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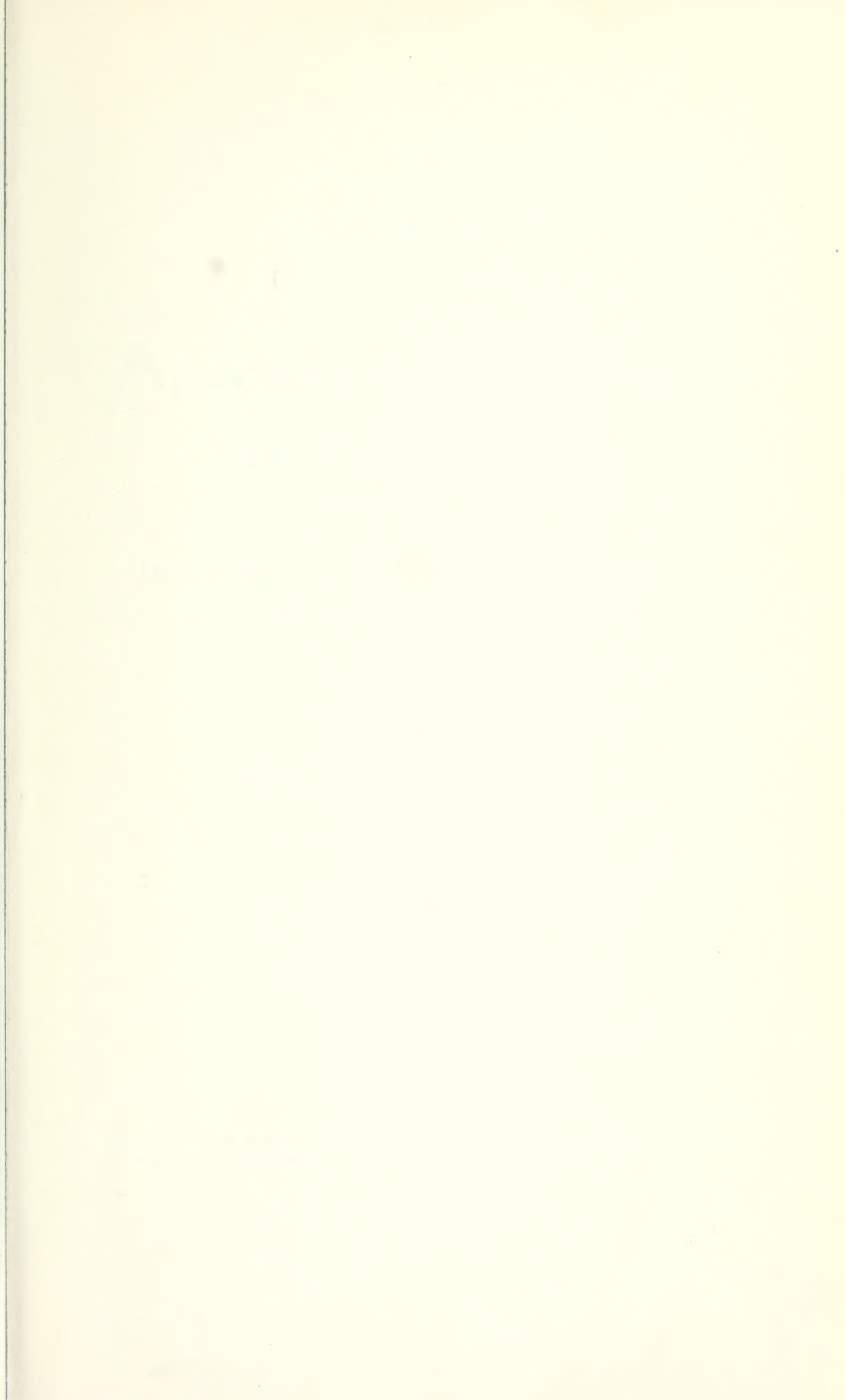
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VOLUME ONE

Appendix to the Journal of the Senate

LEGISLATURE OF THE STATE OF CALIFORNIA
1965 REGULAR SESSION

REPORTS

January 4, 1965–June 18, 1965



HON. GLENN M. ANDERSON
President of the Senate

HON. HUGH M. BURNS
President pro Tempore

J. A. BEEK
Secretary of the Senate

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Appointed by the Governor
of the State

LEGISLATURE OF THE STATE OF CALIFORNIA
THIRD REGULAR SESSION

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REPORT OF THE SENATE FACTFINDING COMMITTEE ON AGRICULTURE

Appointed Pursuant to the Terms of Senate Resolution No. 145
of the Regular Session of 1963 of the California Legislature

ON

PART A

Agricultural Operations Report on Agricultural Programs at Various
State Institutions for the 1963 Calendar Year and the
1963-1964 Fiscal Year

PART B

Recommendations re Capital Outlay Expenditures in the 1964-65
State Budget for Agricultural Structures and
Facilities at State Institutions

MEMBERS OF THE COMMITTEE

VIRGIL O'SULLIVAN, *Chairman*

ROBERT J. LAGOMARSINO,
Vice Chairman

JAMES A. COBEY

SAMUEL R. GEDDES †

JOHN A. MURDY, JR.*

AARON W. QUICK

JOSEPH A. RATTIGAN

HAROLD T. SEDGWICK

WALTER W. STIERN

VERNON L. STURGEON

WILLIAM SYMONS, JR.

HOWARD WAY

ROBERT D. WILLIAMS

PAUL K. HUFF, *Executive Secretary*

* Term Expired

† Deceased



Published by the
SENATE
OF THE STATE OF CALIFORNIA
1965

GLENN M. ANDERSON
President of the Senate

HUGH M. BURNS
President pro Tempore

JOSEPH A. BEEK
Secretary



HON. GLENN M. ANDERSON, *President*
and Members of the Senate

Gentlemen :

The Senate Factfinding Committee on Agriculture, created by the provisions of Senate Resolution No. 145 of the 1963 Regular Session, submits a report in two parts.

Part A of the report consists of a Department of Finance summary of agricultural operations at state institutions. This summary was prepared at the request of the committee. The figures in the summary relating to the Departments of Mental Hygiene and Youth Authority are for the 1963-64 fiscal year, while those for Correctional Industries are for the 1963 calendar year.

Part B of the report outlines in some detail committee recommendations relating to capital outlay expenditures in the 1964-65 State Budget for agricultural structures and facilities at the various state institutions including state colleges conducting farm operations. These items were reviewed by the committee at a meeting held on the Chico State College campus on September 15, 1964, and a report of the committee's findings and recommendations was submitted to the Department of Finance under date of October 15, 1964. This review function is conducted by the Senate Factfinding Committee on Agriculture functioning pursuant to the provisions of Senate Resolution 145. This resolution provides in part that, "Any state agency which proposes the expenditure of any state funds for capital outlay providing for plans, specifications, construction or purchase of new facilities which are to be used for agricultural purposes shall first submit such proposals to the Factfinding Committee on Agriculture to enable such committee to review and inspect such facilities, equipment or items and to report thereon to the Director of Finance. The Department of Finance shall consider the recommendations of the committee in approving or disapproving any such expenditures in order that any resulting economies may be reflected as soon as practicable."

Respectfully submitted,

VIRGIL O'SULLIVAN, *Chairman*

ROBERT J. LAGOMARSINO
JAMES A. COBEY
AARON W. QUICK
JOSEPH A. RATTIGAN
HAROLD T. SEDGWICK

WALTER W. STIERN
VERNON L. STURGEON
WILLIAM SYMONS, JR.
HOWARD WAY
ROBERT D. WILLIAMS

PART A

AGRICULTURAL OPERATIONS REPORT ON AGRICULTURAL
PROGRAMS AT VARIOUS STATE INSTITUTIONS FOR
THE 1963 CALENDAR YEAR AND THE
1963-1964 FISCAL YEAR

DEPARTMENT OF FINANCE

SACRAMENTO

September 3, 1964

HON. VIRGIL O'SULLIVAN, *Chairman*
Senate Factfinding Committee on Agriculture
State Capitol, Sacramento, California

Dear Senator O'Sullivan:

This summary of the agricultural operations in state institutions has been prepared for your committee pursuant to recommendations of the Joint Legislative Committee on Agricultural and Livestock Problems in their meeting July 5, 1956.

It includes the calendar year 1963 for Correctional Industries and the 1963-64 fiscal year for Mental Hygiene and Youth Authority farms. Also the comparison of operations of these farms for the last three years is covered.

Respectfully submitted,

ROY M. BELL, *Assistant Director*
Department of Finance

AGRICULTURAL OPERATIONS REPORT

1963-64 Fiscal Year

Mental Hygiene
Youth Authority

1963 Calendar Year
Correctional Industries

Compiled by Budget Division
DEPARTMENT OF FINANCE



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GENERAL INFORMATION

STATE INSTITUTIONS CONDUCTING AGRICULTURAL OPERATIONS

Department and Institutions	Superintendent or Warden	Industries Manager	Assigned to Farming	Avr. Daily Population
<i>Business</i>				
Mental Hygiene	<i>Superintendent</i>	<i>Administrator</i>	<i>Patients</i>	<i>Patients</i>
Agnews	W. Rapaport, M.D.	D. A. Gidel	18	4,067
Camarillo	L. Nash, M.D.	K. Mills	72	5,773
Mendocino	E. W. Klatte, M.D.	A. O'Farrell	57	2,145
Napa	T. K. Miller, M.D.	P. White	42	4,788
Patton	O. L. Gericke, M.D.	H. L. Carter	72	4,022
Sonoma	D. M. Bramwell, M.D.	K. Clewett	21	3,437
<i>Business</i>				
Youth Authority	<i>Superintendent</i>	<i>Business Manager</i>	<i>Wards</i>	<i>Wards</i>
Preston	A. Breed	M. C. Jensen	99	918
<i>Business</i>				
Corrections	<i>Superintendent or Warden</i>	<i>Industries Manager</i>	<i>Inmates</i>	<i>Inmates</i>
Institution for Men	E. A. Oberhauser	E. Shindler	283	1,370
Deuel Voc. Institution	A. Cook	C. L. Ackerman	42	1,801
Folsom State Prison	R. Heinze	A. Satfield	148	2,050
San Quentin State Prison	F. R. Dickson	E. Howell	11	4,353
Correctional Training Facility	L. E. Wilson	M. Rich	156	3,412

As indicated below, farming operations have been dropped at several institutions and enterprises closed out at others during the three years covered by this report. Records of these discontinued enterprises are deleted from this report but are still included in the totals.

Atascadero State Hospital dropped all farm operations during the 1963-64 fiscal year. All operations at Agnews State Hospital except pork production discontinued during the 1963-64 fiscal year. At Napa State Hospital all operations except poultry and dairy discontinued during the 1963-64 fiscal year. Mendocino State Hospital stopped vegetable production.

Preston School of Industry closed their poultry, slaughterhouse and are now phasing out beef. California Institution for Men removed all their peach trees in 1963. Paso Robles is discontinuing farming.

Farm Operations Summaries**CORRECTIONAL INDUSTRIES****Institution for Men***Financial Report*

	1961	1962	1963
Total value of farm production	\$1,188,559	\$1,321,446	\$1,418,364
Total cost of production	851,868	971,332	1,001,029
Total net income	\$336,691	\$350,114	\$417,335
Dairy	\$210,225	\$261,038	\$315,822
Hogs and slaughterhouse	22,147	12,232	—758
Beef	13,789	4,080	—8,646
Vegetables	196	—3,886	7,497
Field crops and pasture	—9,273	6,474	33,422
Food processing	101,594	67,889	69,998

Acreage & Inmate

<i>Assignments</i>	<i>Acres</i>	<i>Inmates</i>	<i>Acres</i>	<i>Inmates</i>	<i>Acres</i>	<i>Inmates</i>
Dairy and beef	31	45	31	45	31	55
Hogs and slaughterhouse	25	21	25	13	25	10
Vegetables	262	18	297	20	297	13
Field crops and pasture	1,410	62	1,375	71	1,375	25
Food processing	—	70	—	80	—	180
Miscellaneous	232	10	222	—	222	—
Totals	2,000	228	1,990	239	1,950	283

Deuel Vocational Institution*Financial Report*

	1961	1962	1963
Total value of farm production	\$405,551	\$461,006	\$472,957
Total cost of production	301,488	298,538	328,784
Total net income	\$104,063	\$162,468	\$144,173
Dairy	\$84,348	\$132,642	\$136,693
Hogs and veal	14,618	15,623	—2,959
Field crops	5,097	14,203	10,439

Acreage & Inmate

<i>Assignments</i>	<i>Acres</i>	<i>Inmates</i>	<i>Acres</i>	<i>Inmates</i>	<i>Acres</i>	<i>Inmates</i>
Dairy	10	17	10	31	10	20
Hogs and slaughterhouse	20	7	20	12	20	11
Field crops and pasture	388	20	388	12	388	11
Miscellaneous	363	6	363	—	363	—
Totals	781	50	781	55	781	42

Folsom State Prison*Financial Report*

	1961	1962	1963
Total value of farm production	\$507,072	\$742,969	\$592,469
Total cost of production	418,383	683,256	545,579
Total net income	\$88,689	\$59,713	\$46,890
Dairy	\$44,582	\$28,113	\$40,216
Food processing	44,107	31,600	6,674

Farm Operations Summaries—Continued**CORRECTIONAL INDUSTRIES—Continued***Acreage & Inmate*

<i>Assignments</i>	<i>Acres</i>	<i>Inmates</i>	<i>Acres</i>	<i>Inmates</i>	<i>Acres</i>	<i>Inmates</i>
Dairy	25	48	25	43	25	29
Orchard	20	8	50	10	50	10
Field crops and pasture	735	—	705	—	705	—
Food processing	—	210	—	190	—	109
Miscellaneous	49	5	49	3	49	—
Totals	829	271	829	246	829	148

San Quentin State Prison

<i>Financial Report (Dairy Only)</i>	<i>1961</i>	<i>1962</i>	<i>1963</i>
Total value dairy production	\$169,293	\$146,541	\$152,823
Total cost dairy production	122,069	108,682	130,219
Net income	\$47,224	\$37,859	\$22,604
Inmate assignments	26	19	11

Correctional Training Facility

<i>Financial Report</i>	<i>1961</i>	<i>1962</i>	<i>1963</i>
Total value of farm production	\$480,883	\$501,457	\$484,256
Total cost of production	337,852	378,473	355,619
Total net income	\$143,031	\$122,984	\$128,637
Dairy	\$139,126	\$105,128	\$127,575
Hog and slaughterhouse	15,481	15,489	—5,770
Field crops and pasture	—11,576	2,367	6,832

Acreage & Inmate

<i>Assignments</i>	<i>Acres</i>	<i>Inmates</i>	<i>Acres</i>	<i>Inmates</i>	<i>Acres</i>	<i>Inmates</i>
Dairy	8	39	8	41	8	39
Hogs and slaughterhouse	6	19	6	19	6	17
Field crops and pasture	666	120	666	120	666	100
Miscellaneous	256	5	256	—	256	—
Totals	936	183	936	180	936	156

MENTAL INSTITUTIONS**Agnews State Hospital**

<i>Financial Report (Swine)</i>	<i>1961-62</i>	<i>1962-63</i>	<i>1963-64</i>
Total value of farm production	\$42,592	\$45,920	\$52,098
Total cost of production	25,913	24,174	29,264
Total net income	\$16,679	\$21,746	\$22,834
Patient assignments	10	10	10

Camarillo State Hospital

<i>Financial Report</i>			
Total value of farm production	\$505,041	\$540,307	\$488,599
Total cost of production	358,954	372,745	364,209
Total net income	\$146,087	\$167,562	\$124,390
Dairy	\$131,556	\$149,933	\$94,660
Vegetables	32,142	34,423	29,427
Field crops	—17,256	—17,035	303

Farm Operations Summaries--Continued**MENTAL INSTITUTIONS--Continued**

<i>Acreage and Patient Assignments</i>	<i>1961-62</i>		<i>1962-63</i>		<i>1963-64</i>	
	<i>Acres</i>	<i>Patients</i>	<i>Acres</i>	<i>Patients</i>	<i>Acres</i>	<i>Patients</i>
Dairy	68	39	68	33	68	29
Vegetables	165	31	200	36	200	36
Field crops	517	19	482	10	399	7
Pasture	173	—	173	—	173	—
Totals	926	95	926	79	999	72

Mendocino State Hospital

<i>Financial Reports</i>	<i>1961-62</i>	<i>1962-63</i>	<i>1963-64</i>
Total value of farm production	\$296,817	\$287,044	\$287,466
Total cost of production	236,360	207,742	222,305
Total net income	\$60,457	\$79,302	\$65,161
Dairy	\$60,634	\$72,227	\$62,259
Hogs	3,983	—628	—1,347
Orchard	783	1,128	1,975
Field crops	—16,631	204	—5,986
Food processing	9,157	6,371	8,260

<i>Acreage and Patient Assignments</i>	<i>1961-62</i>		<i>1962-63</i>		<i>1963-64</i>	
	<i>Acres</i>	<i>Patients</i>	<i>Acres</i>	<i>Patients</i>	<i>Acres</i>	<i>Patients</i>
Dairy	40	9	15	12	15	10
Hogs	25	11	25	11	25	11
Orchard	25	—	25	—	25	—
Field crops	374	23	414	30	414	25
Food processing	—	5	—	11	—	11
Totals	479	98	479	64	479	57

Napa State Hospital

<i>Financial Report</i>	<i>1961-62</i>	<i>1962-63</i>	<i>1963-64</i>
Total value of farm production	\$722,844	\$488,960	\$359,884
Total cost of production	354,376	337,068	244,821
Total net income	\$168,518	\$151,892	\$115,063
Dairy	\$136,830	\$142,060	\$116,297
Poultry	7,578	7,862	—1,234

<i>Acreage and Patient Assignments</i>	<i>1961-62</i>		<i>1962-63</i>		<i>1963-64</i>	
	<i>Acres</i>	<i>Patients</i>	<i>Acres</i>	<i>Patients</i>	<i>Acres</i>	<i>Patients</i>
Dairy	32	30	32	30	40	22
Poultry	14	25	14	25	20	20
Pasture	332	—	332	—	332	—
Totals	840	160	840	160	392	42

Patton State Hospital

<i>Financial Report</i>	<i>1961-62</i>	<i>1962-63</i>	<i>1963-64</i>
Total value of farm production	\$419,021	\$432,414	\$421,269
Total cost of production	275,469	295,614	300,644
Total net income	\$143,552	\$136,800	\$120,625
Dairy	\$122,142	\$114,168	\$90,631
Hogs	24,802	21,091	23,900
Orchard	—1,925	7,718	9,188
Vegetables	13,704	6,798	6,735
Field crops	—15,170	—12,975	—17,829

Farm Operations Summaries—Continued**MENTAL INSTITUTIONS—Continued**

<i>Acres and Patient Assignments</i>	<i>1961-62</i>		<i>1962-63</i>		<i>1963-64</i>	
	<i>Acres</i>	<i>Patients</i>	<i>Acres</i>	<i>Patients</i>	<i>Acres</i>	<i>Patients</i>
Dairy	16	10	16	10	16	10
Hogs	5	10	5	10	5	10
Orchard	36	—	36	—	36	—
Vegetables	116	22	116	22	116	22
Field crops	236	30	236	30	236	30
Totals	409	72	409	72	409	72

Sonoma State Hospital

<i>Financial Report</i>	<i>1961-62</i>	<i>1962-63</i>	<i>1963-64</i>
Total value of farm production	\$275,051	\$257,397	\$265,826
Total cost of production	202,161	162,686	170,595
Total net income	\$72,890	\$94,711	\$95,231
Dairy	\$82,190	\$87,336	\$83,224
Hogs	3,017	7,375	12,007

<i>Acres and Patient Assignments</i>	<i>1961-62</i>		<i>1962-63</i>		<i>1963-64</i>	
	<i>Acres</i>	<i>Patients</i>	<i>Acres</i>	<i>Patients</i>	<i>Acres</i>	<i>Patients</i>
Dairy	10	20	10	18	10	18
Hogs	3	6	3	4	3	3
Pasture	663	—	663	—	663	—
Totals	676	26	676	22	676	21

YOUTH AUTHORITY INSTITUTIONS**Preston School of Industry**

<i>Financial Report</i>			
Total value of farm production	\$177,697	\$174,611	\$181,573
Total cost of production	159,683	145,902	137,711
Total net income	\$17,414	\$28,712	\$43,862
Dairy	\$42,527	\$41,437	\$49,562
Hogs	1,791	2,123	—4,310
Beef and sheep	—629	3,561	52
Vegetables	—1,233	—2,802	—2,647
Field crops	—12,450	—12,959	1,205

<i>Acres and Ward Assignments</i>	<i>1961-62</i>		<i>1962-63</i>		<i>1963-64</i>	
	<i>Acres</i>	<i>Wards</i>	<i>Acres</i>	<i>Wards</i>	<i>Acres</i>	<i>Wards</i>
Dairy	36	17	36	20	96	20
Hogs	12	7	25	15	25	7
Vegetables	40	15	40	14	40	22
Field crops and pasture	700	40	687	59	627	50
Totals	790	89	790	109	790	99

Farm Operations Summaries—Continued**Value of Farm Production at All Institutions**

<i>Department and Institution</i>	<i>Gross Income</i>		<i>Net Income</i>	
	<i>1962-63</i>	<i>1963-64</i>	<i>1962-63</i>	<i>1963-64</i>
Mental Hygiene				
Agnews	\$219,436	\$59,424	\$40,520	\$23,628
Cambridge	540,307	488,599	167,562	124,390
Mendocino	287,044	287,466	79,302	65,161
Napa	488,960	359,884	151,892	115,063
Patton	432,414	421,269	136,800	120,265
Sonoma	257,397	265,826	94,711	95,231
Totals	\$2,258,980	\$1,882,468	\$721,806	\$543,738
Youth Authority				
Preston School of Industry	\$173,614	\$181,573	\$28,712	\$43,862
Corrections	<i>1962</i>	<i>1963</i>	<i>1962</i>	<i>1963</i>
Institution for Men	\$1,321,446	\$1,418,364	\$350,114	\$417,335
Deuel Vocational Institution	481,906	472,957	162,468	144,173
Folsom	742,969	592,469	59,713	46,890
New Quentin	146,741	152,823	37,859	22,604
Correctional Training Facility	501,457	484,256	122,984	128,637
Totals	\$3,173,419	\$3,120,869	\$733,138	\$759,639
GRAND TOTALS	\$5,721,848	\$5,184,910	\$1,480,509	\$1,347,239

Dairy Enterprise Summaries**CORRECTIONAL INDUSTRIES**

Institution for Men	<i>1961</i>	<i>1962</i>	<i>1963</i>
Total value dairy production	\$577,317	\$656,536	\$765,071
Total cost dairy production	367,092	395,498	449,249
Net income	\$210,225	\$261,038	\$315,822
Cost per gallon milk produced	.46	.51	.50
Milk production (gallons)	757,368	790,364	926,413
Number of cows (average)	510	578	639
Production per cow (pounds)	12,786	11,773	12,661
Animals (12/31)			
Cows, milking and dry	586	579	646
Heifers, 2 years	113	223	185
Heifers, 1 year	134	116	109
Calves, 6 months to 1 year	133	117	100
Calves, under 6 months	286	220	301
Bulls, 6 months and older	15	13	17
Totals	1,267	1,268	1,358
Deuel Vocational Institution			
Total value dairy production	\$295,671	\$352,527	\$369,888
Total cost dairy production	211,323	219,885	233,195
Net income	\$84,348	\$132,642	\$136,693
Cost per gallon milk produced	.53	.53	.49
Milk production (gallons)	383,069	428,890	441,321
Number of cows (average)	235	265	286
Production per cow (pounds)	14,035	13,934	13,286

Dairy Enterprise Summaries—Continued**CORRECTIONAL INDUSTRIES—Continued**

Deuel Vocational Institution—Continued	1961	1962	1963
Animals (12/31)			
Cows, milking and dry	247	279	393
Heifers, 2 years	26	25	55
Heifers, 1 year	81	119	65
Calves, 6 months to 1 year	59	35	36
Calves, under 6 months	65	45	48
Bulls, 6 months and older	2	2	2
Totals	480	505	599
Folsom State Prison			
Total value dairy production	\$172,066	\$165,465	\$166,405
Total cost dairy production	127,484	137,352	126,189
Net income	\$44,582	\$28,113	\$40,216
Cost per gallon milk produced	.53	.56	.56
Milk production (gallons)	264,422	244,314	219,466
Number of cows (average)	158	140	136
Production per cow (pounds)	14,409	15,025	13,894
Animals (12/31)			
Cows, milking and dry	156	140	142
Heifers, 2 years	11	7	16
Heifers, 1 year	25	32	53
Calves, 6 months to 1 year	12	27	7
Calves, under 6 months	12	18	18
Totals	216	224	236
San Quentin State Prison			
Total value dairy production	\$169,293	\$146,541	\$152,823
Total cost dairy production	122,069	108,632	139,219
Net income	\$47,224	\$37,859	\$22,304
Cost per gallon milk produced	.58	.51	.78
Milk production (gallons)	209,719	206,100	165,359
Number of cows (average)	122	109	94
Production per cow (pounds)	14,800	16,280	15,149
Animals (12/31)			
Cows, milking and dry	121	100	95
Heifers, 2 years	7	3	9
Heifers, 1 year	18	28	38
Calves, 6 months to 1 year	20	20	23
Calves, under 6 months	18	18	12
Totals	184	169	177
Correctional Training Facility			
Total value dairy production	\$350,668	\$352,228	\$352,761
Total cost dairy production	211,542	247,100	225,186
Net income	\$139,126	\$105,128	\$127,575
Cost per gallon milk produced	.47	.56	.51
Milk production (gallons)	443,162	448,517	453,001
Number of cows (average)	260	215	238
Production per cow (pounds)	14,675	17,961	16,388

Dairy Enterprise Summaries—Continued**CORRECTIONAL INDUSTRIES—Continued****Correctional Training Facility—Continued**

Animals (12/31)			
Cows, milking and dry	263	265	229
Heifers, 2 years	23	41	38
Heifers, 1 year	106	119	116
Calves, 6 months to 1 year	62	99	93
Calves, under 6 months	54	22	23
Bulls, 6 months and older	5	4	5
Totals	513	550	504

MENTAL HOSPITALS

Camarillo	<i>1961-62</i>	<i>1962-63</i>	<i>1963-64</i>
Total value dairy production	\$377,727	\$404,971	\$351,577
Total cost dairy production	246,171	255,038	256,917
Net income	\$131,556	\$149,933	\$94,660
Cost per gallon milk produced	.59	.51	.58
Milk production (gallons)	469,117	497,826	445,765
Average number of cows	334	329	326
Production per cow (pounds)	12,093	13,028	11,423
Animals (June 30)			
Cows, milking and dry	131	310	316
Heifers, 2 years	53	3	-
Heifers, 1 year	22	33	105
Calves, 6 months to 1 year	37	73	52
Calves, under 6 months	14	38	63
Bulls, 6 months and older	11	4	2
Totals	450	461	538

Mendocino

Total value dairy production	\$166,435	\$179,142	\$178,986
Total cost dairy production	105,801	106,915	116,727
Net income	\$60,634	\$72,227	\$62,259
Cost per gallon milk produced	.58	.59	.61
Milk production (gallons)	188,907	179,779	191,684
Average number of cows	106	103	107
Production per cow (pounds)	15,344	15,028	15,421
Animals (June 30)			
Cows, milking and dry	104	103	107
Heifers, 2 years	1	-	15
Heifers, 1 year	34	16	34
Calves, 6 months to 1 year	-	48	26
Calves, under 6 months	47	51	21
Bulls, 6 months or older	3	3	11
Totals	189	221	214

Dairy Enterprise Summaries—Continued**MENTAL HOSPITALS—Continued**

Napa	1961-62	1962-63	1963-64
Total value dairy production	\$324,211	\$330,928	\$310,822
Total cost dairy production	187,351	188,868	194,525
Net income	\$136,860	\$142,060	\$116,297
Cost per gallon milk produced	.48	.48	.51
Milk production (gallons)	397,718	392,000	381,353
Average number of cows	263	248	245
Production per cow (pounds)	13,020	13,609	13,401
Animals (June 30)			
Cows, milking and dry	264	252	248
Heifers, 2 years	35	50	33
Heifers, 1 year	59	34	44
Calves, 6 months to 1 year	48	—	59
Calves, under 6 months	46	97	22
Bulls, 6 months or older	5	16	13
Totals	457	449	419
Patton			
Total value dairy production	\$292,307	\$289,507	\$281,124
Total cost dairy production	170,165	175,339	182,493
Net income	\$122,142	\$114,168	\$98,631
Cost per gallon milk produced	.45	.46	.50
Milk production (gallons)	389,070	378,353	372,239
Average number of cows	216	217	214
Production per cow (pounds)	15,509	15,012	14,973
Animals (June 30)			
Cows, milking and dry	217	214	202
Heifers, 1 year	48	44	41
Calves, 6 months to 1 year	56	69	68
Calves, under 6 months	31	24	23
Bulls, 6 months or older	5	7	7
Totals	357	358	341
Sonoma			
Total value dairy production	\$240,048	\$232,640	\$235,672
Total cost dairy production	157,858	145,304	152,448
Net income	\$82,190	\$87,336	\$83,224
Cost per gallon milk produced	.50	.48	.52
Milk production (gallons)	323,134	302,464	301,046
Average number of cows	174	166	162
Production per cow (pounds)	15,990	15,688	16,000
Animals (June 30)			
Cows, milking and dry	171	162	153
Heifers, 2 years	20	21	24
Heifers, 1 year	59	64	54
Calves, 6 months to 1 year	—	—	26
Calves, milk fed under 6 months	67	62	29
Bulls, 6 months or older	6	7	6
Totals	323	316	292

Dairy Enterprise Summaries--Continued**YOUTH AUTHORITY INSTITUTIONS****Preston School of Industry**

Total value dairy production	\$112,621	\$110,437	\$124,718
Total cost dairy production	70,095	69,000	75,156
Net income	\$42,526	\$41,437	\$49,562
Cost per gallon milk produced .....	.56	.53	.53
Milk production (gallons)	136,526	130,439	141,607
Average number of cows	120	102	95
Production per cow (pounds)	9,796	11,011	12,829
Animals (June 30)			
Cows, milking and dry	116	87	97
Heifers, 2 years	9	20	28
Heifers, 1 year	18	28	9
Calves, 6 months to 1 year	10	20	34
Calves, under 6 months	28	3	19
Totals	181	158	187

Analysis of Dairy Operations

Institution	Production			Cost per cow			Cost per gallon milk		
	Number cows	Pounds per cow	Total gallons	Labor	Other costs	Total	Labor	Other costs	Total
Corrections									
*C. I. M.....	620 (578)	12,661 (11,773)	926,413 (790,364)	\$86 (102)	\$575 (582)	\$671 (684)	\$0.07 (0.07)	\$0.39 (0.42)	\$0.46 (0.50)
*D. V. I.....	286 (265)	13,286 (13,934)	441,321 (428,890)	144 (161)	648 (669)	792 (830)	0.09 (0.10)	0.42 (0.41)	0.51 (0.51)
*Folsom.....	136 (140)	13,894 (15,025)	219,466 (244,314)	210 (210)	613 (771)	823 (681)	0.13 (0.12)	0.38 (0.44)	0.51 (0.56)
*San Quentin.....	94 (109)	15,146 (16,280)	165,359 (206,100)	253 (236)	838 (761)	1,091 (997)	0.14 (0.13)	0.47 (0.40)	0.61 (0.53)
*C. T. F.....	238 (215)	16,388 (17,961)	453,601 (448,517)	178 (196)	794 (925)	972 (1,121)	0.09 (0.09)	0.42 (0.44)	0.51 (0.53)
Average.....	----- 112	----- 13,721	----- (13,955)	----- (152)	----- 649	----- (791)	----- 0.09	----- (0.43)	----- (0.52)
Youth Authority									
*Preston.....	95 (102)	12,829 (11,011)	141,607 (130,439)	199 (166)	592 (310)	791 (676)	0.13 (0.13)	0.40 (0.40)	0.53 (0.53)
Mental Hospitals									
Camarillo.....	336 (329)	11,423 (13,028)	445,765 (497,826)	299 (290)	465 (485)	764 (775)	0.23 (0.19)	0.35 (0.32)	0.58 (0.51)
Mendocino.....	107 (103)	15,421 (15,028)	191,684 (179,779)	371 (405)	720 (633)	1,091 (1,038)	0.21 (0.23)	0.40 (0.36)	0.61 (0.59)
Napa.....	245 (248)	13,401 (13,599)	381,353 (392,000)	300 (294)	493 (468)	793 (762)	0.19 (0.18)	0.32 (0.30)	0.51 (0.48)
Patton.....	214 (217)	14,973 (15,012)	372,239 (378,353)	342 (319)	523 (489)	865 (808)	0.20 (0.18)	0.36 (0.28)	0.50 (0.46)
Sonoma.....	162 (166)	16,000 (15,688)	301,946 (320,464)	383 (353)	577 (522)	960 (875)	0.21 (0.19)	0.31 (0.29)	0.52 (0.48)
Average.....	----- 166	----- 13,690	----- (14,084)	----- (307)	----- 521	----- (849)	----- 0.21	----- (0.30)	----- (0.49)
Grand total	2,543		4,039,254						

* Inmate milkers.

NOTES: 1. Byproduct sales not deducted for cost of production calculations.

2. Corrections—selling and administration expenses not included.

3. Mental Hospitals—overhead, light, power, etc. not included.

Corrections—1963 figures (1962 figures indicated in parenthesis).

Mental Hygiene and Youth Authority—1963-64 fiscal year figures (1962-63 figures indicated in parenthesis).

Swine and Slaughterhouse Summaries**CORRECTIONAL INDUSTRIES**

Institution for Men	1961	1962	1963
Total value hog production	\$171,025	\$73,908	\$49,406
Total cost of hog production	149,878	69,676	50,164
Net income	\$22,147	\$13,232	—\$758
Pork Production			
Cost per pound .....	.13	.12	.16
Liveweight	553,030	790,364	320,650
Animals (12/31)			
Fat hogs	213	202	189
Feeders	569	366	409
Pigs, weaned	400	620	539
Pigs, suckling	402	283	179
Sows and gilts	141	144	144
Boars	12	9	9
Totals	1,737	1,624	1,469
Deuel Vocational Institution			
Total value hog production	\$64,401	\$60,781	\$54,199
Total cost hog production	49,783	45,158	57,157
Net income	\$14,618	\$15,623	—\$2,958
Pork Production			
Cost per pound .....	.16	.21	.18
Liveweight	249,556	228,790	310,294
Animals (12/31)			
Fat hogs	127	72	65
Feeders	142	432	300
Pigs, weaned	46	117	147
Pigs, suckling	260	163	130
Sows and gilts	89	103	92
Boars	3	4	3
Totals	667	891	737
Correctional Training Facility			
Total value hog production	\$49,551	\$58,522	\$32,276
Total cost hog production	34,070	43,033	38,046
Net income	\$15,481	\$15,489	—\$5,770
Pork Production			
Cost per pound .....	.17	.21	.15
Liveweight	190,880	219,931	254,841
Animals (12/31)			
Fat hogs	60	5	86
Feeders	299	490	270
Pigs, weaned	108	175	45
Pigs, suckling	134	249	174
Sows and gilts	112	78	142
Boars	3	5	4
Totals	716	1,002	721

Swine and Slaughterhouse Summaries—Continued**MENTAL INSTITUTIONS**

Agnews	<i>1961-62</i>	<i>1962-63</i>	<i>1963-64</i>
Total value hog production	\$42,592	\$45,920	\$52,098
Total cost hog production	25,913	24,174	29,264
Net income	\$16,679	\$21,746	\$22,834
Pork Production			
Cost per pound .....	.17	.10	.13
Liveweight	147,926	240,163	215,507
Animals (June 30)			
Fat hogs	46	51	67
Feeders	218	229	221
Pigs, weaned	98	95	94
Pigs, suckling	94	220	213
Brood sows	73	70	69
Boars	2	1	2
Totals	531	666	666
Mendocino			
Total value hog production	\$27,061	\$29,275	\$21,332
Total cost hog production	23,078	29,903	22,739
Net income	\$3,983	—\$628	—\$1,347
Pork Production			
Cost per pound .....	.16	.17	.13
Liveweight	143,605	178,500	169,346
Animals (June 30)			
Fat hogs	35	20	24
Feeders	280	292	178
Pigs, weaned	107	121	40
Pigs, suckling	127	96	63
Sows and gilts	50	53	32
Boars	5	4	3
Totals	604	586	340
Patton			
Total value hog production	\$41,259	\$37,932	\$39,829
Total cost hog production	16,457	18,481	15,929
Net income	\$24,802	\$19,451	\$23,900
Pork Production			
Cost per pound .....	.06	.07	.06
Liveweight	271,726	258,727	252,211
Animals (June 30)			
Fat hogs	91	111	128
Feeders	173	285	272
Pigs, weaned	119	68	66
Pigs, suckling	298	166	114
Sows and gilts	90	76	80
Boars	6	6	6
Totals	384	404	666

Swine and Slaughterhouse Summaries—Continued**MENTAL HOSPITALS—Continued**

Sonoma	1961-62	1962-63	1963-64
Total value hog production	\$26,766	\$24,757	\$30,155
Total cost hog production	17,750	17,382	18,148
Net income	\$3,016	\$7,375	\$12,007
Pork Production			
Cost per pound	-	-	.29
Liveweight	-	-	88,415
Animals (June 30)			
Fat hogs	24	73	62
Feeders	86	77	129
Pigs, weaned	48	46	48
Pigs, suckling	120	189	171
Sows and gilts	42	59	44
Boars	4	6	6
Totals	324	450	460

YOUTH AUTHORITY INSTITUTIONS

Preston School of Industry			
Total value hog production	\$16,535	\$20,165	\$15,783
Total cost hog production	15,656	18,042	20,093
Net income	\$879	\$2,123	—\$4,310
Pork Production			
Cost per pound	.23	.18	.19
Liveweight	66,672	102,205	104,816
Animals (June 30)			
Fat hogs	38	20	20
Feeders	81	163	50
Pigs, weaned	85	45	65
Pigs, suckling	142	138	88
Sows and gilts	36	35	32
Boars	2	3	2
Totals	384	404	257

Beef and Sheep Enterprise Summary**CORRECTIONAL INDUSTRIES**

Institution for Men	1961	1962	1963
Total value beef production	\$20,304	\$24,685	\$19,484
Total cost beef production	6,516	20,605	28,130
Net income	\$13,788	\$4,080	—\$8,646
Animals (12/31) Steers	228	288	359

YOUTH AUTHORITY INSTITUTIONS

Preston School of Industry	1961-62	1962-63	1963-64
Total value production	\$2,754	\$6,582	\$2,089
Total cost production	3,383	3,021	2,037
Net income	—\$629	\$3,561	\$52

Poultry Enterprise Summaries**MENTAL INSTITUTIONS****Napa**

Total value poultry production	\$56,325	\$57,415	\$49,062
Total cost poultry production	48,747	49,553	50,296
Net income	\$7,578	\$7,862	—\$1,234
Cost per dozen eggs .....	.29	.30	.30
Total eggs production (dozen)	167,007	166,496	164,223
Average number laying hens	8,465	8,000	8,104
Eggs per hen	237	250	243
Birds (June 30)			
Laying hens	7,857	6,644	8,229
Pullets and chicks	4,851	6,860	4,420
Turkeys	730	730	—
Totals	13,438	14,234	12,649

Fruit Crop Enterprise Summaries**MENTAL INSTITUTIONS****Mendocino**

Total value production	\$4,658	\$2,136	\$2,177
Total cost production	3,875	1,008	1,202
Net income	\$783	\$1,128	\$1,975
Acreage	25 acres	25 acres	25 acres

Patton

Total value fruit production	\$9,485	\$21,848	\$22,947
Total cost fruit production	11,410	14,130	13,759
Net income	\$1,925	\$7,718	\$9,188
Acreage	35 acres	35 acres	35 acres

Field Crops and Pasture Summaries**CORRECTIONAL INDUSTRIES****Institution for Men**

	1961	1962	1963
Total value crop production	\$30,633	\$48,349	\$75,073
Total cost crop production	39,906	41,875	41,651
Net income	—\$9,273	\$6,474	\$33,422
Production—all crops	1,419 acres	1,410 acres	1,410 acres

Deuel Vocational Institution

Total value crop production	\$45,478	\$47,697	\$48,870
Total cost crop production	40,381	33,494	38,431
Net income	\$5,097	\$14,203	\$10,439
Production—all crops	438 acres	438 acres	438 acres

Correctional Training Facility

Total value crop production	\$80,664	\$90,706	\$99,218
Total cost crop production	92,241	88,339	92,386
Net income	—\$11,577	\$2,367	\$6,832
Production—all crops		666 acres	666 acres

Field Crops and Pasture Summaries—Continued**MENTAL INSTITUTIONS**

	1961-62	1962-63	1963-64
Camarillo			
Total value crop production	\$50,358	\$58,723	\$62,969
Total cost crop production	67,612	75,758	62,666
Net income	—\$17,256	—\$17,035	\$303
Production—all crops	517 acres	517 acres	399 acres
Mendocino			
Total value crop production	\$28,655	\$44,892	\$43,094
Total cost crop production	45,286	44,688	49,080
Net income	—\$16,631	\$204	—\$5,986
Production—all crops	374 acres	414 acres	414 acres
Patton			
Total value crop production	\$17,164	\$25,891	\$23,128
Total cost crop production	32,334	38,866	40,957
Net income	—\$15,170	—\$12,975	—\$17,829
Acreage	236 acres	236 acres	236 acres

YOUTH AUTHORITY INSTITUTIONS

Preston School of Industry			
Total value crop production	\$14,935	\$15,074	\$28,497
Total cost crop production	26,824	28,033	27,292
Net income	—\$11,889	—\$12,959	\$1,205
Production—all crops	598 acres	598 acres	598 acres

Vegetable Enterprise Summaries**CORRECTIONAL INSTITUTIONS**

Institution for Men	1961	1962	1963
Total value vegetable production	\$57,806	\$47,931	\$53,955
Total cost vegetable production	57,110	51,817	46,459
Net income	\$196	—\$3,886	\$7,496
Production—all crops	262 acres	262 acres	262 acres

MENTAL INSTITUTIONS

	1961-62	1962-63	1963-64
Camarillo			
Total value vegetable production	\$76,827	\$76,167	\$74,053
Total cost vegetable production	44,685	41,744	44,626
Net income	\$32,142	\$34,423	\$29,427
Production—all crops	165 acres	165 acres	200 acres
Patton			
Total value vegetable production	\$58,806	\$57,234	\$54,241
Total cost vegetable production	45,102	50,436	47,506
Net income	\$13,704	\$6,798	\$6,735
Acreage	116 acres	116 acres	116 acres

Vegetable Enterprise Summaries—Continued**YOUTH AUTHORITY INSTITUTIONS**

Preston School of Industry	<i>1961</i>	<i>1962</i>	<i>1963</i>
Total value vegetable production	\$13,188	\$11,422	\$10,485
Total cost vegetable production	14,421	14,224	13,132
Net income	—\$1,233	—\$2,802	—\$2,647
Production—all crops	40 acres	40 acres	40 acres

Food Processing (Cannery) Summaries**CORRECTIONAL INDUSTRIES**

Institution for Men	<i>1961</i>	<i>1962</i>	<i>1963</i>
Credit for finished goods	\$331,815	\$465,599	\$455,375
Cost of finished goods	230,221	397,710	385,377
Gross profit	\$101,594	\$67,889	\$69,998
Production	# 10 Cans	# 10 Cans	# 10 Cans
Vegetables	466,596	588,690	628,182
Syrup	63,164	55,588	62,961
Juices	63,282		
Totals	593,042	644,278	691,143
Folsom State Prison			
Credit for finished goods	\$335,006	\$577,503	\$426,064
Cost of finished goods	290,899	545,903	419,390
Gross profit	\$44,107	\$31,600	\$6,674
Production	# 10 Cans	# 10 Cans	# 10 Cans
Fruit	604,700	551,377	448,714
Other			51,295
Gelatin	39,684		39,307
Juices	18,416	10,756	4,374
Totals	662,800	562,133	543,690

MENTAL INSTITUTIONS

Mendocino	<i>1961-62</i>	<i>1962-63</i>	<i>1963-64</i>
Total value of production	\$49,144	\$31,599	\$40,817
Total cost of production	39,987	25,228	32,557
Net income	\$9,157	\$6,371	\$8,260
Production	# 10 Cans	# 10 Cans	# 10 Cans
Vegetables	27,603	22,101	15,106
Fruit	26,028	16,290	27,068
Totals	53,631	38,391	42,174

PART B

RECOMMENDATIONS RE CAPITAL OUTLAY EXPENDITURES IN
THE 1964-1965 STATE BUDGET FOR AGRICULTURAL
STRUCTURES AND FACILITIES AT STATE
INSTITUTIONS

MEMBERS

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Howard Way
Robert D. Williams

California Legislature
Senate Fact Finding Committee
on Agriculture

Paul K. Huff
Executive Secretary

Address All Communications to:

Room 409
State Capitol
Sacramento 95814
Tel.: 445-2206

October 15, 1964

HONORABLE HALE CHAMPION, *Director*
State Department of Finance
State Capitol
Sacramento, California

Dear Mr. Champion:

This is to inform you that the Senate Factfinding Committee on Agriculture, functioning pursuant to the provisions of Senate Resolution 145 of the 1963 Regular Session of the Legislature, approved, with minor changes, the capital outlay items for agricultural structures and facilities appearing in the 1964-65 State Budget as per the attached report, for the following institutions:

CALIFORNIA STATE COLLEGES, BOARD OF TRUSTEES

Fresno State College
California State Polytechnic College, San Luis Obispo Campus
California State Polytechnic College, Kellogg-Voorhis Campus
Chico State College

DEPARTMENT OF CORRECTIONS

California Medical Facility
Deuel Vocational Institute
California Institution for Men
California State Prison, Folsom

Respectfully submitted,

PAUL K. HUFF

1964-65 AGRICULTURAL CAPITAL OUTLAY ITEMS

STATE COLLEGES

FRESNO STATE COLLEGE

1. Farm Fencing—Completion \$12,300.00

Adequate fencing on the college farm is necessary for livestock grazing on the areas to be fenced. This will provide access to stubble, native and planted feeding areas for the beef, sheep and dairy animals. The fenced type proposed has proved very satisfactory on previous installations.

Description:

This farm fencing development program is the balance remaining of the total amount submitted for fencing on new property. This project will include approximately three miles of perimeter fencing and *one loading chute*. The perimeter fence will be a standard 26" wire mesh, 4 strands barbed wire on studded-tee posts and Powder-River Steel stock gates. The plans and specifications will follow amended Division of Highways requirements adapted to the specific conditions. The area to be fenced under this project is described on the attached Fresno State College farm maps. The entire job to be completed under contract.

Cost Estimate Data:

18,150 ft.—26" mesh—4 bb wire fence	
at \$3.378/mile	\$11,550.00
Portable loading chute	750.00
Total	\$12,300.00

The committee recommends approval.

2. Construct Glasshouse \$13,400.00

This house will serve as an instruction unit for agronomy and viticulture. Classroom materials must be prepared year around and present facilities are utilized by the Ornamental Horticulture Department. The CP 12 vegetable crops class needs space for flatting and planting various vegetable crops in the greenhouse during early winter months for later transplanting for spring classwork.

Description:

One (1) new glasshouse is included in this project. It is to be aluminum frame type, truss-supported. The house is to be 25' x 30' x 5'. The house will be equipped with heat, humidity control, water and electricity. The unit is to be constructed by contractors. This is the second phase of a three-phase project.

Cost Estimate Data:

Contract estimate obtained from the glasshouse contractors is as follows for above unit completely installed:

One (1) 25' x 30' x 5' glasshouse	\$13,400.00
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The committee recommends approval.

3. Dairy Corral Fence—Completion \$3,600.00

The facility is needed to hold dry cows and heifers during the winter months and serves as a dry-feedlot for young stock. The continued use by cattle in close quarters has caused a complete breakdown of the existing woven wire fence. The new fence will be a more permanent installation with very little maintenance. This project offers excellent work opportunities for our welding students.

Description:

This project was originally submitted in the 1959-60 budget. The first part was constructed in May 1960. This phase will complete the job. Existing wire fence will be removed and replaced with 2" top pipe rail and three 3" cables supported by 3" x 7' pipe posts set in concrete. Gates to be made of 2" pipe. Foll dirt has been placed in position as part of the first project. Student labor will be employed to augment the day labor.

Cost Estimate Data:

970' 2" galv. pipe @ \$.65	\$630.00
625' 3" galv. pipe @ \$1.35	845.00
4,003' 3" steel cable @ \$.49	400.00
Miscellaneous supplies, rod, bolts, etc.	225.00
Labor for welding, setting cable and posts and removing old fence	1,500.00
Total	\$3,600.00

The committee recommends approval.

4. Construct Hay Shed \$13,400.00

The proposed hay shed will replace hay storage facilities that were lost when they vacated Hammer Field. It was impractical to try to move the old Hammer Field Base Gym (20-year-old frame building) over to present campus. The construction of this new shed will permit all of the hay to be stored at the feed mill (excepting hay stored in dairy feed barn) adjacent to the platform truck scales. This will permit an accurate accounting of all hay used by the various livestock units.

Description:

A pole-type aluminum covered L-shaped hay shed 37' x 60' x 26' x 128' is being requested. This unit is to be constructed south and east of existing feedmill hay storage facilities. An area 65' x 60' of hard-top surfacing will be required. The job will require some fence relocation to provide access by trucks. Extension of lighting and convenience outlet circuits will be necessary. The entire job to be completed under contract.

Cost Estimate Data:

The estimate of the cost of this building is based on a firm bid from the San Joaquin Pole Construction Company, Fresno and the Fresno County Farm Supply Company.

5,340 ft. 2 Pole building @ \$.25	\$12,000.00
3,900 ft. 2 Black top @ \$.25 ft. 2	900.00
Relocate Fence	150.00
Electrical	350.00
Total	\$13,400.00

The committee recommends approval.

CALIFORNIA STATE POLYTECHNIC COLLEGE
SAN LUIS OBISPO CAMPUS
1. Beef Breeding Unit \$112,000.00

The beef breeding unit is designed and planned to aid in care and management of the cow breeding herd at calving time with individual pens and corrals; to provide feeding and pen space to grow out the replacement females, and feed and carry purchased weaner calves for student projects. At present the replacement heifers and weaner calves are carried in small fields and lots, but are not readily available for student instruction because of inadequate space and quarters.

These facilities and corrals will house cattle to be used by students in judging, grading classes, and livestock meetings and/or demonstrations.

This unit will provide a necessary facility to complete the beef cattle instructional units already available or budgeted on the campus. Other elements of this group

are the steer feeding units, the feedmill, slaughterhouse and bull barn. The breeding facility will complete the units necessary to carry on the instructional program which at San Luis Obispo emphasizes breeding and range management. Currently there are over 358 majors in the Animal Husbandry Department with a 1964 enrollment projection of 380 majors. The unit will also serve the needs of students from other departments who are required to take or who elect courses in animal husbandry.

Description:

It consists of 640 square feet of hay and grain storage, a 3,840 square feet of feed alleys, feed troughs and aprons and corrals. The building will be of steel frame, sheet metal covered with concrete floor and drinking troughs. Fencing will be of pipe.

Cost Estimate Data:

Building site. Clearance and preliminary	\$6,000.00	
General building work	45,300.00	
Electrical	3,800.00	
Roads, walks and parking	4,200.00	
External utilities	6,800.00	
Fencing	28,500.00	
Fees and commissions	5,050.00	
Construction, supervision and management	3,800.00	
Contingency	9,100.00	
Total	\$112,550.00	
	Less preliminary plans	550.00
		<u>\$112,000.00</u>

The committee recommends approval.

2. Addition to Insemination Shed—Dairy \$4,000.00

This project was given local approval last year, but was not high enough on the priority list to be financed. This will provide a processing room for the semen gathered where the total process can be handled by students. Under present conditions it is not large enough to work in the area. The equipment for the unit is available. Adequate space is needed to set up the unit for operation. Under present conditions only one or two students can work with the herdsman at one time. This denies other students an opportunity to develop skill in this important field.

Description:

It is proposed to extend to the west side of the insemination shed an additional room approximately 24' x 16' with door connecting to existing building.

Room to be finished off with ceiling—asphalt tile on floor—windows on north side only. Plenty of artificial light. Cabinets to be built along one wall. Electrical outlets on all walls. Sink—backed up to existing sink in present shed.

Cost Estimate Data:

Building materials	\$1,200.00
Paint	70.00
Plumbing materials	100.00
Electrical materials	550.00
Labor: Construction	1,400.00
Painting	240.00
Electrical	200.00
Plumbing	50.00
10% State Employees' Retirement System	190.00
Total	<u>\$4,000.00</u>

The committee recommends approval.

3. Quarantine and Isolation Pens—Cheda \$3,100.00

This will provide a quarantine and isolation area at the Cheda ranch where new or sick animals can be isolated from the main student-owned herd. It can also

be used for dehorning, vaccinating and treatment of animals which must now be performed in the dairy barn.

The San Luis Obispo County milk ordinance prohibits the keeping of any animal closer than 50 feet of milk barn and closer than 100 feet to milk house and storage facilities. This means that the pen now being used for sick cows and maternity cases does not comply with the county ordinance.

Certain tests are required periodically on the dairy cattle to comply with various state animal health regulations. To conduct these tests it is necessary to have the necessary chutes and headgates for confining the animals. The milking barn is not the proper place for conducting such tests and examinations. The very sensitive dairy cows associate this unpleasant experience with the milk barn and as a result are thrown off production whenever they are brought into the barn following such an experience.

In the treatment of many of the common disease conditions of dairy cattle, it is necessary many times to administer the proper drugs directly into the bloodstream. With the changes in the stanchions and feeding equipment in the milk barn, it is impossible to safely administer the various drugs in the manner mentioned above. This safety factor applies not only to the animals but also to the personnel involved in such treatment.

Description:

Construct quarantine and isolation pens consisting of cross fencing, seven gates, two mangers, holding chute with a stanchion, two 10' x 16' cow shelters and install a water trough with a concrete pad around it.

Cost Estimate Data:

Concrete slabs in sheds and at water trough	
20 cubic yards ready-mix concrete @ \$18.00/cu.yd.-----	\$360.00
Material for two cow shelter sheds-----	600.00
13 - 6" x 6" redwood posts - 350 bd. ft. @ \$160.00 -----	56.00
800 bd. ft. D. F. fence rails and gates @ \$120.00 -----	96.00
Material for stanchions and mangers-----	78.00
Gate hinges, latches, bolts and miscellaneous hardware -----	50.00
Paint -----	100.00
Labor—Painter -----	100.00
Labor—Construction -----	1,500.00
10% State Employees' Retirement System-----	160.00
Total -----	\$3,100.00

The committee recommends approval.

KALIFORNIA STATE POLYTECHNIC COLLEGE KELLOGG-VOORHIS CAMPUS

1. Fence Stable Area ----- \$5,500.00

There are considerable improvements that could be effected by a change in these fences. A new fence would greatly enhance the use of the small pastures and new paddocks; this will allow horses to be moved safely from our large pastures into smaller ones or into paddocks without the time consumed in haltering and leading them. This will also provide an area for sale horses so they would be easily accessible to buyers. It will also greatly facilitate the breeding program by allowing mares that are due to foal to be kept in close proximity to the barn so they may be checked periodically by students.

The location of the new dispensary makes a complete relocation of fences necessary in order to bring horses from pastures into the weanling shed area.

At present time, the fences surrounding the stable area are unsafe for valuable animals that are kept on this campus. Construction costs on many different types of fencing were given consideration, but chain link is the safest and most economical.

The most efficient handling of our breeding program affected by the accessibility to the paddocks and stable area will promote a savings in time consumed that in three years will pay the construction costs in full.

Description:

The project involves removal of old wood fence and installation of new chain link fence with six gates—three double and three single.

Cost Estimate Data:

Fencing:	
2,200 ft. @ \$2.00 p/ft.	\$4,580.00
6-16 ft. gates @ \$60. ea.	360.00
8-10 ft. gates @ \$55. ea.	440.00
5-4 ft. gates @ \$22.50 ea.	120.00
Total	\$5,500.00

The committee recommends approval.

2. Fence Citrus Orchard ----- \$5,300.00

Several varieties of citrus fruit have been planted in Citrus Block 110 near the campus entrance off the San Bernardino Freeway. Other varieties have been ordered and will be planted soon. The first planting was made in 1960; therefore, it is coming into production during 1963-64. For security purposes, this block should be fenced in order to maintain production records and field trials. Many of the trees are of a single new hybrid type and must be protected from theft. Loss of trees and fruit has occurred in the past. The chief significance of these losses is that they upset production records and new varietal tree performance. Property and equipment security is of concern in this block, also. There is a small shed on this property that houses many different pieces of hand tools and fittings, valves, etc. Since the planting 12 trees have been stolen. These were new variety and rootstock plantings.

Description:

This project will be to install approximately 2,100 feet of chain-link fence around the new citrus orchard at the fruit and crops unit for purposes of security.

Cost Estimate Data:

2,100 ft. 6-foot chain-link fence with three-barb wire at	
an angle and without a top rail \$1.80/ft.	\$3,780.00
Labor—including concrete—\$.50/ft.	1,050.00
2 ea. 15 roller-type access gates (see sketch attached) @ \$200	400.00
1 ea. Walk-through gate (see sketch attached)	65.00
Total	\$5,295.00

The committee recommends approval.

In the discussion relating to this item, it was pointed out that the citrus orchard proposed to be fenced is within the right of way being purchased by the Division of Highways for a north-south freeway into Orange County. With this information in mind, the committee approved the project with the understanding that the college will not proceed with this fencing project unless it has positive assurance from the Division of Highways that the actual withdrawal of the orchard from California Polytechnic College will not take place for at least three years. This procedure will assure reasonable use of the fence before the college would be required to move it to a new location. (Exhibit A).

CHICO STATE COLLEGE

1. Farm Buildings ----- \$388,200.00

This project involves the construction of four farm buildings together with adjacent site development and utilities extensions. Included is a sheep barn, beef cattle breeding barn, a farm mechanics shop and a field and fruit crops building. All units with toilets, sewer, heating and lighting.

Sheep Barn—Pole type with redwood board and batten siding, composition roof, concrete floor and asphaltic concrete paved pens. Fencing 4" x 4"—8' O. C. posts, three 2" x 6" rails 6" apart and 3 feet high.

Feed storage approximately 1,850 sq. ft. covered pens 7,900 sq. ft. Approximate cost \$5.10 per square foot.

Beef Cattle Breeding Barn—Similar to sheep barn construction. Fence—4" steel pipe posts—8' O.C. rails.

Five—2" x 6" boards (or pipe) 6" apart—5' high. This building is 84' x 114' and costs approximately \$5.30 per square foot.

Farm Mechanics Building—Wood frame building, board and batten, composition roof. Spread footing foundation, walls and floor with reinforced concrete.

Heated and ventilated, sawdust collection system, overhead exhaust system with flex drop connections, etc.

Two-ton electrical hoist and monorail system air compressor. Electrical service 277/480 V 3 phase—underground to panel. Size 58' x 120' and approximately \$10.80 per square foot.

Field and Fruit Crops Building—Standard metal rigid frame, aluminum siding and roofing. Spread footing foundations, walls and floors reinforced concrete. Exterior wall and roofing insulated. Building 40' x 60' approximately and cost \$11.25 per square foot.

Cost Estimate Data: 4 buildings and site development.

Building site preparation -----	\$6,700.00
Building—general work -----	214,500.00
a. Heat, ventilation and air conditioning -----	15,000.00
b. Plumbing -----	9,500.00
c. Electrical -----	34,700.00
Site work—roads, walks, etc. -----	15,600.00
External utilities -----	36,100.00
Landscaping, sprinklers, etc. -----	3,900.00
Fees and commission -----	22,100.00
Construction, supervising and contract management -----	12,600.00
Contingency -----	17,500.00
Total -----	\$388,200.00

The committee recommends approval.

2. Provide concrete on two side aisles in Feed Barn on Farm \$1,500.00

The feed barn is about to be constructed on the college farm. However, present plans call for either dirt or gravel aisles. This presents an unsanitary problem, an inconvenient cleaning problem and a costly cleaning problem. If the area can be cleaned often and completely, the chances are better for the controlling of diseases, viruses, fungi, etc. Also, because of the large amount of rain in this area during the wintertime, with the livestock going in and out of the doors, there is a muddy, undesirable condition. With the provision of concrete aisles, the feed barns will be easy to maintain both economically and more thoroughly, and as a result reduce the chances of sickness among the animals.

Description:

This project consists of constructing a concrete slab in the aisles of the feed barn on the college farm.

Cost Estimate Data:

Labor and material -----	\$1,500.00
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The committee recommends approval.

3. Install Concrete Pipe Line and Gates to Irrigate Pasture \$20,000.00

The college farm is now completely irrigated from open ditches which are difficult and expensive to maintain, especially in the pasture areas where the cattle and sheep continually walk down the banks. This pipeline would do away with all open ditches in the pasture areas. Also, this would give us a semi-enclosed irrigation system to use in irrigation and soil and farm management instruction. It would conserve a sizeable amount of irrigation water. Some of these lines must be laid before certain buildings are constructed.

Description:

This project consists of installing concrete pipe to distribute irrigation water to various areas of the north section of the college farm.

Cost Estimate for:

6,893' - 18" Concrete pipe	
730' - 24" Concrete pipe	
165 8 x 12 valves	
2 12' x 48" diversion stands	
11 Vents	
4 16" gates	
1 Corner	
Total -----	\$20,000.00

The committee recommends approval.

CORRECTIONAL INSTITUTIONS

CALIFORNIA MEDICAL FACILITY—VACAVILLE

1. Install Irrigation Water Supply Line

\$106,000.00

Contracts have been consummated for the purchase of up to 1,200 acre-feet of water from the Solano Irrigation District. This was done to assure a water supply for developing and using the acreage available on the 925-acre site. Domestic water is being obtained from the City of Vacaville. Water costs are \$54.00 per acre-foot for domestic, \$4.00 per acre-foot for irrigation.

Wells in this area have been failing rapidly and those owned by the institution were having difficulty supplying minimum domestic needs. Plans are being made to build another institution on this property and also move in and expand the San Quentin dairy to meet the needs of these and possibly other nearby institutions.

Until the above program is started, most of the land will be leased to farmers. The project involves cutting into the Putah South Canal and installing a turnout, then installing 6,500 feet of 16-inch concrete (or equivalent) pipe to the institution. Rights-of-way will be secured and also a pumping plant and holding reservoir provided.

Cost Estimate Data: (Division of Architecture)

Contract basis	\$90,210.00
Project basis	106,000.00

The committee recommends approval.

2. Construct Irrigation System

In the 1962-63 budget, \$3,000 was included to irrigate orchards and lawns on the grounds by purchasing 120 acre-feet of water. Now that 1,200 acre-feet have been secured, this will be tied in with the overall plan and be a part of the general distribution system.

The project in this year's budget should complete the system of making water available to all areas of the property. By providing this distribution, irrigated crops will be practical on all reasonably level areas, using both treated effluent and canal water. It will reserve the more expensive domestic water for institution use only.

Work by inmates on training program.

Cost Estimate Data:

4" Orangeburg pipe, 4,600' @ \$.30	\$1,380.00
6" Orangeburg pipe, 4,015' @ \$.63	2,520.00
Tax	155.00

Total \$4,055.00

The committee recommends approval.

NOTE: In approving these two items, the committee is cognizant of the fact that the department plans to transfer the dairy farm operations at San Quentin State Prison to the California Medical Facility. The committee further understands that a new minimum security facility programmed for the California Medical Facility will be able to provide a force of inmate labor adequate to service this dairy operation.

DEUEL VOCATIONAL INSTITUTE

1. Install Concrete Pipeline

Irrigation water is pumped from the river in a closed pipeline up to the institution property. From that point to the reservoir, it is carried in an open ditch. This project will replace this ditch.

The three-fold purpose is to:

1. Eliminate losses of water through percolation and evaporation and increase efficiency.
2. Reduce water table problems, and
3. Cut down on wasted land and access problems and lower maintenance costs.

Considerable progress has been made in reclaiming and improving the soil on this farm. A series of drain ditches and a sump pump has made a great deal of the

property useable for crops where it at one time was too wet and had excessive salt content.

Additional irrigation distribution lines and tile drains will be requested in the future as a sound investment.

This intake line is the most important for the present and should improve the conditions on the acreage adjacent to it as well as generally on the farm.

Cost Estimate Data:

3,000-24" concrete pipeline contract.....\$9,750.00

The committee recommends approval.

CALIFORNIA INSTITUTION FOR MEN

1. Replace Boiler at Dairy\$8,000.00

The present boiler at the dairy is 24 horsepower capacity and was originally installed prior to the time the dairy was expanded in order to serve such units as the Youth Training School and Metropolitan State Hospital. These additional customers have resulted in our dairy load more than doubling. The existing 24 hp unit simply does not have the capacity to adequately supply steam to the pasteurizing and particularly to the can washing unit.

This project will provide adequate steam for the dairy operations, including pasteurizing and can washing.

A 60-horsepower unit will be obtained on a purchase order with installation by manufacturer.

Cost Estimate Data:

Previous Financing: None

Unit Cost Estimate:

Material cost\$7,500.00

Supervision500.00

Inmate pay—

Guarding—

Total\$8,000.00

Basis of Cost Estimate:

An estimate by Dixon Boiler Works was obtained at \$7,000 for the 60-horsepower boiler. To this figure was added \$500 for miscellaneous electrical and other connecting expenses and \$500 for supervision.

The committee recommends approval.

2. Replace Well No. 4\$20,000.00

This well is to replace existing irrigation well No. 4 located on the property at the corner of Edison and Cypress Avenues. This well provides irrigation for approximately 150 acres of farmland used for vegetable gardening purposes.

Well No. 4 is approximately 60 years old with a 12" casing and 10" bowls set at 100 feet. On 12-2-59 when the water table was probably at a high point, the Southern California Edison Co. ran an efficiency test and obtained a rating of only 875 gpm. Most of the irrigation wells have 14" bowls set at 150 feet. At the rate the water table is descending, these will need to be extended in the very near future. Well No. 4 was extended to its maximum in 1956.

Description:

Drill 16" well approximately 450 feet deep, provide pump, pumphouse and necessary electrical connections. Well to test 1,200 gpm.

Cost Estimate Data:

Unit cost estimate.....\$20,000.00 by contract

Basis of Cost Estimate:

This is the approximate price of a new well drilled on the institution grounds recently.

The committee recommends approval.

FOLSOM

1. Hay and Feeding Barn\$10,000.00

The loss by fire of the hay storage and feeding barn last fall has made it essential to build a new one as soon as possible. There is practically no permanent cover for hay at the institution now and the fire destroyed the only covered feeding stanchions.

Description:

It is planned to construct a pole type building with corrugated metal roofing and sides as needed. The central hay storage will be approximately 30' wide, 20' high and 60' to 80' long with gable roof.

The feeding areas will be 12' deep on each side with shed roofs approximately 7' above the slab. Metal stanchions and concrete slab floor will be installed.

Cost Estimate Data:

Estimated cost of building on contract and floor, etc., by inmate labor--- \$10,000.00

The committee recommends approval.

Exhibit A**CALIFORNIA STATE POLYTECHNIC COLLEGE**

San Luis Obispo, California

October 27, 1964

MR. PAUL K. HUFF

Executive Secretary

Senate Factfinding Committee on Agriculture

Room 409, State Capitol

Sacramento, California 95814

Dear Paul:

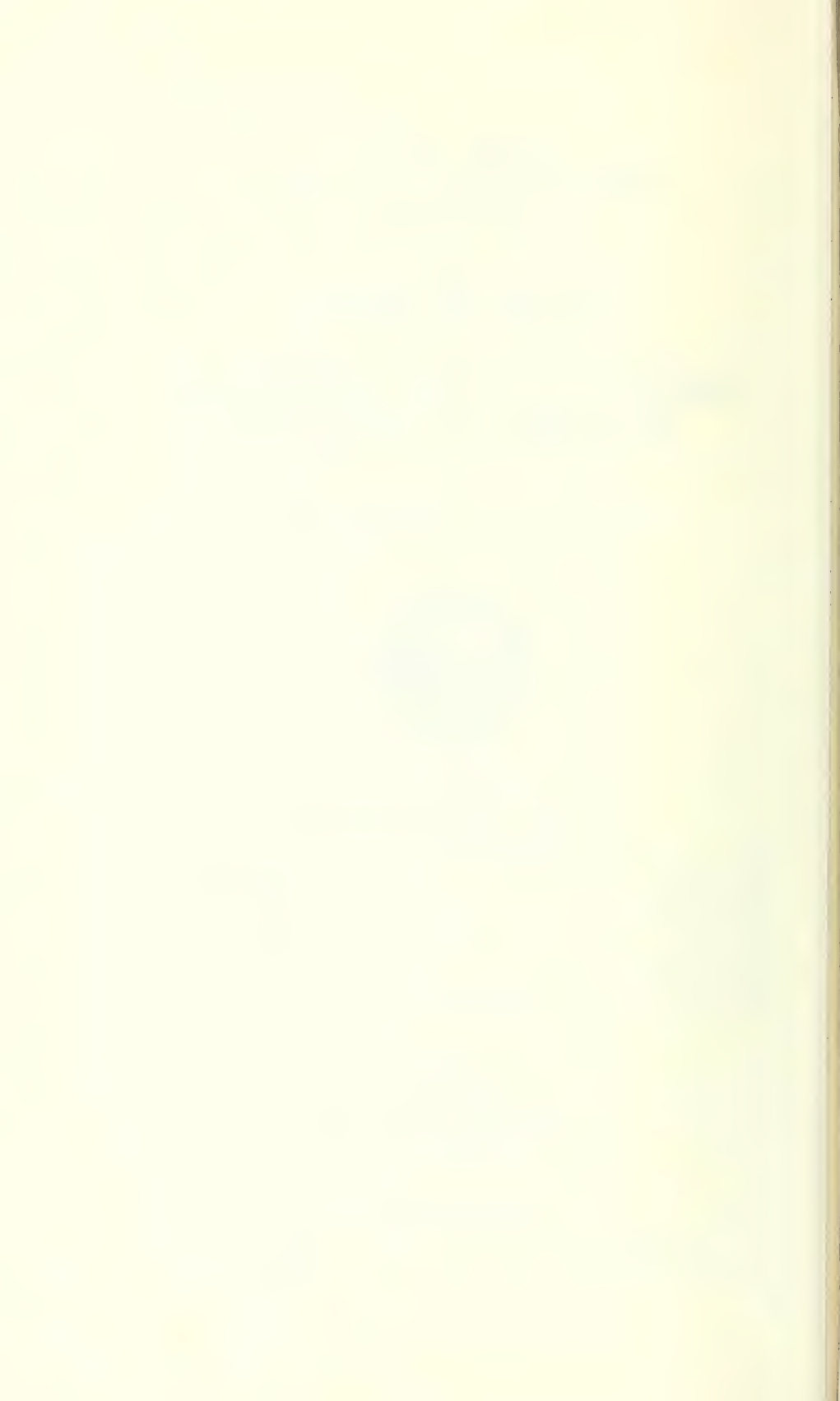
Thank you for the five copies of the minutes of the Senate Factfinding Committee on Agriculture meeting of September 15, 1964, and the October 15 letter of transmittal of the minutes to Mr. Champion. I have need for two more copies and would appreciate receiving them if you have additional copies available.

In connection with the condition placed on the approval of our Kellogg Campus item No. 2, fence citrus orchard, I wish to advise you that the college received a letter under date of September 21 from G. L. Russell, Assistant District Engineer for the Division of Highways, which stated that the division does not anticipate the north-south freeway project will be under construction within the next three years. Mr. LaBounty has advised Mr. Harry Harmon, Chief of the College Facilities Planning office of the California State Colleges, and stated in his letter that the college interprets this assurance by the Division of Highways as meeting the condition of approval by the Senate Factfinding Committee on Agriculture and, therefore, was planning to proceed with the fence construction. I trust you concur with the college's action in this regard.

Sincerely yours,

HAROLD O. WILSON
Executive Dean
Operations Analysis

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LETTER OF TRANSMITTAL

CALIFORNIA LEGISLATURE
SENATE FACTFINDING COMMITTEE ON AGRICULTURE

February 15, 1965

HON. GLENN M. ANDERSON, *President*
and Members of the Senate

Gentlemen:

Submitted herewith is a copy of the "Report on Survey of Bureau of Livestock Identification, Department of Agriculture." This contract survey was undertaken for the Senate Factfinding Committee on Agriculture by the management consulting firm of Booz, Allen & Hamilton, Inc., as authorized by the provisions of S.B. 1444 of the 1963 Regular Session.

The Senate Factfinding Committee on Agriculture and the consulting firm were assisted in the conduct of the study by a Cattle Industry Advisory Committee which I was authorized to appoint. This industry committee consisted of the following members of representative industries: range cattle: Brunel Christensen, chairman, Robert O. Johnson and Ward Woody; feeder cattle: Harvey McDougal, John Guthrie and Will Gill, Jr.; dairy cattle: Leonard Gomes, George te Velde and Frank Steiner; meat packers: Norman Maffit; and sales yards: H. C. (Bud) Jackson.

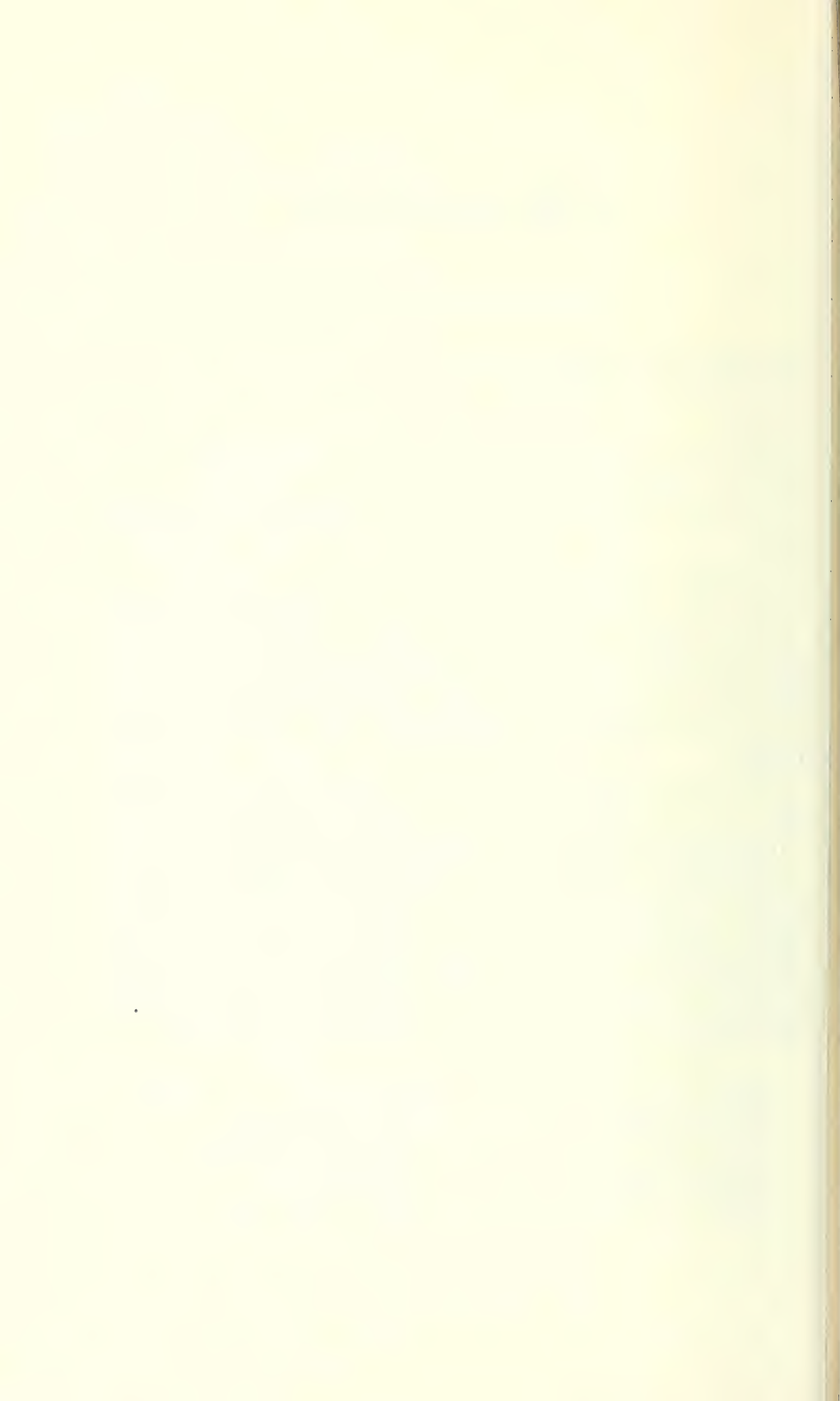
The report is being submitted at this time in order that sufficient copies may be printed and made available to representatives of the cattle industry and to other interested individuals and organizations.

It should be emphasized that while the Senate Factfinding Committee on Agriculture has accepted this report no action has been taken on the recommendations and alternatives for improving the services of the Bureau of Livestock Identification as suggested in the report by Booz, Allen & Hamilton. No action will be taken until such time as the Cattle Industry Advisory Committee, together with representatives of all segments of the industry and others interested have had an opportunity to study the recommendations and alternatives and to present their views to the Senate Factfinding Committee on Agriculture.

Respectfully submitted,

ROBERT J. LAGOMARSINO
JAMES A. COBEY
SAMUEL R. GEDDES
AARON W. QUICK
JOSEPH A. RATTIGAN
HAROLD T. SEDGWICK

VIRGIL O'SULLIVAN, *Chairman*
WALTER W. STIERN
VERNON L. STURGEON
WILLIAM SYMONS, JR.
HOWARD WAY
ROBERT D. WILLIAMS



**Report on Survey
of
Bureau of Livestock Identification
Department of Agriculture**

SENATE FACTFINDING COMMITTEE ON AGRICULTURE
STATE OF CALIFORNIA

BOOZ, ALLEN & HAMILTON, INC.
San Francisco, November 12, 1964

THE HONORABLE VIRGIL O'SULLIVAN, *Chairman*
Senate Factfinding Committee on Agriculture
California Legislature

Dear Senator O'Sullivan:

We are pleased to present herewith our final report on the survey of the organization and operations of the Bureau of Livestock Identification, Department of Agriculture.

The purpose of the survey was twofold: (1) to evaluate the programs and services of the bureau; and (2) to recommend where opportunities are available to improve the bureau's efficiency and effectiveness in fulfilling its objectives under the hide and brand law. As you recall, this survey was to highlight organization, financial support, and possible alternatives to providing livestock identification in the state.

Our approach to the work included four principal phases: (1) survey planning; (2) fact gathering; (3) analysis of data and development of conclusions and recommendations; and (4) preparation and presentation of this report.

We began in mid-July 1964. The initial survey phase—that of planning—was a brief period in which a detailed work plan for conduct of the study was developed. This plan was reviewed with your executive secretary to obtain his views and suggestions.

During the second phase, we reviewed pertinent data, reports, legislation, financial records, and other relevant information regarding the bureau's activities. This fact-gathering period also included more than 85 interviews throughout the state with persons representing various segments of the cattle industry, the insurance industry, bureau executives and personnel, county sheriffs and district attorneys, and members of the Cattle Industry Advisory Committee and the Livestock Identification Advisory Board. Moreover, field visits were made to Texas, New Mexico, Arizona, Nevada, Oregon, and Washington to review at first hand the carrying out of the hide and brand laws of these states.

Various activities of bureau personnel were observed throughout the state at a variety of locations (such as sales yards, feedlots, slaughter plants, and the headquarters office in Sacramento) to evaluate bureau services as they were performed on a day-to-day basis.

These data and information then were analyzed in order to determine improvement opportunities in the bureau. This analysis included an assessment of consensus opinions of various segments of the industry with regard to the value of present services. Thus, practical and attainable conclusions and recommendations were developed.

The fourth and final phase of the survey was preparation and presentation of this report.

Meetings were held with the Cattle Industry Advisory Committee during the course of the work to keep the committee apprised of survey findings and progress and to gain benefit of the committee's experience in the industry. Further, individual members of the committee were consulted at intervals during the work to evaluate specific conclusions and recommendations.

The report is comprised of an introduction and five chapters. The introduction refers to the history of the development of hide and brand laws and their general value to the cattle industry. Data also are presented pertaining to the size and scope of the cattle industry in California today. This is done to provide perspective prior to the detailed evaluation of the bureau. The following four chapters are concerned with the present organization and operations of the bureau, an evaluation of the bureau's program and services, comparison to programs in other states, and recommendations for improvement. Finally, Chapter V spells out a plan of action to guide the Senate factfinding committee in the implementation of recommendations.

Acknowledgment should be made of the cooperative help and objective information provided us by personnel of the Department of Agriculture, Division of Compliance, and the bureau during the survey.

We appreciated the opportunity to conduct this important survey for your committee. Moreover, the study team was indeed impressed with the sincere interest shown by the people of the cattle industry and the bureau itself in having one of the finest livestock identification programs possible.

Very truly yours,

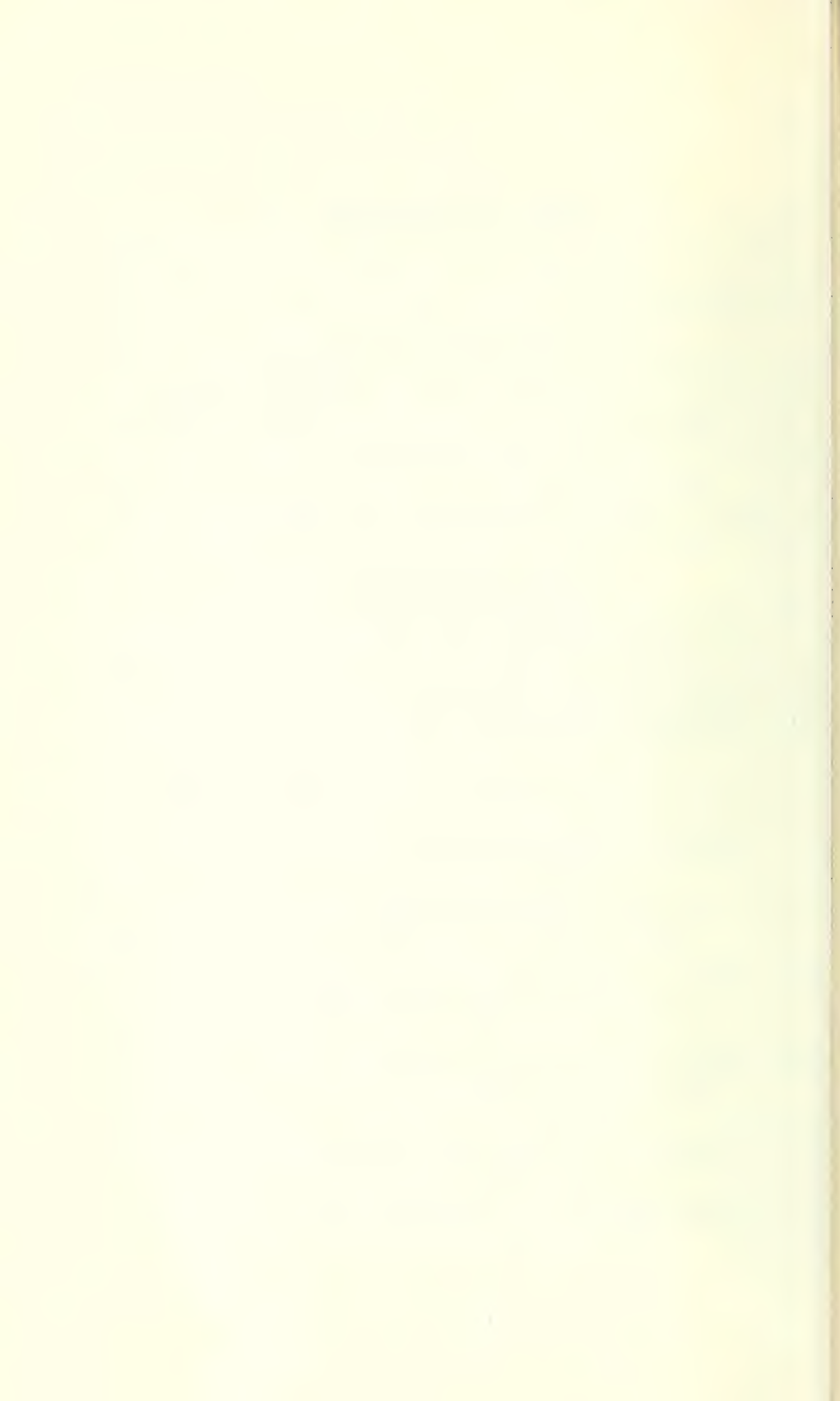
BOOZ, ALLEN & HAMILTON, INC.

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INTRODUCTION

The cattle rustler has not disappeared from the American scene. He simply has replaced his horse with a highspeed pickup, thereby gaining wider pastures. But neither has the primary method of preventing cattle rustling—the branding iron—disappeared. Branding, though not required by California's hide and brand law, is widely practiced throughout the industry as the simplest and best method of identifying cattle. Over 33,000 brands are registered in California alone. One brand, the Spanish A of the Treseony Ranch near King City, reportedly dates from the mission era of California history, nearly three centuries ago.

The California state government became the administrative agent of the hide and brand law in 1917. Earlier, the cattle theft and stray problem had contributed to the formation of the cattlemen's associations. The Colorado association was formed as early as 1869, and most western cattle states soon followed in forming similar associations. These groups spearheaded the development of state hide and brand laws and did much to reduce cattle rustling. In summary, these associations took steps to reduce loss by theft and straying by:

- Recommending that state governments maintain registers of brands.
- Promoting the use of brand inspectors to be responsible for establishing ownership of cattle sold or transported.
- Forcing legal action against cattle thieves.

Brand inspectors emerged as the central figures in these programs. The role occupied by the inspector is colorfully illustrated by Oren Arnold and John P. Hale in *Hot Irons*, published in 1940.

“The brand inspector has inevitably emerged as the detective of rangeland fiction, and that's precisely what he is in fact. He must keep ever alert for the brand that has been blotted out and replaced by a new one. He must pounce on rustlers who will sometimes be as clever as sin, collecting evidence with which to convict them and seeing that they are imprisoned. If a case of thievery happens to be particularly flagrant he must act as an intermediary between his own bosses and the established agencies of the law to forestall possible lynching as in the olden days.

“Some of these inspectors develop a truly remarkable memory for cattle brands, holding thousands of them in mind and calling them off at will when riding through a great herd of animals at roundup, or spotting them in pens at shipping or receiving points. Their services are excellent, for instance, in counting animals as well as identification. Modern counting devices are said to be no more accurate than some of the more skilled brand inspectors who can ‘tally’ a big herd and remember exactly how many animals were carrying each of 20 or 30 brands.”

The cattle industry is one of California's most vital growth industries. Beef production alone is valued at close to \$750 million annually—the largest single value of any agricultural commodity in the state. Moreover, all segments of the industry—beef production, dairy, slaughter, processing, and primary market channels—contribute to a conservatively estimated \$3 billion annually to the gross state product.

In the last decade, significant changes have taken place in California's cattle industry that affect the program and services of the bureau. First, the cattle population has increased 21 percent, from 3.9 million head in 1955 to 4.7 million at the present time. Of this total gain, feedlot cattle have shown the sharpest growth rate and have nearly doubled since 1955, from 500,000 to 900,000. Production cattle have shown the greatest absolute increase, up to 2.3 million head compared to 1.9 million head 10 years ago. The dairy industry has indeed felt the benefits of improved herd management as the state's dairy herd has remained at the level of 1.5 million head. The significant growth in feedlot cattle indicates the important part played by the feedlot operator in today's industry. In recent years, the feedlots in the state handled nearly 2 million head and, thus, rank nearly as important as the slaughter plants in the state as "destination" for cattle.

Secondly, California continues to be a large importer of cattle from out of state with shipments reaching 2.3 million head in 1962. Trucks have replaced railroads as the means of transporting cattle; and today they move 80 percent of cattle, whereas 10 years ago railroads moved 65 percent. The opportunity for cattle theft has thereby been increased due to the mobility and speed of trucks to move long distances rapidly.

The producer segment of the industry has grown substantially in number during the last decade. Doctors, lawyers, businessmen—men inexperienced in the cattle industry (the techniques used in production, the industry's problems, how brands are used, and so forth)—have made investments in cattle ranches. The management of their ranches is frequently handled by a "hired hand" who may not take the same pride in operation as the traditional owner-manager. Thus, the need for the professional cattle producer to be assured that rightful ownership is established is of paramount importance.

Finally, California continues to be a leading slaughter state. In 1963, 2.8 million head were slaughtered, almost 1 million over the early 1950 level. Only Iowa, with its "initial kill plants," leads California in the number of cattle slaughtered.

The above factors illustrate the complexity of California's cattle industry and emphasize the need for a dynamic livestock identification program.

I. ORGANIZATION AND OPERATIONS OF THE BUREAU

The California hide and brand law originally was administered by the California cattle protection board, later changed to livestock identification service in 1936, and to the bureau of livestock identification in 1940. The purposes of the original board were to:

- Protect breeders and growers of cattle from theft or stray.
- Provide for registration of cattle brands and licensing of cattle slaughterers and sellers of beef.
- Provide for inspection of cattle and hides for brands and marks.
- Provide for collection of license and cattle protection fund.
- Provide penalites for violation of provisions of the law.

The law provided for establishment of branding districts, registration of cattle brands, licensing of cattle slaughterers, inspection of all cattle for shipment or slaughter, and inspection of hides. The first law did not apply to registered pure bred cattle, or to dairy cows.

The objectives of this initial legislation remain virtually intact today.

The principal features of the present law involve three basic services: (1) brand registration; (2) cattle inspection; and (3) law enforcement.

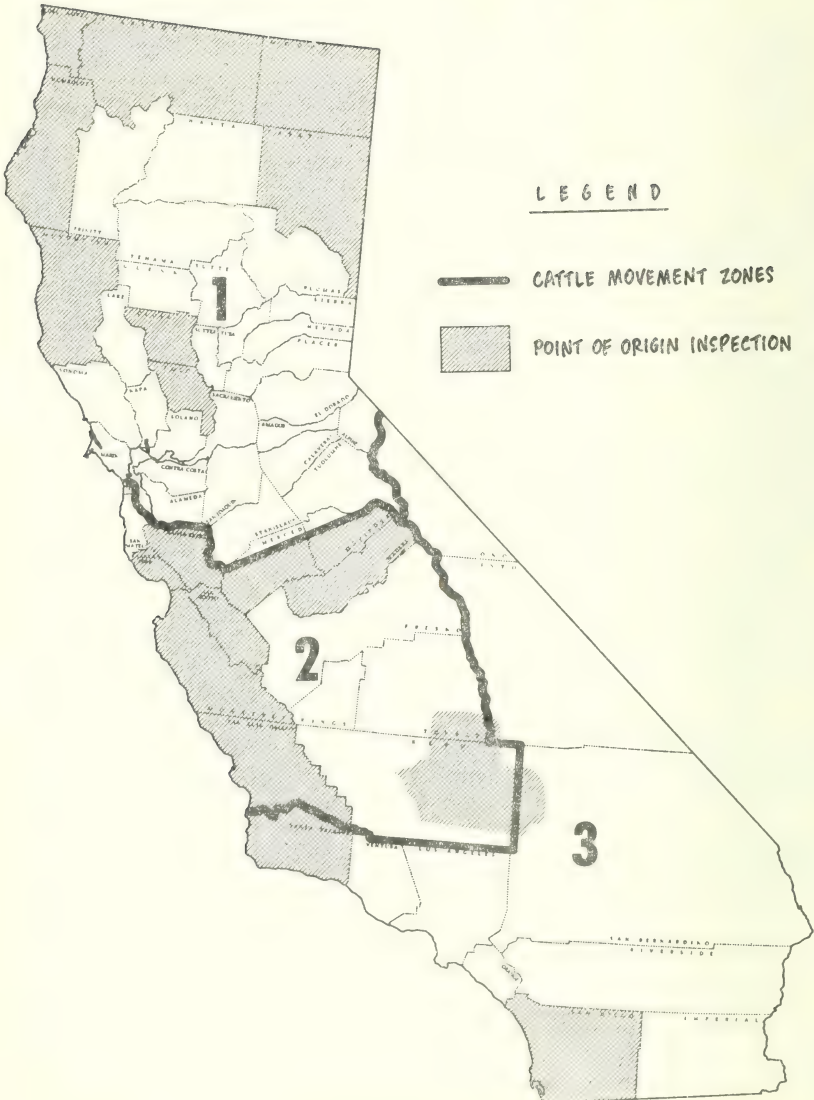
- (1) *Brand registration* provides for exclusive use in the state of a brand in a specified location on the animal.
- (2) *Cattle inspection* in California is based upon local cattle industry election of either "point of origin" or "point of destination" district, usually based on county lines.

—*Point of origin* inspection system requires that (a) cattle be inspected *before transportation* if cattle are leaving the county, or if sold and being transported within the county; (b) if cattle are being transported within the county to a public salesyard, public stockyard, or licensed slaughter plant, they will be inspected at shipment destination; and (c) no inspection is required if no sale is involved and cattle are moving within the county. In common terminology, point of origin is known as a "closed" county or area.

—*Point of destination* inspection system requires that (a) cattle be inspected *prior to transportation* out of the state, or if sold and not destined for a public salesyard, public stockyard, or licensed slaughter plant, or if being transported to another cattle movement zone; (b) if cattle are being transported to a public salesyard, public stockyard, or licensed slaughter plant, they will be inspected at destination; and (c) no inspection is required if no sale or slaughter is involved and cattle are not being transported out of their present zone.

EXHIBIT I
SENATE FACT FINDING COMMITTEE ON AGRICULTURE
STATE OF CALIFORNIA

POINT OF ORIGIN AND
DESTINATION AREAS AND
CATTLE MOVEMENT ZONES
IN CALIFORNIA



The law provides that a county or area can choose the point of origin inspection system if 65 percent of cattle owners present at a public meeting called by the director of the department of agriculture, vote in favor of such a system. Exhibit I, preceding this page, depicts the present point of origin and destination counties and the three cattle movement zones in the state.

- (3) *Law enforcement* provides for penalties, fines, and prison sentences for breaking provisions of the law. Brand inspectors of the bureau are peace officers in carrying out the provisions of the law. Inspectors can issue citations, seize animals, impound illegal or questionable sales fees, investigate cattle theft cases, make arrests, and assist county district attorneys in preparing court cases.

1. THE ADMINISTRATION AND OPERATIONS OF THE BUREAU ARE WITHIN THE STATE DEPARTMENT OF AGRICULTURE

Exhibit II, following this page, presents the organization of the Department of Agriculture and the relative placement of the bureau within the division of compliance of the department.

Exhibit III, following Exhibit II, depicts the organization structure of the bureau. Under this plan, the state is organized into eight inspection districts, each of which has an average of 12 brand inspectors. Each inspection district is headed by a supervising brand inspector who reports to the bureau chief and who is responsible for enforcing the hide and brand law within his district. Supervisors oversee the activities of brand inspectors.

In addition to the chief, the Sacramento headquarters group consists of a program coordinator of field services and a staff technician who heads up the office service personnel. This group maintains all brand records, processes fees, and maintains the bureau's records.

2. CATTLE INDUSTRY'S PARTICIPATION IN BUREAU'S PROGRAM IS ADVISORY ONLY

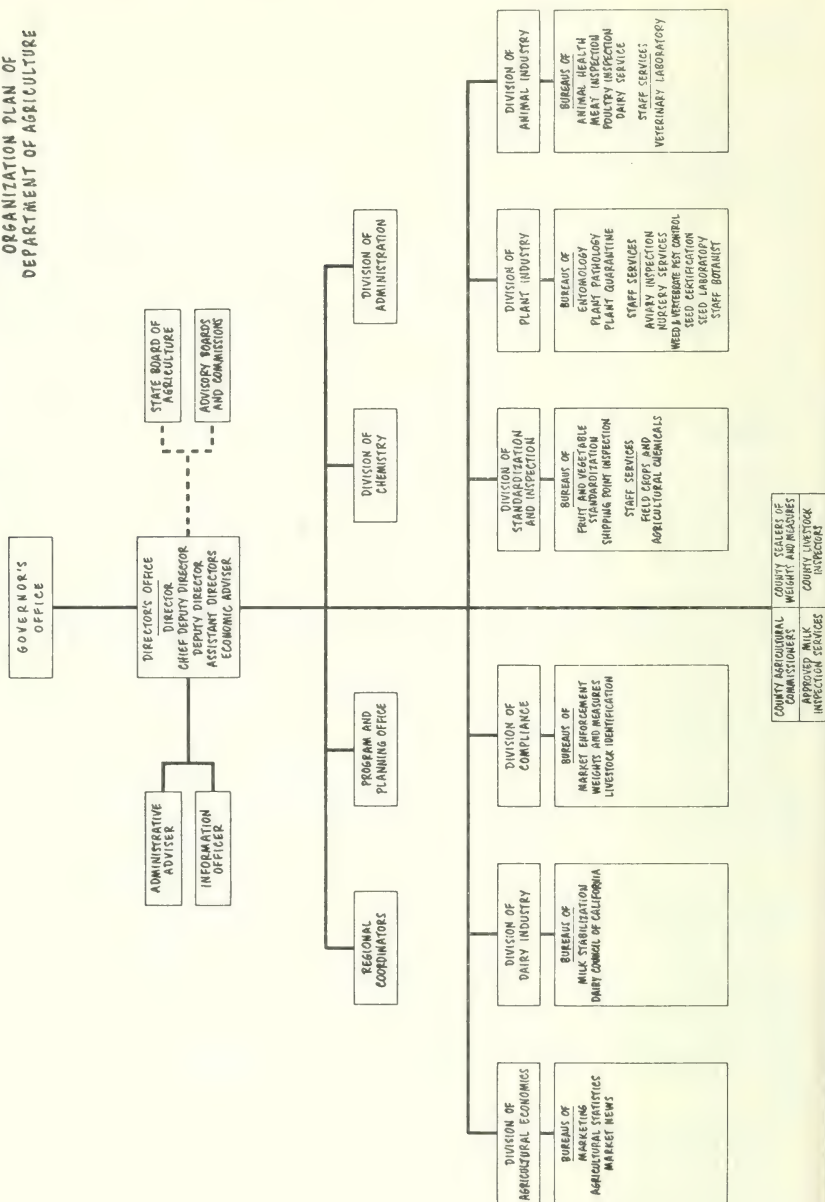
At present, the director of the Department of Agriculture appoints a five-member advisory board. The appointments are for four years, and membership of the board is comprised of two members engaged in beef cattle; two in dairy; and one in livestock marketing. The duties and responsibilities of the board are to make recommendations regarding:

- Improvements and changes in the administration and enforcement of the hide and brand law.
- Procedures to be followed by the bureau.
- Methods for curbing livestock thefts.
- Legislation designed to improve overall functioning of the bureau.

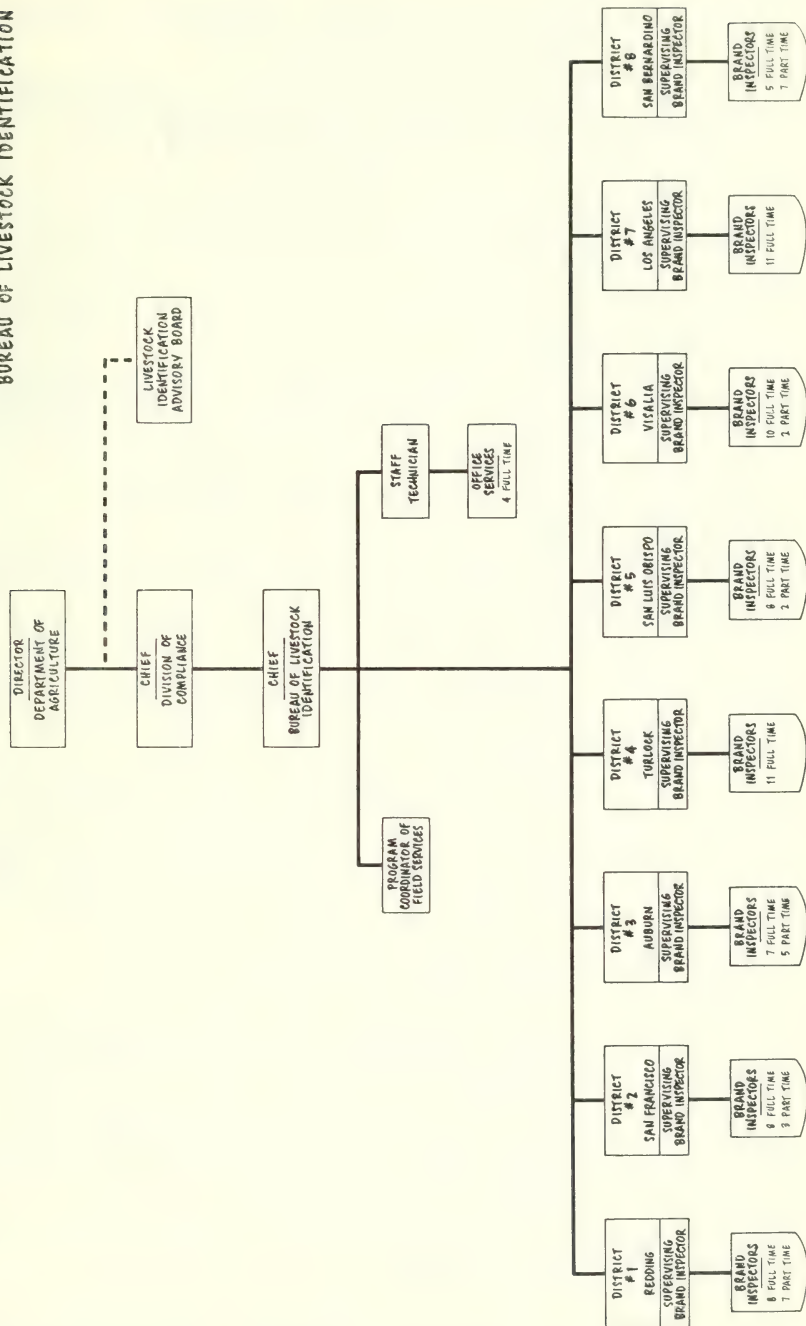
The board does not, however, establish or approve policy.

EXHIBIT II
SENATE FACT FINDING COMMITTEE ON AGRICULTURE
STATE OF CALIFORNIA

ORGANIZATION PLAN OF
DEPARTMENT OF AGRICULTURE



PRESENT PLAN OF ORGANIZATION BUREAU OF LIVESTOCK IDENTIFICATION



3. BUREAU'S OPERATION IS FINANCIALLY SUPPORTED BY SERVICE FEES. CATTLE INSPECTION IS PRIMARY ACTIVITY

Exhibit IV, following this page, presents the bureau's estimated revenues and costs of services during the past fiscal year. Cattle inspection was clearly the major service, generating 85 percent of revenues and accounting for 81 percent of bureau cost.

Brand registration revenue is derived from recording fees—\$3 for annual renewal per brand and \$5 new recordings.

Inspection revenue is derived from fees ranging from \$0.10 per head for moving cattle from pasture to pasture (closed area) to a maximum of \$0.20 per head.

Law enforcement revenues include penalties, fines, and proceeds from sale of stray animals.

The bureau's 1963-1964 budget of \$881,000 included a 6-percent overhead allocation from the Department of Agriculture. It is understood that this allocation is based upon the relation of the bureau's budget to the total budget of the division of compliance.

4. PROGRAM COSTS HAVE NOT CHANGED APPRECIABLY OVER LAST DECADE

The program today costs the cattle and dairy industry \$0.20 per head, based on a total expenditure by the bureau in the fiscal year 1963-1964 of \$881,000, and a cattle and calf inventory in the state in 1963 of approximately 4.5 million head. The cost of the program has remained fairly constant over the last 10 to 15 years. For example, the cost of the program was \$0.19 per head in fiscal 1951-1952. Twenty years ago, during the period 1940-1949, the program cost the industry about \$0.13 to \$0.17 per head.

It should be pointed out that while this program cost index has increased approximately 54 percent since the 1940s, the average farm inventory value per head of cattle has increased 73 percent during the same period. Thus, it appears that the program has been able to contribute to the prevention of cattle theft without appreciable increase in the relative cost to the industry.

5. THE BUREAU ALSO PROVIDES A NUMBER OF NONFEE SERVICES TO THE INDUSTRY

In addition to the three basic fee services of brand registration, cattle inspection, and law enforcement, the bureau also provides several important non-revenue-producing services to the industry. For example, there is no charge for returning strays and estrays (except for feed costs in the latter instance), identifying mortgaged cattle for lenders, processing killed animal reports, or collecting beef promotion charges. Based on 1963 records, about 20 percent of brand inspectors' time is utilized in these nonfee services.

These services are important to the industry and are viewed as basic elements of the bureau's program.

This chapter has described the organization and operations of the bureau. Attention now turns to an evaluation of the bureau's program and activities.

EXHIBIT IV

Senate Factfinding Committee on Agriculture
State of California

**ESTIMATED SOURCES AND USES OF REVENUE, BUREAU OF LIVESTOCK
IDENTIFICATION, FISCAL 1963-1964**

\$(000)

Service		Estimated revenue	Percent	Service cost	Percent
Brand registration.....		\$113	13	\$29	3
Cattle Inspection					
Salesyards.....	\$165			230	
Slaughter plants.....	402			147	
Country movements.....	150			336	
Out-of-state shipments.....	33				
Total cattle inspection.....		750	85	713	81
Law enforcement.....		18	2	139	16
Total.....		\$881	100	\$881	100

II. EVALUATION OF THE BUREAU'S PROGRAM AND ACTIVITIES

Previous chapters have discussed the background and development of the hide and brand law and the organization and operations of the bureau. Thus, a backdrop for evaluating the program and activities of the bureau was established.

It is clear that the most precise measure of the bureau's effectiveness is whether or not it is doing the job it is supposed to do. Inasmuch as the bureau's main activity is to prevent loss of livestock by theft or stray, the following sections contain quantitative and qualitative measures of the bureau's effectiveness. These measures resulted from evaluation by several sources, including the various segments of the cattle industry.

1. CATTLE LOSSES THROUGH THEFT OR STRAY HAVE BEEN WELL CONTAINED FOR PAST FIVE YEARS

One of the primary quantitative measures of program effectiveness is the level of cattle theft and stray. The table below presents statistical data of theft and stray in the state since 1959.

<i>Year</i>	<i>Reported Missing</i>	<i>Strays returned</i>	<i>Value of animals returned</i>	<i>All cattle on farms and ranches</i>
1959	1,320	1,987	\$286,487	3,933,000
1960	1,121	2,601	310,845	4,121,000
1961	968	1,764	228,683	4,207,000
1962	1,238	1,638	228,896	4,238,000
1963	1,888	2,176	276,316	4,562,000

Several conclusions can be drawn from these data:

- (1) The magnitude of cattle theft is not a major problem; thus, the present program is controlling loss. In fact, the level of losses is a fraction of 1 percent of the total cattle population.
- (2) While the value of animals returned is relatively low, these figures do not include animals returned to owners and not reported by brand inspectors. This latter figure would probably be close to \$1 million annually, according to industry sources.
- (3) Not all missing cattle are reported to the bureau. Based upon bureau estimates, about 50 percent of missing cattle are reported. Significantly, most of the cattle reported missing are branded, thus indicating the basic value of branding.
- (4) Examination of reported theft indicated that individual cases were primarily of one to three heads, usually calves and yearlings.

2. PRODUCERS ARE STRONG BACKERS OF THE PROGRAM, PARTICULARLY THOSE OPERATING IN POINT OF ORIGIN AREAS

The nature of range cattle operations, where different herds run together on thousands of acres, required a rigid inspection system to be effective. Range cattle, particularly in northern California, move to summer pasture out of the state into Nevada and Oregon. Therefore, the point of origin inspection system was developed to assure that all cattle movements out of the area are closely regulated. Hide and brand legislation was originally sponsored through the efforts of the cattlemen's association. The need for livestock identification was recognized by the producers, and they remain strong backers of the program.

3. "PROOF OF OWNERSHIP" IS CONSIDERED A NUISANCE BY SOME DAIRY OPERATORS. THE DAIRY INDUSTRY, HOWEVER, GENERALLY SUPPORTS THE PRESENT PROGRAM

The operating characteristics of the dairy segment of the industry differ widely from those of the beef producing segment. Dairies typically operate in more confined, fenced areas. Because most operators today keep excellent herd records on a per animal basis for milk production purposes, the use of branding is not as widely practiced as in the range operations. On the other hand, there is constant "culling" in dairy operations, and sales and auction yards throughout the state are used as a market for these animals. Frequently, these animals are four years or older, and presenting proof of ownership by a "bill of sale" if not branded can cause problems for the seller.

Interviews with dairy operators, however, revealed that they generally support the present inspection program and consider proof of ownership requirements necessary to implement the law.

4. FEEDLOT OPERATORS ARE CRITICAL OF PRESENT INSPECTION PROCEDURES AND GENERALLY DO NOT BENEFIT FROM THE LAW

Under the present inspection system, cattle are inspected as they move to slaughter rather than as they enter the feedlot. This procedure is criticized by feedlot operators for two principal reasons:

- Unless cattle enter with a straight iron, the feedlot generally will rebrand to identify lots of cattle for control purposes. Thus, the holding iron is the feedlot brand and not the original owner's brand. Consequently, inspection is of little value.
- Inspection of fat cattle as they move to slaughter contributes to shrinkage if the brand inspectors move the cattle to read brands. Since selling price is based on weight, any weight loss is monetary loss to the feedlot operator.

5. SALES AND AUCTION YARD AND SLAUGHTER PLANT OPERATORS SEE LITTLE BENEFIT TO THEIR SEGMENTS FROM THE PROGRAM

The function of the salesyard and slaughter plant is to make a market for cattle. Turnover of cattle is rapid and, in the case of the salesyard, ownership is not involved. Thus, these segments of the industry do not recognize a need for inspection. Further, inspection

fees at salesyards and slaughter plants are charged against the seller, not by the yard or plant.

6. STRONGEST BACKERS OF THE PROGRAM—PRODUCERS—ALSO PAY THE MAJORITY OF COSTS

In order to give proper weight to the consensus opinions of the various segments of the industry, the financial support given the program by each industry segment was determined. The results of this determination are shown in Exhibit V, following this page.

The data reflected in the exhibit are based upon estimated inspections and brand registration by industry segment derived from the following sources:

- (1) Statistics on cattle population, slaughter, and movements as prepared by the California Crop and Livestock Reporting Service, Sacramento, California.
- (2) Brand inspection certificates and salesyards tally sheets on file at the bureau's office in Sacramento.
- (3) Interviews with bureau personnel and industry members.

It is clear that beef producers are the major contributors to the program. In fact, feedlot revenue could also be combined with production revenue as the next sequential step as the cattle move to slaughter. Combined, these two segments contribute an estimated 76 percent of the program cost.

7. REGISTRATION OF BRANDS AT THE STATE LEVEL CONTRIBUTES SIGNIFICANTLY TO FULFILLING THE OBJECTIVES OF THE PROGRAM

In the early days of the industry, brands were the only effective protection against loss by theft or straying. While branding is not compulsory today, its widespread use is recognized as the best, least costly method of protecting against loss. Moreover, the value of brands has been enhanced through their registration at the state level. Thus, owners can have exclusive use of the brand—a legal proof of ownership. As stated previously, more than 33,000 brands are registered in California. Analysis of sample brand certificates and salesyards tally sheets indicated that the majority of animals are branded, as shown below:

<i>Industry segment</i>	<i>Level of branding</i>
Production	80-90%
Feedlots	80-90%
Dairies	45-55%
Salesyards	60-70%
Slaughter plants	70-85%

8. INSPECTION IS USED BY THE BUREAU AS THE PRIMARY MEANS OF PREVENTING LOSS BY THEFT OR STRAY

The major purposes of inspection are to:

- Deny market for stolen cattle.
- Identify strays prior to their being sold or shipped, thus eliminating the problem of transporting cattle back to rightful owners.
- Prevent the sale of stolen cattle in surrounding states by requiring California inspection certificate.

EXHIBIT V

Senate Factfinding Committee on Agriculture
State of California

**ESTIMATED RELATIVE PROGRAM FINANCIAL SUPPORT BY INDUSTRY
SEGMENTS, FISCAL 1963-1964**

Industry segment	Estimated inspections	Estimated inspection revenue ¹	Estimated brand registration revenue	Total revenue contribution	Percent revenue contribution to total
Production.....	\$2,200,000	\$312,000	\$80,000	\$392,000	45
Dairy.....	730,000	102,000	28,000	130,000	15
Feedlot.....	1,860,000	263,000	13,000	276,000	31
Out-of-state.....	590,000	83,000	-----	83,000	9
Totals.....	\$5,380,000	\$760,000	\$121,000	\$881,000	100

¹ Based on (average) \$0.14 inspection fee.

According to the 1963 Agricultural Code of California:

—Cattle shall be inspected in each of the following cases:

Prior to transportation:

- (1) Out of an area having full point of origin inspection.
- (2) Out of the State of California.
- (3) Across an established cattle movement zone line or boundary.
- (4) By or to a new purchaser.

Prior to slaughter.

Prior to release or sale from a public stockyard, public salesyard, or public or private cattle sales market.

Prior to release from a posted stockyard or posted salesyard.

—No inspection is required prior to transportation to a point and from an area designated by the chief as one in which inspection may be made enroute or at destination.

—Proof of ownership (evidence of ownership) is required for each inspection, and inspection applies to all cattle, branded or unbranded. Acceptable evidence of ownership is:

—A recorded brand registered in the name of the person selling or shipping livestock.

—A prior brand inspection on certificate of animals sold or shipped.

—Bill of sale from the owner of the brand on said animal or hide.

Inspection is performed to the "letter of the law" throughout the state. There appears to be no exception to this administrative rule.

Over the last three years more than 5 million inspections were made annually, as indicated below:

<i>Fiscal year</i>	<i>Number of inspections</i>
1961-1962	5,801,955
1962-1963	5,147,264
1963-1964	5,374,568

9. RESPONSIBILITY FOR LAW ENFORCEMENT RESTS PRIMARILY WITH COUNTY SHERIFFS

The bureau has delegated law enforcement pertaining to cattle theft to county sheriffs. Although it does provide assistance to sheriffs, the major focus of the bureau's effort has been upon brand inspection.

Although the bureau has the authority under law to participate actively in law enforcement, it has not chosen to do so. Thus, certain problems have resulted.

(1) Few Counties Employ a Special Cattle Theft Investigator or Deputy

As cattle theft has become less and less a problem and as the statewide crime rate has increased over all, county sheriffs have necessarily directed their resources to other criminal activities. Thus, in only a limited number of counties is the sheriff's office skilled in the investigation of cattle theft cases.

(2) A Number of Cases Require Statewide Investigation

The type and speed of vehicles that can be used to haul cattle make the problem of cattle theft a state problem, since a cattle thief may cross many county lines.

Although county sheriffs can contribute to multicounty work, the initiative to continue the search for stolen cattle at the state level must be assumed by state law enforcement through the bureau.

(3) Only a Limited Number of Men in the Bureau Are Trained or Experienced in Law Enforcement Work

Brand inspection capability is the primary factor in selection of new personnel. Interviews conducted within the bureau revealed that few men are trained or experienced in law enforcement work. None of the inspectors and only half of the field supervisors appear to be qualified. Theft investigation is conducted almost entirely by field supervisors who spend from 25 percent to 50 percent of their time on theft investigation.

(4) Over the Last Five Years an Average of 125 Warning Violations Were Issued Each Year for Various Infractions of the Hide and Brand Law and About 25 Convictions Were Obtained Each Year for Grand Theft

In the process of assisting local law enforcement agencies in the collection of evidence and presentation of court cases involving cattle thefts, the bureau obtains information on the level of law enforcement activity pertaining to cattle theft. The five-year history is indicated in the table on the following page.

	1959	1960	1961	1962	1964
Warning violations issued -----	178	122	135	149	128
Grand theft cases -----	46	16	14	4	38
Complaints filed -----	42	20	12	5	35
Grand theft sentences -----					
State prison -----	4	0	0	1	2
County jail -----	16	2	9	3	17
Probation granted -----	23	16	12	3	22
Restitution ordered -----	24	8	2	2	11
Misdemeanor cases -----					
Complaints filed -----	39	21	37	14	20
Convictions -----	26	17	35	10	10
Acquittals -----	5	2	7	-	8
Fines -----	\$1,602	\$1,928	\$1,406	\$672	\$475

10. BASED ON THE PRESENT HIDE AND BRAND LAW, THE BUREAU HAS BEEN ABLE TO PROVIDE ITS SERVICES WITHIN ITS PRESENT FEE SCHEDULE

For the last 13 years, the bureau has been able to pay its own way except for the four years from fiscal year 1957-1958 through 1960-1961. The trend in revenues and expenses is indicated in Exhibit VI, following this page. Inspection revenue, representing from 80 percent to 85 percent of the bureau's revenue, has maintained a constant relationship to the total bureau revenue and is directly related to the number of brand inspectors in the field, which today represents 67 full-time inspectors and 25 part-time inspectors.

As shown in Exhibit VI, it appears that the budgeted cost for the fiscal years 1964-1965 and 1966-1967 may exceed forecast revenue based on the historical trend in revenue.

The major reason for the four deficit years was a depressed industry. As indicated by Exhibit VII, following this page, the growth and trend in inspection revenue have closely paralleled the growth and trend in the cattle industry. The present fee schedule has been in use since 1948, with the exception of an increase in inspection fee from \$0.08 to \$0.13 per head for out-of-state cattle moving directly to California salesyards and slaughter plants. Recording fees were increased in 1961: renewal fees from \$2 to \$3 and recording fees from \$2 to \$5.

11. CLOSED COUNTIES APPEAR TO HAVE LESS A PROBLEM OF THEFT OR STRAY THAN OPEN COUNTIES

Based on the analysis shown below, it appears that the closed counties have less a problem of missing cattle and, consequently, cattle theft than open counties.

Selected counties with a relatively high level of missing cattle are:

<i>County</i>	<i>Open or closed</i>	<i>1963 number of cattle and calves on farms and ranches</i>	<i>1963 bureau report of cattle missing</i>		
			<i>Reports</i>	<i>Head</i>	<i>Branded</i>
Los Angeles -----	Open	190,800	35	318	191
Tehama -----	Open	64,500	7	228	228
San Joaquin -----	Open	177,100	12	164	163
Sacramento -----	Open	108,500	28	130	116
San Bernardino -----	Open	105,000	19	114	76

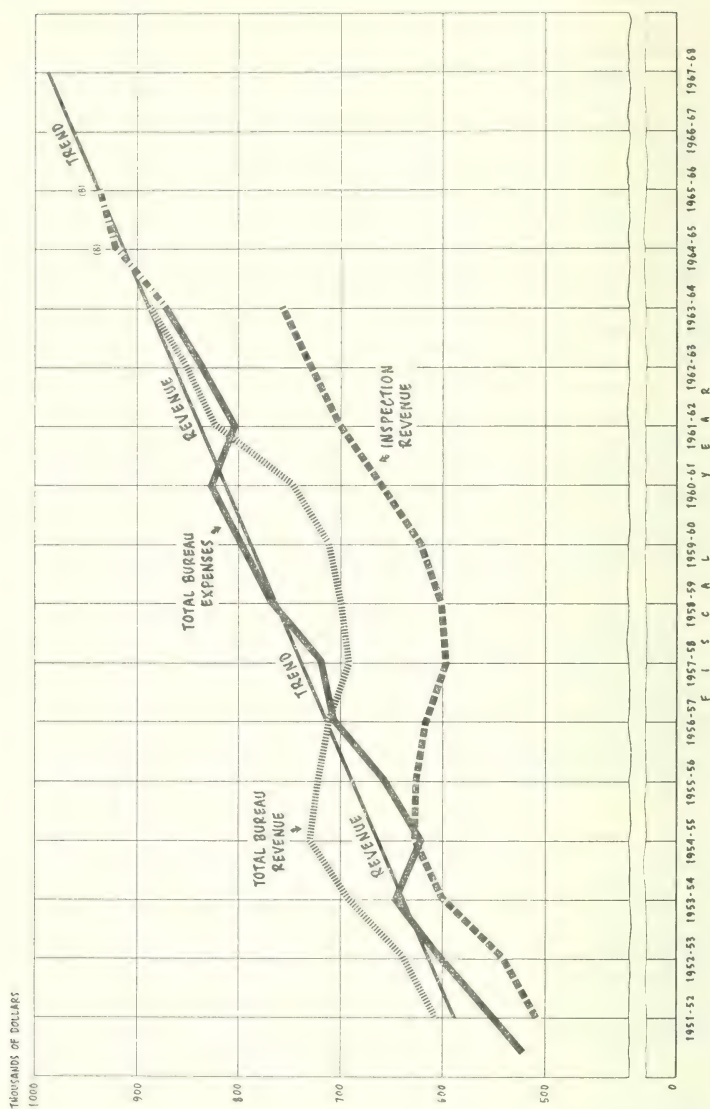
Selected counties with a relatively minor problem of missing cattle:

<i>County</i>	<i>Open or closed</i>	<i>1963 number of cattle and calves on farms and ranches</i>	<i>1963 bureau report of cattle missing</i>		
			<i>Reports</i>	<i>Head</i>	<i>Branded</i>
Fresno -----	Open	271,900	2	2	2
Merced -----	Closed	236,500	13	27	27
Monterey -----	Closed	132,100	1	28	28
Santa Barbara -----	Closed	87,000	1	1	0

12. CLOSED COUNTY INSPECTION SYSTEM DOES NOT PAY ITS WAY

Despite clear indications of the high level of effectiveness of the point of origin inspection system, an analysis of revenues indicates that cost exceeds fee income. Data were analyzed (1) by point of inspection and

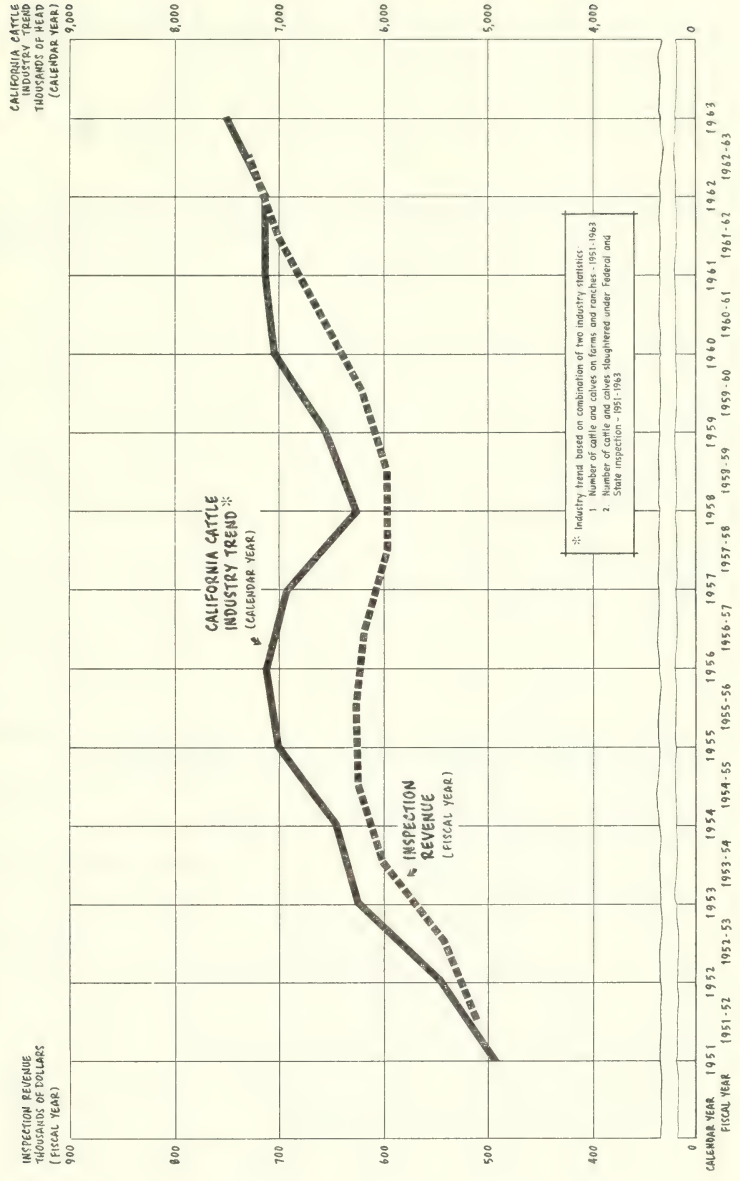
EXHIBIT 31
SENATE FACT FINDING COMMITTEE ON AGRICULTURE
STATE OF CALIFORNIA
TREND AND FORECAST OF REVENUE AND EXPENSES
BUREAU OF LIVESTOCK IDENTIFICATION
FISCAL YEARS: 1951-52 TO 1967-68



(2) by selected closed counties. The table below presents the results of inspection point revenue/cost analysis.

Inspection point	Fiscal 1963-1964			
	Estimated revenue		Estimated costs	
Country	\$150,000	20%	\$336,000	47%
Salesyards	175,000	23	240,000	33
Slaughter plants	402,000	53	147,000	20
Out-of-state	33,000	4	—	—
Total	\$760,000	100%	\$723,000	100%

HOUSE COMMITTEE ON AGRICULTURE
STATE OF CALIFORNIA
**GROWTH IN CALIFORNIA CATTLE INDUSTRY
COMPARED TO INSPECTION REVENUE**
BUREAU OF LIVESTOCK IDENTIFICATION
1951 - 1963



Most significant is the indication that revenue from inspections in the country fall short of covering cost of such inspections. Since this point of inspection is the vary basis of the closed county system, selected counties were further analyzed on a revenue/cost basis. Exhibit VIII, following this page, presents the findings of this analysis. Only San Diego County, a closed county, generated revenue sufficient to cover program costs in fiscal 1963. This exception to the general deficit

pattern is probably explained because San Diego County also has several salesyards and slaughter plants which develop fees sufficient to cover the closed inspection system costs.

EXHIBIT VIII

Senate Factfinding Committee on Agriculture
State of California

ESTIMATED SOURCES AND USES OF REVENUE FOR CATTLE INSPECTION SERVICES IN SELECTED POINT OF ORIGIN COUNTIES, FISCAL 1963-1964

Inspection revenue	Counties			
	Santa Barbara	Siskiyou	Modoc-Lassen	San Diego
Sources				
Country inspections	\$14,500	\$4,230	\$12,900	\$9,000
Salesyards inspections	2,100	5,240	6,300	1,530
Slaughter plant inspections		1,345	575	15,300
Total	\$16,600	\$10,815	\$19,775	\$25,830
Uses				
Country inspections	\$15,700	\$9,810	\$21,300	\$3,824
Salesyards inspections	5,230	1,434	3,300	3,824
Slaughter plant inspections		956	1,560	11,472
Total	\$20,930	\$12,200	\$26,160	\$19,120

13. SEVERAL SIGNIFICANT CONCLUSIONS REGARDING PROGRAM AND ACTIVITY EFFECTIVENESS WERE DEVELOPED

In addition to the foregoing measures of effectiveness, several other conclusions became evident during the survey.

(1) In General, the Industry Is Not Well Informed About the Total Identification Program

Available materials describing the various features of the hide and brand law are difficult to interpret and do not effectively explain the law in operation. Moreover, there is not a clear, concise description of the program and activities of the bureau. Only a limited number of persons contacted during the survey had a complete knowledge of the bureau and its duties and responsibilities.

(2) Role of Livestock Identification Advisory Board Appears to Have Little Value Under Present Arrangement

As indicated previously, the livestock identification advisory board does not approve or establish policy. Rather, it acts in an advisory capacity to the bureau chief. While the law was probably intended to keep the industry in a position of program control, it does not establish a significant set of duties and responsibilities for the board. Consequently, several inefficiencies exist, such as:

- Organizational relationships among bureau chief, division chief, and department director are somewhat diffused by the presence of the board, since the bureau chief can operate somewhat independently of the department.

- The board's agenda is controlled by the bureau chief, and matters brought before the board are primarily for information purposes, not to seek recommendations for program changes.
- Board members are not involved in such policy matters as budget review and performance evaluation. Consequently, many board members feel that they do not have a real board-level job to perform.

(3) Cattle Movement Zones Are Effective as Control of Point of Destination System Shipments

Previous sections of this chapter included measures of the high level of control over theft and stray in closed counties and areas. While the point of destination area does not have such rigid control, the three cattle movement zones, in effect, make the state three closed areas. Cattle cannot be shipped over 400 or 500 miles in the state without being subject to inspection. This requirement adequately supplements the open area system and poses no administrative or operating problems in implementation.

(4) District Boundaries Are Flexible and Can Be Adjusted to Match Workloads

The present district boundaries are only management boundaries and are not integral to the law. Frequent shifts have taken place in years past as supervisory workloads have changed.

(5) District Brand Supervisors Do Not Schedule or Control Brand Inspections in Most Districts

Scheduling and control of brand inspectors are difficult to achieve, particularly in rural locations. The brand inspector is called by the cattle shipper when inspection is required prior to transportation. Thus, the majority of inspection work does not lend itself to supervisory schedule and control. Moreover, in day-to-day operation, the program coordinator and bureau chief have as much contact with brand inspectors as do the supervisors.

(6) Inspection Methods and Techniques Vary Throughout the State Indicating Need for Bureauwide Training

The program coordinator is responsible for seeing that uniformity is achieved in implementing the law in the state. For example, in the conduct of his job he seeks to establish that "proof of ownership" requirements are enforced and that fresh brands are questioned. However, there is no formal training in either brand inspection techniques or in supervising brand inspection. As a result, methods vary throughout the state.

(7) Lack of Specialists in Law Enforcement Hinders Bureau Effectiveness

From 25 percent to 50 percent of supervisors' time is spent in handling missing cattle and theft cases. In addition, brand inspectors also spend about 15 percent to 20 percent of their time on these duties. While the program coordinator does provide an informal source as to interpretation of the law, there is a lack of trained specialists in law enforcement. Consequently, effectiveness in the preparation of cases for prosecution is diminished.

(8) **Major Procedural Loophole in Law Appears to Be Lack of Inspection of Cattle Entering Feedlots**

Earlier in this chapter it was indicated that feedlot operators were critical of the program because the present procedure called for inspection of fat cattle at the slaughter plant. This procedure also permits the major loophole in the present law—cattle can be consigned to the feedlot and not be inspected, and out-of-state cattle are not inspected as they enter feedlots. Moreover, the feedlot will brand for lot control purposes after the cattle have entered the lots so that the feedlots' iron becomes the holding iron, thus eliminating the value of subsequent inspection.

The next chapter presents a comparison of the California program to programs in other selected states.

III. COMPARISON OF CALIFORNIA PROGRAM TO PROGRAMS IN OTHER SELECTED STATES

Prevention of loss by theft or stray is not limited, of course, to California cattle operators. In order to better evaluate the California program, the hide and brand laws of six other states were compared to that of California. As a result of this comparison, three basic conclusions were developed.

1. CATTLE INDUSTRY IN CALIFORNIA IS MORE DYNAMIC AND COMPLEX THAN IN OTHER STATES EVALUATED. LAW IS CONSEQUENTLY MORE DIFFICULT TO ADMINISTER

The cattle industry in California consists of literally hundreds of range, dairy, salesyard, feedlot, and slaughter plant operations. This is in direct contrast to most other western states where the cattle population, except in Texas, is a fraction of the California herd. In fact, most of the states studied export their range cattle to California's markets. This diversity of activity and scope of operations make the job of administering the hide and brand law in California more difficult than in other states. Additionally, California's population growth has resulted in an ever-expanding cattle industry to meet the demand for beef and dairy products. Thus, the bureau has been faced with a sharply increased workload, coupled with a dual system of inspection.

2. CALIFORNIA PROGRAM DOES NOT EMPHASIZE LAW ENFORCEMENT AS MUCH AS OTHER STATES STUDIED

Each of the programs of the six other states places emphasis on law enforcement as a primary deterrent to cattle theft. For example, in other states, brand inspectors, who are equipped with sirens and flashing lights, carry sidearms, and former police officers are frequently employed as either inspectors or as specialists in hide and brand law enforcement. Most respondents in other states claimed this more rigid police-type operation was necessary to supplement a "looser" inspection system compared to California's.

3. LEVEL OF EFFECTIVENESS IN CALIFORNIA EQUALS OR EXCEEDS OTHER STATES STUDIED. COSTS OF CALIFORNIA PROGRAM ARE IN LOWER RANGE

Exhibit IX, following this page, presents the essential elements of the hide and brand law of seven cattle states, including California. Only New Mexico and Arizona have compulsory branding. Their programs are more complete than California as each is essentially a "closed" state. This higher level of service, however, results in an estimated program cost of \$0.48 per head in Arizona and \$0.31 per head in New Mexico, compared to \$0.20 per head in California. Though incomplete, data regarding loss and stray indicate that California's program is as effective as that of New Mexico and Arizona. It is also of interest to note that only one state studied, Arizona, utilizes general fund moneys to support operations of identification service. The program in Texas operates under the cattlemen's association, with inspectors deputized as Texas Rangers. Inspection in Texas is nominal, and the emphasis is on recording brands involved in transactions as record rather than to establish ownership.

EXHIBIT IX

Senate Factfinding Committee on Agriculture
State of California

COMPARISON OF HIDE AND BRAND LAW ELEMENTS OF SELECTED STATES

State	Compulsory branding	Inspection			Estimated current annual program cost per head	Services and fees	General fund	Cattle tax	Industry associations	Industry assessment of program
		Origin	Destination	Out-of-state						
California	No	Limited	Yes	Yes	20¢	100%				Adequate; level of inspection service questioned
Texas	No	No	Sales-yards only	No	6¢	80%			20%	Adequate; several major loopholes
Arizona	Yes	Yes	Yes	Yes	48¢	43%	12%	45%		Adequate
New Mexico	Yes	Yes	Yes	Yes	31¢	56%		44%		Excellent
Nevada	No	Limited	Yes	Yes	29¢	20%		80%		Adequate; fee inspection system difficult to manage
Oregon	No	No	Yes	Yes	28¢	100%				Adequate; no inspection prior to shipment
Washington	No	No	Yes	Yes	19¢	100%				Adequate; no inspection prior to shipment

IV. RECOMMENDATIONS AND ALTERNATIVES FOR IMPROVING THE SERVICES OF THE BUREAU

Several opportunities exist to strengthen the present operations of the bureau. These include organizational and procedural changes as well as improvements that are available through better management scheduling and control of brand inspection services. The sections which follow present recommendations aimed at achieving greater efficiency and effectiveness in the bureau. The last sections of the chapter consider alternatives to the program and consider utilization of other organizations to replace or supplement bureau activities.

1. MODIFY OR CHANGE THE PRESENT INSPECTION SYSTEMS TO MAKE PROGRAM EITHER MORE EQUITABLE OR EFFECTIVE

The previous chapter presented a number of improvement opportunities available to the bureau to (1) increase program effectiveness, and (2) make the program more equitable to the various industry elements. The following recommendations should achieve these objectives.

(1) Increase Point-of-origin and Country Inspection Fees

The basic fee for point-of-origin inspections should be increased from \$0.20 to \$0.25 per head, and from \$0.13 to \$0.15 in open counties for country inspections. Point-of-origin pasture-to-pasture inspection fees should be increased from \$0.10 to \$0.12 per head. This overall 25-percent increase in fees should result in point-of-origin and country inspection revenues to cover costs of such services.

(2) Inspection at Feedlots Should Be Made on Incoming Cattle for California-fed Cattle

This procedural change should overcome the major loophole in the present law. While fees would be reduced somewhat by cattle entering with inspection certificate, this revenue loss should be offset by the increased fee schedule for point-of-origin and country inspections. Further, a \$0.05 administrative charge should be levied at the slaughter plant for California-fed cattle moving to slaughter with an inbound inspection certificate. This is necessary to support inspection at slaughter plants to verify number of animals shipped to slaughter. Out-of-state-fed cattle would continue to be inspected at slaughter plants as under the present procedure and with no adjustment to the fee schedule.

(3) Proof of Ownership Could Be Eliminated by Licensing Procedure, But This Alternative Is Not Widely Supported

As previously indicated, one disadvantage of the present law is the nuisance factor involved in proof of ownership requirements. This was pointed up by some members of the dairy industry. A licensing procedure could be developed whereby the bureau would sanction the sale of animals by approved operators at selected salesyards subject

to proof of ownership claims at any time. While feasible, this alternative does not appear to have the support of a majority of dairy operators, as do current requirements.

2. STRENGTHEN BUREAU EFFECTIVENESS BY ADDING SPECIALIST IN LAW ENFORCEMENT

According to information gathered from county sheriffs, decreasing emphasis is placed on cattle theft law enforcement. Few sheriffs' offices are manned with personnel qualified in this field. Moreover, as previously indicated, the law enforcement effort of the bureau itself is not well defined.

It is recommended, therefore, that law enforcement specialists be employed by the bureau to handle all cattle theft cases. It is further suggested that two specialists be retained at first, and that personnel be added based upon caseloads. Exhibit X, following this page, indicates the new positions reporting to the bureau chief. These men should have a background in law enforcement and should be trained by appropriate state-level law enforcement agencies. These specialists should handle all cases, and would be aided, as necessary, by field personnel. In all cases, however, the specialists should coordinate with the district supervising brand inspectors and not directly with brand inspection except with knowledge of the supervisor.

3. DELEGATE MORE AUTHORITY TO DISTRICT SUPERVISORS AND MAKE PROGRAM COORDINATION RESPONSIBILITY OF BUREAU CHIEF

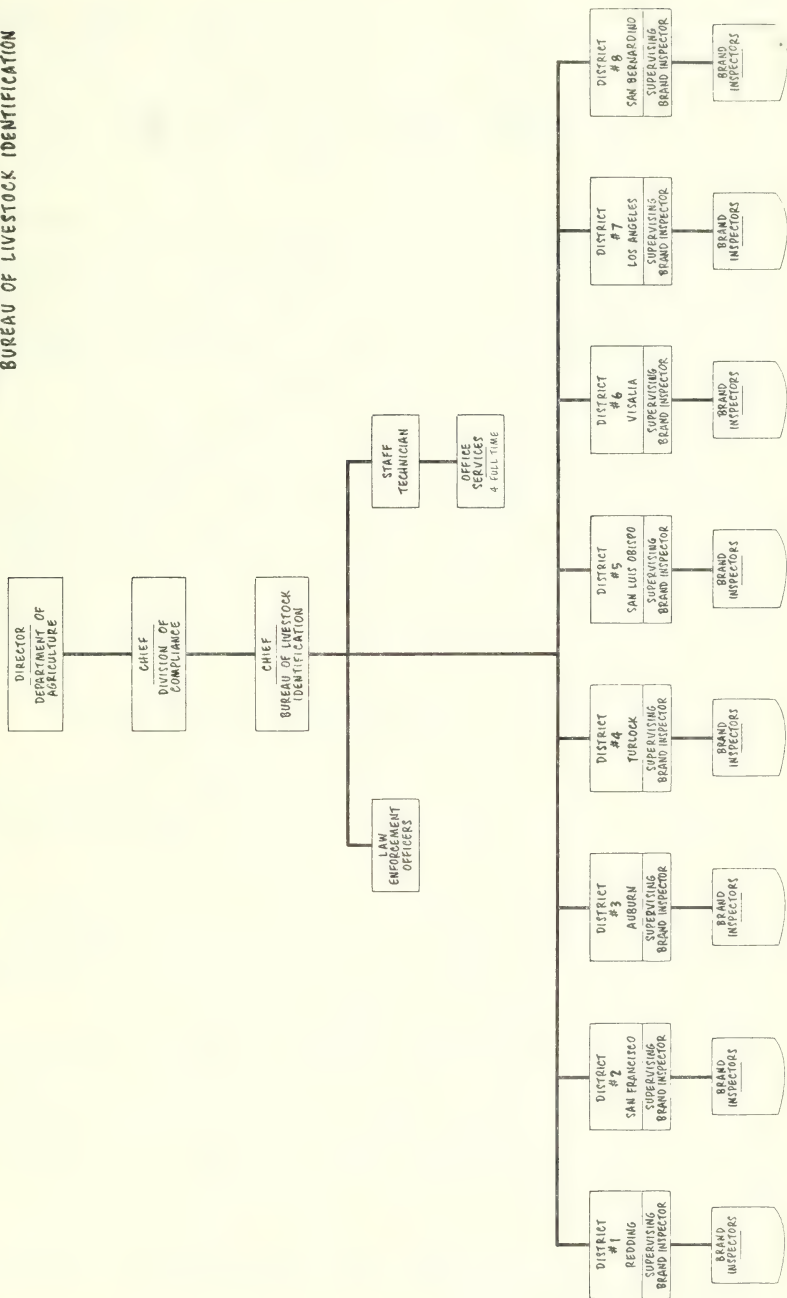
As indicated previously, the present position of program coordinator carries responsibility for seeing that uniform practices are implemented throughout the state. In practice, this has resulted in reducing the responsibility of the supervisors because the coordinator acts essentially in a line rather than staff capacity. Program coordination should be one of the prime responsibilities of the bureau chief working directly with the supervisors, not through a program coordinator.

4. DEVELOP STANDARDS FOR MAJORITY OF BRAND INSPECTION WORK TO PERMIT PLANNING, SCHEDULING, AND MONITORING OF PERFORMANCE OF BRAND INSPECTORS

The nature of brand inspection makes effective management difficult, since scheduling of work is virtually impossible except in urban areas. While productivity of inspectors is probably high, there exists a real potential for improving utilization. However, in order to achieve a higher utilization, yardsticks based on units of work should be developed.

Standards should be developed for the majority (80 percent) of brand inspection work. These standards would be used to evaluate the performance of field personnel and have a gauge on current workload. Based upon previous experience where standards have been applied to such work, utilization could be increased as much as 20 percent to 30 percent. This increased utilization could result in direct savings to the program through either normal attrition of personnel or with no increase in manpower to handle a significantly higher workload.

EXHIBIT X
SENATE FACT FINDING COMMITTEE ON AGRICULTURE
STATE OF CALIFORNIA
**RECOMMENDED PLAN OF ORGANIZATION
BUREAU OF LIVESTOCK IDENTIFICATION**



5. CONDUCT REGULAR TRAINING PROGRAMS FOR ALL FIELD PERSONNEL

Training is necessary to provide (1) qualified persons, (2) a pool of skills that will improve the bureau's organization and effectiveness, and (3) a means of appraisal and identification of persons for promotion. The state has highly qualified training officers who could conduct such a program, and the bureau should move rapidly to seek its development.

6. PREPARE LITERATURE DESCRIBING BUREAU'S PROGRAM AND SERVICES

During the course of the work, the survey team observed the general lack of knowledge about the hide and brand law. The Department of Agriculture should prepare literature describing the law and how it operates with regard to each segment of the industry. This material should be made available to all cattle operators and could be sent with brand registration renewals or new recordings.

7. DISSOLVE LIVESTOCK IDENTIFICATION ADVISORY BOARD

Previous chapters have indicated that the advisory role of the present board has little value to the program. The various associations are regularly consulted when changes in the law are contemplated; thus, in reality, the board merely duplicates effort. An alternative would be to give the board policymaking responsibility such as selection of the bureau chief, budget approval, and so forth. This alternative, however, does not appear to be practical for a program as limited in size as that of livestock identification.

8. BOTH A CATTLE TAX AND STATE GENERAL FUNDS APPEAR IMPRACTICAL AS ALTERNATIVE SOURCES OF REVENUE

While a cattle tax is perhaps a more equitable method of financing the program, it also appears to be a more costly approach. The pertinent cost element is that of collection cost. Under the program today, collection is directly tied in with the service performed—that of brand inspection—and thus substantially reduces costs.

A cattle tax would require the service of a state, and possibly a local, tax collecting agency, which then would charge the bureau a fee for performing the tasks of billing, collecting, crediting, and dispensing the funds. Because this would be a costly procedure in comparison with the existing system, it is not an acceptable alternative.

Moreover, it appears unlikely that general funds to support the program would be available. The question regarding the use of general funds is a political one, and the current government administration would like to have all special programs, such as this one, supported by the group receiving its benefit. This is the case of the bureau's program, and thus under the present administration the use of general funds is improbable.

9. AN INDUSTRY-WIDE INSURANCE PROGRAM WOULD NOT PROVIDE THE REQUIRED INSPECTION SYSTEM AND COSTS WOULD PROBABLY BE PROHIBITIVE

One alternative to the present system would be an insurance program. Costs were developed on the basis of loss experience, which indicates that the annual premium for such coverage would probably

approach \$600,000, or \$0.13 per animal. This does not include any inspection service, the costs of which would have to be added to the insurance program. Without the inspection system, losses would undoubtedly rise which, in turn, would merely result in higher premiums.

10. SCOPE OF BUREAU PROGRAM LIMITS USE OF OTHER AGENCIES OR GROUPS TO PROVIDE BUREAU PROGRAM SUPPORT

An evaluation was made of other agencies in the Department of Agriculture, county sheriffs offices, and local independent groups to determine if any of the present services of the bureau could be handled elsewhere. Criteria, including such factors as knowledge of cattle, statewide information system, background in law enforcement, ability to respond to service calls on demand, and freedom to operate outside of local pressures, were developed. These criteria were considered prime requisites of the program. While several agencies, such as animal health, plant quarantine, and dairy service, were closely allied, they did not meet all criteria. Moreover, delegating the program to county sheriffs or local groups would be even less effective in meeting the program's requirements. An effective program requires specialization, and it appears this is best achieved through the Bureau of Livestock Identification.

V. PLAN OF ACTION TO GUIDE INSTALLATION OF RECOMMENDATIONS

Following are suggested guides for installing recommendations contained in the report. Inasmuch as several groups are involved (the Senate factfinding committee, cattle industry advisory committee, Department of Agriculture, cattle associations), each should be given an opportunity to review the report and submit its views to the Senate factfinding committee.

1. Senate factfinding committee should request the cattle industry advisory committee to review the report and submit its views to the committee.
2. Director of Department of Agriculture, Chief of Division of Compliance, and bureau chief should review the report and submit their views to the committee.
3. Executive secretary should review the report for any possible changes in law resulting from implementation.
4. Meetings should be scheduled with cattlemen's association and other interested groups to discuss findings of the report.
5. Schedule for implementation of adopted recommendations should be developed by the bureau chief and regularly scheduled reports should be given to the Director of Department of Agriculture regarding implementation progress.

o



REPORT OF THE SENATE FACTFINDING COMMITTEE ON AGRICULTURE

Appointed Pursuant to the Terms of
Senate Resolution No. 145 of the Regular Session of 1963
of the California Legislature

on

PESTICIDES

MEMBERS OF THE COMMITTEE

VIRGIL O'SULLIVAN, *Chairman*

ROBERT J. LAGOMARSINO, *Vice Chairman*

JAMES COBEY

SAMUEL R. GEDDES †

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AARON W. QUICK

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HOWARD WAY

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STAFF

PAUL K. HUFF, *Consultant*

JO SMITH, *Secretary*

† Deceased

* Term Expired



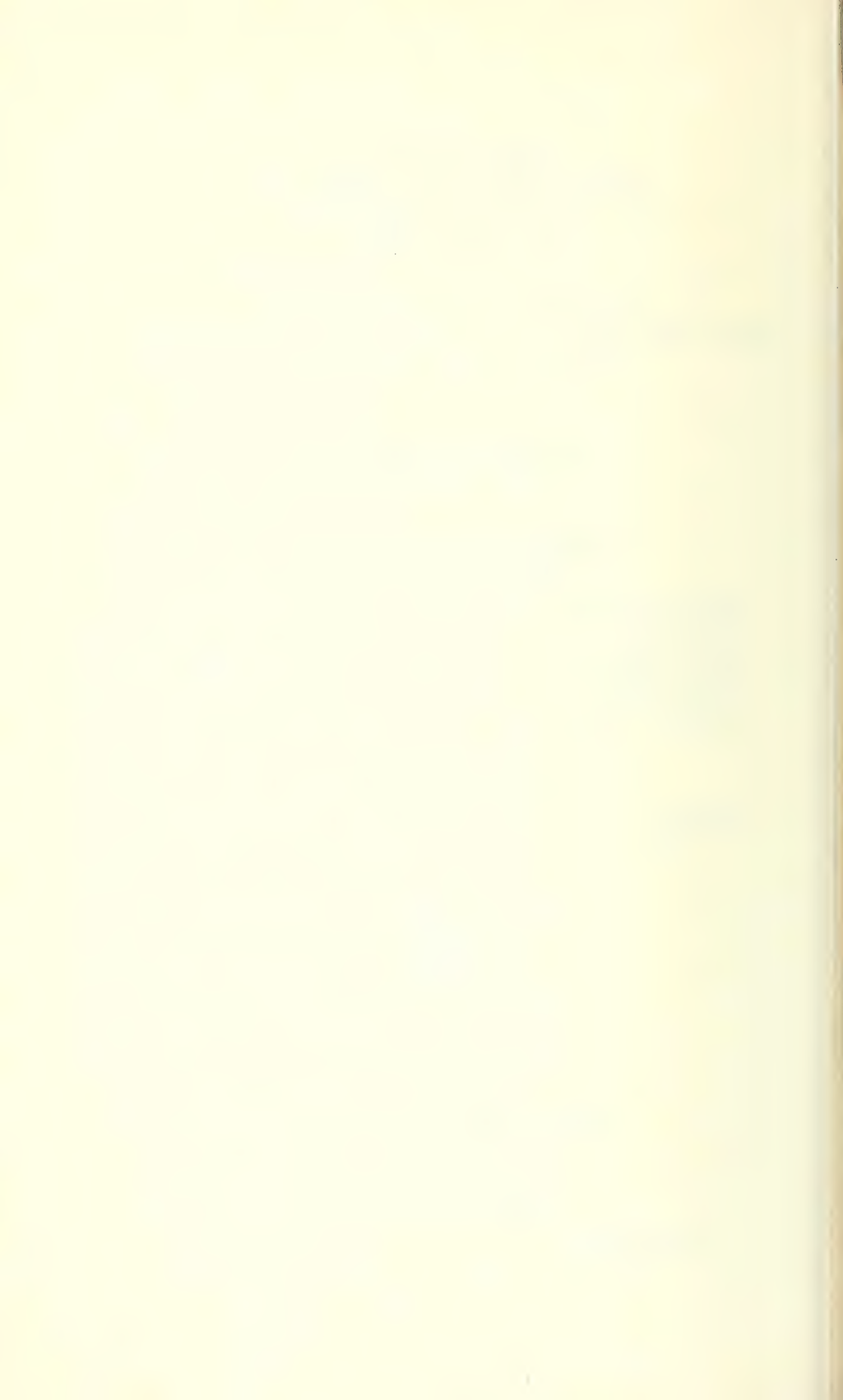
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SENATE
OF THE STATE OF CALIFORNIA

1965

GLENN M. ANDERSON
President pro Tempore

HUGH M. BURNS
President pro Tempore

JOSEPH A. BEEK
Secretary



May 11, 1965

HON. GLENN M. ANDERSON, *President*
and Members of the Senate

Gentlemen :

The Senate Permanent Factfinding Committee on Agriculture functioning pursuant to the provisions of Senate Resolution No. 145 of the 1963 Regular Session of the Legislature submits a report entitled "Pesticides."

This report is based on an objective evaluation of the some 1,026 pages of testimony and statements presented to the full committee by over one hundred witnesses at a series of meetings held throughout the state during 1963 and 1964. These meetings were called to receive testimony on AB 2233 (Petrus) of the 1963 Regular Session relating to injurious materials, the subject matter of which had been referred to the committee for interim consideration by the Senate Rules Committee.

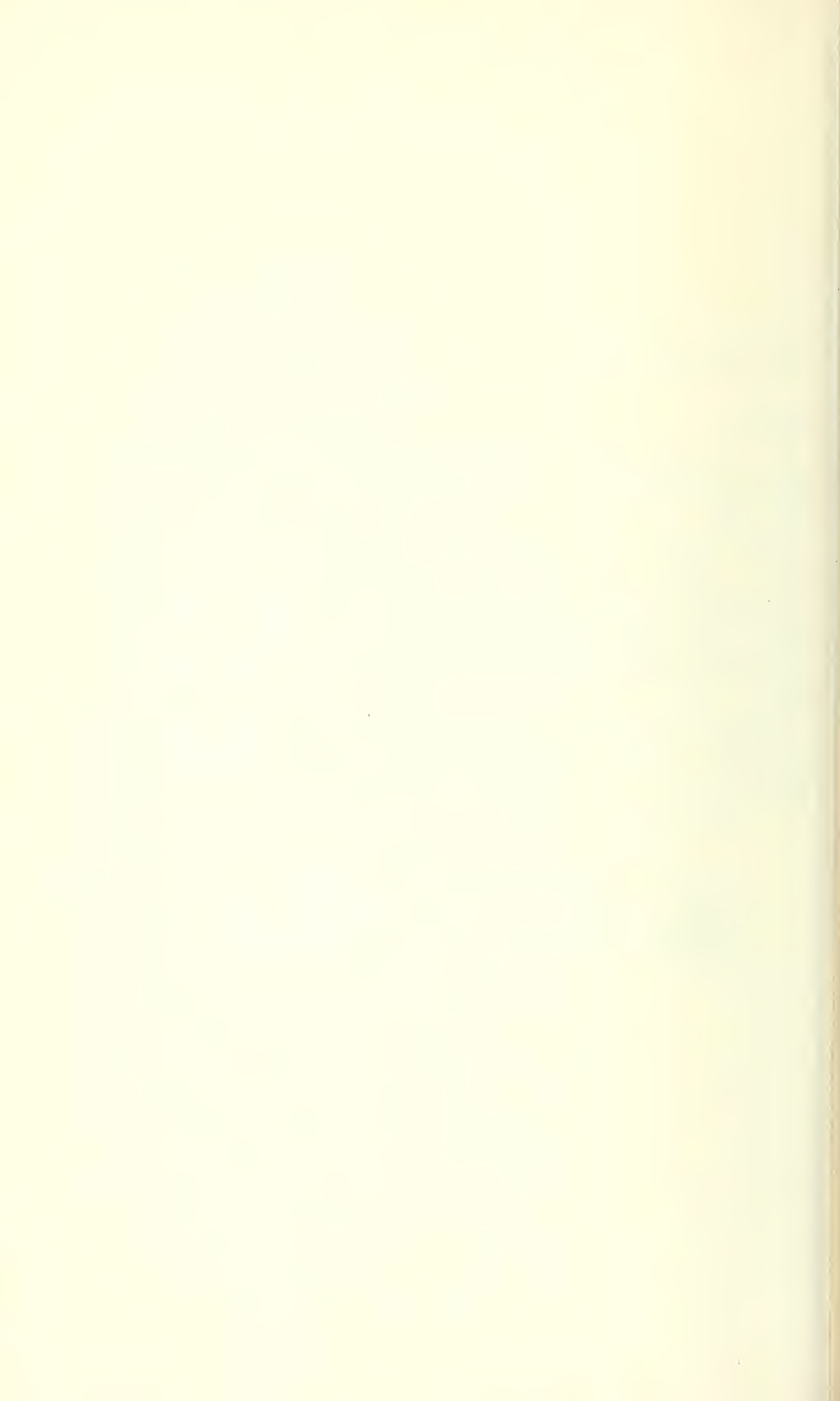
It is felt that information contained in the report, together with the committee's findings and recommendations will prove of value to members of the Legislature and to others having an interest in the broad field of pesticides.

Respectfully submitted,

VIRGIL O'SULLIVAN, *Chairman*

ROBERT J. LAGOMARSINO
JAMES A. COBEY
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FOREWORD

“Legislative control of the use and application of pesticides is an exercise of the state’s police power under the Federal Constitution for the protection of health and welfare of the people.”



INTRODUCTION

On September 12, 1963, the subject matter of AB 2233 (Petrus) of the 1963 Regular Session, relating to injurious materials, was assigned by the Senate Rules Committee to the Senate Factfinding Committee on Agriculture for interim study. AB 2233 was the subject of an exhaustive study by the committee during the 1963-65 interim period.

The first series of meetings on this measure was held in Sacramento, October 22 and 23, 1963. In announcing this particular two-day hearing, Senator O'Sullivan, chairman of the committee, said that the meeting was being called to review the entire picture of agricultural chemicals and, in particular, pesticide or economic poisons, in an attempt to ascertain whether any new legislation at the state level is needed. Senator O'Sullivan went on to say that the proper use and regulation of economic poisons is becoming a problem of sufficient magnitude to warrant a thorough legislative review at this time.

Senator O'Sullivan also said that while he was genuinely concerned with the possible affect of the indiscriminate use of injurious materials on humans and wildlife, we should not overlook, in our consideration of the use of these materials, the part they have played in the story of mankind's battle against his worst enemies; namely, starvation, disease, insects, rodents, fire and plagues.

The first day of the meeting, October 22, was devoted to receiving testimony from representatives of federal, state and local agencies having responsibilities in this area of research, education, application, regulation and control of the use of economic poisons. The second day the committee received extensive testimony from various representatives of farm and industry organizations and other interested individuals.

Testifying or submitting written statements for the record at the October 22 and 23 meeting of the committee were the following:

Hugo Fisher, Administrator of the Resources Agency
Frank M. Stead, Department of Public Health
Charles Paul, Director of State Department of Agriculture
E. P. Reagan, Agricultural Research Service, USDA
Dr. Irma West, State Department of Public Health
Dr. M. L. Peterson, Dean of Agriculture, University of California
Dr. George F. Stewart, University of California
Dr. D. G. Crosby, University of California
Norman B. Akeson, University of California
Walter T. Shannon, Director, California Department of Fish and Game
Eldridge G. Hunt, Department of Fish and Game
Ian McMillan, San Luis Obispo County
James L. Averell, U.S. Forest Service
S. T. Ancell, State Association of County Agricultural Commissioners

Kenneth L. Wolff, Agricultural Commissioner, Los Angeles County
 Richard Straw, Agricultural Commissioner, Marin County
 Loren D. Anderson, University of California
 C. J. Barrett, Agricultural Commissioner, Ventura County
 R. M. Schneider, Agricultural Commissioner, San Bernardino County
 James M. Moon, Agricultural Commissioner, San Diego County
 William Fitchen, Agricultural Commissioner, Orange County
 L. D. McCorkindale, Agricultural Commissioner, Fresno County
 McKay McKinnon, Jr., Food and Drug Administration, SF District
 W. D. Murray, California Mosquito Control Association
 Mrs. Helen Nelson, Consumer Counsel, State of California
 Malcolm N. Allison, Bureau of Sport Fisheries and Wildlife
 C. O. Barnard, Western Agricultural Chemicals Association
 William Staiger, Agricultural Council of California
 Norman W. Hazel, Kern Chemical Association
 Powers S. Messenger, University of California
 Betty Lee Morales, National Health Federation
 E. Alan Mills, California Grape and Tree Fruit League
 R. K. Sanderson, packinghouse manager
 Robert J. March, Cannery League of California
 Dean Donaldson, Agricultural Research, California Packing Corporation
 Evan Hudelson, farmer, Modesto area
 Homer A. Harris, Associated Produce Dealers and Brokers of Los Angeles
 Herman Grabow, California State Grange
 Allan Grant, California Farm Bureau Federation
 Laura Tallian, Committee for Biological Pest Control in Agriculture
 James G. Van Maren, California Milk Producers' Federation
 William E. Warne, Director, California State Department of Water Resources
 R. E. Butcher, California Citrus Pest Control Association
 Edwin A. Putnam, California Agricultural Aircraft Association
 George Defani, California Wildlife Federation
 D. Lowell Wells, California Pest Control Association
 Edward Brubaker, State Department of Industrial Relations
 William F. Huston, California State Beekeepers Association
 Kieth Kirstein, California Feed & Grain Association
 X. Dahlstrom, Los Angeles Chemical Company
 Claude M. Finnell, Agricultural Commissioner, Imperial County
 Robert M. Howie, Agricultural Commissioner, Riverside County
 Max Rafferty, Director of Education, State of California
 William Hazeltine, Lake County Mosquito Abatement District
 Knox Marshall, California Forest Pest Control Action Council
 W. B. Carter, California State Board of Forestry

The committee also held, during the week of June 16 through 19, 1964, another series of hearings to complete its extensive pesticide studies. The first meeting in this series was held in El Centro on June

16. That particular meeting was called to provide southern California diversified agricultural interests with an opportunity to present their views on the subject matter of AB 2233. The committee next met on June 16, 1964, on the Riverside campus, University of California, Riverside, to observe firsthand many of pesticide research programs then being conducted by the university. The last meeting in the series was held on June 19, 1964, in San Francisco, to receive testimony from representatives of selected governmental agencies having responsibilities relating to pesticides. Representatives of the California Medical Association also testified at length at the hearing in San Francisco.

All individuals requesting a place on the agenda for the June 1964 series of meetings were requested to come prepared to comment on a list of some twelve observations, questions and recommendations here enumerated which had been raised or suggested by witnesses testifying at the 1963 committee hearing: These are

1. The desirability of mandatory interagency consultation and cooperation by all interested governmental agencies.
 - a. Prior to registration of a pesticide chemical for use in California;
 - b. Prior to the initiation of programs and activities involving the use of pesticide chemicals.
2. If research on the subject of agricultural chemicals is to be expanded, what area or areas should receive priority?
3. Salesman of agricultural chemicals.
 - a. Require salesmen of pesticide chemicals (as such chemicals are defined in Section 1010(b) of the Agricultural Code) be licensed by the Director of the State Department of Agriculture and registered with the agricultural commissioners in counties where the pesticide chemicals are offered for sale.
 - b. Require any recommendation for application and/or for use made by a salesman of pesticide chemicals be reduced to writing with a copy to the user and one to the supplier.
4. In what manner should labeling, container type and size requirements be changed to afford greater protection to users?
5. Desirability of legislation requiring that the authorization for the use of pesticide chemicals be reviewed annually.
6. What portion of existing law, if any, should be made applicable to governmental agencies and individual farmers engaged in programs involving the use of pesticide chemicals?
7. More stringent regulations on the use of insecticides around the home and garden.
8. If the need exists for an expanded educational program relative to the use of and application of insecticides, particularly around the home, who should be responsible for the development and administration of the program?
9. Should the penalty provision for violations of laws and regulations relating to the use and application of pesticide chemicals be strengthened?

10. Would there be any merit in legislatively categorizing materials other than those listed as injurious that may need monitoring?

11. Should county agricultural commissioners be given authority to adopt rules and regulations governing the use and application of pesticide chemicals, authority comparable to that presently existing as relates to pest control (see 160.5 of the Agricultural Code)?

12. The need for further study of the technical issues involved in the concepts of zero tolerances and no residue.

Included in the list of individuals or organizations testifying or submitting written statements for the record at the June 1964 series of hearings were the following:

Claude Finnell, Agricultural Commissioner, Imperial County
 E. J. Dietrick, Entomologist, Elmore Desert Ranch
 Norman Stanley, Agricultural Aircraft Association
 Bill DuBois, Imperial Hay Growers Association
 Delvin Ashurst, Beekeeper
 M. J. LaBrucherie, Farmer and cattle feeder
 Bailey Santistevan, Crown Chemical Company
 William S. Zimmer, Salesman of Agricultural Chemicals
 Leroy Westmoreland, Imperial County Farm Bureau
 Rudolph J. Miller, Imperial County Growers Association
 Earnest Studer, Imperial County Farm Bureau Pesticide Committee
 A. C. Morrison, Legislative Counsel
 Charles Paul, Director of State Department of Agriculture
 Frank M. Stead, Division of Environmental Sanitation
 Stanley J. Leland, M.D., Director of Health
 Robert Allen, Imperial Valley Beekeepers Association
 Ralph Teall, M.D., California Medical Association
 C. H. Hine, M.C., Ph.D., University of California
 Parke C. Brinkley, National Agricultural Chemicals Association
 Robert L. Ackerly, Chemical Specialties Manufacturers Association
 E. B. Antonell, Western Growers Association.
 Jack Garriott, Jr, Agricultural Aircraft Association, Inc.
 L. D. McCorkindale, Agricultural Commissioner, Fresno County
 Steve Ancell, Agricultural Commissioner, Tehama County
 Herman Grabow, California State Grange
 Russ Richards, California Farm Bureau Federation
 Henry Moras, Stauffer's Label and Registration Department
 Robert J. Marsh, Cannery League of California
 California Medical Association
 Kenneth L. Wolff, Agricultural Commissioner, Los Angeles County
 Maynard W. Cummings, Tulalake Pesticide Review Committee
 Toxicology Center at University of California
 Robert M. Howie, Agricultural Commissioner, Riverside County
 James M. Moon, Agricultural Commissioner, San Diego County
 R. M. Schneider, Agricultural Commissioner, San Bernardino County
 Robert W. Johnston, Manager, Contra Costa Water District

McKay McKinnon Jr., Department of Health, Education and Welfare, EFA

George A. Gooding, California Packing Corporation

E. P. Reagan, Assistant Administrator, U.S. Department of Agriculture

H. T. Spieth, Chancellor, Riverside Campus, University of California

Dr. A. M. Boyce, Dean of College of Agriculture, Riverside Campus, University of California

Dr. L. D. Anderson, Professor, Entomology, Riverside Campus, University of California

Dr. J. E. Swift, Extension Entomologist, University of California

Dr. F. A. Gunther, Professor, Entomology, Riverside Campus, University of California

The committee's report and recommendations, are to a large extent, based on an evaluation of the testimony received relating to these same 12 observations, questions and recommendations.

PROPOSAL 1

Desirability of mandatory interagency consultation and cooperation by all governmental agencies.

- a. Prior to registration of a pesticide chemical for use in California.
- b. Prior to the initiation of programs and activities involving the use of pesticide chemicals.

Discussion

This recommendation was first advanced at the series of meetings of the committee held in October 1963 in Sacramento. It was also discussed briefly at an executive session of the committee held during the 1964 Budget Session. Witnesses appearing at the second series of meetings on the subject of pesticides held during June of 1964 were asked to comment on the specific proposal. Dr. Ralph Teall, President of the California Medical Association, in commenting on this proposal, said that in his opinion, there seemed to be no reason for any attempt to change by regulation or law the relationship between departments because it is presently working very fine on a day-to-day basis.

Mr. Parke C. Brinkley, President of the National Agricultural Chemical Association, in speaking to this suggestion, said that while he recognized the need for consultation between the various agencies, he realized the cumbersomeness and the antagonism which could develop from a mandatory requirement giving one department the authority to tell another department what to do or to veto the action of that department.

Mr. Robert L. Ackerly, counsel to Chemical Specialties Manufacturers' Association, in commenting on this proposal, said: "I am a lawyer and I have never believed constitutionally in the value of the Legislature delegating legislative authority to a specific branch of the executive branch of government. I feel that the Legislature delegates

authority to the Governor, to the executive—and it is his responsibility to carry it out.”

Agricultural interests represented at the two series of hearings generally indicated they did not favor mandatory interagency consultation and cooperation in this matter and the same interests were quite emphatic in expressing their concern—at least the basic control of and the responsibility for—agricultural chemicals being transferred to another department other than agriculture.

I think it is safe to say that most of the witnesses appearing before the committee were of the opinion that the required and desired degree of cooperation and consultation should be initiated by the executive branch of government, which, if it works as it seems to be in California at the present time, due in part to the progress made by the Governor's Committee on Pesticide Review, should obviate the necessity for action by the Legislature making such cooperation and consultation mandatory.

At the same time, it would be naive not to recognize that unless something is done at the state level, we may witness in California what has happened in Washington; namely, representatives of federal agencies appearing before various committees of Congress, each trying to acquire more jurisdiction and authority in this field.

Committee Recommendation

For this reason, the committee recommends that the executive branch of the government formalize, by executive order, interdepartmental arrangements for continuous coordination and cooperation between the various agencies in the executive branch having responsibilities in the field of pesticides. This could be accomplished through formal memorandum of agreement between these various agencies, establishing working procedures to assure effective coordination in carrying out their respective responsibilities such as is being done now at the national level under an agreement reached between the Departments of Agriculture; Interior; and Health, Education and Welfare, in April 1964.¹

Committee recommendation to be implemented through the introduction of a Senate Concurrent Resolution at this session of the Legislature. The resolution as introduced in the Senate on April 22, 1965, reads as follows:

SENATE CONCURRENT RESOLUTION NO. 70

Relative to Coordination of State Pesticide Activities

WHEREAS, There does not exist any formalized interdepartmental arrangements for continuous coordination in the executive branch in matters relating to the safe use of pesticides; and

WHEREAS, Through formal memorandum of agreement such arrangements have been made at the national level between the Departments of Agriculture; Health, Education and Welfare; and Interior establishing working procedures to assure effective coordination in carrying out their respective responsibilities; and

¹ A copy of this agreement was appended, marked exhibit A.

WHEREAS, The development and registration of new economic poisons and their expanded use throughout the environment will require greater supervision and closer coordination to protect public health and plant and animal life; and

WHEREAS, The lack of such cooperation, consultation and coordination between agencies having responsibility relating to pesticides may lead to incidents involving injury to humans and to plant and animal life unless a program for coordination and consultation is initiated by the executive branch of government; now, therefore, be it

Resolved by the Senate of the State of California, the Assembly thereof concurring, That the executive branch of the government is requested to formalize by executive order, interdepartmental arrangements for continuous coordination, consultation and cooperation between the various agencies in the executive branch having responsibility in the field of pesticides.

PROPOSAL 2

Should pesticide recommendations by salesmen be made in writing?

Discussion

Governor Brown's Committee on Pesticide Review in its preliminary report on pesticides in California, dated June 1964, recommended that salesmen dealing in agricultural pesticides and structural pest control products should be required to make all recommendations for specific application of such pesticides in writing and keep copies of such recommendations for review by an appropriate state department. The Department of Agriculture has also recommended similar legislation. This same subject has also been a suggestion advanced by the California Association of Agricultural Commissioners.

Mr. Parke Brinkley, President of the National Agricultural Chemical Association, in commenting on this proposal, said that a mandatory requirement of the salesmen to give written recommendations does two things. According to Mr. Brinkley, it either makes the salesmen rewrite the label or the Legislature itself, by this action, sanctions the salesmen going beyond the recommendation that is on the label or beyond the recommendations developed by the U.S.D.A., the University of California — as would be the case in California — and in turn, through the extension service to the farmer.

Mr. Robert M. Howie, Agricultural Commissioner of Riverside County, speaking in support of this proposal, said he could foresee the day when most pesticides used in California agriculture would be by prescription on much the same basis as presently applies to certain medicines and drugs. On the other hand, Mr. James Moon, Agricultural Commissioner of San Diego County, took the position that such a requirement would be extremely complex. He pointed out, for example, that the salesmen of pesticides in retail nurseries would be overburdened with writing. He further pointed out that commercial pest control operators often sell materials in the conduct of their services, while at the same time, these individuals have, by a state examination, been found to be competent and knowledgeable.

While it must be recognized that testimony presented in the exhaustive series of committee hearings on the subject of pesticides was rather limited, the committee feels that it cannot ignore the very substantial support for such a proposal.

Committee Recommendation

The committee approves, in principle, the concept that recommendations involving the use of pesticides on commercial crops be required to be made in writing, with appropriate control procedures relative to the documentation and safekeeping of such writing. The committee notes the pendency at this session of Assembly Bill 598 (Petrus), which bears upon this subject. Pending legislative action on AB 598 the committee will defer specific legislation on the subject, subject to the possibility that Senate legislation may be indicated later at this session. The committee reserves specific comment on AB 598 until it has reached the Senate Standing Committee on Agriculture for consideration at this session.

PROPOSAL 3

Should the penalty provisions for violation of laws and regulations relating to the use and application of pesticides be strengthened?

Discussion

Mr. L. D. McCorkindale, Agricultural Commissioner of Fresno County, in commenting on this question, said "Yes." According to him, county agricultural commissioners should have the same power in the enforcement of pesticide regulations as they have had for many years in the enforcement of fruit and vegetable quality requirement standards and in the enforcement of state and federal plant quarantine laws. He suggested that possibly the language "it is unlawful to" should be used as it presently is in Sections 106 and 106.1 and many other sections of the Agricultural Code. For many years, according to Mr. McCorkindale, the county agricultural commissioner has been able to effectively enforce standardization and plant quarantine laws because of adequate power to issue violation notices and resort to legal action if the need arises. The commissioner is not left in doubt as to his authority as he sometimes is in laws concerning pesticide usage.

Mr. Stephen T. Ancell, president of the California Association of Agricultural Commissioners, in commenting on this proposal, said his association makes the following recommendation: "Add a section to Article 1 of Chapter 1a of Division 2 of the Agricultural Code, Agricultural Pest Control Business, to provide that any person who violates any of the provisions of the article or the regulations made under the article would be guilty of a misdemeanor." In elaborating on this recommendation, Mr. Ancell said that the article as now written is not clear on this matter. According to him, there are provisions for administrative action which can be taken against the license of the pest control operator or a pilot's certificate but this type of action usually takes several months and is a very expensive procedure. According to Mr. Ancell, if the necessary provisions existed in the law

whereby a complaint could be filed against the pest control operator or pilot when necessary, it would strengthen the law and give the agricultural commissioner an effective weapon to carry out his duties. Mr. Ancell went on to say that while he recognizes that Section 8 in the general provisions of the Agricultural Code provides that "unless a different penalty is expressly provided, a violation of any provision of this code is a misdemeanor," there would be merit in adding the misdemeanor language to Chapter 1a (Agricultural Pest Control Business).

Mr. Herman Grabow, representing the California State Grange, in his presentation to the committee on this proposal, called for strict penalties to be imposed on those who flagrantly violate "sensible" regulations governing the use of restricted pesticides.

On the other hand, Mr. Russell Richards, speaking for the California Farm Bureau Federation in his testimony before the committee, is quoted as saying: "We feel that at the present time, there is no need to strengthen the penalty provisions of the law."

Mr. Robert M. Howie, Agricultural Commissioner, Riverside County, in speaking to this proposal, said that in his opinion, by and large, the penalty provisions relating to the use and application of pesticide chemicals are adequate, if used. He went on to say that: "My only question here is the inadvisability of suggesting that violations or regulations pertaining to pesticides be made a misdemeanor. The revocation or suspension of permits and licenses under regulations is appropriate."

Mr. James M. Moon, Agricultural Commissioner, San Diego County, in commenting on the proposal, stated that any violation provisions of Chapter 1a should be unlawful and treated as a misdemeanor.

Committee Recommendation

In view of the uncertainty surrounding this proposal, the committee recommends the Legislative Counsel be requested to review the language in Chapter 1a in an effort to resolve the uncertainties raised by the various county agricultural commissioners regarding their authority as it applies to violations of Chapter 1a of the Agricultural Code, prior to recommending any remedial legislation. Following is the opinion of the Legislative Counsel in response to the committee's request:

Sacramento, California
December 11, 1964

HON. VIRGIL O'SULLIVAN
P. O. Box 427
Williams, California

Pest Control Operators, No. 7873

Dear Senator O'Sullivan:

QUESTION

You have asked whether a violation of Section 160.2, or accompanying sections (160.1 to 160.9) of the Agricultural Code* is a misdemeanor.

* All references are to this code.

OPINION

Yes.

ANALYSIS

The Agricultural Code contains a general penal section which applies to a violation of any section of the code:

“8. Unless a different penalty is expressly provided, a violation of any provision of the code is a misdemeanor.”

It could be argued that a “different penalty” is provided for in Section 160.2 since a license may be revoked:

“160.2. It is unlawful for any person to engage for hire in the business of pest control without first procuring from the director a license for each calendar year or portion thereof. Applications for such license shall be in the form prescribed by the director, and shall state the name and address of the applicant and the type of pest control in which he intends to engage. The application, except as hereinafter provided, shall be accompanied by a fee of twenty dollars (\$20). Each applicant shall further satisfy the director of his character, qualifications, responsibility, and good faith in seeking to carry on the business of pest control.

“* * *

“The director may refuse to grant a license or renewal of license and may revoke or suspend any license, as the case may require, when, after a hearing as herein provided, he is satisfied that the applicant or licensee is not qualified to perform the type of pest control under the conditions and in the locality in which he intends to operate, or, that he has committed any of the following acts, each of which is declared to be a violation of this chapter:

“* * *”

However, it is our opinion that these provisions controlling the revocation of a license to do business are not penal. The purpose of statutes authorizing revocation of licenses is to protect the public rather than to punish the licensee (53 C.J.S., Licenses Sec. 44a; see also *West Coast Home Imp. Co. v. Contractors' State License Board of Dept. of Professional and Vocational Standards* (1945), 72 Cal. App. 2d 287).

Since the licensing provisions of the statute are not penal, there is no “different penalty . . . expressly provided” under the terms of Section 8, and therefore Section 8 would apply to make a violation a misdemeanor.

The same reasoning applies to Sections 160.1 and 160.3 through 160.9 regarding the application of Section 8 to make a violation a misdemeanor.

Very truly yours,

GEORGE H. MURPHY
Legislative Counsel

By STANLEY M. LOURIMORE
Deputy Legislative Counsel

PROPOSAL 4

Biennial review of pesticide programs conducted by state agencies.

Discussion

In this connection, it should be noted that in at least one such program, the State Department of Agriculture has already taken some preliminary steps. In a memorandum dated May 18, 1964, the Chief of the Bureau of Entomology recommended to Mr. Charles Paul, Director of the State Department of Agriculture, that a meeting be held between representatives of U.S.D.A., California State Department of Agriculture, the University of California and selected industry representatives, to discuss the resumption of intensified pursuance of control research directed toward diminishing the role of insecticides and attendant costs in the control of beet leafhoppers and this research should be on a sustained and adequately financed basis. Such a meeting was held on September 29, 1964, at which time a steering committee was selected to evaluate suggested research proposals.

It should be pointed out that for over 20 years, the Department of Agriculture has been engaged in control of the sugar beet leafhopper. In the four-year period beginning in 1950, approximately \$3,500,000 has been spent to chemically reduce populations of this insect, conservatively estimated to have caused losses of \$5 million in 1950 to California tomatoes and melons alone.

During the 1963-64 fiscal year, for example, the department expended \$318,000 on this program. The annual cost for the past five years has averaged \$261,000. It should also be pointed out that in the areas in which the problem occurs, these crops, which also include squash, cucumbers, spinach, flax and beans, are represented by over 400,000 acres, showing an annual average return of over \$100 million.

Implementation of this proposal by state agencies, it should be noted, would be in line with action taken recently by the U.S.D.A. in establishing a pest program evaluation group. This group has been given the responsibility of reviewing all U.S.D.A. control programs involving the use of pesticides on a continuing basis to make certain that the safest and most effective of materials and procedures are being used.

Committee Recommendation

The committee is of the opinion that this proposal has merit and recommends that such a resolution be introduced at the 1965 Regular Session of the Legislature with a further stipulation that the Legislature be provided with a biennial report from the various agencies on progress, if any, achieved in the implementation of the intent of the resolution. The text of the resolution introduced in the Senate on May 11, 1965, reads as follows:

"SENATE RESOLUTION NO. 182

Relating to the Use of Pesticides

WHEREAS, Questions have been raised regarding the possible cumulative hazard to human and animal health as a result of extended exposure to pesticides; and

WHEREAS, For example, the annual cost for the state administered sugar beet leafhopper chemical control program has for the past five years averaged \$261,000; and

WHEREAS, Tremendous progress has been made in recent years in the development of new biological methods of insect control and/or eradication designed to avoid or greatly minimize the possibility of environmental contamination; and

WHEREAS, The United States Department of Agriculture recently established a pest program evaluation group which has been given the responsibility of reviewing all United States Department of Agriculture control programs involving the use of pesticides on a continuing basis to make certain that only the safest and most effective materials and procedures are used; now, therefore, be it

Resolved by the Senate of the State of California, that all state agencies conducting continuing, large scale control and/or eradication programs involving the use of pesticides for whatever purpose review these programs biennially not only in an effort to reduce cost but more importantly to ascertain whether or not the same measure of effectiveness can be attained through means other than the continued use of pesticides; and be it further

Resolved, That the Legislature of the State of California be provided with a biennial report from the various state agencies on progress, if any, achieved in the implementation of the intent of this resolution."

PROPOSAL 5

Would there be any merit in legislatively categorizing materials other than those listed as injurious that may need monitoring?

Discussion

This subject was first advanced by Mr. Alan Grant of the California Farm Federation at the meeting the committee held in Sacramento on October 23, 1963. In his presentation, Mr. Grant said that there should possibly be a category set up in the codes somewhat similar to the injurious materials list. According to Mr. Grant, many of our chemicals need the same degree of monitoring that injurious materials do but are materials that have not been proven dangerous to man, animals and plants under ordinary circumstances. Mr. Grant went on to say that the entire chemical situation can be so delicate that even categorizing some materials incorrectly can have an adverse affect on agriculture.

It should be pointed out that witnesses commenting on this specific proposal at later hearings of the committee were unanimous in their opinion that legislatively categorizing materials would be a mistake, inasmuch as it would reduce the flexibility in adding or deleting materials from the particular lists as new information is acquired. It was generally felt that handling this phase of the program by regulation has been eminently fair and effective.

It is quite possible that Mr. Grant in his testimony meant categorizing materials in the Administrative Code, rather than in the Agricultural Code, which, as a matter of fact, has since been accomplished.

Amended regulations of the Department of Agriculture which became effective on June 10, 1964, provide a completely new category of restricted materials established to include dieldrin, endrin, heptachlor, and toxaphene, and certain uses of these materials in both spray and dust form are subject to the requirement of a permit. The pesticides DDT and DDD are also designated as "restricted materials" and their use is regulated in a similar manner.

Committee Recommendation

The committee is of the opinion that the present system of categorizing injurious materials by administrative regulation should not be changed.

PROPOSAL 6

If the need exists for an expanded educational program relative to the use and application of insecticides, particularly around the home, who should be responsible for the development and administration of the program?

Discussion

Mr. Parke Brinkley, president of the National Agricultural Chemical Association, in commenting on this proposal, said he thought it was a job for everyone to work at. According to him, his industry has developed the "Read the Label" program. He said this year his association is working through the National Safety Council and is encouraging through them the 4-H Clubs and their individual chapters and the FFA chapters, to make this a part of their farm safety program. Mr. Brinkley is further noted as saying:

"I think all of us—the extension service, the State Department of Agriculture, the State Department of Public Health, the industry—I think that everyone has a responsibility in this."

At least one other individual testified that the development and administration of such a program should be a joint venture between the farm advisor's office and the county agricultural commissioner. Still another suggested a cooperative program between the Extension Service of the University of California, the agricultural commissioners' offices and private industry.

There was general agreement on the need for an expanded educational program. This is in line with a recommendation contained in the report of the President's Science Advisory Committee on the Use of Pesticides for the initiation of a broad educational program delineating the hazards of both recommended use and the misuse of pesticides.

I think it can be said that an impartial evaluation of the testimony presented to the committee indicates that educational programs attuned to hazards associated with the manufacture, transportation, application and use of toxic materials on a commercial basis are effective; however, it would appear that a need still exists for an educational program designed to reach the accidental type of hazard, particularly to children around the home and garden.

In this connection, it should be pointed out that Section 8000.1 of the Education Code specifically provides that instruction shall be given in every elementary and secondary school in the state in the subjects of public safety and accident prevention, with special emphasis to be devoted to avoidance of hazards upon streets and highways.

Section 8000.2 of the Education Code also provides that the State Board of Education shall adopt such rules and requirements as it deems necessary and proper to secure instruction in public safety and accident prevention in the elementary and secondary schools of the state.

Dr. Max Rafferty, Superintendent of Public Instruction, in a statement submitted to the committee on the subject of pesticides said that "All of us who are engaged in education have an intense interest in this very important issue. As I view our role in education, it is one of providing all of the available information possible to students who have any contact with pesticides either directly or indirectly. While classes throughout the state have stressed the need for intelligently handling and applying pesticides to growing crops and in the harvesting of fruits and crops to which pesticides have been applied, classes in chemistry are equally interested and give instruction as part of their curriculum in the use of chemicals as pesticides. I want to assure the Senate factfinding committee of the genuine interest of the Department of Education in this important problem and their desire to acquaint students with the results of any research that may furnish answers. If the committee has any suggestions of anything that we in education should do, we would be most happy to receive them."

It should also be pointed out that in the report of the President's Scientific Advisory Committee on "Use of Pesticides" it was recommended that "to enhance public awareness of pesticide benefits and hazards, . . . appropriate federal departments and agencies initiate programs of public education describing the use and the toxic nature of pesticides. Public literature and the experiences of panel members indicate that, until the publication of *Silent Spring*, by Rachel Carson, people were generally unaware of the toxicity of pesticides. The government should present this information to the public in a way that will make it aware of the dangers while recognizing the value of pesticides."

Committee Recommendation

The committee recommends that a resolution be introduced at the 1965 Regular Session of the Legislature requesting the State Department of Education to undertake a survey of public safety and accident prevention instructional programs in elementary and secondary schools in the state in order to ascertain to what extent, if any, instruction is being given in the hazards associated with the recommended use and the misuse of pesticides and then to take whatever action is deemed appropriate based on the results of this survey. The text of the resolution as introduced in the Senate on May 11, 1965, reads as follows:

SENATE RESOLUTION NO. 181

Relative to Pesticides and Toxic Agents

WHEREAS, About 45 million pounds of pesticides are used each year in urban areas and around homes, with much of the material being used by individual homeowners; and

WHEREAS, It has been demonstrated that householders take few precautions in their home and garden use of pesticides and other toxic agents; and

WHEREAS, It is apparent that educational programs attuned to the hazards associated with the manufacture, transportation, application and use of toxic agents and pesticides on a commercial basis are effective, however, it does appear that a definite need exists for a continuing educational program designed to reach the accidental type of hazard, particularly to children; and

WHEREAS, The President's Science Advisory Committee in its report on Use of Pesticides has found that it is necessary to provide, on a continuing basis, for the initiation of a broad educational program delineating the hazards of both recommended use and misuse of pesticides; now, therefore, be it

Resolved by the Senate of the State of California, That the California State Department of Education is requested to undertake a survey of public safety and accident prevention instructional programs in the elementary and secondary schools in the state in order to ascertain to what extent, if any, instruction is being given in the hazards associated with the recommended use and misuse of pesticides and other toxic agents and then to take whatever action is deemed appropriate based on the results of the survey.

PROPOSAL 7

What portion of existing law, if any, would be made applicable to governmental agencies and individual farmers engaged in programs involving the use of pesticides?

Discussion

Surprisingly enough, there was very little opposition to the proposal to make existing law applicable to the individual farmer who is sometimes referred to as the "do-it-yourself type of operator." Testimony referring to blanketing governmental agencies under existing law was quite limited. First, it should be pointed out that a very real void exists in the law as it relates to the individual farmer who conducts his own pesticide program. This void is further enlarged by the language contained in Section 160.2 of the Agricultural Code which provides in part as follows:

"A person not regularly engaged in the business of pest control and operating only in the vicinity of his own property and for the accommodation of his neighbors shall not be required to procure a license but shall obtain a permit from the director, register with the commissioner as provided in Section 160.3 and be subject to all other provisions of the chapter."

While this provision does exist in the code, it is almost impossible to determine the magnitude of this type of operation.

Section 160.5 of the Agricultural Code is a controlling section. It specifically provides that the director shall make rules and regulations governing the conduct of the business of pest control; however, this section is applicable only to persons who are registered to engage for hire in the business of pest control. Farmers who conduct their own pest control programs are excluded. It should be noted, however, that Section 1080 of the Agricultural Code which gives the Director of Agriculture authority to adopt rules and regulations governing the application in pest control or other agricultural operations of any material which the director finds and determines to be injurious is applicable not only to commercial operators but to individual farmers as well. It is this section which gives the Director of Agriculture authority to require permits for the use of materials which he finds and determines to be injurious to persons, animals and crops other than the pest or vegetation which the material is intended to destroy.

It is felt that the problem was placed in its proper perspective by Mr. Kenneth Wolff, Agricultural Commissioner from Los Angeles County. In his testimony to the committee at the meeting held in San Francisco on June 19, 1964, Mr. Wolff pointed out that in Los Angeles County, it had been his experience that present state laws and regulations relating to persons and firms who do pest control work for hire give the commissioner an adequate degree of control over pesticide applications for commercial operators. Also, the commissioner, through the issuance of permits, can control application by individual users of those pesticides which have been designated by the Director of Agriculture as injurious or restricted materials. However, according to Mr. Wolff, there still remain many pesticides which have not been so designated over which the commissioner can exercise no control when applied by persons using their own equipment.

In this connection, Mr. Wolff point out, for example, in the Antelope Valley area, during the year ending June 30, 1962, there was a total of 82,655 acres, treatments of which 14,000 or less than 20 percent, were by commercial pest control operators.

The point Mr. Wolff was trying to make was the fact that in this particular area, the preponderance of work on commercial crop acreages is by growers using their own equipment rather than by commercial pest control operators.

To meet this situation, Mr. Wolff said that the County of Los Angeles, in 1962, put into effect a county ordinance which puts restrictions on the use of seven pesticides in the chlorinated hydrocarbon group; namely, aldrin, BHC, DDT, DDD, deldrin, endrin, and heptachloride, which, if allowed to drift onto forage crops fed to dairy stock could cause a residue which would later show up in dairy products.

The use of a county ordinance for this purpose, according to Mr. Wolff, for the following reasons is not altogether satisfactory:

1. Such an ordinance is effective only in the unincorporated areas of the county.

2. A question could be raised as to whether a local ordinance of this nature infringes on an area already occupied by the state.

Similar action for a like reason was also taken by the Board of Supervisors of Imperial County which passed an ordinance in 1962, which provides that:

"Any person, firm, association, company or corporation who engages for hire in the business of agricultural pest control in Imperial County shall obtain a permit from the Agricultural Commissioner of Imperial County before applying any pesticide other than those pesticides which have been determined by the Director of Agriculture of the State of California to be injurious to persons, animals or crops. The agricultural commissioner may issue such permit in which he may provide conditions for the application of such pesticides he deems necessary to protect persons, animals (including bees), crops, and property."

Mr. Norman Stanley, owner of Growers Aerial Service in El Centro, in speaking to this proposal, while not advocating the extension of existing law to farmers, did suggest that the present exemption for farmers who apply pesticides for their neighbors (see Section 160.2 of the Agricultural Code) be deleted. Mr. Stanley went on to say that in his opinion, any person who applies materials commercially, including the farmer, should have to meet the same regulations that he meets.

Many witnesses testifying recommended that control regulations be kept at the local level with the agricultural commissioner calling hearings to make regulations on each material with final approval of the proposed local regulation to remain with the Director of the State Department of Agriculture.

Mr. M. L. La Brucherie, diversified farmer in the El Centro area, in speaking to this proposal, pointed out that there are several materials not listed as injurious which, if not used properly, could cause problems. As an example, he pointed out that if a representative from the agricultural commissioner's office saw a commercial applicator (in Imperial County) dusting or spraying, with a wind stronger than five miles an hour, he has the authority to stop him; however, he would have no control over a grower doing the same thing. Mr. La Brucherie went on to say:

"The commissioner should have the same control over the farmers as he has over the commercial applicator."

Mr. William S. Zimmer, salesman of agricultural chemicals in Imperial County, also took the same position as that of Mr. La Brucherie. Mr. Zimmer illustrated his point, citing the example of a farmer using sulfur on a hot day on a crop adjacent to a field of cantaloupes. According to Mr. Zimmer, sulfur fumes (not listed on the injurious materials list) could, under certain circumstances, "run down hill and if the cantaloupes were not sulfur resistant and were in a particular stage of growth, the sulfur would fry them."

One of the few witnesses testifying against further regulations of farmers in this area was Mr. L. D. McCorkindale, Agricultural Commissioner of Fresno County. In commenting on this proposal, he said: "As 20 of the most commonly used pesticides are now under permit where producers are regulated, enough laws are already in existence which are applicable to farmers."

Mr. Russell Richards, coordinator of feed commodity services, California Farm Bureau Federation, in commenting on this proposal, said:

"In this I note we went on record on March 31, 1964, when we testified in the injurious materials hearings (State Department of Agriculture), to the effect that we do believe there should be controls and that the controls should be applicable to everyone who uses them and in this case, it was chlorinated hydrocarbons. We would make, certainly, the same statement to injurious or restricted materials. By this, we mean the rules for use and penalties for misuse should apply to commercial applicators, farmers who apply the materials themselves and government agencies."

It should be pointed out that Mr. Richards did not comment on materials other than those on the injurious list.

Mr. R. J. Marsh, secretary-treasurer of the Cannery League of California, in speaking to the proposal, said:

"We feel that county agricultural commissioners, individually or collectively, should not be given such comparable authority to adopt rules and regulations regarding the use and application of pesticide chemicals. We believe that such authority should be vested solely in the State Department of Agriculture."

Mr. Robert M. Howie, Agricultural Commissioner, Riverside County, in his comments on this subject, said:

"It is my opinion that governmental agencies, except for research agencies, should be included in all regulations restricting the use of pesticides, including the sections pertaining to injurious materials and herbicides. Instead of imposing more restrictions on pest control activities of individual farmers, I would refer to my comments and suggest that should my proposal be adopted, this should suffice to control the activities of the individual farmer."

As Mr. Howie's remarks relating to labeling, are interpreted, he is suggesting that pesticide use in California will ultimately be on a prescription basis. Under this setup, the county agricultural commissioner would be the prescriber.

Mr. James M. Moon, Agricultural Commissioner of San Diego County, in commenting on the proposal to make existing law applicable to governmental agencies said:

"In view of alleged pesticide contamination of fish and wildlife from apparently 'unknown' sources, as experienced in other areas, it might be wise to consider expanding existing law to include governmental agencies and individual farmers under a portion of Section 160.3 of the Agricultural Code, to wit:

"The registrant shall further keep and maintain a record of each property treated, showing the date of treatment, the material and dosage used, the number of units treated, and such other information as may be required, and shall report the same to the commissioner or to the director when and as required." "

The Department of Agriculture, as one possible solution to this problem, has suggested a provision be added to the code to make it unlawful to use a pesticide on any food or fiber crop other than in the manner specified on the label or on the printed directions delivered with the product. The department also suggests legislation which would prohibit the use of pesticides in a manner which would permit

any substantial drift to other crops without express authorization by the director or the agricultural commissioner." ¹

Staff Recommendation

Based on an evaluation of the testimony received, the following recommendations were presented to the committee for consideration.

1. Make all of the provisions of Chapter 1a (Agricultural Pest Control Business) applicable to farmers who engage in the business for hire.

2. Require all farmers and nurserymen engaged in pest control operations to obtain a permit from the director, register with the commissioner as provided in Section 106.3 and be subject to all other provisions of the chapter. Farmers should not, however, be required to be licensed.

3. Make Recommendation No. 2 equally applicable to governmental agencies.

For a variety of reasons, the committee refused to concur in these three staff recommendations.

PROPOSAL 8

If research on the subject of agricultural chemicals is to be expanded, what area of areas should receive priority?

Discussion

Research certainly was the key word used by most witnesses testifying before the committee at the hearings held in Sacramento on October 22 and 23, 1963. Accordingly, witnesses testifying at the series of meetings in June 1964 were asked to comment on what area or areas of research should receive priority. At the meeting held in El Centro, on June 16, 1964, the number of suggestions from farmers testifying at this meeting was rather limited. However, the following four recommendations were made:

1. The study of pesticide residue with an aim to eliminate as many zero tolerances as possible.

2. Expand work in biological control.

3. Study attractants such as black light.

4. Pesticides in the soil.

At the hearing held in San Francisco on Friday, June 19, 1964, the following recommendations were advanced by witnesses testifying:

Dr. Ralph Teall, president of the California Medical Association, in his presentation suggested that research in all areas pertaining to agricultural chemicals should be continued. He specifically called for a greater capacity for research and investigation into the affect of pesticide on human health.

Dr. C. H. Hine, M.C., Ph.D., association clinical professor, preventative medicine, University of California, in his testimony to the committee on research stated that research is needed in the area of human experimentation and controlled observation on the population to ascertain the affect of the intake of substances of a persistent na-

¹ This suggestion was incorporated in the provisions of AB 598 as amended on April 21, 1965. The amended version is appended marked Exhibit B.

ture over an extended period of time. Dr. Hine went on further to say that as a source of scientific inquiry, study should be conducted in an effort to ascertain whether there is an aggravation of any degenerative-type of naturally occurring disease or any acceleration of disease by exposure to the substances and the quantity in which they are encountered ordinarily. Plans for the first large-scale study ever made to determine possible relationships between long-term health effects and the use of pesticides were made public on March 4 by the Public Health Service, U.S. Department of Health, Education, and Welfare. According to an account which appeared in the April issue of *NAC News and Pesticide Review*:

The study will be underway by the end of March in nine states and is expected to be extended next year to at least three other areas. Initial cost will be \$1.2 million and will rise to \$2.3 million next year. Areas participating in the study are:

The Windsor-Greeley region of Colorado; Dade County, Florida; the Island of Oahu in Hawaii; La Fourche and St. Bernard Parishes, Louisiana; Berrien County, Michigan; Monmouth County, New Jersey; the lower Rio Grande Valley in Texas; the Wenatchee-Quincy Basin in Washington; *and an area to be designated in California.*

Seven research programs are being set up under PHS contracts with the assistance of state health departments that will conduct them. In Louisiana and Hawaii, operations will be by contract with academic institutions. Some county health organizations also are cooperating and assistance is being provided by university research units in many of the states.

Public Health Service scientists regard much of the present information about the effect of pesticides on people as inadequate in that it is related to short-term human investigations, or animal toxicity tests, or to acute cases of poisoning resulting from heavy accidental exposures. None of these is immediately relevant to long-term exposure effects. To ascertain any long-term health effects, the community research will run at least five years in all cases.

"Many pesticides, widely used for years, have not been investigated for their impact on human beings after long environmental exposure," said Dr. Robert J. Anderson, Chief of the Public Health Service's Bureau of State Services which will have charge of the research. "We know very little, moreover, about disease states which may crop up ten years or more after acute pesticide poisoning."

Dr. Anderson described the study as "a truly pioneering venture in environmental health research."

"Never before has an effort of this magnitude been made to determine how and what pesticides get into the environment, by what routes they affect people, how their metabolites are handled by the human body and its tissues and organs, and whether pesticides are making people sick or shortening their lives," Dr. Anderson said. One of the first tasks of the community researchers will be to determine the kinds and amounts of pesticides used and methods of application; pesticide retention characteristics of the soil; local weather features; methods employed for farm, garden, household, public health, and commercial pest control; and rural and urban population distribution patterns, disease incidences, and mortality rates.

Surveillance will be maintained in each community to develop accurate information on varying levels of pesticides in human beings.

Instances of persons receiving heavy chronic pesticide exposure will be subjected to scientific scrutiny with researchers focusing upon the health of pest control operators. Particular attention will be paid to liver and kidney ailments, neurological diseases, and allergies, among other disorders. Deaths from unknown causes will be checked to determine if pesticide fatalities have been occurring which were not recognized as such.

A recently established PHS Office of Pesticides will supervise the community research programs and operate a national pesticides intelligence system to disseminate data to scientists working in the field.

Mr. Parke C. Brinkley, President to the National Agricultural Chemicals Association, in commenting on research said that the pesticide industry is a very research conscious industry. According to Mr. Brinkley, this industry spends 10 percent of its gross income on research and development, which is one of the highest ratios between sales and research and development among all industries. According to Mr. Brinkley, it is exceeded only by the pharmaceutical industry. Mr. Brinkley went on to say that he felt that the chemical industry is extremely well qualified to synthesize new materials, to screen them for the pesticidal activity and to test them for the efficacy and for safety.

Mr. Brinkley also pointed out that the land grant colleges and universities and the U.S. Department of Agriculture all are extremely well qualified to do research in the use of these materials, and the development of new methods of application. They are also, according to him, extremely well qualified to do research in the field of attractants, of sterilization, of biological control of various sorts, and it is his opinion that if, in general, the industry confines itself to the development of these new materials, the colleges and the U.S.D.A. devote themselves to these other fields that industry is not so well qualified to do, that we will do away with considerable duplication and at the same time we will be serving the American people to a better extent.

Mr. L. D. McCorkindale, Agricultural Commissioner, Fresno County, in his testimony on the question of research, said that he felt work definitely needs to be done on insect repellents which are nontoxic to plants or animal life, and that additional study should be given to why a particular host plant attracts a certain pest. Subsequently, according to him, a repellent chemical could be sought which would seemingly change the nature of the host plant, thus rendering it unattractive to the pest. Mr. McCorkindale went on to say that in his opinion more selectivity in pesticides needs to be achieved, especially in directing control toward a certain stage in the life history of a pest. According to him, in this manner desirable species of insect parasites and predators can be better protected. Mr. McCorkindale also pointed out that for many years, a great deal of interest and considerable difficulty has been experienced in the application of pesticides to crops in bloom where pollination is unnecessary, and where injury to honeybees has occurred. According to him, more research should be done in seeking chemical bee repellents that might be added to insecticides. He said

that he was aware that considerable work had already been done on this, but in his opinion, even more study needs to be directed to the subject.

Mr. Herman Grabow, representing the California State Grange, in his statement to the committee, said that his organization is convinced that vigorous and intensive study in research be implemented immediately in biological control of insects. He further called for stepped-up programs of research into chemical and all other controls that will be harmless to human life and further reduce soil pollution as well as water pollution to a minimum. According to him, chemical and other suppliers of insecticides have a duty to lead in these avenues.

Mr. Russell Richards, speaking for the California Farm Bureau Federation, in commenting on this proposal said that his organization feels that research priority should be given to the effects of chemicals on (1) humans and animals, (2) drift, and (3) biological control.

Mr. Robert J. Marsh, secretary-treasurer, Cannery League of California, in his testimony to the committee said that in the matter of research that his organization feels that the following areas should be given consideration:

- a. Determination of the influence of pesticide chemicals on quality factors (both raw and finished products), for example, flavor and color.
- b. Determination of persistence of pesticide residues which might become a health hazard to agricultural workers.
- c. Development of data on pesticides' breakdown and persistence in soil.

Also made a part of the record of the committee's proceedings at the meeting held in San Francisco was a statement regarding the proposed toxicological center at the University of California in Davis. It is understood that this unit will be officially designated as the University of California, Davis Toxicology Center. This center, according to the statement, will have three broad objectives:

1. To sponsor coordinated, multidisciplinary research programs on problems related to chemical and microbiological hazards associated with agricultural production and food processing and food preservation.
2. To sponsor training programs in disciplines required for the solution of public health problems, especially those associated with the healthfulness and safety of foods, including the agricultural practices used to produce raw materials.
3. To sponsor seminars, colloquia, conferences, symposia, etc., on environmental health problems, particularly those associated with the use of chemicals in agricultural production and food processing and food preservation.

The statement went on to say that the university study has revealed that the Davis campus has the potential for a broadly based program of research on chemical and microbiological hazards associated with agricultural production and food processing and food preservation. The following research areas have been identified which are already under investigation and can be expanded or which have the potential for substantial development:

1. Chemical hazards.
 - a. Analytical methods and instrumentation.
 - b. Methods for assessment of chronic toxicity.
 - c. Morphological, physiological and biochemical aspects of chronic toxicity.
 - d. Environmental fate (air, water and soil) of agricultural chemicals and feed additives.
 - e. Naturally occurring feed and food toxicants.
 - f. Methods and systems for minimizing health hazards and chemicals.
2. Microbiological hazards.
 - a. Isolation, identification and enumeration of toxigenic and infective agents.
 - b. Physiological and biochemical characterization of infective and toxigenic agents.

Another agricultural commissioner testifying on research at the San Francisco meeting was Mr. Robert M. Howie, Riverside County. In his presentation, Mr. Howie pointed out that tremendous amounts of research had been devoted to most of the chemicals as regards to their use and effectiveness on specific pests. About this Mr. Howie said: "I do not mean to imply that this should be curtailed, but under present circumstances stepping up the research in the area of analysis for chemical contamination on commodities is most important." According to him, research must provide as quickly as possible the information regarding required effective dosage, toxicology, pesticide decay, pesticide detection, etc., of chemicals which will make possible the establishment of finite tolerances for pesticides on commodities at harvest. Another important area of research involved methods of safely applying chemicals without drift.

Mr. James M. Moon, Agricultural Commissioner of San Diego County, in commenting on this proposal said that systemic pesticides, lures and chemosterilants are quite specific in function. When used properly they do not readily move out of the "target" area. Engineering studies of methods and equipment used in application of pesticides to more closely confine them would be of benefit. Analytical methodologies to determine residues should be standardized and such standard methods should be maintained.

Mr. Robert W. Johnston, manager of the Contra Costa Water District, also had several recommendations on this proposal. According to Mr. Johnston the Contra Costa County Water District would recommend that priority be given the following areas of research in the order presented:

1. The problems of measuring and isolating pesticides in raw water supplies used for treatment and distribution as a potable water for human consumption.
2. The effectiveness of filtration to remove pesticides from potable water supplies.
3. The tolerances of the human system for maximum levels of pesticides in potable water supplies.

Mr. E. B. Antonell, speaking for the Western Growers Association, stated as follows: "We feel that the most important field of long-range study is in the area of biological or natural controls which could ultimately eliminate or at least greatly reduce the need for chemicals. We are, however, practical farmers and we know that such programs take time and may not even produce commercial results within our lifetime. We would, therefore, recommend an increased study and experimentation with effective chemicals of low mammalian toxicity. There have been great improvements in this area in recent years, and we feel that such materials hold greater immediate promise than any pie-in-the-sky ideas about the rebalancing of nature."

According to Mr. Antonell, such nontoxic or low-toxic materials should receive immediate consideration and rapid approval when they are developed and they should not be delayed by red tape or scare tactics in their release to food producers.

It should also be pointed out that Governor Edmund G. Brown's special Committee on Public Policy regarding agricultural chemicals in its report presented to the Governor on December 30, 1963, recommends that research should be intensified in all areas pertaining to the use, toxicology and the effects on health of agricultural chemicals and in finding better pest control methods. The research should continue to include not only development of safer pesticides and more efficient methods of analyses, but also alternative measures such as biological control and the development of pest-resistant varieties of crops.

Mr. George A. Gooding, vice president of California Packing Corporation, in a statement submitted to the committee enumerated a number of areas where, in his opinion, knowledge of safety and efficiency is as yet incomplete. He pointed out that, for example, with respect to workers' safety we need new knowledge of proper gloves, face covering and clothing. He also went on to say that we must know more, for instance, about how long a parathion-treated orchard remains unsafe to enter. Specifically he suggested that the environmental sciences center to be created at Davis study these problems. With respect to residue safety, he called for new definitions as well as new knowledge. He pointed out that there are demands for a federal definition of zero tolerances as well as a statewide definition. As more agriculturists follow the trend toward selective applications, new knowledge may be needed for public agencies to recommend safe use of several pesticides in combination or in succession. Such knowledge, according to him, must be backed by residue studies of the combination or sequential treatment, not by isolated studies with individual pesticides alone. In the area of crop safety, Mr. Gooding said, we need more care in tagging pesticide mixtures "compatible" if the compatibility depends on use of a particular solvent, for instance, or emulsifier, or low concentration in the spray mix.

In speaking to the safety of nontarget organisms, Mr. Gooding said that excellent work is being done and even more must be done.

On the question of pest control efficiency, Mr. Gooding asked that the committee look toward a total approach. According to him while the use of agricultural pesticides must remain the mainstay of pest

control, we must by all means continue to explore supplementary biological and cultural control.

Mr. Gooding went on to say that to achieve maximum efficiency we must know what the pest is, when to control him, if at all. He further pointed out that while publications of the University of California Extension Service have been very helpful in this regard, it may be true that such advice as "if the pest is present" or "as needed" is somewhat too vague. Next, a total approach necessarily involving determination of the best control methods . . . where a combination. . . . We know of only one or two biologicals registered for use in pest control, and these are limited in their effectiveness.

Mr. Gooding went on further to say that in seeking to meet the goal of safe and efficient pest control through a total biological approach, there are, according to him, still information gaps that frustrate the industry. He questioned if there is sufficient effort being made in studying pests of all major crops, rather than only certain ones. He also questioned whether there is a proper balance between basic research and applied research.

Mr. Gooding in a written statement submitted to the committee also asked that state agencies consider cooperation with nongovernment agencies in an effort to increase the output of basic research. According to him, possibly this can be done through a system of grants and contracts aimed at providing a continuing supply of capable research personnel.

It should also be noted that the Governor's Committee on Pesticide Review in its report to the Governor dated June 1, 1964, also recommended there be established in state government a continuing program to identify, stimulate, conduct and evaluate needed research in the field of pesticides. Some 11 specific areas were singled out as needing research. Many of these duplicate research requested by witnesses testifying at various hearings of this committee. To implement this specific recommendation the Governor's committee is suggesting an appropriation of \$100,000 be made in the next fiscal year to the Pesticide Review Committee for use in areas not adequately funded by current programs. It is understood that these funds would be used to identify, stimulate, conduct and evaluate needed research in the field of pesticide problems.

University of California Pesticide Research Program 1961-62

At a meeting of the committee held at the Riverside campus of the University of California on June 17, 1964, Senator O'Sullivan requested that the committee be provided with the expenditures by the university incident to pesticide research. In response to this request the following information was submitted to the committee by Mr. Harry Wellman, Vice President of the University of California.

"These figures were compiled for the fiscal year 1961-62 at the request of President Kennedy's Science Advisory Committee. I believe these figures are fairly representative of more recent years since there has been almost no augmentation of the research budget in this area since that time. Please note that the figures were compiled for the university's entire Division of Agricultural Sciences including the College of Agriculture on four campuses, the School of Forestry and

the School of Veterinary Medicine. Also, the figures are not for pesticides alone, but also cover expenditures on biological control of pests including insects, diseases and weeds.¹

<i>Field</i>	<i>Man-years * 1961-62</i>	<i>Expenditures including salaries 1961-62</i>
Fungicides	10.05	\$308,756
Insecticides	26.31	480,219
Nematocides	5.50	49,593
Weedkillers	11.66	305,550 †
Host resistance to diseases	16.82	319,359
Host resistance to insects	5.40	91,307
Biological control of insects (predators, parasites, etc.)	19.17	499,679
Biological control of plant diseases (predators, parasites, etc.)	5.00	83,857
Biological control of weeds (predators, parasites, etc.)	1.30	26,855
Eradication of diseased hosts .....	.50	12,180
Heat therapy-disease-free clones .....	.93	38,850
Total	102.	\$2,216,205

* Academic—include nonacademic salaries under expenditures.

† \$16,831 is from industries.

Committee Findings and Recommendations

This committee is definitely in favor of additional research, however, it is not in a position, even based on the voluminous testimony provided, to say which area or areas of research should be initiated or expanded where programs have already been initiated. Rather, the committee is concerned, after reviewing the testimony and information developed to date, just where we are going in this research field. The committee is also aware of the fact that the President's Science Advisory Committee in its reports in the use of pesticides in one of its recommendations specifically called for "coordination of the research programs of those federal agencies concerned with pesticides."

If coordination is called for at the federal level, it appears logical to assume that coordination is also needed between federal programs and existing or recommended state-sponsored programs. This is particularly true in view of the fact that many of the programs being carried on by the several states through universities are financed by the federal government.

On February 13, 1964, the *Sacramento Bee* carried an article entitled, "Rutgers University Gets One Million Dollars for Pesticide Study Task." The article said and we quote in part, "A million-dollar study of how pesticides influence the balance of nature was announced today by Rutgers University. It will be financed by the federal government. The Rutgers' study is to be supported by a series of five one-year grants from the Public Health Service totaling \$1,740,591, the largest single research grant in the university's 198-year history. A staff of 30 scientists at the Rutgers College of Agriculture will research for pesticide residue in soil, water, fish, insects and plants, and determine their effects. Dr. Samuel D. Foss said scientists do not know what are safe levels of pesticide in water because we have no way of detecting them in small quantities. If we find pesticides persist in water

¹ Appended marked Exhibit C are State Department of Agriculture budget figures for 1963-64 for pesticide programs.

supplies and municipal water purification systems, we will probably have to eliminate them.”

It appears that many of the areas planned for research as a part of Rutgers University's program are comparable to those programmed for research and training center in environmental health now in the process of being created at the University of California at Davis. If this is the case, certainly then the need exists for coordination at both levels.

With this information in mind, the committee specifically recommends that:

a. Any future state appropriation for pesticide research not be made available until such time as a complete-documented search of all pertinent literature available indicates in published form that the need exists and that the proposed research project will not represent a duplication of research programs previously conducted or programed for the future by other governmental agencies, domestic and foreign, and including industry research programs when such information can be made available.

b. That no state appropriation for pesticide research be approved unless it can be demonstrated that the research project is needed to provide an answer to a problem of a significant nature which is peculiar to California.

c. That no appropriation be approved for pesticide research until a *specific* research program has been presented to and reviewed by the Legislature.

PROPOSAL 9

Should the renewal date for the pest control operator's license be changed from the last day of January to the first day of January?

Discussion

This proposal was advanced by Mr. Steve Ancell, then president of the County Agricultural Commissioners' Association, at a meeting the committee held in San Francisco on June 19, 1964. This proposal has since been recommended by the State Department of Agriculture.

Section 160.2 of the Agricultural Code presently provides in part that the license “may be renewed annually . . . on or before the last day of January of the calendar year for which the license is issued.” In addition, Section 160.3 of the Agricultural Code makes it “unlawful for any person to engage for hire in the business of pest control in any county without first registering for each calendar year or portion thereof with the commissioner. . . .”

According to the Department of Agriculture, this proposed change would prevent operators from registering with the commissioner and operating during January without having a valid renewal license issued by the state.

Apparently this situation has caused some problems for commissioners in certain areas of the state wherein the commissioner is required to register these operators with no knowledge that the applicant has a valid renewed license.

Committee Recommendation

It would appear that this suggestion does have merit; accordingly, the committee recommends that legislation be introduced to accomplish this date change.

PROPOSAL 10

In what manner should labeling container type and size requirements for pesticide containers be changed to afford greater protection?

Discussion

A—Existing provisions in the Agricultural Code.

Section 1064 provides as follows:

Economic poison is misbranded when:

(a) The package or label thereon bears any false or misleading statement, design, or device regarding such article or the ingredients or substances contained therein.

(b) The package or label is falsely branded as to the place of manufacture or production.

(c) It is an imitation or offered for sale under the name of another article.

(d) It is labeled or branded so as to deceive or mislead the purchaser.

(e) The contents of the package as originally put up have been removed in whole or in part and other contents placed in such packages, or the contents of the package are of a quality below that of the guarantee on the label or on the application for registration of the economic poison or of the analysis of the representative sample delivered in connection with the application for registration of the economic poison.

(f) In package form, and the contents, if stated in terms of weight or measure, are not plainly and correctly stated on the outside of the package.

(g) The label fails to state either.

(1) The name and percentage of each active ingredient, together with the total percentage of the inert ingredients, in the economic poison; or

(2) The name of each active ingredient, together with the name of each and total percentage of the inert ingredients, if any there be, in the economic poison.

If the preparation is highly toxic to man, as determined by rules and regulations of the director, option (1) only shall apply.

(h) The economic poison contains arsenic in any form and the label fails to state, in addition to one of the options required by provision (g) of this section, the percentages of total and water-soluble arsenic, each calculated as elemental arsenic.

(i) The label does not contain a warning or caution statement which may be necessary and if complied with adequate to prevent

injury to living man and other vegetable animals, vegetation, and useful invertebrate animals.”

1061. As used in this article:

(a) ‘Economic poisons’ includes any substance, or mixture of substances intended to be used for defoliating plants or for preventing, destroying, repelling, or mitigating any and all insects, fungi, bacteria, weeds, rodents, predatory animals or any other form of plant or animal life which is, or which the director may declare to be, a pest, which may infest or be detrimental to vegetation, man, animals or households, or be present in any environment whatsoever.

Section 1064.2 also relates to labeling and provides as follows:

Spray adjuvants are economic poisons within the meaning of this article and, except as otherwise specified, the provisions of this article apply to spray adjuvants with the same force and effect as though the term ‘spray adjuvant’ were specifically named and set forth in each usage of the term ‘economic poison.’ The term ‘spray adjuvant’ means any wetting agent, spreading agent, deposit builder, adhesive, emulsifying agent, deflocculating agent, water modifier, or similar agent, with or without toxic properties of its own, intended to be used with another economic poison as an aid to the application or effect thereof, and sold in a package separate from that of the economic poison with which it is to be used.

In addition to the provisions of Section 1064, a spray adjuvant is misbranded when the label fails to state the type or function, and the names of the principal functioning agents. If more than three such agents are present, only the three principal ones need be named. An economic poison sold only as a spray adjuvant shall not be construed to be misbranded within the meaning of provision (g) of Section 1064 if the total percentage of the constituents ineffective as a spray adjuvant is stated on the label without mention of the terms ‘active ingredient’ or ‘inert ingredient’ in lieu of one of the options required by said provision (g).

(Added by Ch. 505, Stats. 1949.)

1064.5. The statement of ingredients in such economic poisons as are intended and sold for internal administration to animals may be given in terms of dosage in lieu of percentage by weight as specified in Sections 1064 and 1071.

(Added by Ch. 83, Stats. 1945.)

1065. The registrant of economic poisons shall attach to every separate lot, and every separate, finished, sealed or closed container or package of economic poisons which he intends to sell within this State, a plainly printed label, stating the name, brand or trade-mark, if any, under which sold, and the name and address of the registered manufacturer, importer, or vendor.

The registrant of any economic poison sold or delivered to a consumer in this State shall furnish printed directions for use, and dilution, if any, upon the label, or shall inclose such printed directions in each container or package thereof, except that such printed directions for use shall not be required when the economic poison, in accordance with established local custom, is to be used in its original form as sold, without dilution or further preparation for use.

A registrant of economic poisons may cause to be printed upon the label of any sealed or closed container or package of economic poisons which he intends to sell within this State, or upon the label of any opened lot from which sales have been authorized by the director, such limitations of warranty with respect to the use thereof, as the registrant may consider, proper; but no such limitations shall exclude or waive the implied warranty that the economic poison corresponds to all claims and descriptions which the registrant has made in respect thereto in print; nor shall any such limitation exclude or waive the implied warranty that such economic poison is reasonably fit for use for any purpose for which it is intended according to any printed statement of the registrant.

The registrant shall not be liable in respect to any injury or damage suffered solely by reason of the use of said economic poison for a purpose not indicated by the label, or when used contrary to the printed directions of the registrant or seller, or in respect to the breach of any warranty by the registrant not expressly printed on the label, except as provided in this section.

Sales of economic poisons in any other than the registrant's sealed or closed container or package are prohibited. The director, in his discretion, in accordance with regulations prescribed by him, may authorize sales of economic poisons to be made out of registrant's opened but properly labeled lot, container or package. The director shall serve notice of his proposed action, by depositing a copy thereof in a United States post office, inclosed in a sealed envelope with postage prepaid thereon and addressed to each economic poisons registrant at his last address on file with the division of chemistry of the department, and allow 15 days during which any protest may be filed.

Section 1068 also gives the director authority to adopt, amend or repeal such rules and regulations as usually are necessary to carry out the provisions of this article on economic poisons, including various provisions for labeling.

Mr. E. P. Reagan, Assistant Administrator, Agricultural Research Service, U.S.D.A., in his presentation before the committee at a meeting held in Sacramento on Tuesday, October 22, 1963, pointed out that an important protection to the public is provided by control over the labels used on pesticides. According to Mr. Reagan, labeling requirements are strict and U.S.D.A. officials review each proposed label in its entirety. They accept a proposed label only when they are satisfied that the directions of warning are adequate to protect the public. Mr. Reagan went on to say that such day-to-day working arrangements are indispensable. According to him, if at any stage of the review, U.S.D.A. officials find that they do not have enough information to judge the adequacy of label claims, the manufacturer is informed and the registration is withheld until the essential information is developed and submitted. Continued review is carried on to establish label requirements to give greater protection in the home and garden and on the farm. Labels that are easy to read and understand are a necessity because both federal and state laws are requiring more and more information on pesticide labels. They are sometimes printed, especially on small containers, and typed too small for easy reading. Requirements for both legibility and context, size and type of block arrangements and simpli-

fied wording are under review. Better placement and increased emphasis on precautionary statements and specific requirements for front panel labeling are being drafted for consideration. Mr. Reagan further pointed out that any changes will be published in the *Federal Register* as proposed regulations with an invitation to consumers, industry scientists and others to give the department their views for consideration before final action. In preparing the proposed regulations, advantage has been taken of the views of the specially selected group of outstanding specialists in public health, food and drug, fish and wildlife and the Federal Trade Commission, together with experts from the State Department of Agriculture and the public. These people, Mr. Reagan pointed out, were asked by the Department of Agriculture to study registration operations and suggest what, if any, changes were needed to increase public safety. The speaker felt the proposed label changes would help users to handle pesticides more safely and effectively and would provide additional safeguards against possible misuse.

This great concern for safe labeling is part of an educational campaign by the U.S.D.A. to make users highly conscious of the need to use pesticides carefully. The department, Mr. Reagan said, had prepared and issued posters, publications, and news stories writing against the dangers of proper pesticide use. Radio and television spots have been used widely. A film called "Safe Use of Pesticides" is also available in every state. The essence of the message in all these materials is simply this: "Use pesticides safely—read the label."

In his final remarks, Mr. Reagan said the law provides for enforcement of safe and effective labeling by the manufacturers. The department's enforcement inspectors cooperate with state enforcement officials in locating nonregistered, mishandled or adulterated pesticides.

Mr. Charles O. Barnard, executive secretary, Western Agricultural Chemicals Association, in speaking to this proposal, pointed out that a leading member of his organization had initiated a long-range program which illustrates the industry's awareness of responsibility. This company, according to Mr. Barnard, has expanded its educational program to emphasize proper use of pesticides in our society. It has revised its label format by dividing product lines into four categories, as follows:

(Skull and Crossbones in red)

Group I—Extremely toxic

Do not inhale

Do not get on skin

Do not take internally

(Six-sided stop sign in red)

Group II—Toxic in large amounts
—requires warning statement

Do not inhale

Do not get on skin

Do not take internally

(Four-sided caution sign in blue)

Group III—Product not usually toxic if inhaled or from contact with the skin

Group IV—Products of very low toxicity

No special precautions required

"All labels will carry cautions and warnings prominently in center panels."

Mrs. Betty Lee Morales, representing the National Health Federation, in her testimony made available to the members of the committee, copies of an article entitled "Your Customers Want to Know" and another article, "Better Than a Thousand Words." According to her, these articles tell about how efficiently the industry is mothproofing blankets. She went on to say that the blankets are mothproofed in such an efficient way that they can be washed countless times and the mothproofing is not removed. There are, according to her, no laws legislating the mothproofing of blankets, carpets, drapes—all kinds of things that are used in the home in our daily life being impregnated with all kinds of poisons. There is not one word on any of the literature to explain what the toxin was that was used or how much of it is there. There are people who know they have allergies to certain specific chemicals and certainly, Mrs. Morales said if we are going to permit things like this, we should require the proper labeling so that a person knows what he is being subjected to.

Mrs. Morales also said, in response to a question from Senator Sturgeon,

"The Health Federation stands for freedom of choice—put it on the label and you choose it if you want and let me reject it if I want."

Mr. George Difani, representing the California Wild Life Federation, in his comments to the committee on this proposal, cited for the record a resolution which was adopted by his association in which it was resolved that:

"The California Wild Life Federation does hereby endorse the provisions of H.R. 2857 requiring federal agencies to consult wildlife management agencies before initiating major pesticide programs, and

"Be it further resolved, that there be a better understanding of the hazards of such materials and the California Wild Life Federation does hereby endorse the provisions of H.R. 4487 requiring more stringent labeling of these materials with respect to their affect on wild life."

Mr. D. O. Wells, President of the California Citrus Pest Control Association, in his comments on this proposal, stated he wanted to preface his remarks by commenting further on Mr. Barnard's statement that perhaps there is no real distinction between our labeling of poisons. Mr. Wells said:

"On any sack that we have, there is some sort of a poison sign on it. They are all the same—they have crossbones and say the material is poison. I think it would be very important from all aspects to have properly labeled materials. Some of them are just materials to be used

with caution; some of them are a little more toxic and some of them are real toxic, and if there is a gradation of types of material that we do use . . . I might say this—in pest control, the personnel that we get very often cannot read and if they do read, they don't read with understanding. If they use one material for years that says poisonous and is of low toxicity, and then they see something that is really poisonous, they see no difference in the meaning."

At the second series of hearings of this committee held in June of 1964 on the subject of pesticides, the witnesses requesting time were asked to come prepared to testify on just what could or should be done on the labeling problem.

Mr. Santistevan, an entomologist from Holtville, California, in his testimony before the committee meeting held in El Centro on June 16, stated that he felt more regulations should be enforced, for the following reasons:

"I do not believe that the average home owner has the knowledge of the uses, the dangers or methods of application or storage or disposal of the used containers of pesticides.

"It was reported in the California Farm Bureau Monthly last April, and I quote: 'Nationally about 150 deaths per year are attributed to persons in rural and urban areas. More than half involved are children less than five years old, who encounter the poison materials while playing. Most of the remaining deaths are of adults who mistakingly drink a poison pesticide that someone carelessly placed in a beverage bottle, fruit jar or food container. Relatively few deaths occur nationally from exposure to pesticides during their manufacture or application. In California, there is an average of 10 deaths per year due to pesticides and 6 or more are children under five years of age. Two or three are adults who mistakenly drink the poison. The other one or two deaths are people who work in manufacturing or application of pesticides.' The chemicals may be purchased very easily at any drug store, feed store, nursery, grocery store or at many others. I recently spent an afternoon visiting different stores to find what pesticides were sold for household use, that could be considered of an injurious nature. I purchased four of these materials which I have placed before you.

"For example, one material contains 3.8 percent arsenic in the form of an ant paste and it's recommended for certain types of ants by mixing it with bacon grease as one method of control.

"Another is tetraethyl pyrophosphate, commonly known as TEPP in a mixture with another pesticide for fly control. It recommends that the user use, and I quote, 'Protective equipment, such as boots, or shoes impervious to TEPP.' And I might add here if the consumer knew he was going to have to buy some new boots or shoes to use this material, he wouldn't buy it. But he doesn't know this until he has it at home.

"'Milk accidentally contaminated with this material would be hazardous if consumed by animals or humans.' This is also on the label.

"I would like to add that practically no TEPP has been used in the Imperial Valley in agricultural pest control for a number of years. We found this chemical to have serious effects on our applicators. I also found I could purchase 95 percent sodium fluoride and small

candles that can be burned within a house that contains 12 percent DDT for flying insects.

"With these observations, I felt that the labeling of small packaged pesticides was sufficient, for trained or experienced personnel but the real dangers that could exist were not clearly stated. I also found that on the highly toxic chemicals that the red skull and crossbones ranged in all sizes from one-fourth inch in diameter and up, depending upon the size of the container. In some cases, I actually had to inspect a container on all sides to find this poison marking. I concluded that these markings are placed in areas on the containers not easily seen by the purchaser. There were many other pesticides available at different strengths, mixtures and forms. I have just pointed out a few that I thought should be mentioned. In conclusion, I want to state that:

1. I definitely feel that pesticides are indispensable to modern life providing they are used correctly. I recommend to this committee that steps should be taken to establish a more complete method of labeling small package pesticides, with their danger more clearly stated in a form that would attract the eye of the purchaser.

2. That steps be taken to remove from sale certain injurious pesticides that can be purchased by persons who lack the knowledge of their usages and dangers. I suggest this can be accomplished by marking these chemicals accordingly and making them available only to licensed structural pest control operators."

Mr. Santistevan, in response to a question of Senator Geddes as to what could be done to protect people who buy these pesticides and do not read the label, had the following suggestions to make:

"Let's take this ant paste, for example, which is arsenic. I don't believe this should be on sale. I think if there is a use for arsenic, it should be used only by somebody who is licensed within the field. For example, I don't think that anyone should be able to walk in and buy it."

Mr. Santistevan went on to say:

"I bought these . . . (referring to the ant paste and other materials) at a drugstore—just pulled them off the counter and went home with them."

Stanley J. Leland, M.D., M.P.H., F.A.C.P.M., Director of Health Imperial County, in a statement submitted to the committee for consideration, said that the major health hazard to the public is the use and application of insecticides in and around the home. Here, according to Dr. Leland, the question of appropriate labeling with conspicuous warning is most important. However, he went on to say that public health agencies have been concerned with this as a part of prevention programs and are reporting some progress.

Support for the position taken by Mr. Santistevan was also given by Mr. William S. Zimmer, salesman of agricultural chemicals in Imperial County.

At the meeting of the committee held on the Riverside campus of the University of California on June 17, officials of the university were asked by Senator Stiern whether or not they felt there should be a review of the labeling of these products (pesticides) that are sold to people who are strictly uninformed on how to handle them or use

them so that there would be more caution taken to prevent people from contaminating themselves or causing harmful effects to themselves in handling roses and shrubs and things of that nature. Senator Stiern asked: "Have you thought about this and do you think there should be a little stronger regulation in this area?"

Dr. Swift, in answering this question, said:

"Yes, I think we should take a real careful look at these materials for home use, both as to the labeling and as far as the caution statement and the uses designed for them and also type of products that are available."

Dr. Swift went on to say: "I think one of the most important things that has occurred in the last two years was sodium arsenide. It used to be available for homeowners. The number of deaths—the information supplied by public health—showed sodium arsenide was one of the greatest offenders between children three to five years of age. Two years ago, it was decreed injurious and not available for sale, and there has not been a death from sodium arsenide since. I think if we look carefully at this we might have some reservations but I think it would certainly be worth a review."

Senator Stiern, in commenting further on this problem, said:

"On the surface of it, it seems a little foolish that you would go to the pharmacist to buy a drug. It might be criminal to use and you would have to have adequate reason for obtaining it—signing a registry maybe and probably going through some routine but you can walk into a nursery and pick up products made by Ortho and similar companies like this or arsenical compound used for ant and insect control in packages that come labeled by Merek in the original label of that company sodium fluoride with absolutely no controls at all. It would seem the average housewife would be wide open for some very serious results because this seems so loose."

Senator Stiern went on to say: "It seems odd we are so restrictive when a pharmacist dispenses these things but we are so loose in just letting these out to people with no experience who may seriously damage themselves through other outlets for these kinds of chemicals and drugs."

Dr. Ralph Teall, President of the American Medical Association, in commenting on the problem of labeling at a meeting of the committee held in San Francisco on June 18, said that adequate labeling and public information concerning the danger of agricultural pesticides should be a continuing effort. At the same time, he went on to say, the manner of labeling and handling of such very potent poisons is always a matter of personal and direct interest but does not require any new legal approach.

Dr. C. H. Hine, M.C., Ph.D., associate clinical professor, preventive medicine, University of California, in speaking to this proposal, said that, according to him, our major problem is the intentional ingestion of drugs and chemicals to cause death or the accidental ingestion of chemicals by children in groups other than economic poisons. Dr. Hine went on to say that in the national poison centers an analysis of statistics which they obtain on a nationwide basis, including those from California, on medicinal compounds and agents used about the house for chemicals, cleaning, sanitary agents, compiling the number

of injuries and deaths with agricultural chemical substances in proportion is a relatively small figure. Speaking of his own experience, Dr. Hine pointed out that he had been connected with the coroner's office in San Francisco for the last 14 years and had the opportunity to analyze 1,000 deaths which occurred in San Francisco from the ingestion of drugs, chemicals or exposure to noxious substances in the atmosphere. Of this total of 1,000, there were two deaths which related to agricultural chemicals and these both occurred with adults with the intentional ingestion—the death wasn't due to the agricultural chemical; it was due to the solvent used. He went on to point out that there were, in addition to these two deaths due to agricultural chemicals of the hydrocarbon type, eight deaths due to arsenic or fluoride and these again were intentionally or accidentally ingested; two accidentally and six intentionally ingested.

According to Dr. Hine, the problem in the urban areas, such as San Francisco, is insignificant insofar as exposure to the general public is concerned. And it is his opinion that the practice now of placing these agents in specific, well-identified containers does not lead to a problem so far as accidental deaths are concerned. These agents are potent materials and if one wishes to commit suicide, they are available, but again, in this country, they are resorted to to a very limited extent. "It is my understanding," Dr. Hine said, "that in areas abroad—especially in Japan—suicide with these agents is, rather than the barbituric hypnotic drug class used here, much more frequent."

Dr. Hine went on to say that this problem of labeling is a very difficult one and he is quoted as saying: "It is my opinion that labeling as it is now conducted is as practical as it's going to become. I don't think you can impose upon a label the inclusion of all the information that would make poisoning impossible because this situation just is never going to exist."

"In the first place," Dr. Hine said, "I think the labeling of economic poison in agricultural chemicals is better than labeling in any other area—certainly, there are no labels on a bottle of aspirin which is purchased in a pharmacy or in a drugstore, or at the supermarket, and aspirin causes more deaths in children than all the agricultural chemicals combined. This one drug, aspirin, causes a minimum of 50 deaths a year and has for a great length of time. Acute intoxications will occur with unlabeled prescription drugs like the iron tablet the mother takes in pregnancy and the purchase of gasoline or petroleum solvents of any number of sanitary chemicals is now done with impunity. But I think this: There is an irreducible minimum which cannot be exceeded by more elaborate-type labeling."

Dr. Hine went on to say that labeling could be improved, certainly, among some of the household chemicals. He said: "I think, speaking generally, that the labeling in this particular area is quite satisfactory and more thought has gone into it than any other . . . I do think that specific labels could be improved. They should be looked at and could be looked at generally. It is not a major problem and you will not achieve—well, what kind of decreased mortality are you going to obtain when you have about 3 to 10 accidental deaths a year in the whole state?"

Senator Lagomarsino, in commenting on the proposal, said he wondered if there might be an increase in intentional use of pesticides if they were clearly labeled poisons.

In commenting on this statement by Senator Lagomarsino, Dr. Hine said:

"Well, it's something one has to balance against the other. However, I don't think it makes any difference so far as the suicidal intended persons; that person, whether he uses this or a drug—the American way is to take barbiturates."

Dr. Parke C. Brinkley, President of the National Agricultural Chemicals Association, Washington, D.C., in commenting on the proposal, said:

"In this matter of labeling, a great deal of thought and consideration is given to it. We are constantly in contact with the state authorities, the State Departments of Agriculture, that require the approval of these labels. We are constantly in touch with the Department of Agriculture in Washington and this is a moving thing all the time. These labels are being changed from time to time to meet the requirements, to meet the desires of the various regulatory officials and they are, we think, quite good. We think that they are improving all the time.

"Now, I think it is something that requires a great deal of very thoughtful study by people who are real specialists in this field. But I think that the Departments of Agriculture are the ones to make the requirements rather than the writing of the requirements of the label into legislation because it is such a changing thing and laws are harder to change and regulations are more flexible."

In his concluding remarks, Mr. Brinkley said:

"I would like to remind you that most of these products that we produce are distributed all over the United States, or at least into several states, into interstate commerce, and we constantly run into the problems of differing laws and rules and regulations in differing jurisdictions. If everybody had exactly the same laws, rules and regulations, of course, it would be much easier for us to label the products and ship them. The more difference there is in regulations, the more difficult it is and more costly it is for us to do this."

Also testifying on this proposal was Mr. Robert L. Ackerly, counsel to Chemical Specialties Manufacturers Association. Mr. Ackerly pointed out that the U.S. Department of Agriculture early this spring published final regulations which will become effective January 1, 1965. These regulations require a signal word and a statement of the hazard which will appear on the front panel of each pesticide. Mr. Ackerly went on to say that the Department of Agriculture will make public very shortly type size requirements in relationship to the available panel size so that every pesticide, after January 1, that moves in interstate commerce will have a warning statement on the front panel and it will be prominent. It will be distinctive in color and it will be in a minimum type size.

The labeling of all pesticides is spelled out in great detail by the U.S.D.A. Interpretation 18 which interprets the enforcement of the Insecticide and Rodenticide Act. In speaking on the point of uniformity, Mr. Ackerly said:

"We do sell products throughout the 50 states and to some foreign countries. In the pesticide field, our uniformity is good. One reason, I think, is because the state officials have a national association, the American Association of Pesticide Control Officials, that meets every year, usually in August or September, so that there is a good communication between the state enforcement officials and with the industry and U.S.D.A."

Mr. Ackerly went on to say it is impossible to write a label that will meet the requirements of every state in the country. It would be so conflicting everybody who sells it would violate some law or regulation.

Mr. L. D. McCorkindale, Agricultural Commissioner, Fresno County, suggested that where labeling is concerned a long series of trade names for the same pesticide chemical should be eliminated, if possible. This large number leads only to confusion. He pointed out that a number of years ago, with few chemicals on the market, the problem did not exist. Hundreds of products with numerous assorted brand names now do cause confusion in the agricultural industry. Probably a standardized system of using the commonly accepted name after the company name would be more appropriate. As an example, use "John Doe DDT" instead of "John Doe Special Bug Killer" or "John Doe Killum Dead." In this manner, one specific chemical could always retain its common name, the manufacturer still could use his company name, and persons reading the label would immediately know what pesticide was involved.

As his second suggestion, Mr. McCorkindale stated that it would be desirable to have the common name of the pesticide, which could be either a single name or a mixture of names, stand out just as prominently in the lettering as the name of the company. Commonly used names of pesticides should not be hidden in small print on a container label.

Mr. McCorkindale went on to suggest that legislation could be enacted to make it illegal to reuse containers of certain toxic pesticides. A statement on each label should so indicate.

As his final suggestion in this area, Mr. McCorkindale said that for toxic pesticide chemicals which cause injury to or through the skin, the use of glass containers should be avoided because of possible breakage and subsequent physical damage to persons handling these materials.

Mr. Russell Richards, coordinator of feed commodity services, California Farm Bureau Federation, had five specific recommendations to make relative to labeling. It should be pointed out here this is not necessarily the Farm Bureau position but it was the position taken by a number of growers who served on the committee to review this problem of labeling.

These recommendations are as follows:

1. Wherever possible, there should be a larger print on the labels.
2. Instructions regarding the disposal of the containers should be on the labels, if they are not there. The term "Warning" or any of this sort of wording should be very prominent on the labels.

3. Instructions for use should be understandable, particularly where it might be used by farmers and nontechnical people.

4. A good adhesive should be used to affix the label to the container.

5. On the matter of reregistration of chemicals, Mr. Richards said that his farm supply people told them that while there are instances where labels should be updated, this is something that should be handled by registration in the Administrative Code rather than making it an automatically annual affair.

Mr. Henry Moras, manager, Stauffer's Label and Registration Department, and chairman, Western Agricultural Chemical Labeling and Packaging Committee, in his testimony pointed out that:

"Agricultural chemicals are marketed in two broad channels which the industry refers to as agricultural chemicals and the home and garden trade. Many labeling features apply to both product labels intended for both markets. Certain basic differences are involved in composition, however. In this regard, package types, sizes too are significantly different. Proposed changes, therefore, should consider these differences."

Mr. Moras went on to say that pesticide manufacturers who are members of his association have carried on a voluntary program of labeling improvement and changes are made frequently as new experience and knowledge is gained. He went on to say that:

"The art of labeling is one which is a constantly evolving one. Labeling specialists in our industry are alert for more effective means of providing instructions which will result in more effective and safe use of the product. Principles of labeling, label specimens and examples of package types and sizes by industry should be examined before labeling proposals are adopted to assist this committee or any other group to evaluate the basic factors involved."

Mr. Robert M. Howie, Agriculture Commissioner, Riverside County, had two suggestions to make regarding the labeling proposal. He suggested first that in addition to that presently required, the addition on containers of injurious or restricted materials of appropriate size, words to this effect: "Before using, obtain a permit from the county agricultural commissioner," and the requirement that the injurious materials permit number be stamped on each container delivered.

Mr. Howie went on to say that the only suggestion he could make in the area of more stringent regulations on the use of insecticides around the home and garden would be in the restriction of pesticides that could be sold for such purposes and bigger print on the labels.

Mr. E. P. Reagan, Assistant Administrator, U.S.D.A., who previously testified at the committee meetings held in 1963, was unable to attend the series in 1964; however, he did submit for the record a statement relating to legislation before the Congress concerning pesticides. Mr. Reagan pointed out in the legislative field on the the most recent developments was the passage by Congress of S. 1605, Public Law 88-305 by Senator Ribicoff, an act entitled "To amend the Federal Insecticide, Fungicide and Rodenticide Act, as amended; to provide for labeling of economic poisons with registration numbers; to eliminate registration under protest and for other purposes."

The measure, according to Mr. Reagan, was signed by the President on May 12, 1964, and, with the passage of this act, all registration under protest terminated and the department sent notices to the holders of such registration. Proposed regulations providing for the display of registration numbers on the labels of pesticides were published in the *Federal Register* on May 20, 1964, with an invitation for comments from all interested persons.

In the administrative field, Mr. Reagan pointed out that the department published on March 27, 1964, in the *Federal Register*, proposed revisions to regulations governing the registration of pesticides. The new regulations require key warning and caution statements to be placed prominently on the front panel of the pesticide label. These must include the statement: "Keep out of reach of children" or its equivalent and a "signal" word—such as "Danger," "Caution," or "Warning"—which draws the user's attention to the need to handle the material carefully. Warning and caution statements must be easy to read. "Signal" words and the warning to keep the product away from children must conform to specified minimum type sizes.

Use of pesticides, according to Mr. Reagan, in and around homes by the general public, has increased rapidly in recent years, making it essential that consumers know how to handle them safely. For this reason, the department is now requiring that expanded precautionary information be placed on the label—in a place where it is easily seen.

Mr. Reagan went on to say that other changes have been made to update the regulations, bringing them in line with present practice. For example, wording has been added making it clear that a foreign language version of the label may be used in addition to one in English in U.S. areas where such a language is spoken.

Most of the revisions became effective April 26. Those dealing with labels became effective May 26. Manufacturers of products registered prior to the effective date must comply with all provisions of the revised regulations by January 1, 1965.

In a separate but related action, the department republished one of its original proposals to require manufacturers to remove safety claims from pesticide labels and allowed a 30-day period for added comment. This proposal, applicable to a limited class of pesticides—estimated at about 1 percent of all products registered—also was published in the *Federal Register* on March 27, 1964.

Department of Agriculture Recommendation

The Department of Agriculture has recommended that Section 1064 of the Agricultural Code be amended to require that the applicant for registration of an economic poison state on the application the name and the amount of each inert ingredient contained in the pesticide proposal for registration. According to the department, the law now requires only that the applicant supply the total percentage of inert ingredients contained. According to the department, this will provide information necessary for a better evaluation of the pesticide before granting the registration.

In this connection, it should be noted that solvents and other carriers, according to public health officials, may contribute to the danger of insecticidal formulations, either through their inherent toxicity or

through their solubilizing action on the so-called active ingredients. In some instances, according to informed sources, cases of poisoning by solutions of insecticides have been characterized by symptoms and clinical causes indistinguishable from those caused by the solvent alone.

Kerosene is one of the most common solvents in insecticidal solution and emulsions, especially in sprays of the household type that may contain up to 98 percent kerosene. Systemically, kerosene acts as a narcotic. Liver and kidney damage may occur in severe cases. Xylene is another common solvent in insecticidal solution, emulsifiable concentrates and emulsions. It is extensively used in industry, especially as the main constituent of "solvent naphtha." Undiluted xylene is a severe irritant to mucous membrane and delicate skin and can cause a local dermatitis on any skin if used repeatedly. When absorbed, it too acts as a narcotic and affects the circulatory red blood cells.

Committee Findings and Recommendation

1. The committee finds that the labeling of economic poisons (pesticides), both commercial and those materials designed for the home and garden trade, is not a major problem and, as a matter of fact, is much better than labeling in any other area. As was pointed out by C. H. Hine, M.C., Ph.D., associate clinical professor, preventive medicine, University of California, there are no labels on a bottle of aspirin, yet aspirin has caused more deaths in children than all the agricultural chemicals combined.

2. While the committee recognizes that labeling can be improved, particularly in the area of household chemicals, it is convinced that, generally speaking, label requirements for economic poisons should, to maintain flexibility, be accomplished by administrative regulation, rather than through action of the Legislature.

3. The committee recommends that the Department of Agriculture undertake a systematic review of labeling requirements, particularly for home and garden type pesticides, to ensure that adequate protection is being afforded to the public. In the event sufficient funds are not presently available for this review, the committee will support a required budget augmentation.

4. The committee also recommends that the Department of Agriculture be requested to investigate and report back to the committee on the statements made by Mr. Bailey Santistevan of Crown Chemical Company, at the committee meeting held in El Centro on June 16, 1964, to the effect that he was able to purchase four different pesticides of an injurious nature which were offered for sale for household uses. Mr. Santistevan referred specifically to ant paste, containing 3.8 percent arsenic; to a material containing TEPP; to a 95 percent sodium fluoride (commonly used for roaches) and finally, to small candles containing 12 percent DDT for flying insects.¹

5. The committee also instructed the committee secretary to secure a Legislative Counsel's opinion on the constitutionality of the labeling provisions as proposed in AB 598. A copy of the opinion is appended marked Exhibit E.

¹ Appended marked Exhibit D is a report of the department's investigation of this matter.

PROPOSAL 11

Should the administration of the pesticide program in California be transferred from the Department of Agriculture to the Department of Public Health?

Discussion

Such a proposal was envisioned in AB 2233 (Petrus) of the 1963 Regular Session of the Legislature, which measure, after being substantially amended, was passed by the Assembly and heard by the Senate Standing Committee on Agriculture. This committee, after rather extensive hearing, in turn referred the measure to the Senate Rules Committee, with the recommendation that the subject matter be referred to the proper interim committee for study. AB 2233 was subsequently referred to the Senate Factfinding Committee on Agriculture for interim consideration.

Extensive hearings were held by the Senate Factfinding Committee on Agriculture in October of 1963 and again in June of 1964. The committee's position on this proposal is based on an evaluation of the voluminous testimony presented to the committee at the two series of hearings.

Intent of AB 2233

As introduced, AB 2233 generally proposed to accomplish the following:

1. Revise existing law regarding injurious materials to transfer from the Director of Agriculture to the Director of Public Health the authority to designate substances as "injurious materials" and to prescribe tolerances for pesticide chemicals in or upon any food.

2. Require that any person, including governmental agencies, desiring to receive or use any injurious material in pest control or agricultural operations, obtain a permit from the city or county health officer of the place of use and authorize such health officer to deny or revoke any such permit for designated reasons.

3. Would add Section 25955 to the Public Health and Safety Code to provide that a city or county health officer may, if he determines that such action is necessary, for the protection of public health, require that a less toxic injurious material be used, rather than one which the person has made application to receive or use, or the city or county health officer may refuse to issue any permit to such person if he determines that there is a biological control method readily available which such person may use instead of the injurious material.

4. The measure also proposes to add to the Health and Safety Code, Section 25968 to provide that no injurious material can be sold, furnished or given away to any person in the state in any glass container or in any other container which the director by regulation determines cannot be safely used to package such materials.

5. Amend Section 26470 of the Health and Safety Code to provide that a food shall be deemed to be adulterated if any pesticide chemical residue which the food bears or contains is in excess of the permissible tolerance for the pesticide chemical established by the director.

6. Amend Section 26510 of the Health and Safety Code to change the minimum fine for a violation of Chapter 3 (Foods) Division 21, Health and Safety Code, from not less than \$25 to not less than \$100 and would further provide that if the violation is committed after a conviction of such person under the same chapter has become final, the maximum amount of the fine would be raised from \$1,000 to \$5,000.

It can be said that the preponderance of testimony by representatives of agricultural interests and governmental agencies overwhelmingly favored maintenance of the status quo. Very little testimony was given in support of the provisions of the Petris bill as originally introduced. One of the few witnesses testifying in support of that measure was Mrs. Helen Nelson, Consumer Counsel of the State of California. In her opening remarks, Mrs. Nelson stated that:

"On the basis of four years of experience as a Consumer Counsel in California, I can report that no other concern placed upon me by consumers is held as deeply by as many consumers as the concern over the widespread use of pesticides."

It is found quite difficult to reconcile this statement with the 19,432 valid signatures filed on the pesticide initiative constitutional amendment, keeping in mind that 468,259 signatures would have been required to place the initiative on the ballot. This initiative measure was submitted to the Attorney General under date of January 24, 1964, and titled by his office to read, "Provides it is unlawful to use in agriculture certain designated or any pesticides which might cause damage to the human body. Legislature may enact implementing legislation."

Specifically, Mrs. Nelson urged the committee to recommend legislation which would make the Department of Public Health the final authority for decisions on the use of any chemical pesticide in California. Mrs. Nelson went on to say: "In making this recommendation, we follow the lead of the President's Science Advisory Committee panel which expressed their belief that within the federal government, registration of pesticides related to health should be the responsibility of the Department of Health, Education and Welfare. Mrs. Nelson neglected to point out, however, that the panel was specifically referring to the U.S.D.A.'s regulatory staff evaluating and approving uses that bring pesticides into intimate contact with people, such as in the case of mothproofing of clothes and blankets and applications to household lawns and gardens. It should also be noted that this particular field has already been occupied by the California State Department of Public Health, as is the case relating, for example, to criteria established for the use of indoor fly control devices which vaporize or mechanically inject into the air of buildings, measured amounts of chemical insecticides.

Mrs. Nelson's second recommendation concerned the criteria for registering a pesticide. In this connection, Mrs. Nelson is quoted in part as saying:

"Present state laws governing the registration of pesticides are designed to protect the public from being sold a worthless or ineffectual product. This work is a valuable first criteria but it should be the first and not the only one as it is now." Mrs. Nelson went on to say:

"Under existing law, if an agricultural pesticide is determined useful for the product and marketing of products, this is sufficient to allow its use."

Specifically, Mrs. Nelson recommended that the California law should require that prior to the licensing of a pesticide chemical, proof be submitted that the public will benefit from its use. Not only effectiveness but its need and relative safety should be considered, according to her. The burden of proof should be upon the manufacturer and the final authority for weighing the evidence and making the decision should rest with the California Department of Public Health.

Mrs. Nelson, for whatever reason, failed to point out that Section 1072 of the Agricultural Code presently provides in part as follows:

"The director may, after hearing, cancel the registration of or refuse to register any economic poison, (a) which is of little or no value for the purpose for which it is intended or which is detrimental to vegetation, except weeds, to domestic animals, or to *the public health and safety* when properly used and may require such practical demonstration as may be necessary to determine said fact"

It should also be noted that an additional proviso in Section 1075 gives the Director of Agriculture authority to seize and quarantine any economic poison which is adulterated, or misbranded within the meaning of the article, or detrimental to agriculture or to the *public health*"

In her third recommendation, Mrs. Nelson urged the committee to consider legislation requiring authorization for the use of a pesticide on a crop to be reviewed annually and be limited to the potential abundance of the crop. On the basis of Mrs. Nelson's other recommendations, it can only be assumed that this particular authorization would also be a function of the Department of Public Health. This suggestion, to say the least, is completely unrealistic regardless of the agency charged with this responsibility. In its practical application, this would be analogous to using a particular cultural practice to reduce, for example, the number of holes in an apple from—say, seven to five.

Perhaps more to the point and in support of the effectiveness of the present control system is this excerpt from the testimony presented by Mr. Frank Stead, Chief, Division of Environmental Sanitation, Department of Public Health, in which he stated:

" . . . I believe that it would be desirable to make a statement that can be made clearly and to make it early in this hearing, and that is that the current information both from the measurements made by the Department of Agriculture in California and by the Food and Drug Administration nationally, indicate that the average levels of pesticide residue in the public food supply is a small fraction indeed of the present tolerance I believe we have enough information on this subject to indicate that this is not where our primary concern should be except with respect to a refinement of our information on the long-term effects of these said tolerances."

Then, in his prepared statement submitted to the committee, Mr. Stead said:

"In general, the State Department of Agriculture is carrying on an adequate program of regulation and monitoring of insecticides applied to raw agricultural crops. The Department of Public Health has

not considered it necessary to carry on a parallel program of monitoring of processed food. Levels of residue in processed food may, on the basis of the Department of Agriculture's program, safely be assumed to be within existing tolerances for fruits and vegetables. However, except for special situations, no systematic measurement has been made by any agency on fish or game, either sport or commercial. Consequently, on the basis of present information, all that can be said with assurance about the food supply is that the pesticide levels in agricultural crops are well below the tolerances which have been established."

The position of the county agricultural commissioners on this proposal was possibly best expressed by Mr. Stephen P. Ancell, president of the California Association of County Agricultural Commissioners, when he said to the committee:

"California has had laws governing the sale and use of pesticides for over 40 years.

"This state is noted for its diversity of crops, varying climate and geography. With these variables and large metropolitan areas, many different individual types of problems develop that must be dealt with at the local or 'grass root' level.

"California is the only state that has county agricultural commissioners who provide this grass root type of regulations on pesticides. Existing laws provide some of the flexibility necessary to allow county agricultural commissioners to deal with problems as they are recognized in their various localities.

"With the commissioner's knowledge of local situations, a reasonable and logical job of regulating the sale and use of pesticides can be accomplished, resulting in protection to the consumer but still allowing the use of pesticides which will put products on the market that are safe and which the consumer can afford to buy.

"Protection is also provided to the user of the chemicals."

Speaking to the Department of Agriculture's role in the area of economic poisons, Mr. Charles Paul, director, said in his presentation to the committee:

"The department's functions are primarily regulatory in nature. The law and regulations we administer deal with the registration of pesticides, the *licensing and regulation of pest control operators*, the control of the use of injurious materials, and the establishment and enforcement of pesticide residue tolerances.

"The agricultural industry is deeply concerned and recognizes and supports the viewpoint that the primary public interest in pesticide chemicals is to safeguard the health and safety of the public. Our function is to provide this protection. We need to be assured that pesticides are used safely and effectively. This requires that our high-quality food supply be free from chemical residues; that people are not injured by the application of pesticides; and that our wildlife is protected from injury or destruction."

"We believe that the people of California are provided with a more complete and practical surveillance program, to see that their food is healthful and wholesome, than any other state.

"The concern of agriculture is twofold: first, and paramount is public safety and the health and welfare of the people; second, there

is also a public interest which calls for the judicious and responsible use of agricultural chemicals."

Mr. Paul went on to say:

"So conscious has the state been in its responsibility to the safety of the public, that it leads the nation in the field of pesticide residue control. This leadership has existed for many years. Our position is the result of the state's 37 years of foresight and experience."

In commenting on the extent of the department's program, Mr. Paul pointed out:

"The department's activities in the task of protecting its exploding population and of providing high quality, wholesome foods has expanded rapidly. Funds in our budget for pesticide control work increased fourfold from \$154,793 in 1958-59 to \$624,017 in 1963-64.

"It is not unusual, then, that chemists from other states and foreign countries visit our department's laboratories frequently to learn our techniques in dealing with pesticide problems. From these visitors, we have learned that many states and foreign countries are just inaugurating programs we established in California in 1926."

Mr. Paul went on to say:

"We have found that strict enforcement of pesticide laws and regulations is mandatory if full protection is to be achieved. The effectiveness of California's pesticide control program then, may be attributed to the state's historic concern for the health and welfare of its citizens, to state pesticide laws, and to strict enforcement of those laws and regulations.

"The department's enforcement of our pesticide laws and regulations is assisted by the work of the county agricultural commissioners. The county agricultural commissioners and their staffs, numbering approximately 700 persons, constitute the largest field force of its kind in the nation. These officials have an intimate knowledge of almost every farm in their counties and have the duty of enforcing certain pesticide controls. County agricultural commissioners, under the supervision of the California Department of Agriculture, enforce state regulations pertaining to agricultural pest control operators and the use of injurious pesticides."

Also speaking against the proposal was Mr. Charles O. Barnard, representing the Western Agricultural Chemicals Association, who said that his association believes the Department of Agriculture is the public agency best qualified to administer pesticide regulations.

Mr. William Staiger, assistant executive secretary, Agricultural Council of California, in commenting on this specific proposal, stated:

"We believe that the present laws dealing with agricultural chemicals have, generally speaking, proven to be adequate. Weaknesses, as demonstrated by the so-called 'protest' registrations at the federal level indicate the need for periodic review and reappraisal. However, with respect to state laws we have no recommendations for specific legislation at this time. Most of the recommendations we would make are outside the scope of legislation.

"We believe that the State Department of Agriculture is the logical state agency to supervise and control the laws regulating agricultural chemicals and we urge that no changes be made as initially suggested by AB 2233 (Petris) in the 1963 Legislature. This department, in

close cooperation with the Public Health Department and other state agencies, the University of California and with the agricultural chemicals industry, has done an excellent job of protecting the public interest both from the standpoint of pure, safe food products, and from the equally important standpoint of an abundant, economical variety and supply of food and fiber. Continued cooperation should be encouraged, but the responsibility must lie with one agency."

Mr. E. Alan Mills, executive assistant of the California Grape and Tree Fruit League, in his comments on this proposal, said:

"We believe you will agree that the fresh grape, tree fruit, and berry industries of California have done and are continuing to do an outstanding job in the application of agricultural chemicals, and that their long-range objectives are in tune with the best interests of the economy of our state and nation, and the health and welfare of its citizens. This effective program is being carried out under existing laws set forth by the California State Legislature and the Congress of the United States. Each of these governing bodies had seen fit to place flexible authority in the hands of competent administrators. It is our judgement that this authority has been wisely applied at both the state and federal levels. It is important that the continuity existing between state and federal pesticide rules and regulations be maintained. This continuity has been developed largely through the administrators of the respective laws. Ninety percent of the fresh grapes, deciduous tree fruits, and berries shipped to market by California growers are involved in interstate commerce. Though we believe existing state laws amply provide for the protection of the health and welfare of the citizens of California and the nation, we urge that any changes in the state laws governing the use of agricultural chemicals in the State of California be written so as to coincide with the federal laws with which California growers must comply in marketing 90 percent of their production."

Mr. Robert J. Marsh, representing the Cannerymen's League of California, took a similar position in testifying to the committee, stating that:

"We believe the present laws and regulations governing the licensing and use of agricultural pesticide chemicals in California are working very well. The present law contains adequate provision for the promulgation of additional regulations if and when they become necessary. And we can see no need at this time to provide additional regulatory powers or to substitute legislation in fields which could easily be covered by regulation."

Mr. Homer A. Harris, consultant for Associated Produce Dealers and Brokers of Los Angeles, stated:

"The Agricultural Code wisely provides for its joint enforcement by the Department of Agriculture and county agriculture commissioners. This is particularly true in the regulation and control of the spraying and treatment of food crops. Every agricultural county in the state has an agricultural commissioner, a total of 53. They are well qualified and are devoted to their many duties. They have staffs in proportion to the importance of agriculture in their respective counties. They license and regulate pest control operators and inspect the fields during the application of the pesticides, and again before harvest to make sure that all requirements have been met, both as to applica-

tion of sprays, but also as to safety requirements for operators. Some counties have radiotelephones so that the office can keep in constant touch with inspectors in the field.

"The county commissioners have more than 500 men in the field as inspectors and supervisors in the enforcement of the many provisions of the Agricultural Code. Their normal individual duties may be as diverse as California agriculture, but their training is broad enough that manpower can be concentrated on any urgent problem. Our county commissioner system permits a flexibility in the use of manpower and efficiency in operation that could not be attained by any single state agency.

"For these and many reasons already expressed by other speakers, we do not believe any major changes in the law are desirable. Specifically we are opposed to changes of the type indicated by AB 2233 as introduced."

A spokesman for the California State Grange, in his statement, recommended that the present constituted authority governing the use of pesticides remain as it is under the Director of the California State Department of Agriculture and always in cooperation with the State Department of Public Health.

Mr. Allan Grant, representing the California Farm Bureau Federation in his presentation to the committee on this proposal said that his organization believes that the State Department of Agriculture should have the authority to administer the chemicals and residues program with more of the policing and monitoring assigned to and be done at the local level by the agricultural commissioners under local conditions.

One of the few testifying in support of the Petris bill was Mrs. Laura Tallian, speaking as chairman of the Committee for Biological Pest Control in California. Mrs. Tallian asked the committee to strengthen the bill until the State of California has a mandate to move to biological control of pests.

Mr. Richard E. Butcher, secretary of the California Citrus Pest Control Association, while not speaking directly to the proposal as such, stated that in his opinion, there are already all the laws and regulations on the books necessary to keep the public safe.

Also submitted for consideration by the committee was a statement of the Resources Agency, Department of Conservation, which expressed the opinion that the existing system of pesticide regulation has been satisfactory to forestry interests. The statement went on to say: "Any change made should permit the continued privilege of using the wonders of chemistry to protect and manage forest lands for the benefit of this and future generations.

Mr. Edwin A. Putnam, executive director of the California Agricultural Aircraft Association, said that his purpose in appearing before the committee was to voice the association's support of the manner in which the use of agricultural chemicals are being controlled at the present time at the state and county level. Mr. Putnam went on to reiterate his association's support of presently existing laws, rules and regulations. In this connection, he is quoted as saying:

"We take the firm position that further legislation is not indicated at this time."

It should also be emphasized that Mr. Putnam, in speaking to the question which had been raised as to how much injurious materials the human body could absorb before developing symptoms of illness, referred to a survey conducted at Bakersfield by the Bureau of Public Health in 1950. According to Mr. Putnam, this survey firmly established that an agricultural aircraft pilot, flying 500 hours, would absorb one million times as much material each year as the ordinary man would in a lifespan of 1,000 years. Mr. Putnam went on to say: "To our knowledge, not one of these pilots, some of whom have flown as much as 20 years, has ever developed symptoms of any kind."

Mr. D. Lowell Wells, President of California Citrus Pest Control Association, in speaking to the proposal, said:

"I submit that we need no further legislation controlling either method of application or materials used in order to give the consumer the safe and insect-free food and fibre to which they have become accustomed."

A similar position was also taken by Mr. Keith Kirstein, secretary-treasurer, California Feed and Grain Association. Mr. Kirstein urged that no major changes be made in the present pesticide laws.

Mr. X. Dahlstrom, sales manager of the Los Angeles Chemical Company, in a statement to the committee, took a position definitely opposing the transfer of any authority invested in the Department of Agriculture to the Director of Public Health. According to Mr. Dahlstrom, the present controls are specific and adequate and transferring to the Department of Public Health would not increase their effectiveness.

Mr. Robert M. Howie, Agricultural Commissioner, Riverside County, in his presentation to the committee, said:

"We believe the present system of controlling the use of pesticides in California is certainly the best in the world. We would not recommend a wholesale revision of the present laws. We should retain the existing authority in the hands of the capable, responsible, and experienced personnel of the State Department of Agriculture and the county agricultural commissioners."

Mr. W. Hazeltine, manager, Lake County Mosquito Abatement District, also spoke out against the proposal, saying that "There does not appear to be a need for additional legislation to protect the public health or wildlife provided registrations be reviewed as often as some diverse effect is detected and confirmed."

The California Forest Pest Control Action Council also went on record before the committee opposing the proposal, pointing out that because of the well-established, well-understood and workable relationships and because of outstanding safety records on forest pest control provisions in the past, the regulation of pesticide use should continue under existing regulatory authority, rather than having its activities assigned to a new agency.

Is There a Public Health Hazard?

C. H. Hine, M.D., Ph.D., associate clinical professor of preventative medicine (occupational medicine) and toxicology, in his testimony to the committee, pointed out that the hazard which is associated to the general public and to the employed person as regards agri-

cultural chemicals is real but it is finite. According to Dr. Hine, there are about 800,000 injuries that occur to employed persons in California in the course of a year. About 20,000 of these result in a visit to a physician and of these 20,000, approximately one-third to one-fourth result in lost time after that single visit. Of this total number of cases that have resulted in lost time, approximately 5 percent are due to exposure to agricultural chemicals . . . this is minutia of 1 percent in terms of actual disease frequency and the injury that has occurred. Dr. Hine went on to point out that about 45,000 people die from all sources in the course of one year in California. About 450 are related somehow to work situations. Of these 450, about 2 are due to exposure to agricultural chemicals so we have 2 out of a total of 45,000 people who died. In addition to this, an estimate of about 10 accidental deaths among a population as a whole occurs from the ingestion of products which could be broadly classified as agricultural chemicals or substances related to them. The majority of these are agents that are used about the house in the control of ants, roaches and other pests. These are arsenic and floride; agents that have been used for many years and are not the new exotic type of more active agricultural chemical. So we have a total death of employed group of about 2 due to this and about 10 totaled in the state. In the United States as a whole, we have 8,000 deaths a year due to poisoning . . . we would figure about 800 deaths per year in California due to this problem of the exposure to or overingestion of drugs and chemicals, and of these 800, 10 are due to agents which are related closely to economic poisons.

According to Dr. Hine, our major problem is the intentional ingestion of drugs and chemicals to cause death or the accidental ingestion of drugs and chemicals by children and groups other than economic poisons. Dr. Hine further said that analyses of statistics obtained nationwide indicate that medicinal compounds, agents used about the house as household chemicals, cleaning, and sanitary agents far exceed in number the injuries, ingestions and death as compared with agricultural chemical substances.

Having summarized the extent of the total problem of exposure, I would like to comment, if I could, on the problem to the consumer. I have carried out some research and analysis of food samples for the presence of persistent type of insecticide in human fat. These samples have been collected both in California and other parts of the United States since we wished to see if California in any way differed from other parts of the United States and it was our finding that there were definite detectable amounts of about five persistent insecticides in the human fat of people who had no known exposure, occupationalwise or through their use of them intensively about the home, of the substances. They were present in very small quantities. In the greatest, one of the present greatest amounts, DDT, a metabolic product, DDE has been referred to in this article quoted this morning and we have found this to be true. There are other substances that are also present. The finding of these substances in this quantity in no way implies a chronic intoxication of the population. This merely indicates exposure and exposure and hazard are not necessarily related. In fact, they are not related as we can see by these figures in any way.

The body has stored within it a great number of naturally occurring minerals, metals and other chemical substances because with ingestion of these materials in drinking water, in the foods that we eat as they come off the soil, these things are present so we have arsenic and manganese and vanadium and cobalt. A number of these are deposited in the bone and the soft tissues, where they remain for a long period of time. *They do not, so far as we know, constitute any hazard, so far as we know, so far as the public health is concerned.* They don't affect aging. They don't affect reproductivity. They don't affect the general health.

I think the question was asked relative to the exposure of the young and could we accurately and safely predict what would happen 30 or 50 years from now in the then older population. I don't think that, medically speaking, anyone could say with a hundred percent assuredness that there would be no effect. On the other hand, *one would be most foolish to predict, based on the present evidence, that there is any likelihood of an untoward effect in the future.* I am basing this now, as best I can, on the experimental work which has been done on animals to date where intake of the substances of a persistent nature over a period of months and years and for the lifetime of animals has shown no change that can be measured and, since this is the only experimental data which is available, I would have to base my opinion on this and in our general experience in this field and in which we are basing predictions continually on new drugs and new chemical substances, this is the only data that could be used for a long-term projection.

Now, I do think that certainly efforts and research are needed in this field. I have recommended this to Senator Ribicoff's committee. I have written the National Institute of Health about this subject. I think the human experimentation is necessary and controlled observation on the population is needed in the future. I think the State Department of Public Health and the research arm of the university in the State of California should be encouraged in this particular area to continue these investigations. I think that the surveys done to date, not in California, but in other parts of the country where there has been widespread advocacy of persistent type of insecticides, has shown no effect on the general public health as measured by morbidity, absence from school, absence from work, increase of any type of disease. In fact, the whole picture has indicated that when these materials are used and they have been used judiciously—because of cost in part and because of the good intent of the Public Health people who have applied them—there has been nothing but improvement of the total public health. There has been a decrease, if anything, in the diseases which are carried by insects and vectors of this kind. They are destroyed by the insecticides and I think the total public health picture is immeasurably improved by their use.

In commenting on the possible effects of pesticides on persons with degenerate disease, he had this to say:

"I do think that, as a source of scientific inquiry, that studies should be conducted along these lines in order to establish more firmly this question which you have raised but there is no information at the present time which would indicate that there is an aggravation of any degenerative type of naturally occurring disease or any accelera-

tion of disease by exposure to the substances in the quantity in which they are encountered ordinarily.

"Now, if we have a person who has had tuberculosis and he is exposed to methylobromide or chloropicrin, he may have acceleration of that disease state and die but this would be an exposure beyond that which would be considered safe under ordinary circumstances. Exposures to the concentrations which are accepted as safe would, to my knowledge, in no way cause aggravation or acceleration of the disease states."

The Governor's Interest In the Problem

In June 1960, Governor Edmund G. Brown appointed a 15-member Special Committee on Public Policy regarding agricultural chemicals to study and review the problem and recommend a sound public policy. This committee was appointed because questions had arisen with regard to the safety of man's food supply, in view of the fact that many agricultural chemicals in themselves are known to be toxic to man and other animals. This committee, in a statement of public policy, published in December of 1960, said in part:

"The great preponderance of evidence convinced the committee that at this time, our food supply is safe. The belief of some witnesses that the presence of any chemical residue in foods is deleterious was not substantiated. The public health is not threatened in this way."

In June of 1963, the Governor announced the creation of a Pesticide Review Committee to conduct a continuing review of the works being done by the various arms and branches of the state government in pesticide control, investigation and research. The committee consisted of Hugo Fisher, Chairman, and Administrator, The Resources Agency; Charles Paul, Director of Agriculture; Malcolm H. Merrill, M.D., Director of Public Health; Maurice L. Peterson, Statewide Dean of Agriculture, University of California; William E. Warne, Director of Water Resources; Samuel A. Abrahams, President, Structural Pest Control Board; Walter T. Shannon, Director of Fish and Game; Helen E. Nelson, Consumer Counsel; Fred Jordan, Press Assistant, Governor's Office; DeWitt Nelson, Director of Conservation.

The committee had available to it, the assistance of a technical staff group consisting of representatives of the various departments and agencies of state government having a direct interest in problems associated with the use of agricultural chemicals.

In its preliminary report on pesticides in California submitted to the Governor under date of June 1, 1964, the committee made some 13 recommendations for new programs. It is quite interesting to note that not one of the recommendations advance involved the transfer of existing authority from the Department of Agriculture to the Department of Public Health. It should be noted, however, that several new programs such as one of environmental monitoring, together with a human surveillance program, including a program to assess the level of exposure from pesticides used by householders would, if they prevail, become the responsibility of the State Department of Public Health.

Committee Findings

For the following reasons, the committee refuses to support the intent of AB 2233 to transfer existing pesticide authority from the Department of Agriculture to the Department of Public Health:

1. Such a transfer could seriously jeopardize agriculture, the state's largest industry.

2. The few arguments advanced by proponents of the proposal were not valid.

3. No showing was made that such a transfer would provide a better degree of safety to public health than is presently provided under existing programs.

4. While it is recognized that there may be some cause for concern, the committee is not convinced that an emergency exists and that the seriousness of the problem warrants such a radical approach.

5. The state pesticide program, implemented and administered at the local level by county agricultural commissioners, has proven to be one of the most effective in the nation and a pattern for other states to follow.

6. The State Department of Public Health presently has the authority to insure that harmful residues exceeding legal tolerances, do not exist in processed foods. The manner in which this responsibility has been discharged leaves much to be desired in view of the fact that it has been stated by officials of the Department of Public Health that their existing program has not been systematic but rather has been carried on a "lead or suspicion" basis.

Committee Recommendation

Based on these findings the committee recommends that the existing pesticide authority now vested in the Department of Agriculture remain vested in the Department of Agriculture and not be transferred to the Department of Public Health, but that the Department of Agriculture be required to keep the Department of Public Health apprised of its activities in this field.

PROPOSAL 12

The need for further study of the technical issues involved in the concepts of zero tolerances and no residue.

Discussion

First, the difference between the two concepts should be understood. "No residue" is a determination made by the U.S.D.A., based on experimental data that none will remain from a particular pesticide use, irrespective of toxicity. "Zero tolerance," on the other hand, is an F.D.A. prohibition of any residue on a crop because the compound is too toxic to permit a residue. These concepts have been modified as more sensitive detection methods become available. In practice, zero tolerance is interpreted by the F.D.A., in some cases, to include a detectable level of residue lower than that believed to be pharmacologically significant. The F.D.A. is responsible for establishing safe tolerances of pesticide residues on food products and enforcing such toler-

ances by preventing illegal residues on interstate and foreign food shipments. The Department of Agriculture, on the other hand, has the sole responsibility for approving registration for pesticides used on any agricultural product other than food crops, on food crops where no residue results, and for all nonagricultural uses. The F.D.A. is responsible for assuring that tolerances are not exceeded. In addition, individual states may directly control pesticide uses and enforce their own tolerances for products sold within the state. In this connection, it should be noted that in California, the State Department of Agriculture has, by administrative regulation, adopted the tolerances established by the federal government.

As an administrative principle, tolerances are set by the F.D.A. at 0.01 of the lowest level which causes effects in the most sensitive test animals whenever data on human toxicity are not available. However, tolerances have been set for some compounds, such as dieldrin, aldrin, heptachlor and chlordane, although a "no effect" level in animals has never been determined.

History

In 1954, the F.D.A. Act was amended to empower the Department of Health, Education and Welfare to establish tolerances or exemptions from the requirement of tolerances in or on raw agricultural commodities. This amendment, known as the Miller amendment, or pesticide chemical amendment, assigned two responsibilities to the Department of Agriculture. When a petition for a tolerance or an exemption is submitted to the Department of Health, Education and Welfare, a copy is furnished to the Department of Agriculture, which is required to furnish to the Department of Health, Education and Welfare (1) a statement certifying whether the pesticide chemical is useful for the purpose for which the tolerance is sought and (2) an opinion as to whether the tolerance proposed by the petitioner reasonably reflects the amount of residue likely to result when the pesticide chemical is used in the manner proposed for the purpose for which certification is made. Tolerances sometimes are set at zero.

In other cases, in the absence of information to demonstrate finite amounts of residue, registration of a pesticide may be given on a no-residue basis. In both cases, the rapid advance of technology in the development of procedures for the measurement of extremely small amounts of residue is constantly upsetting the determination as to whether or not a residue actually exists in a food or feed. This problem was very thoroughly considered by the President's Science Advisory Committee and in the report of that committee entitled "Uses of Pesticides" published on May 15, made two recommendations in this area.

"1. That the Food and Drug Administration proceed as rapidly as possible with its current review of residue tolerances, and the experimental studies on which they are based. When this review is completed, it is recommended that the Secretary of Health, Education and Welfare select a panel from nominations by the National Academy of Sciences to reevaluate toxicological data on presently used pesticides to determine which, if any, current residue tolerances should be altered. Of the commonly used chemicals, attention should be directed first to heptachlor, methoxychlor, dieldrin, aldrin, chlordane, lindane, and par-

athion because their tolerances were originally based upon data which are in particular need of review. Upholding the same standards, the secretary should ensure that new compounds proposed for registration be rigorously evaluated.

"2. That the National Academy of Sciences—National Research Council be requested to study the technical issues involved in the concepts of 'zero tolerance' and 'no residue' with the purpose of suggesting legislative changes."

Mr. E. P. Reagan, Assistant Administrator, U.S.D.A., in a statement submitted to the committee at a meeting held in San Francisco on June 19, 1964, pointed out that in recognition of the seriousness of this problem, the Secretaries of Agriculture and Health, Education, and Welfare, according to him, recently asked the president of the National Academy of Science's National Research Council, to have the technical questions relating to zero tolerances and no residue evaluated by a group of experts with a view to recommending a basis for a solution. According to Mr. Reagan, this request has been accepted and the academy is now engaged in convening the group of scientists to undertake this work.

*Extent of the Problem as It Relates to Milk and Dairy Products in California*¹

"The Bureau of Dairy Service enforces the provisions of the California Agricultural Code relating to the production and processing of milk and dairy products. These statutes are designed to provide consumers safe, wholesome dairy foods, and to protect the public against fraud and misrepresentation.

"The bureau employs a staff of 50 persons: a chief, two regional administrators, 22 district supervisors, 25 dairy inspectors, and five clerical assistants. City and county health departments operate approved milk inspection services under the general direction of the Director of Agriculture. There are 38 approved milk inspection services which employ 98 inspectors plus laboratory personnel who perform the required bacteriological and chemical tests on milk and fluid market milk products.

"While the regulatory responsibility for the quality and safety of market milk is shared with the local health departments, the Bureau of Dairy Service is the sole state agency charged with the enforcement of laws dealing with the composition and sanitary standards of manufactured dairy foods such as ice cream, dry milk products, cheese, butter and evaporated milk.

"Most of the work of the bureau consists of dairy product sampling, testing (done by the Division of Chemistry), dairy farm and processing plant inspection and enforcement. Special activities are performed in cases of acute problems or emergency situations.

Pesticide Program

"Keeping pesticide residues out of milk has been of primary concern to bureau officials. Activities in this field have increased each year since the program started in 1959.

¹ From the 44th Annual Report, Volume 53, No. 2, 1964, Department of Agriculture Bulletin.

"Pesticides of the chlorinated hydrocarbon group, such as DDT, remaining on feed which dairy animals eat, are stored in the body fat of the cow and released into the milk. Therefore, it is necessary to test samples of milk on a routine basis to determine if traces of pesticides are present.

"Early in the program it was established that packinghouse wastes, vegetable or fruit trimmings and tomato pomace almost always contained slight traces of pesticides and should not be fed to dairy animals. As in past years, constant policing was necessary to keep these trash feeds from cows and dry heifers. The effort has been worthwhile. Only a few remote cases of trash feeding gave trouble during 1963.

"California is believed to be the only state which attacks the pesticide problem directly at the farm level. The program calls for testing milk as it comes from the dairy. If pesticide residues are found, operation of the dairy is suspended and the milk is kept off the market. This action protects the consumer.

"In enforcing this program in 1963, sales of milk from 26 dairy farms was suspended. The total loss of milk was 146,781 gallons. Over 1,500 tons of hay and dairy feed contaminated by pesticides were condemned by bureau officials as unfit for dairy animals. It was necessary to prosecute two uncooperative dairymen who persisted in selling milk from suspended dairies or who offered physical resistance to control officials.

"The 1963 Legislature enacted Assembly Bill 507 which empowers the State Director of Agriculture to identify female dairy cows and goats known to be contaminated with pesticide residues and makes it unlawful to move such animals from the premises until their milk is free of adulteration.

"For many years the director has had the power to condemn milk or to the director's authority over the movement of dairy animals carrying pesticides in their bodies. This law helps the state's enforcement program, not only in identifying contaminated animals so they may be excluded from a milking string, but also in prohibiting the sale of such animals to other dairymen.

"The law became effective in September 1963. In the four months before January 1, bureau officials identified 220 cows known to be carrying pesticide residues. At the close of the year 25 cows were being held and 195 had been released after having been found free of pesticide residues.

Drift Contaminates Feed

"During July and August 1963, a serious pesticide drift problem occurred in the peach- and prune-growing areas of Sutter and Yuba Counties. This was a particularly bad year for losses caused by the oriental fruit moth. The fruit growers missed their "spraying cycle" because of adverse weather conditions and were unable to spray at the precise intervals needed for effective control. In this situation growers used liberal quantities of DDT dust to keep the orchards 'fogged' in an effort to save the maturing fruit. Through drift, adjoining alfalfa fields and permanent pasture became contaminated.

"Milk from three dairy farms in the area had to be excluded from the market and many tons of hay were found to contain excessive

pesticide residues. Contaminated pasture had to be clipped and the feed destroyed.

"This situation led to a change by the department in the California Administrative Code. After public hearings, held in Sacramento and San Bernardino in September, the code was amended by placing DDT and DDD on the injurious materials list when applied in dust form or when delivery of more than 50 pounds is obtained in a 24-hour period. Permits for DDT and DDD application in dust form must now be obtained from the county agricultural commissioners.

"The bureau continued its policy of encouraging dairymen to test all home grown hay and purchased hay before storing.

"In November 1963, one large dairy with 150 milking cows in southern California was suspended because the milk contained 9.1 ppm, benzene hexachloride (B.H.C.), fat basis. Investigation revealed that the dairyman had used B.H.C. in place of methoxychlor as a dust on the necks of the animals for fly control. The B.H.C. was absorbed through the skin and contaminated the cows to the point where the milk was affected. Operation of the dairy was suspended for three weeks and more than 23,000 gallons of milk was lost. This costly experience demonstrated to the dairyman the necessity for reading and understanding directions on pesticide labels.

"One facet of the problem as it relates to contaminated hay supplies is still with us, as is pointed out in the following editorial which appeared in the November 1964 issue of the *'Dairyman.'*

"A situation of critical proportions has developed in the Kern County growing area of California. Many thousands of tons of alfalfa, scheduled to be fed to dairy cows, have been contaminated with endrin, a chlorinated hydrocarbon like DDT, but much, much more toxic. The tolerance for it on hay is zero. In practical enforcement, hay is quarantined if it contains above one-tenth part per million.

"How much hay has been contaminated no one really knows. Estimates have gone as high as 30,000 tons and even higher. The endrin was not applied directly to the growing alfalfa, but drifted on to the fields from nearby crops, chiefly cotton.

"When the situation was discovered, hay growers in the area voluntarily held up supplies. The State Department of Agriculture stepped up its testing program, quarantined loads of hay in the San Joaquin Valley and over 1,000 tons in southern California.

"But the critical question still remains. How much hay was affected, how many dairymen will get hurt because of it, and why did it happen in the first place?

"Control of the application of chlorinated hydrocarbon pesticides such as DDT and endrin is the responsibility of the agricultural commissioner of the county in which application is performed.

"Several years ago, the commissioner of Imperial County, where alfalfa and cotton are grown in adjacent areas, took a forward step and prohibited the application of chlorinated hydrocarbons, except under rigidly controlled conditions. All the other commissioners in southern California soon followed suit, and there has been practically no trouble in that area with hay since then. Early this year, similar restrictions were imposed by the commissioners of Fresno and Tulare Counties.

"Kern County adopted like restrictions as soon as the endrin situation was apparent, but this was like locking the barn door after the horse escaped. Why, in a predominant cotton- and hay-growing area like Kern County, were these restrictions not imposed at the time other counties made their move? And how well have spraying activities been policed by the county commissioner? Certainly a degree of negligence is indicated.

"From the standpoint of economics, the situation is already reflected in slightly higher hay prices. But this is of minor consideration compared with the enormity of the problem confronting a dairyman who unknowingly feeds heavily contaminated hay.

"There is only one safeguard to follow. Buy and feed only hay that has been tested for both DDT and endrin and certified by a reliable commercial lab."

The Problem Nationwide

In the *Western Milk and Ice Cream News* dated July 5, 1964, there appeared this statement:

"A little-noted amendment to the Antipoverty Bill, about to become law, provides for payments to dairy farmers whose milk must be dumped because of pesticide content. The amendment was tied to Title III of the bill in a flurry of changes, made by the Senate July 23. The milk amendment, introduced by Senator Mitch Young, R-N.D., provides for indemnity payments at fair market value of the milk. The payments would go to producers of milk whose milk has been kept off the market 'because it contained residues of chemicals registered and approved for use by the federal government at the time of such use.' The payments would continue until a farmer is allowed to sell his milk again. The provision is retroactive from last January 1 until January 31, 1965."

And from the *California Dairyman* of August 1964, this account:

"MORE FARMERS LOSE WASHINGTON, D.C., MARKET. More farms supplying milk to the Washington market have been cut off as a result of pesticide residue in the milk, district authorities reported. Originally 14 farms in Maryland and Pennsylvania were suspended for too much heptachlor in the milk. Four of these have been reinstated. Meanwhile, the total of suspensions has risen to 27, of which 6 have been reinstated. Some of the more recent suspensions were in Virginia. Of the recent suspensions, three of four have been for milk which contained too much dieldrin, a chlorinated hydrocarbon similar to heptachlor. Authorities said that testing is continuing. Meanwhile several bills were being introduced in Congress to reimburse farmers whose milk has been withdrawn from the market. The bills would pay for losses at the support price. The National Milk Producers Federation, which backs the bills, said the U.S. Department of Agriculture recently rejected such payments by administrative action."

Also, from the *Western Milk and Ice Cream News* of August 28, 1964:

"Insecticide traces (heptachlor and dieldrin) have been detected in milk at Denver and four other U.S. areas recently, according to John Kirk, associate commissioner of FDA. But government and agricultural leaders this week assured citizens the contamination was negligible.

Other milksheds showing contamination are Baltimore-Washington, Philadelphia, Dallas and Minneapolis. Use of heptachlor is illegal in Colorado and dieldren is barred from alfalfa in that state. Colorado Governor John Love stated Friday that additional funds for testing milk and field crops will be allocated, 'If I can find them.' Present Colorado testing facilities can handle 350 analyses per year, but Love said it should be able to make 1,500 trace tests."

From the *California Dairyman* of September 1964, this account:

"Pesticide Residues Found. Insecticides have been found in milk in five different areas in the United States—Denver, Dallas, Philadelphia, Minneapolis and Washington-Baltimore—and the concentration has caused shippers in more than one area to be banned from milk sales, according to reports from officials of the Food and Drug Administration. A few Wisconsin dairymen have been shut off from the Chicago and Milwaukee markets."

From the *Western Dairyman*, the following account of one legislative approach appeared:

"Appearing before the House Agricultural Committee last week, Representative W. R. Poage of Texas stated, 'Zero pesticide residue tolerance in milk is absurd.' He said, 'There is more heptachlor in Washington, D.C., drinking water than the FDA seeks to permit in milk.' On the 'no tolerance' ruling, Poage asked, 'Is this a matter of protection or an exercise in enforcement?'"

Industry reaction to the pesticide indemnity proposal is cited in the following account which appeared in the September issue of the *California Dairyman*:

"Pesticide Indemnity Okayed. As a result of the action of the U.S. Senate which has approved paying indemnities to farmers who suffer losses when their milk is banned from markets because it contains pesticides, it is anticipated that increased crackdowns are in the offing. States and cities have been chary of banning the milk containing small amounts of the pesticides but now that indemnity payments will be made it is expected that closer checks will follow and more milk will be banned from various markets."

Dr. D. G. Crosby, toxologist at the California Agricultural Experimental Station, in commenting upon pesticide research programs of the University of California Experimental Station, in his testimony to the committee on October 22, 1963, had this to say:

"At the outset, let me explain that perhaps the principal difficulty in pesticide residue work is that we are required to deal rigorously with quantities more nearly approaching nothing at all than ever before in the history of food chemistry. The finest analytical balance generally in use is sensitive to one-tenth of a milligram—far less than the weight of a single salt grain. However, there may be much less DDT than this in a quart of overtolerance, illegal milk! Our analytical procedures usually require that we work with amounts of pesticide smaller than the unaided eye can see as our maximum limits. It may be comparatively easy to chemically analyze 'something'; it is very difficult indeed to analyze 'nothing.'"

"Basic research in my own laboratory, supported by a U.S. Public Health Service grant, is concerned with the toxicology of the array of potentially toxic substances which may be expected to be found in

ordinary foodstuffs. One part of this study involves development of new methods for detecting and measuring toxicity in animals. Using these techniques, the chemistry and toxicology of naturally occurring toxicants, products of the metabolic breakdown of pesticides by plants, and the pesticide decomposition products caused by the action of sunlight are under investigation.

"Incidentally, the results of this work, we hope, will also give us an opportunity to destroy pesticide residues intentionally at will."

Mr. William Staiger, executive secretary of the Agricultural Council of California, in speaking to this problem, said:

"One of the problems in the field of research that does concern us is the apparent lag between progress made in the analysis of residues left in or on crops after varying periods of time, and the toxicological effects of such residues in man. With greater and greater analytical accuracy being developed, we are rapidly approaching the time when any residue above absolute zero can be measured. It is important that equally accurate data be developed concerning residue buildup and safe levels of toxicity in man, since 'zero tolerances' are, in our opinion, highly impractical and perhaps for many chemicals, unnecessary."

Mr. William Zimmer, salesman of agricultural chemicals, employed by the Airi-Cal Chemical Company, in his testimony on this problem at the meeting in El Centro on June 16, 1964, had this to say:

"If research on the subject of agricultural chemicals is to be expanded I would suggest the following areas:

"1. Study of pesticide residues with an aim to eliminate as many zero tolerances as possible. We in the industry, in order to do a good job of integrated control at an economical cost, must have as many materials at our disposal as possible.

"We feel that a priority should be put on this study because of new and very much more accurate methods of analysis for such residues that have been developed in industry and are now being used in government laboratories. Under old methods you had at least a fraction of a part per million tolerance. Now with new methods, a technician can for example measure 0.01 part per million of endrin. Further, if I understand correctly, a sample of carrots that tested 7 parts per million of toxaphene last year might test 12 parts per million now with new methods.

"I'm talking about the same carrots and the legal allowable amount in this case is 7 parts per million, so one case would be legal and the other case wouldn't be.

"To me, this means the safe tolerance must be reexpressed (after sufficient research) to go along with the new methods.

"In other words, if it was safe at 7 parts per million and now because of new methods of analyzing we find that it now tests 12 parts per million, then it would seem to me that the person wouldn't be poisoned any quicker or be hurt with that amount and, therefore, the regulations should be changed to catch up with the technology."

Mr. Ernest Studer, chairman of the Imperial County Farm Bureau Pesticide Committee, in speaking to the proposal, said:

"The dairyman has probably been one of the most affected in agriculture by the pesticide regulations even though he is one of the smallest users. There have been a few instances where a dairyman has fed by-

products (crop residues from food processing) or bought contaminated herd replacement; but, by and large, the dairyman's main problem has been pesticide drift from field adjacent to his forage crops.

"Prohibiting the use of pesticides where there is any change of contamination of these feed sources would appear to be simple solution to the problem, but, in the first place, there are times when the forage crops themselves must be treated for pests. Lack of treatment would result in less feed at a much higher cost or severe economic losses. The past year of high feed costs have taken their toll of the marginal dairies and if the trend continues, the ultimate cost will be passed on to the consumer. Also by prohibiting usage of pesticides which might contaminate the dairyman's feed sources, the farmer whose land lies next to the dairyman's would be penalized while his competition whose land is a safe distance away is free to use insecticides as he pleases.

"Much of the problem area in the pesticide fields has revolved around the lowering 'zero' dairy tolerance and its repercussions on the chemicals programs of other commodities. This zero dairy tolerance problem—I inserted that word there—has come about by new and better methods of testing. Because the zero dairy tolerance has always been unrealistic, I feel that legislation should advocate 'reasonable' tolerances on all foods—including milk and butterfat."

Mr. Studer went on to say:

"I'll probably get into trouble for saying this but I think we are real fortunate in California that we always seem to stay a little bit ahead of the federal people on this zero tolerance and, even though the milk by federal standards has zero, by some of the standards we are using out here, it might not. This gives us an indication where we have to go."

When asked to elaborate on what he considered a reasonable tolerance, Mr. Studer said:

"Well, I personally would kind of base it on something like this. I believe that, like your lettuce and some of your foodstuffs, you have a present standard that has been set at those. Okay. Then we'll go down and milk is at what we'll call zero now. I would say the dairy product should probably stay at a proportionate ratio below these other products. I'm not saying milk should have the equal rights that these other things do because we have in the past been able, as a general rule—not too many dairymen have been closed down. This has happened to some but we can keep the milk fairly pure within reason and I think in a proportionate amount we can continue going down.

"In other words, if you set the standard, what the dairyman's complaint is is this: Here you have allowed on these foods and we are down on zero and they keep finding out that zero isn't zero, actually."

Dr. Ed Swift, extension entomologist, University of California, in commenting on zero tolerance described the concept as an administrative zero based on the technique used for analyses. Dr. Swift, in response to a question from Senator Way regarding changing techniques, said:

"They have made a change and it has led to the improvement of techniques. On October 11, 1963, the level of sensitivity was 2.5 parts per million in butterfat and that has been cut to 1.25 as of now."

Dr. Swift also indicated, in response to another question from Senator Stiern, that in his opinion, the tolerance of zero on milk for such contaminants as DDT is not realistic. He went on to say that:

"... Following the work of the U.S. Public Health Service, the amount which is the level of sensitivity that we did have was two-five-five parts per million in the butterfat or a tenth of a part per million in the whole milk, and this, once again following the U.S. Public Health Service, seems to be a safe level, and it is not only safe, it is a practical level as far as the general contamination throughout and it's difficult if you're going to use these pesticides. They drift. This will occur on various food crops—I mean feed crops. There also seems to be a possibility sometimes residue may be picked up from the soil from its contamination as Dr. Anderson spoke about it. It's there and if they try to establish an absolute zero, if you could ever find that point, we wouldn't be able to have any feed crops feeding."

Dr. Alfred M. Boyce, dean, College of Agriculture, Riverside campus of the University of California, added the following comment:

"May I make a comment relative to your zero tolerance? This has become such an issue that the Food and Drug Administration and others concerned have asked the National Academy of Sciences to appoint an expert committee to evaluate this whole problem because to say a zero is a zero when it isn't a zero is not intellectually honest so a very high quality committee has been appointed by the National Academy of Sciences to explore this whole area and it would appear probable that the results of that study would come up with a decision to have finite tolerances. Instead of having the zero be synonymous with the lowest detectable amount that the method will show 1.25 in butterfat is zero. This is intellectual nonsense so we have hopes they will come up with recommendations and develop finite tolerances for these because the chances are with the improvement of analytical techniques you'll be able to find some chlorinated hydrocarbons and other compounds, for that matter, in practically everything."

Dr. Ralph Teall, president of the California Medical Association, in speaking to this proposal at a meeting of the committee held in San Francisco on June 19, 1964, had this to say:

"I'm sorry but I couldn't be regarded as an expert on this one at all. I did discuss the matter (zero tolerance) about a week ago with certain veterinary physicians who are interested in the field. It was their feeling, as I have indicated a moment ago, that the matter of zero tolerance, as you have already indicated, was not necessarily proving that there was nothing there but we weren't able to detect what was there. The matter of zero tolerance as a protection may or may not be unrealistic. It is unrealistic from the standpoint of DDT and we are talking essentially now of zero tolerance of DDT because DDT is one of the more persistent things we are concerned with.

"I don't think the CMA should try to go on record at this point as to the realism or unrealism of this tolerance since it's not in any sense expert on the veterinary aspect. But from the standpoint of the public health hazard, this would seem to be a requirement that is in excess of our present knowledge. I believe that that is as accurate as I can say it. That we probably do not require from the standpoint of the prevention of disease, a complete zero tolerance. This is true.

However, a great many tolerances, most of which are established by the Federal Food and Drug Administration and are concurred in by the state although there are some variations, that the tolerances are set well apart from any possible recognizable disease situation and in this case I believe the tolerance was set on the basis of public health emotional factors as well as the problem of identified public health hazard.

"I think that the testimony as to the exact level as to whether a DDT tolerance of zero or a tolerance of a few parts per million could be allowed is a matter which we should not attempt to commit the CMA to because we didn't have enough information on it."

C. H. Hine, M.D., Ph.D., associate clinical professor of preventive medicine, in commenting on the proposal, had this to say:

"The persistent insecticides must, with the newer chemical methods, be present in every milk sample. I am sure if we use our highly accurate, scientific methods for determining these persistent insecticides, that they could be detected in minute quantities in every sample. We have to do one of two things; either we use a method that doesn't detect small quantities and you can leave your zero tolerance, if this is the most pragmatic and easiest way of arriving at the solution, or I think we should allow a tolerance in milk. I do not believe that the presence of small quantities of persistent insecticides in milk constitutes any public health problem.

"This regulation arose, I believe, from the early deliberations on the part of Dr. Arnold Lehman and Dr. Justice Ward in Washington, who felt that milk, being the sole source of food intake of infants and the infant being perhaps more susceptible than the adult, should have an absolutely pure product. But, of course, this is relative nonsense because there is present in mother's milk quantities of these insecticides. I don't know how you are going to legislate it out of mother's milk because it's going to be there as long as the mother has fat in her body and stores these insecticides.

"To answer your question levelwise, I think that this has an order of magnitude of somewhere around two to three parts per million of total persistent insecticides would be a reasonable order of magnitude but I think that it should be the subject of scientific inquiry by an expert board."

Mr. McKay McKimmon, Director, San Francisco District, F.D.A., in outlining the activities of his administration in this area, stated:

"One of our own activities to expand capabilities has been the establishment of an F.D.A. Institute for Advanced Analytical Chemistry at Georgetown University. This institute is offering four 12-week courses each year of intensive study in advanced theory and application of instrumental methods to analytical chemistry. The second 12-week session is in a limited number of designees from the various states. The course includes lectures and laboratory work in chromatography, electrochemistry, radiochemistry, and the various types of spectroscopy, including ultraviolet, visible, infrared, nuclear magnetic resonance, X-ray and mass spectroscopy.

¹ Appended marked Exhibit F is an Associated Press account of an exhaustive study of pesticides by the U.S. Department of Agriculture which disclosed "No milk available on the market today in any part of the United States is free of pesticide residue."

"Our experience with notification of results to growers and to state regulatory officials, a procedure adopted experimentally in 1962, has convinced us that these reports serve a distinctly useful purpose and they will be continued.

"In an effort to reduce time lag between a sample collection and examination, Los Angeles district has augmented its major facilities by using mobile laboratories, particularly along the Mexican border.

"San Francisco district set up a remote laboratory on the Fresno State College campus to make preliminary examinations of the wide variety of products produced in the southern Central Valley. Both of these activities will be repeated this year with added emphasis on imported foods. By June 30, 1964, the two districts will have examined about 2,800 samples of raw agricultural commodities grown in California and imported into California. In addition, the two districts will have examined a total of slightly over 700 samples of imported foods. This work on imports has been done largely by Los Angeles district. The chart which follows shows the number of samples collected in each general food class in California from July 1, 1963, through May 31, 1964.

Vegetables -----	939	Vegetable oils -----	77
Fruits -----	835	Hay -----	43
Grains -----	150	Animal feeds -----	33
Miscellaneous processed		Nuts -----	33
foods -----	147	Fresh milk -----	25
Dairy products -----	144	Fish -----	3
Eggs -----	81		

San Francisco district for the first time in several years found it necessary to request a seizure on charges of pesticide residues. Frozen broccoli produced in the Watsonville area was found through field sampling to have gone into process carrying measurable residues of endrin. Los Angeles district had no seizures of fruits and vegetables within the period covered, but did cite two southern California firms for shipping celery in interstate commerce carrying excess residues of chlorinated hydrocarbons.

Both Los Angeles district and San Francisco district found it necessary to seize alfalfa hay bearing pesticide residues. The hay seized by Los Angeles originated in Arizona and contained substantial quantities of DDT. The hay seized by San Francisco originated in Nevada and contained significant amounts of DDT and heptachlor epoxide. Los Angeles successfully prosecuted an Arizona shipper whose romaine lettuce moved in interstate commerce carrying 19 ppm of DDT as against a tolerance of 7 ppm. The firm was fined.

It has consistently been the purpose of the Food and Drug Administration in carrying out its obligation under the law to keep the channels of commerce free from products which do not meet the law's requirements, to use the best methods available to determine whether any residues are present where the law and regulations provide for none.

In the action we found necessary to take against California frozen broccoli, and in other actions directed against carrots produced else-

where in the United States, we felt that we had developed a method completely reliable to show endrin in any amounts above 0.03 ppm. We have, therefore, considered that figure as the dividing point between 'actionable' and 'nonactionable' for all agricultural commodities bearing endrin residues. In amounts above that level, we feel confident that we can go into court and prove that the pesticide is actually there. As methodology improves, this undoubtedly will be the case where other agents—particularly those having a zero tolerance or no established tolerance—are concerned. In fact, we announced to state regulatory officials in October 1963 that we now have methods capable of conclusively demonstrating the presence in milk and dairy products of a number of pesticides in the following levels:

	<i>Fat basis</i>	<i>Whole milk basis</i>		<i>Fat basis</i>	<i>Whole milk basis</i>
Aldrin -----	0.25 ppm	0.01 ppm	Dieldrin -----	0.25 ppm	0.01 ppm
BHC -----	1.25 ppm	0.05 ppm	Endrin -----	0.25 ppm	0.01 ppm
DDE -----	1.25 ppm	0.05 ppm	Heptachlor -----	0.25 ppm	0.01 ppm
DDT -----	1.25 ppm	0.05 ppm	Heptachlor		
TDE (DDD) ---	1.25 ppm	0.05 ppm	Epoxide -----	0.25 ppm	0.01 ppm
DDT+DDE+			Lindane -----	1.25 ppm	0.05 ppm
TDE -----	1.25 ppm	0.05 ppm	Methoxychlor ---	1.25 ppm	0.05 ppm

These figures were made available to the dairy industry at the same time. No tolerances have been established for any of these agents in milk or milk products.

Based on testimony about toxicity studies presented at residue spray hearings held in 1950, chlordane has a currently existing tolerance of 0.3 ppm on about 47 fruit and vegetable crops. Methods for determining the safety of pesticide residues have improved tremendously since 1950 and F.D.A. reached the conclusion that reevaluation of chlordane toxicity data indicates that they are inadequate in the light of present information. Therefore, a proposal was published in the *Federal Register* for December 5, 1963, to amend the existing regulation to repeal all tolerances now outstanding for chlordane and to make it a no residue agent. Final action had not been concluded when this statement was prepared.

One of the major reasons for the broad scale screening procedures mentioned earlier is to help us develop information as to the overall potential intake of pesticide residues in the diet. Frequently, attacks are made by alarmists on the safety and integrity of our food supply. To determine just what the facts are, F.D.A. began in 1961 a "total diet study" which has been popularly called the "market basket survey." We started this in the District of Columbia and have since extended it to a number of strategically located cities throughout the United States. Several times a year we go to the usual retail outlets in these cities and purchase the estimated amount of food of all varieties sufficient to satisfy the appetite of a healthy 19-year-old boy for two weeks. We figure his intake would probably exceed that of any other individual of any age or either sex. This food is prepared in diet kitchens exactly as it would be prepared for serving in the home and various assays are made of the foods when they are ready to eat. We began this study to obtain basic data on strontium 90 and cesium 137, but quickly realized that such excellent samples could be used to determine

nutritive content and pesticide residues. The results have shown that most of the food analyzed contain no pesticide residues or amounts too small to measure. The residues were found to range from approximately 0.1 ppm to 0.002 ppm. No residues were found to represent more than a minor percentage of established safe tolerances.

The nationwide survey, state by state, of enforcement capabilities is well underway and should reach the reporting stage by this fall.¹ As previously reported to this committee, F.D.A. is under no illusion that the protection of the public in the pesticide area is something that we can achieve alone. We are convinced that such public protection demands concerted effort by state and local officials working in coordination with the federal agencies which may be involved. The goal has not changed; to plan against surprise to the end that no pesticide mishap, however localized, will go undetected and uncorrected.’’

Committee Findings and Recommendation

On the question of the need for further study of the technical issues involved in the concepts of no residue and particularly that of zero tolerance, the committee had this to say:

We recognize that the rapid advance of technology in the development of procedures for the measurement of extremely small amount of residue has made these concepts completely unrealistic. It is understood that, aware of the seriousness of the problem, the Secretaries of Agriculture and Health, Education, and Welfare earlier this year requested the National Academy of Sciences-National Research Council, to study the technical issues involved in the concepts of zero tolerance and no residue with the purpose of suggesting legislative changes. The committee further understands that the request has been accepted, and the academy has been engaged in convening a group of scientists to undertake the study. The committee is hopeful that the studies being conducted by this group will lead to a resolution of the problem.

¹ Appended marked Exhibit G is a copy of a news release by the F.D.A. making public the results of the F.D.A.'s continuing "total diet" studies undertaken to discover the quantity of pesticides in all kinds of food and drink consumed daily.

APPENDIX

LIST OF EXHIBITS IN APPENDIX

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Agreement between the Departments of Agriculture; Interior; and Health, Education, and Welfare relative to Coordination of Federal Pesticide Activities, dated April 1964.	
EXHIBIT B	79
Assembly Bill No. 598 (Petrus) of the 1965 Regular Session, California Legislature, as amended April 21, 1965.	
EXHIBIT C	82
State Department of Agriculture budget figures for 1963-64 pesticide programs.	
EXHIBIT D	84
Report of the State Department of Agriculture's investigation of testimony of Bailey Santistevan at the June 16 meeting of the Senate Factfinding Committee at El Centro, dated December 3, 1964.	
EXHIBIT E	87
Opinion of the Legislative Counsel dated December 22, 1964, relative to the constitutionality of pesticide labeling requirements.	
EXHIBIT F	88
Associated Press release dated April 19, 1965, relative to United States Department of Agriculture's study of pesticides.	
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News release by the United States Food and Drug Administration relative to "total diet studies" dated April 9, 1965.	

Exhibit A**NAC NEWS AND PESTICIDE REVIEW****COORDINATION OF FEDERAL PESTICIDE ACTIVITIES**

The Departments of Agriculture, Interior, and Health, Education, and Welfare announced in April 1964 interdepartmental arrangements for continuous coordination in the executive branch in matters relating to the safe use of pesticides, including federal registration, establishment of permissible tolerances in food and feed, and exchange of research findings.

Through formal memorandum of agreement, the three departments have established working procedures to assure effective coordination in carrying out their respective responsibilities.

The formal agreement is reproduced below:

**INTERDEPARTMENTAL COORDINATION OF ACTIVITIES
RELATING TO PESTICIDES**

by

The Department of Agriculture
The Department of Health, Education, and Welfare
The Department of the Interior

Purpose

Coordination of activities of the three departments pertaining to pesticides with special reference to registration and the setting of tolerances to give effect to the pertinent recommendations of the May 15, 1963, report of the President's Science Advisory Committee on "Use of Pesticides."

Existing Departmental Responsibilities

The following responsibilities of the respective departments relate to the registration of pesticides and the setting of tolerances for pesticide residues:

Department of the Interior

Fish and Wildlife Service. Conserving beneficial wild birds, mammals, fish and their food organisms and habitat, with regard to pesticides.

Department of Health, Education, and Welfare

U.S. Public Health Service. Protecting and improving the health of man in regard to pesticides.

Food and Drug Administration. Establishing tolerances for pesticides in or on raw agricultural commodities and processed foods.

Department of Agriculture

Agricultural Research Service. Providing for the safe and effective use of pesticides, including the registration thereof.

Agreement

1. Information

Each department undertakes to keep each of the other departments fully informed of developments in knowledge on this subject from research or other sources which may come into its possession. Additionally, the Department of Agriculture undertakes to furnish to the other two departments on a weekly basis a listing of all proposals affecting registration and reregistration, and the Department of Health, Education, and Welfare undertakes to furnish to the other two departments on a weekly basis a listing of all proposals affecting tolerances. Upon request, the Departments of Agriculture and Health, Education, and Welfare respectively will furnish to the other departments full information about any pending action on registration or the setting of a tolerance.

2. Procedure

(a) Each department will designate a scientist to act on behalf of such department in carrying out the terms of this agreement. The weekly listings from the Departments of Agriculture and Health, Education, and Welfare and any additional information relating thereto will be directed to these representatives.

(b) The departmental representative will review the weekly listing of actions pending. If there is reason to question any of the items on that list, this will be communicated to the originating department within one week stating the specific reason for need for further review.

(c) Upon receipt of such request the originating department will furnish the necessary information and make the necessary arrangements for further review and will withhold final action on the matter for an additional three weeks.

(d) If one department concludes that the proposal should be rejected in whole or in part, this view shall be expressed in writing and shall be supported by appropriate scientific evidence. Upon being notified, the department responsible for final action will take the initiative to work out a basis for agreement.

(e) In the event agreement is not reached among the department representatives within two weeks of the initial objection, the matter will then be referred directly to the secretary of the department responsible for final action with such information, views, and recommendations as the three department representatives deem appropriate.

(f) The secretary of the department charged with final action may then avail himself of whatever administrative and scientific review procedures seem appropriate under the circumstances. The other two departments will be notified in advance of the proposed final determination of the issues.

(g) The department representatives will jointly make a quarterly report concerning their activities to the secretaries of the three departments.

(h) The departmental representatives are authorized to review questions involving existing patterns of use of pesticides or tolerances upon which they have reason to believe that critical questions exist.

3. *Conference*

At least once each year the departmental representatives will arrange a general conference to discuss research needs, research programs and policy, and the application of research findings in action programs, including public information relating to pesticides.

4. *Federal Pest Control Review Board*

The Federal Pest Control Review Board may be asked from time to time to consider broad questions on policies relating to pesticides involving the interrelationships of control programs, research, registration, tolerances and general departmental recommendations to the public.

Dated : April 8, 1964

ORVILLE L. FREEMAN,
Secretary,
Department of Agriculture

Dated : March 27, 1964

STEWART L. UDALL,
Secretary,
Department of the Interior

Dated : April 3, 1964

ANTHONY J. CELEBREZZE,
Secretary,
Department of Health,
Education, and Welfare

Exhibit B

AMENDED IN ASSEMBLY APRIL 21, 1965

CALIFORNIA LEGISLATURE—1965 REGULAR (GENERAL) SESSION

ASSEMBLY BILL

No. 598

Introduced by Assemblyman Petris

January 27, 1965

REFERRED TO COMMITTEE ON RULES

An act to amend Sections 160.2 and 1071.2 of, and to add Sections ~~1066.2 and 1066.3~~ to ARTICLE 4 (COMMENCING WITH SECTION 160.98) TO CHAPTER 1a, DIVISION 2 OF, *the Agricultural Code, relating to pesticides.*

The people of the State of California do enact as follows:

SECTION 1. Section 160.2 of the Agricultural Code is amended to read:

160.2. It is unlawful for any person to engage for hire in the business of pest control without first procuring from the director a license for each calendar year or portion thereof. Applications for such license shall be in the form prescribed by the director, and shall state the name and address of the applicant and the type of pest control in which ~~be~~ *he* intends to engage. The application, except as hereinafter provided, shall be accompanied by a fee of fifty dollars (\$50). Each applicant shall further satisfy the director of his character, qualifications, responsibility, and good faith in seeking to carry on the business of pest control.

The director shall thereupon issue to such applicant a license entitling the applicant to conduct the business described in the application for the calendar year for which the license is issued, unless the license is sooner revoked or suspended. Such license may be renewed annually upon application to the director, accompanied by the proper fee, on or before the first day of January of the calendar year for which the license is issued. To any fee not paid when due, there shall accrue and be added a penalty of five dollars (\$5).

A person not regularly engaged in the business of pest control and operating only in the vicinity of his own property and for the accommodation of his neighbors shall not be required to procure a license, but shall obtain a permit from the director, register with the commissioner as provided in Section 160.3, and be subject to all other provisions of the chapter. The determination of the director that a person is engaged in the business of pest control beyond the vicinity of his own property or for the accommodation of others than his neighbors shall be final.

The director may refuse to grant a license or renewal of license and may revoke or suspend any license, as the case may require, when, after a hearing as herein provided, he is satisfied that the applicant or licensee is not qualified to perform the type of pest control under the conditions and in the locality in which he intends to operate, or, that he has committed any of the following acts, each of which is declared to be a violation of this chapter:

(a) Making false or fraudulent claims, or misrepresenting the effects of materials or methods to be applied, or applying worthless or improper materials, or otherwise engaging in unfair practices;

(b) Operating in a faulty, careless or negligent manner;

(c) Refusing or neglecting to comply with the provisions of this chapter, or of rules and regulations issued hereunder, or of any lawful order of the commissioner;

(d) Refusing or neglecting to keep and maintain the records required by this chapter, or to make reports when and as required;

(e) Making false or fraudulent records or reports;

(f) Operating in any county without first having registered with the commissioner, as hereinafter provided;

(g) Operating equipment with incompetent or unqualified persons in charge thereof;

(h) Fraud or misrepresentation in making application for a license or for renewal of a license;

(i) Failure to comply with the provisions of Article 4 (commencing at Section 1080) of Chapter 7 of Division 5 of this code.

SEC. 2. Section 1066.2 is added to said code to read:

1066.2. It is unlawful for any person to make any recommendation regarding the agricultural use of an economic poison in connection with a sale of an economic poison unless such recommendation regarding the use of the economic poison is given in writing to the customer and a copy retained on file by the party making such recommendation for a period of one year. Any recommendation shall conform to the label or to supplementary printed directions delivered therewith unless authorized by the director or the commissioner.

SEC. 3. Section 1066.3 is added to said code, to read:

1066.3. It is unlawful for any person to use an economic poison on any food, forage or fiber crop other than in the manner specified on the label or in any supplementary printed directions delivered therewith or to use an economic poison in a manner which permits any substantial drift to other crops, unless such application is expressly authorized by the director or the commissioner.

SEC. 2. Article 4 (commencing with Section 160.98) is added to Chapter 1a, Division 2 of said code, to read:

Article 4. Recommendations and Usage

160.98. *It is unlawful for any person to make any recommendation regarding the agricultural use of an economic poison either in connection with a sale of an economic poison or in connection with an advisory service for hire or for a fee, unless such recommendation regarding the use of the economic poison is given in writing to the customer. The written recommendation shall be delivered not later than the time of delivery of the material to the customer, or the time of use by the customer. A copy of the written recommendation shall be retained on file by the party making the recommendation for a period of a year. No written recommendation shall be in conflict with the label or with supplementary printed directions delivered therewith unless authorized by the director or the commissioner. The recommendation need not include any specific directions contained on the label or supplementary printed directions delivered therewith.*

160.99. *Unless otherwise expressly authorized by the director or the agricultural commissioner, the use of a pesticide by any person in pest control operations shall be in such a manner as to prevent any substantial drift to other crops and shall not conflict with the manufacturer's registered label or with supplementary printed directions delivered therewith and any additional limitations applicable to local conditions contained in the conditions of any permit or the written recommendations issued by the director or commissioner.*

Violations of this article constitute a misdemeanor.

~~SEC. 4.~~

SEC. 3. Section 1071.2 of said code is amended to read:

1071.2. Each applicant for a license shall also file a statement of the brands, trademarks, and kinds of economic poisons intended to be manufactured or sold, the correct name and percentage of each active ingredient and of each inert ingredient contained therein. Supplemental applications for registration of additional economic poisons may be submitted at any time without payment of penalty required by Section 1071.1. A change in the name or percentage, or both, of an inert ingredient shall not be construed to be a change in composition of the economic poison requiring a new registration unless the change in inert material results in a change in the use or application of the economic poison.

Exhibit C

STATE OF CALIFORNIA
DEPARTMENT OF AGRICULTURE

EDMUND G. BROWN, Governor

December 9, 1963

MR. PAUL K. HUFF, *Executive Secretary*
Senate Factfinding Committee on Agriculture
Room 409, State Capitol, Sacramento

Dear Mr. Huff:

As requested in your recent letter we are attaching a statement of the funds budgeted in the 1963-64 fiscal year for each of the three divisions involved, to support functions of the Department of Agriculture in the field of agricultural chemicals and in particular, pesticides. Also attached is a listing of the functions in each of the divisions and the funds budgeted for each activity.

It is to be noted that the total of funds budgeted for 1963-64 is \$17,896 less than the total given in testimony before the Senate interim committee. This differential is a result of adjustments made in the 1963-64 budget after an evaluation of prior year expenditures.

The department does not employ any private laboratories for the determination of pesticide residues in any kind of produce. We are not in a position to estimate the total work done on pesticide residue determinations by private laboratories.

We believe that no money is expended for the determination of pesticide residues in any commodities by any city or county agency. However, county agricultural commissioners have joint responsibility with the State Department of Agriculture in the enforcement of Division 2, Chapter 1a, Agricultural Pest Control Business of the Agricultural Code relating to the regulation of pest control operators. In this activity all county agricultural commissioners in the state spent \$142,967.18 during the fiscal year ending June 30, 1962. This information has not been tabulated for the fiscal year ending June 30, 1963 but we are sure that more funds were used in the counties in the 1962-63 fiscal year than in the previous year and no doubt still more funds will be used in the present 1963-64 fiscal year.

If you need additional information please call upon us.

Sincerely yours

CHAS. PAUL, *Director*

STATE DEPARTMENT OF AGRICULTURE

1963-64 Fiscal Year Estimated Cost

AGRICULTURAL CHEMICAL FUNCTIONS

PESTICIDES

83

Division	Pesticides (Economic Poisons)	Pest Control Operators	Feed and Livestock Remedies	Pesticide (Spray) Residue	Animal Health	Dairy Service	Poultry Inspection	Meat Inspection	Totals	
									General Fund	Department of Agriculture Fund
Standardization and Inspection-----				117,430					117,430	
Standardization and Inspection-----	88,880	49,649	20,000		1,200	48,604	124	234	50,162	158,529
Animal Industry-----			8,500	147,860		68,640		1,000	217,500	62,500
Chemistry-----	54,000									
General Fund Totals-----				265,290	1,200	117,244	124	1,234	385,092	
Department of Agriculture Fund Totals-----	142,880	49,649	28,500							221,029
Grand total-----										606,121

	General Fund	Department of Agriculture Fund	Totals
Division of Standardization and Inspection-----	\$117,430	\$158,529	\$275,959
Division of Animal Industry-----	50,162		50,162
Division of Chemistry-----	217,500	62,500	280,000
Totals-----	\$385,092	\$221,029	\$606,121

Exhibit D

STATE OF CALIFORNIA
MEMORANDUM

To: PAUL K. HUFF
Executive Secretary
Senate Factfinding Committee on Agriculture
Room 409 State Capitol
Sacramento, California

Date: December 3, 1964
Place: Sacramento

From: Department of Agriculture
Allen B. Lemmon, Chief, Division of Plant Industry

Subject: Testimony of Bailey Santistevan at June 16 Meeting of
Senate Factfinding Committee at El Centro

You have requested my comments concerning the testimony of Bailey Santistevan of Crown Chemical Company at the June 16 meeting of the Senate Factfinding Committee on Agriculture at El Centro.

A transcript of the hearing which you sent me shows, on pages 74 and 75, that Mr. Santistevan stated he had recently purchased pesticides for household use that he considered to be of an injurious nature. I will comment on them as follows:

1. One material contained 3.8 percent arsenic in the form of an ant paste. The poison law administered by the State Board of Pharmacy requires ant paste containing more than 0.40 percent arsenic expressed as metallic to be sold only through registered pharmacists. If the ant paste mentioned by Mr. Santistevan was not purchased from a registered pharmacist, it was an illegal sale.
2. Tetraethyl pyrophosphate, commonly known as TEPP, is an injurious material under Section 1080 of the Agricultural Code, and a permit from the county agricultural commissioner is required to use such a material. He comments: "Milk accidentally contaminated with this material would be hazardous if consumed by animals or humans." TEPP breaks down in water rather rapidly, and in a few hours would not be poisonous. I concur that it should not be permitted to get into milk, but because of its rapid breakdown consider it considerably less of a hazard than some other materials from the standpoint of food contamination.
3. Ninety-five percent sodium fluoride is no more toxic than various other chemicals that are used around households. I do not think it is any more hazardous than common lye.
4. The small candles that contained 12 percent DDT for flying insects will be investigated.

By a copy of this letter I am forwarding to Field Crops and Agricultural Chemicals, in the Division of Standardization and Inspec-

tion, the information you have given us. Followup will be made with Mr. Santistevan, and proper action taken to stop any violation of pesticide laws that appear to have been reported by him.

From: Department of Agriculture—H. E. Spires, Chief
Division of Standardization and Inspection

Supplementing Mr. Lemmon's memorandum to you dated December 3 on the above subject, attached is a copy of our inspector's report of investigation relating to testimony of Bailey Santistevan.

The first three products are currently registered for sale in California, but the Ortho fly killer containing lindane and TEPP has not been registered for at least 10 years. The manufacturer ceased marketing this product when TEPP was placed on the injurious materials' list.

You will note that the owner of the pharmacy was at fault for not requiring Mr. Santistevan's signature on the poison register at the time of purchasing the ant paste.

For your further information attached is a photocopy of the label for the new bug fog insecticide containing 12 percent DDT.

STATE OF CALIFORNIA MEMORANDUM

December 21, 1964
Los Angeles

From: Department of Agriculture, L. Eskenazi
Field Crops & Agricultural Chemicals

Subject: Economic Poison Samples
12/10/64 memo VM-GDB, Economic Poison Samples

As requested in Mayhood's memorandum, on 12/15/64 I called on Mr. Bailey Santistevan owner of Crown Chemical Company, Holtville. The call was made with regard to the pesticides mentioned in Santistevan's testimony before the Senate Factfinding Committee on Agriculture in El Centro in June 1964.

Santistevan explained that he had been invited to testify before the committee and on 6/12/64 he purchased over the counter several pesticides which he considered to be extremely dangerous. He further explained that he, as owner of a chemical company and as a structural pest control operator, is required to comply with many regulations in regard to pesticides and yet anyone can go into a retail store and purchase these very dangerous materials. He wanted it made clear however that this was in no way a criticism of the Department of Agriculture. He said he understands the problems of our agency but he had wanted to bring the matter to the attention of the committee.

The products purchased by Santistevan were examined and they consisted of the following:

New Bug Fog Insecticide, a candle-type device containing 12% DDT, manufactured by Hanksraft; Reedsburg, Wisconsin.

Sodium Fluoride Merck Tinted, containing 95% sodium fluoride, manufactured by Merck & Co., Inc.; Rahway, New Jersey.

Kellogg's Ant Paste, containing 3.8% total arsenic as metallic, manufactured by Kellogg's Insecticide Co.; Los Angeles.

Ortho Fly Killer, containing lindane and 4.7% TEPP, manufactured by California Chemical Co.; Richmond, California.

Santistevan said he bought the above products from Parker's Pharmacy, 102 Fifth Street, Holtville. He did not have to sign a poison register for the arsenic ant paste nor was he asked for his permit to buy the TEPP fly killer. He also brought to my attention Stearn's Electric Brand Paste, and economic poison containing phosphorous 3%, manufactured by Stearn's Electric Paste Co.; Chicago, Illinois. This too, he said was dangerous. He thought that these same items were probably offered for sale in several other retail outlets.

I then called on Mr. Myrl Parker, owner of Parker's Pharmacy. He said that many of the materials on his pesticide shelf had been on hand for several years including some of those purchased by Santistevan. He said that he was not aware a permit was required for purchase of TEPP; and he said that the sale of the arsenical ant paste without requiring the purchaser to sign a register was "one of those things that got by."

Official samples were taken of the following materials:

1. Bug Fog Insecticide; Hankscraft, Inc. LE-1794.
Certificate of registration shows it should read HANKSCRAFT BUG FOG INSECTICIDE.
2. Kellogg's (the original) Ant Paste; Kellogg Insecticide Co. LE-1795.
3. Sodium Fluoride Merck Tinted; Merck & Co. LE-1796.
4. Stearn's Electric Brand Paste; Stearn's Electric Paste Co. LE-1797.

None of the Ortho Fly Killer could be found, but Parker said that in September 1964 he had had his employees clear out several pesticide items which were dumped and buried and he believed this product was among them.

Several drugstores, feed stores and livestock supply stores in Holtville, El Centro and Brawley were then inspected, but not a one of the items in question was found on their shelves.

Exhibit E

STATE OF CALIFORNIA
OFFICE OF LEGISLATIVE COUNSELSacramento, California
December 22, 1964Honorable Virgil O'Sullivan
P.O. Box 427
Williams, California

PESTICIDES—#7709

Dear Senator O'Sullivan:

QUESTION NO. 1

You ask us if it is constitutional for the Legislature to enact a statute which would make it unlawful for anyone to use a pesticide on any food or fiber crop other than in the manner specified on the label or on the printed directions delivered with the product.

OPINION NO. 1

Yes.

ANALYSIS NO. 1

The scope of legislative power to enact laws is only limited by restraints found in the Constitution, and unless a denial is found therein, the law will be valid (see *Dean v. Kuchel* (1951), 37 Cal. 2d 97). We have not found any constitutional limitation that would prohibit the Legislature from enacting such a statute.

As we understand the proposed statute, private business interests will determine the scope of the pesticide directions. We think the courts would treat the private determination not as a nondelegable legislative act to a private party, but as a prerequisite for the legislative act to take effect (see *Scovill Mfg. Co. v. Skaggs Pay Less Drug Stores* (1955), 45 Cal. 2d 881). The Legislature itself determines that a violation of the pesticide directions is a crime while participation by private interests is only in formulating the directions.

We note that the Legislature in the area of livestock remedies (Ch. 7B (commencing with Sec. 1095), Div. 5, Ag.C.) has made it unlawful to use any livestock remedy except in accordance with the instructions for use provided with the remedy (Sec. 1099.4, Ag.C.). However, the livestock remedies, including the instructions for use, are required to be registered with the Director of Agriculture (Secs. 1096 and 1096.7, Ag.C.), and the director is required to refuse registration if he finds that the instructions for use do not contain adequate warnings against use in those conditions, whether pathological or normal, under which its use may be dangerous to the health of livestock, or against unsafe dosage, unsafe duration of use, or unsafe methods of administration (Sec. 1096.5, Ag.C.).

Exhibit F

REPORT SAYS ALL MILK HAS PESTICIDE TRACES, DISCOUNTS PERIL

By GEOFFREY GOULD

WASHINGTON—AP—An exhaustive study of pesticides by the agriculture department discloses “no milk available on the market today, in any part of the United States, is free of pesticide residues.”

The report cites interviews with many scientists in the field, both government sponsored and private. It adds that these authorities said “there is no evidence that minute traces of any pesticide in milk have either an immediate (acute) or cumulative (chronic) ill effect of human health.”

Furthermore, the report says, federal and state health authorities have determined that “samples of mothers’ milk contained amounts of pesticide residues far in excess of the pesticide residues permitted by the F.D.A. (Food and Drug Administration) in cows’ milk.”

The report says breast fed babies are ingesting these residues in their mothers’ milk because the latter ingest foods which legally contain pesticide residues.

Yet it adds that “the study concluded that there were no ill effects on the babies as a result of the pesticide residue in the mothers’ milk.”

Tolerance Set at Zero

The government set tolerance for pesticide residues in cows’ milk shipped in interstate commerce is zero.

But the scientists told the government investigators “it is scientifically impossible to guarantee that any product is absolutely free of some pesticide, as it is only possible to state that a product does or does not contain more than a certain proportion of a pesticide.”

Part of the problem is that more sophisticated testing techniques have been developed, so that products which formerly tested zero for pesticide residues are now found to contain minute amounts.

The report says:

“Most scientists and representatives of the American Medical Association, industry, and federal and state governments interviewed by the staff questioned F.D.A. policy in establishing tolerances. They advised that F.D.A. regulations for establishing tolerances for residues in certain foods are unreasonable and inconsistent.”

The milk situation is cited as an example.

The report was included with testimony of Secretary of Agriculture Orville L. Freeman before a house appropriations subcommittee March 19 and was made public today.

Overall Review

The report is in the nature of an overall historical review of the pesticide problem and traces much of the public concern to the book *Silent Spring* by the late Rachel Carson. Miss Carson in the book projected a time when no bird would sing or insect chirp because they had been poisoned by manmade pesticides.

The report attempts to "debunk" the Carson book in this manner: "The staff was advised, by scientists and by physicians, that the book is superficially scientific in that it marshals a number of accepted scientific facts. However, it is unscientific in (A) drawing incorrect conclusions from unrelated facts and (B) making implications that are based on possibilities as yet unproved to be actual facts."

The report details major pesticide incidents over the last 10 years, such as the cranberry scare of 1959; contamination of milk from sprayed alfalfa in Maryland, Pennsylvania and West Virginia in 1964; cauliflower on Long Island, in 1963; cheese in Utah in 1963; and the Mississippi River fish kills of 1963.

Reassurance Given

The report concludes that "there is no evidence to date that humans are adversely affected by long term ingestion of the minute traces of pesticides present in raw and processed foods.

"The greatest cause of public apprehension is that traces of pesticides may produce cancer. The cancer problem has changed little since the advent of synthetic pesticides."

In a February 3rd appearance before a different appropriations subcommittee, Food and Drug Commissioner George P. Larrick acknowledged criticism of the pesticide tolerances set by the FDA and said it has asked top scientists for advice.

"I don't know what they can come up with," Larrick said. "It may very well be that additional legislation in this field is needed."

Exhibit G

U.S. DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Food and Drug Administration—Washington, D.C. 20204

Pesticide residues are detectable in the American food supply by today's highly sensitive analytical methods, but the amounts of such residues are insignificant from a health standpoint, according to findings announced today by the Food and Drug Administration, U.S. Department of Health, Education, and Welfare.

F.D.A. made public the results of the latest of its continuing "total diet" studies undertaken to discover the quantity of pesticides in all kinds of food and drink consumed daily. Through the tests F.D.A. is able to evaluate broadly the results of all efforts made to keep pesticide residues below legal tolerance levels. The studies also provide clues as to which pesticides may be getting into the food supply in excessive amounts.

Pesticide levels found in the test samples were generally less than 1 percent of the safe legal tolerance. Many of the most commonly used pesticides were not found at all.

The F.D.A. studies are made on market-basket samples collected from grocery stores in three major U.S. cities. Groceries selected are representative of those that would be in a nutritionally satisfactory diet of a hypothetical average 16- to 19-year-old boy—biggest eater in the U.S. population.

Unlike previous total diet studies, the 1964 tests were made on composite samples representing 12 major food groups, for example, root vegetables, dairy products, and grain and cereal products. In previous years the contents of the market-basket sample were blended together in a single composite. The effect of the new procedure is to increase the sensitivity of the tests, and make their results more significant. Results of the 1964 tests showed pesticide levels lower than in the earlier studies.

All pesticides detected were at very low levels. Twenty-four different chlorinated pesticide residues would have been found had they been present but only seven were detected in tested samples. In 1963, comparable tests for 20 chlorinated pesticides detected nine kinds. No one sample contained all of the kinds found in either year. Tests made for organophosphate pesticides in 1964 detected no residues at the established detection levels; eight kinds were found in the 1963 tests.

The diet samples were also examined to detect herbicides and fungicides. These results were similar to those reported in previous years. Of 72 composites tested 13 contained detectable residues which were well within safe limits established for individual crops.

Method and Details of 1964 Study

The 1964 study was conducted in three F.D.A. district laboratories, representing northeastern, midwestern, and western regions of the United States. It covered foods being marketed in Boston, Kansas City, and Los Angeles. In each of these cities F.D.A. inspectors purchased a typical market-basket sample of many kinds of fruits, vege-

tables, dairy products, meats, and other commodities. These were prepared for the table by trained dieticians to eliminate variations in food preparation practices. Composite samples of the prepared foods representing 12 major food categories were then tested in the F.D.A. laboratories.

Following are the residues reported:

DDT, and its homologues (DDE and DDD), were most frequently found but at low levels ranging from 0.001 ppm (parts per million) to a maximum of 0.396 ppm.

Seven other chlorinated organic pesticides were found in the 72 commodity composites examined. Lindane was found in 11 composites at levels 0.001 ppm to 0.210 ppm. Heptachlor epoxide was found in 10 composites at levels from 0.002 ppm to 0.057 ppm. Dieldrin was found in 10 composites at levels from 0.003 ppm to 0.033 ppm. BHC was found in four composites at levels from 0.015 ppm to 0.141 ppm. Aldrin was found in three composites at levels from 0.001 ppm to 0.005 ppm. One composite contained 0.166 ppm of Kelthane. One composite contained 0.011 ppm TCNB (tetrachloronitrobenzene).

The chlorinated residues in the dairy products, meat, fish and poultry, and oils, fats and shortening were determined on the fat basis and would be much lower if the entire weight of the food were considered.

No organic phosphates were found in any of the 72 composites.

Four composites were found to contain 2,4 D at 0.03 ppm or less. Two composites were found to contain 0.01 ppm and 0.02 ppm PCP (pentachlorophenol).

Four composites contained residues of cabaryl ranging from 0.19 ppm to 0.42 ppm. Two composites contained dithiocarbamates at 0.4 and 0.5 ppm.

Bromide residues were found in 56 composites, with residues above 30 ppm in only four composites.

No arsenic residues were found at level above 0.1 ppm.

In addition to the total diet studies, F.D.A. laboratories continuously test individual samples of fruits, vegetables, and other foods for pesticide residues. In the past fiscal year the administration's laboratories analyzed 32,678 samples of raw agricultural commodities for excessive residues. Only 34 lots of high-residue commodities had to be seized in federal court actions. Under F.D.A.'s system of reporting high-residue lots to both the owner and to state officials, some other illegal lots were not shipped.

Pesticide tolerances are established on the basis that the commodity will be safe to eat as it is shipped to market. Normal trimming, peeling, washing, and cooking substantially reduces the amount of pesticide residue actually consumed.

O

REPORT TO THE LEGISLATURE
PART I
by the
SENATE FACTFINDING COMMITTEE
ON
BUSINESS AND COMMERCE

Members of the Committee

ALAN SHORT, *Chairman*

STAN PITTMAN, *Vice Chairman*

"J" EUGENE McATEER

LEE M. BACKSTRAND *

WALTER W. STIERN

LUTHER E. GIBSON

JOHN F. McCARTHY

* Deceased

W. W. MONTGOMERY, *Committee Consultant*



Published by the
SENATE
OF THE STATE OF CALIFORNIA

GLENN M. ANDERSON
President of the Senate

HUGH M. BURNS
President pro Tempore

JOSEPH A. BEEK
Secretary

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LETTER OF TRANSMITTAL

May 3, 1965

HON. GLENN M. ANDERSON, *President*
and Members of the Senate
Senate Chamber
State Capitol
Sacramento, California

Gentlemen :

Attached hereto is the report of the Factfinding Committee on Business and Commerce. The report contains a summary of the hearings held by the committee during the interim period from August 1, 1963, to December 31, 1964.

This report incorporates the views of the state agencies involved as well as private organizations and individuals as to those matters of particular concern to them.

Respectfully submitted,

ALAN SHORT, *Chairman*
LUTHER E. GIBSON
JOHN F. MCCARTHY
STAN PITTMAN, *Vice Chairman*
J. EUGENE MCATEER
WALTER W. STIERN

BREAD SIZES AND WEIGHTS

Senate Bill 1362



BREAD SIZES AND WEIGHTS

Senate Bill 1362

Senate Bill 1362 was introduced in the 1963 Session of the Legislature and referred to the Senate Factfinding Committee on Business and Commerce for study. In essence, the bill restores the old standards that provided for a 16-ounce loaf of bread and a 24-ounce loaf, or 1 pound and 1½-pound loaves, respectively. These sizes have been traditional throughout the United States. In addition to the 1-pound and 1½-pound loaves, the bill also permits the baking of a ½-pound loaf.

This legislation was introduced at the request of consumer groups throughout the state. Bread weight standards were established by the State Legislature in 1921 and amended in 1939 and 1947. The present weight standards were introduced in 1942 as a World War II measure designed to conserve wheat. In 1947, at the termination of World War II, the Legislature enacted the wartime regulations into California law with minor change. These present regulations provide for a standard loaf that weighs not less than 15 ounces nor more than 17 ounces, and a standard large loaf that would weigh not less than 22½ ounces nor more than 25½ ounces. These weights are subject to check only during the 24-hour period after baking. There are special provisions for inspection and weighing, and 10 loaves are tested for overall weights. The 10 loaves must average out to the tolerance permitted within the law. This procedure differs from the usual weights and measures procedures in use for testing other commodities throughout the state.

At the committee hearing, held in Sacramento on Thursday, April 9, 1964, the following parties appeared in support of SB 1362: Helen Nelson, Consumer Counsel of the State of California; Wilda Huffman, representing the Association of California Consumers; Betsy Wood, representing the Berkeley Consumers Co-op; Arthur Sealy of the Contra Costa Weights and Measures Department; Don Weinland; Assistant to the Director of the State Department of Agriculture; William Kerlin, Chief of the Bureau of Weights and Measures of the Department of Agriculture; Mrs. John Miller, Jr., California State Division of the American Association of University Women; Herman Grabow, of the California State Grange; and Senator Carl Christensen, author of the proposed legislation.

Appearing in opposition to the bill were Mr. Wesley Sizoo, attorney for the California Bakery Employers Association, and Merle Goddard, executive director of the California Grocers Association.

Testimony by Mrs. Helen Nelson, Consumer Counsel, indicated that California consumers purchased bread at a distinct disadvantage as compared with consumers in neighboring states. She stated:

“The weight of a loaf of bread established by law, and the bread law in California, from the consumer point of view is inferior to that of the neighboring states of Nevada and Arizona, as well as that of many other states in the country. We would hope that

your committee would recommend to the Legislature that we end the 15-ounce loaf of bread in California. We have brought some examples here to show you the difference between our bread size or weight in California and in the neighboring states, and maybe I can do this best by showing you some of these things.

Let me say at the outset that there are two; we have established two standard loaves of bread, fundamentally the pound and the pound and one-half. This is in order that there will not be a proliferation of sizes, and so that people will be able to compare the prices of bread, and to keep deception in bread to a minimum. This is a practice in practically all states. Here are three loaves of bread, one from Nevada, one from Arizona, and one from California. The loaf from Nevada bears the statement of a pound, and, as you will see, it costs 27 cents. The one from Arizona is a different company and is labeled one pound, and incidentally this particular one costs 26 cents. The California loaf, which is baked by the same baker as this Nevada loaf, is labeled 15 ounces and sells for 27 cents, the same price as the pound loaf by the same baker in Nevada. So, very simply, we think we ought to get a pound in California."

It is interesting to note that during their presentation to the committee while the 1963 Session of the Legislature was convening, the industry insisted that broad weight tolerances were necessary. Mrs. Nelson indicated that the same bakeries make sweet dough products such as cakes, sweet rolls, etc., and that these are packaged in precise ounces and are subject to the same rules and regulations as other commodities tested by the scalers of weights and measures. As far as she was able to ascertain there are no violations, and bakeries are well able to operate within the policies set forth by the Department of Agriculture regulations. She continued:

"This piece of Hostess pound cake is 11 ounces, so apparently the company that may profess to have trouble hitting a pound on bread seems to be able to hit 11 ounces when they are baking pound cake."

Testimony centered around the so-called elongated, fluffed, or ballooned loaf of bread which has become the major bread item on the retail market. It was pointed out that to prevent shoppers from becoming confused, the neighboring states of Arizona and Oregon have taken steps to insure the shopper's being able to distinguish between a pound loaf of bread and the pound-and-one-half loaf. These states require the affixing of a red label with the designation "balloon loaf" whenever a standard loaf of bread is whipped, fluffed, or ballooned. With this protection the customer is not misled, if he does prefer this type of bread.

In the course of her presentation Mrs. Nelson showed the committee various loaves of bread produced by the same baker and pointed out the disparities not only in weight but in price. The so-called elongated loaf or balloon loaf, which is the same weight as the standard 15-ounce size, sells for 31 cents, or 4 cents more than the regular 15-ounce loaf. In the State of Oregon the same baker sells the one-pound balloon loaf

for 27 cents, or 4 cents less than the similar loaf in California, which weighs only 15 ounces.

Testimony indicated that in many instances bakers doing business in California are baking bread in this state and shipping to neighboring states wherein the prices and weights are different from those obtaining in the State of California. A bakery in Sacramento bakes bread for both local and Nevada consumption; loaves weighing 16 ounces are transported to Nevada and sold there for the same price as the 15-ounce loaf of bread sold in California. The Oregon situation is even more aggravated, according to additional testimony by Mrs. Nelson:

"I would like to show you this. Now here, in Oregon, is a standard loaf of bread. Here is a loaf by the same baker that weighs the same amount which has been fluffed or whipped or whatever you want to call it. Now, the bakers tell us that there is a market for this balloon loaf. Some people like a fluffier loaf of bread, so the Oregon answer for this is 'O.K., let's just make sure those people who want it know what they are buying.' So they label their loaf a balloon loaf. Now you will see that these two loaves in Oregon sell for the same price. This one costs 27 cents, and this one costs 27 cents, and next to the label is the balloon bread designation, so as it sits on the shelf there can be no doubt about it.

"Now the same loaf of Wonder bread in California, which is ballooned, sits on the shelf at 31 cents, with no designation at all to alert the customer to the fact that it is a 15-ounce loaf of bread that has been ballooned. Now it would appear that where the customer is aware of it there is a choice. The bakers are putting no more dough into this; it sells at the same price. In California the housewife is paying 4 cents a pound more for the same amount of bread as the housewife in Oregon is."

Senator Pittman: "May I ask a question? The same number of slices?"

Mr. McKenzie: "The California loaf had 20 slices including the ends, and the Oregon had 21."

There was further philosophical discussion relative to the need for specifics and standards for foods:

Mrs. Nelson: "Basic foods like milk, milk for home use, is sold by the quart and two quarts, and butter the Legislature or regulation in most every state specified must be sold as pounds, halves, or quarters. These basic foods are traditionally . . . and I think very wisely the Legislature specified the quantities so that prices can be compared and cheating and deception kept to a minimum. Therefore the sizes of the loaf of bread which have been permitted in the past have been kept to the minimum, these two basic ones, really, for retail use. Now the question occurs as to whether or not the changes in the family composition . . . we should review these and perhaps authorize another because any other unauthorized size is illegal."

There has been a great deal of discussion to the effect that the present bread sizes are confusing to the customer, and that he actually does not know what he is buying. There is a feeling that perhaps comparison

cannot be made, that people in this hustle and bustle age do not take the time to make comparison, and that it is the Legislature's duty to be protective. The testimony of Mrs. Betsy Wood of the Berkeley Consumers Co-op was most interesting. This co-op represents 30,000 families in the Berkeley, Walnut Creek, El Cerrito and Castro Valley areas. Mrs. Wood has worked as a part-time home economist for the co-op.

Mrs. Wood: "I have never found one who knew the California bread weights or that the big one is 50 percent larger than the small one unless we had recently told them. It is an easy thing to forget because these are confusing numbers. It took me four years of consumer education work before I realized this relationship and I'm ashamed to say that, too. I have been taking a course at the University of California Medical School and this last Monday we distributed a sheet of questions to—these are mostly hospital dieticians. We asked them—well, the sheet reads: 'There are two standard sizes of bread for sale in California retail stores. The minimum weights of these breads are ----- and -----.' Then the next is 'How much more does the larger loaf weigh than the smaller loaf: 20 percent more, 25 percent more, 33½ percent more, 40 percent more, 50 percent more, 75 percent more, 100 percent more.'

"Some people didn't hand in sheets, but we received 56 sheets back. Three people out of 56 got all answers right, in other words, the two weights and then the relationship between the two. Two more knew the weights but they missed the relationship. Sixteen said the weights were 1 pound and 1½ pounds. There were 21 other answers and 14 blanks indicating they couldn't even begin to guess at any of these."

The whole question of confusion in costs was brought out vividly in Mrs. Wood's testimony:

Mrs. Wood: "I would like to give an example of what it might cost a family in terms of confusion when they cannot compare prices or they just do not know how to compare prices.

"I brought a little bread, too. These two breads are the same. The brand makes no difference. This is the whole wheat bread, it is 15 ounces, and it cost 33 cents. This is the large loaf, 22½ ounces, and it cost 37 cents. Now, to get 22½ ounces of bread at this rate would cost a person 49½ cents. In other words, to get the equivalent of a large loaf it would cost 49½ cents. This would be a rather expensive bread. Most people wouldn't buy it, and yet they are paying the equivalent when they pay 33 cents for this one. If a family of four used this or the equivalent of this, in another example with the same kind of relationship, if a family of four buys six—and this would be a reasonable number, even a little low if you have active children—six small loaves a week, it would cost \$1.98 for six of the 15-ounce loaves at 33 cents. Now, you get the same amount of bread by buying two-thirds as many loaves or four loaves a week of the large loaf, and that costs \$1.48 for the same amount of bread."

Senator Gibson: "Different quality?"

Mrs. Wood: "No, as far as I know—no. I haven't called the company, but I have tasted both of these. There is nothing on the label to indicate any difference in quality."

There was further discussion as to the confusion in price comparison.

Mrs. Wood: "No, I am saying that if the bill that is under consideration is passed and this were clearly labeled 1 pound and this clearly labeled $1\frac{1}{2}$ pounds, that a housewife could compare and decide how much she wants to pay for the convenience of the smaller loaf."

Senator Gibson: "May we ask a question, what is that labeled now, presently?"

Mrs. Wood: "This label says 1 pound $6\frac{1}{2}$ ounces, and this says 15 ounces. Perhaps you would all go home and give your wives this questionnaire and see if they know what the small loaf and the large loaf is. My argument is that with the weights at 15 ounces and 1 pound $6\frac{1}{2}$ ounces, our educational level or something is not high enough for people to be able to tell that the big one is 50 percent more than the little one. I'm amazed at this, but this is my experience and I keep asking this question. I think they should have the choice, but if the bread is labeled clearly at 1 pound and $1\frac{1}{2}$ pounds, then the choice would be more rational than paying one-third more for this per pound. That is a lot to pay. . . .

"My feeling is they should know they are paying 50 cents a week extra or the equivalent and would be able to figure it out, or it would cost \$2.17 a month extra, or \$26 a year extra just for the difference in the small and the large loaf.

"Of course, bread is a staple in the diet of most people, and people who have low incomes and people with large families and many growing children eat more bread than others. I think these people need weights they can understand. As it is now, it is hard to calculate, but I would say at least 90 percent of the people cannot compare the standard loaf and the large loaf.

"If this bill becomes law and if the weights are clearly labeled, I predict that most people will learn how to compare 1 pound and $1\frac{1}{2}$ pounds and if there is a half-pound they can do that."

The previous industry argument and testimony to the effect that weight tolerances were necessary rendered the testimony of Mr. Kerlin, State Chief of the Bureau of Weights and Measures, of notable interest.

Mr. Kerlin: "We just took from our files and from our records the reports that the Sealers send us of the bread that they have weighed over the past few months. We did an analysis of what we found on these 60 reports so that the committee would have the benefit of what is actually occurring. Now, as far as weight deviations in loaves of bread, 73 percent of all of the loaves weighed during that period were controlled by the industry within plus and minus one-fourth of an ounce. In other words, they were someplace within this 15- and 17-ounce range. This weight was within one-fourth of an ounce of each other all the way through. Twenty-seven percent were not. Five percent were controlled

within plus and minus one-half ounce. We thought this would be interesting for the committee for their future study.

Chairman Short: "What was the 27 percent?"

Mr. Kerlin: "The 27 percent were within the range, present range of plus and minus one ounce or you might say the two-ounce range. Let's put it that way, because there is a two-ounce range between 15 and 17 which now is permitted and these 27 percent were within that area."

Mrs. John Miller, Jr., spoke on behalf of the California Division of the American Association of University Women, which has a total membership in California of 25,836.

Mrs. Miller: "The California State Division of the American Association of University Women urges and supports California legislation on bread packaging and labeling which will restore to the consumer the traditional rights of freedom from deceptive labeling and packaging and the ability to purchase food in pounds, pints, quarts or even fractions thereof.

"Traditionally, bread—as with other foods—has been sold in even measures. A loaf of bread weighed 1 pound or $1\frac{1}{2}$ pounds. During a wheat shortage shortly after World War II, California bakers were given temporary permission to sell a slightly lighter weight loaf—a minimum standard loaf of not less than 15 ounces, and a large loaf of not less than $22\frac{1}{2}$ ounces were permitted.

"Recent developments in the breadmaking process have produced a loaf seemingly larger, but in reality weighing but the minimum 15 ounces. This process is known as 'ballooning,' or 'batter whipped,' or some other name meaning nothing more than that it is baked in a larger pan with more air locked into the same weight loaf. Such a loaf sells for more than the standard small loaf. While this may make for a lighter, softer loaf of bread, the housewife should know that she is paying more for bread weighing the same as the smaller sized 15-ounce loaf."

A similar statement was offered by Mr. Herman Grabow, speaking on behalf of the California State Grange.

Mr. Grabow: "I am Herman Grabow, legislative representative for the California State Grange, and while we haven't taken up this specific thing, the things that the Grange stands for are along this line, that we believe that everybody should be very easily informed to identify the amount they are buying whether it is gallons or pounds, like on the milk, when we sell, we sell by pounds of milk, pounds per hundred, and to go back to this pound exact amount, it seems to me I remember that Shakespeare wrote a play about a pound of flesh and it couldn't be more or less. Our position is this, that today with the automatic machinery we have, that tolerances should be to a bare minimum because we know that in the butter machinery where we have a pound it is almost exactly a pound, and therefore we are in favor of this bill."

There was further discussion relative to bread baked in California and shipped out of the state:

Senator Christensen: "Perhaps for the orderly presentation, there was a suggestion or Senator Stiern asked a question relative to certain testimony that Mrs. Nelson may have given before the standing committee. Perhaps Mrs. Nelson would like to respond to that question at this time."

Mrs. Nelson: "We did present to the standing committee during the regular general session last year two loaves of bread from the same baker, one of which has been bought locally here in Sacramento and one which I bought up in Tahoe City or across the border in Nevada, a pound loaf up there, 15 ounces here, the same price."

Senator Stiern: "Made by the same baker and made in the same bakery in California?"

Mrs. Nelson: "Yes."

Senator Stiern: "In other words, this bakery produced a loaf of bread in a Sacramento bakery with the prevailing label?"

Mrs. Nelson: "I believe it was a San Jose bakery."

Senator Stiern: "A San Jose baker. Correct me if this is wrong, a San Jose baker baked two loaves of bread, one was a 15-ounce loaf and one was a 16-ounce loaf. They were both labeled at the same price and the 16-ounce loaf was transported as far as the Nevada line and sold in Nevada at the same price to the Nevada housewife as the loaf would have been sold to the housewife in San Jose, and the San Jose housewife received 1 ounce less of bread but paid exactly the same price as the 16-ounce loaf in Nevada. The labor is the same in San Jose, the transportation cost was on top of the one that went to Nevada. Am I confusing you? I want for the record of this committee the same thing we had on the other committee."

Mrs. Nelson: "That is correct. We traced the loaves of bread to the same bakery. We can only assume, I mean the judge has left and we can only assume that it had to be transported to Nevada. I can't prove it."

Senator Stiern: "The reason I made the point is because Senator Gibson was asking a former witness if they knew what the labor problems were between the various states and I thought this was an illustration where the labor problem was the same on the two loaves of bread plus the fact there was a transportation cost on the one."

The California Bakery Employers Association, represented by Mr. Wesley Sizoo, was obviously in opposition to the proposal. In answer to a question by Senator Stiern, Mr. Sizoo replied that it was a fact that bread is produced in California, shipped to Nevada, and sold there at a price similar to that asked for a comparable loaf in California. The reason for this, according to Mr. Sizoo, is that the bakers have no way and seek in no way to regulate the retail price of bread on the grocers' shelves, and that the Federal Trade Commission and the Robinson-Patman Act would prevent them from so doing. In the view of the bakers, bread prices are controlled by the retail grocer, and not by the wholesaler. Questioned as to how bread prices were determined on the wholesale level, Mr. Sizoo offered the opinion that testimony along this line would be in violation of federal regulations.

Senator Pittman inquired as to the price tags on bread:

Senator Pittman: "May I ask a question? Just while you are traveling along that line, these stamps, are they put on in the factory, these price stamps? There is a red stamp."

Mr. Sizoo: "At the plant."

Senator Pittman: "Does the wholesale grocer tell you, that is the manufacturer, 'I want this price put on'? You are talking about price; I am just asking for information."

Mr. Sizoo: "I'm sorry, Senator, but I can't answer that because I am not involved with the merchandising phase of it. Again, I question the legality of the Robinson-Patman Act in this type of discussion. I do submit without any equivocation that the baker has and can have no control over the price at which the retail grocer sells this product."

Senator Pittman: "Well, then, somebody should explain to me at what point these red seals go on."

Senator Backstrand: "You see 31 and 27 on them. What Senator—excuse me, Mr. Chairman, what Senator Pittman is asking is at what point and where do those labels get on there?"

Mr. Sizoo: "Well, they are put on generally at the plant, but I would prefer—now, we are getting into a technical area of pricing and dealing with the retail grocer, and I would prefer to defer to one of the gentlemen from the wholesale bakers who are present today and would be glad to take up that aspect of the problem."

Senator Stiern: "Because of a phrase you used, Mr. Chairman, I would like you to know I am not accusing anybody of shady dealing. I am asking why does the Reno lady get the bonus of one ounce. Why does the Nevada housewife get the bonus of one ounce over the California housewife? We are not talking about shady dealings. Why does the one lady in Nevada get an advantage?"

Mr. Sizoo: "In what sense do you use the word 'bonus'?"

Senator Stiern: "Sixteen ounces for the same price the California lady gets 15 ounces. That is a one-ounce bonus for the same labeled price on the end of the loaf. The loaf is the same labeled price."

Mr. Sizoo: Is your question then, sir, why is the lady purchaser in Nevada getting more for her money per ounce in Nevada than in California? Is that the question?"

Senator Stiern: "Well, she gets one ounce more for her money. If a San Jose baker sends a loaf to Reno and sells it to the lady for the same price as the lady in San Jose gets a loaf of bread which is one ounce less weight, then the Reno lady has a bonus of one ounce."

Mr. Sizoo: "We are assuming first of all that the statement made is a fact. Again, if we were in court, we would have to establish on what day, at what store, and with what frequency, if any, these loaves were purchased and by whom at a Reno location."

Some discussion over logical terms followed, in an interchange between Senator Stiern and Mr. Sizoo:

Senator Stiern: "You don't deny she got 16 ounces in Reno where the San Jose lady got 15 ounces?"

Mr. Sizoo: "This is a possibility."

Senator Stiern: "Yes, a possibility or a fact?"

Mr. Sizoo: "No, a possibility. Now, we are getting into another area which I was going to discuss later and that is the aspect of the bill which concerns itself with the tolerance between 15 and 17 ounces. Mr. Kerlin has also testified in effect, I think, on behalf of the industry by saying that so few loaves are found to be below the 15, most average in the 16 area so it is roughly the same."

Senator Stiern: "I'm not a lawyer and I am not—I don't think it is a possibility, I think it is a fact that the law says in Nevada a loaf weighs 16 ounces, and it is a fact in California the law says it is 15 ounces. This is not a probability or possibility, this is a fact."

There was more discussion about bread being baked in California and shipped to Nevada, and the discussion got far afield. In order to bring it back to a focal point, Chairman Short inquired:

Chairman Short: "Why do they get a better deal in Nevada?"

Mr. Sizoo: "We don't think they do, sir. How do you define a better deal, in what sense is this used?"

Chairman Short: "You don't have to be a lawyer to answer this. The loaves of bread cost the same and one is heavier, and we have to take into account the distance; the cost of labor is the same because it is made in one location. So why do they get a heavier loaf of bread, which is a better deal because there is more dough, there is more bread there."

Mr. Sizoo: "And for the same price?"

Chairman Short: "For the same price."

Mr. Sizoo: "There is one fallacy in the statement which the Consumer Counsel made and that is the assumption that the labor cost is the same. As a matter of fact, that is a gross misstatement. We are just recently concluded negotiations on behalf of those bakers who ship into Nevada with the Teamsters Union Local 533. Nevada is a right-to-work state and the wage rates, the distribution cost in Nevada is substantially lower than that governing the distribution of bread in California, all of which are under master agreement. The baking industry has negotiated—we are not complaining or blaming the labor unions for anything. We have negotiated master contracts with them and we are living up to them, but our facts remain our labor costs are grossly higher in California than they are right across the border in Nevada and the big cost is not in production in this sense. It is in distribution, the commissions paid for distribution, overtime."

Chairman Short: "Is this your answer? I'm waiting for it. Why do they get a bigger loaf of bread shipped out of San Jose at the same price as the purchaser in San Jose pays for it?"

Mr. Sizoo: "In the first place, none is shipped out of San Jose, just to be technical, but there are some producers in Sacramento or Stockton and sent to—"

Chairman Short: "Say Sacramento or Stockton then. I think Senator Gibson answered it. He said because they want to do it that way. I think that is the answer."

Mr. Sizoo: "There are really two answers. There are a multitude of answers. I thought I had answered your question by saying (1) we don't agree the consumer is getting a better deal; (2) we can't control the price the grocer charges for the merchandise in Reno."

Senator Gibson: "I think it is not a very difficult question to answer. The fact that they require a 16-ounce loaf in Nevada, that is the first requirement of a loaf there, and that is number one. Now, if this bakery down in Sacramento desires to meet those conditions and send his bread up and sell it competitively, that is his business, and I think that is the answer."

Senator Stiern: "Mr. Chairman, I still would like the witness to answer yes or no or give an answer. Is it not true that the Nevada housewife gains a bonus of an ounce of bread in weight for the same money when both loaves are baked within California?"

Mr. Sizoo: "Here is the difficulty—the answer is no, and the reason is this, you said for the same money. We must in order to answer that question take a survey over a representative period of time, etc., etc. . . ."

Chairman Short: "Well, I think we can resolve this situation, because we have to proceed, by pointing out whether the wholesale price was the same, and so this would take care of the fluctuations that might happen in Nevada. If the wholesale price is the same to the purchaser in Nevada as it is in Sacramento or Stockton—"

Mr. Sizoo: "I will be glad to answer that. The answer to that, sir, is that first I don't know anything about the wholesale price, and secondly if I did, both federal and state law would prevent me from discussing it with you."

In discussing the situation with respect to the State of Oregon, the opponents of the legislation argued in their testimony that we are not taking all factors into consideration.

Mr. Sizoo: "Many factors were ignored in this pricing example, one of which is that one of the major mills in the entire west coast, Centennial Mills, is located right in the City of Portland. There are plants in Portland, and therefore the bakers can buy their flour practically next door and it is not shipped in. So this is just one more factor and again is why the rates in Oregon for both inside production people and distribution are lower in the State of Oregon than they are in California. . . ."

The industry opposed the legislation on the basis that it would remove tolerances contained in the present regulations:

Mr. Sizoo: "The present tolerance of 15 to 17 ounces has been in effect for a good number of years, as in this case Mrs. Nelson accurately stated the history of how the California law amended and how it came to its present form. It is in the nature of things

in this industry that the equipment which is used, and technically the term is the divider, is not so precise as to make possible the flat use of the term one pound or pound and a half. This tolerance is necessary. Now, it is not of course impossible to raise tolerances, or if we used the term one pound and one pound and a half, bakers obviously would have to increase the weight. This is not impossible, but to do so to comply with this bill would require anywhere from 5 to 7 percent ingredient increase and would increase the cost to the baker quite substantially, to a degree where the baker in the present narrow profit margin could not absorb this, and this certainly would not be a service to the consumer. We are very concerned about the fact that we must have this increased tolerance, this present tolerance, and that because of the ingredient cost would have to go into this. Bakers would just not be able to absorb this.

"Secondly, we feel that there is no problem here of misleading the public or as one of the ladies who testified suggested, I am not sure as we ended up whether she was accusing the industry of fraud or not. We were in sort of a nebulous area there, but if in fact fraud is accused to the industry, then the State Senate and also several state committees and state bureaus are parties to this fraud because in the last Legislature the industry cooperated with the state agency, the Sealer of Weights and Measures, who did us the courtesy to point out several deficiencies which in the department's judgment existed in the labeling of bread. We worked very closely with the department and as a result came up with some legislation which went through the committee without any opposition and with the full endorsement of the industry."

Mr. Sizoo was referring here to SB 377, a piece of legislation which provided that the printed type indicating bread sizes and weights must be in quarter-inch type, in letters contrasting in color with the wrapper, and must be conspicuously located on the wrapper. In discussing weight sizes, the industry insisted that there is nothing sacred about 14, 15, 16, or 18-ounce loaves of bread, so long as the public is not misled. They object to the notion of a half-pound loaf because they feel it is unnecessary.

Mr. Sizoo: "The half-pound loaf is one which would involve a great deal of expenditure to the industry in equipment and production changes and we don't think would serve a general consumer need.

"Present bread products and processing and refrigeration and freezing which the average housekeeper has, makes it unnecessary to be concerned with bread not being preserved over a matter of a couple of days. It can be frozen almost indefinitely and a refrigerator can keep it at least a week. Also it is misleading sometimes for people to think that if they were to buy a half-pound loaf the price necessarily therefor would be one-half the price of the one-pound or minimum of 15 ounces. This doesn't follow at all . . . the same production labor cost would be applicable, the same wrapping costs, the same or greater distribution costs. . . . So with all these other major costs which would remain fixed,

the difference in price . . . would be negligible. We have not taken the position in this industry that we are opposing any change for the sake of opposition alone . . . there is no point in changing the law unless there is a pressing need for the benefit of the consumer, which we do not see exists here. I might add . . . that if this bill were to become law . . . it would impose another and very gross cost upon the industry members in California. There was a tremendous cost to make the changes required by SB 377 which went into effect January 1 . . . and we think to have to do this again would impose a totally unwarranted and very gross added cost to the industry, which it is just not in a position to stand."

Discussion followed concerning the sizes and portions of bread products:

Senator Stiern: "You made a statement where you said there is nothing sacred in a 14, 15, or 16 loaf. In your opinion why would the larger bakeries object to making a 16-ounce loaf and selling it as such? What would be the objectionable feature to that?"

Mr. Sizoo: "The objectionable feature to that is, Senator, if we made a flat 16-ounce loaf it would require, in order to avoid any risk of noncompliance, baking or adding to the weight of the dough, and to add to the weight of the dough to comply with this bill as presently written would raise the cost anywhere from a quarter to a third-of-a-cent for a loaf of bread in many cases, and that profit just isn't there and the cost of this would have to come from somewhere."

Senator Stiern: "Well, what I was thinking, if the consumer would desire a pound or a pound-and-a-half loaf of bread and was willing to pay for the difference of getting the extra ounce, is there any particular loss then to the baker?"

Mr. Sizoo: "If the consumer were willing to pay the additional money, there might be, but we have to consider this, with each increase in price of bread comes an increase in consumer resistance and consequent decrease in bread consumption. For example, if we did add the extra ounce and did, as would be necessary, increase the price, consumption would fall down and the industry as well as its many thousands of employees in this state would suffer. And again, as long as the loaf is conspicuously labeled as it is now, we feel nobody is in any way being deluded or misled."

" . . . if I may add one thing more, statements were also made about the so-called balloon loaf, elongated or expanded loaf. This is suggested as something which is a snare and a delusion upon the public. We submit again that we have this 15 ounce very conspicuously labeled here and apparently the consuming public in California has raised no objection to this because this loaf constitutes 52 percent of the sales of white bread in this state. If that is so, certainly this is something which has not met with any consumer resistance . . . we don't think it is appropriate for us to deprive the people of this loaf."

The representatives of the baking industry were questioned extensively about the difference of the loaf of bread in Nevada and Oregon, and the nature of the pricing structure; they were most evasive and argumentative. At the conclusion of the noon recess the representative of the industry clarified and corrected his testimony.

Mr. Sizoo: "I wanted to answer a question which was posed this morning by Senator Stiern, it is a fact, if I correctly phrase your question, that the Nevada housewife receives a 16-ounce loaf of bread where the California housewife would receive a 15-ounce loaf. Yes, it is true. And if the same price were paid for each loaf in each case, then it would follow that she has received a more advantageous transaction there . . . I want just very briefly to state that the price and the conditions under which this bread is sold are governed by local competitive conditions and are not established by the baker.

"Secondly, we talked about the end seals. . . . I have checked this with the representatives of all major bakeries who are here and they have advised me that these end seals are in fact placed on the loaf of bread by the baker at the factory and are delivered to the retail grocery store with the end seal in place. The end seal is used by the baker at the request of the retail grocer . . . this is just the suggested price which as I have said has been established by the grocer through competitive conditions, competitive factors, but the grocer, of course, is not obligated to sell a loaf of bread to the consumer at the price indicated on the end seal. . . ."

There has been considerable discussion to the effect that bread companies give rebates to certain large users, and this practice is employed in a competitive manner either to secure new accounts or to destroy competition. In this connection, Senator Short inquired as follows:

Chairman Short: "It has been my experience in the past as far as milk is concerned, and other basic food items, that there is a rebate section in the Agricultural Code concerning milk products. Is there any comparable section as far as bread is concerned? If the grocer gets a rebate from a bread manufacturer, is there anything in the code that says this is illegal and finable?"

The chairman was answered by Mr. Merle Goddard, representative of the California Grocers Association:

Mr. Goddard: "The only thing that would apply would be the Robinson-Patman Act. If they give a discount to one operator, they would have to give it to the other. Specifically there is nothing with regard to either the grocer's cost or what he charges. It is strictly based on competition, and whatever he wants to charge."

The California Grocers Association, represented by Mr. Goddard, recorded opposition to the bill, and was specifically opposed to that provision which would permit a baker to manufacture a half-pound loaf. Mr. Goddard registered doubt that any public benefit would be derived from such a practice, for substantially the same reasons as those offered in prior testimony. The grocers association had an addi-

tional and more important reason for opposing the manufacture of the half-pound loaf:

Mr. Goddard: "If Section 19802.5 is added to law, more shelf space for bakery products in the supermarket would be required, and shelf space in the food store costs money. Another factor not to be overlooked is that placing half-pound loaves in food stores would have to increase the percentage of stale returns that are picked up by the bakers and this certainly adds to their cost."

Chairman Short: "Do you have any position as far as the 15-ounce loaf is concerned?"

Mr. Goddard: "Well, frankly, it doesn't affect the grocer generally, Mr. Chairman. However, I think looking at it realistically, that competition itself has pretty well taken care of the consumer as far as the value in California is concerned, and this is a personal opinion. I think if we require the bread sizes, the pound loaf to go to 16 ounces, you are certainly going to have a tendency there to increase cost to the consumer, and on that basis I would question the advisability of passing legislation particularly unless there is good sound reasons for it. If it can be determined that the customer is actually being gypped, cheated, or frauded . . . you have the responsibility of legislating."

Senator Stiern: "I would like to ask a question. . . . Why would you oppose a provision for a half-pound loaf when it would seem that it would allow people to manufacture it who wanted to, and grocers to stock it who wanted to, because I know of bakeries that would like to make a half-pound loaf, and what difference does it make to the grocer? He doesn't have to buy it or stock it, and the manufacturer does not have to manufacture it. It would only provide a provision where one could if they wished."

Mr. Goddard: "Officially and legally, Senator, you are perfectly right. But from the standpoint of competition, which we think is the greatest of all public benefactors, competition would say they would have to put it in. In a typical supermarket, you are running about three shelves and somewhere between 30 and 40 feet of shelf space for bread.

"Now to satisfy all these demands, satisfying them with the varieties that the consumer wants . . . in a great many cases it would certainly require an expansion of the bread space in a food store, and we don't think that this is in the public interest. . . . It is true that if you put this into law and authorize it, it is not mandatory, but the competitive forces would make it so."

Senator Stiern: "I am thinking of a family bakery and small bakeries who manufacture and put it right out of their own outlet. They certainly would not be manufacturing to put it on supermarket shelves. Therefore they would not be competitive to you and still they would not be denied doing this in their own individual small neighborhood bakery."

Mr. Goddard: "Conceivably you have a point there, Senator . . . we would certainly look at that possibly that we could come out with some sort of definition of a so-called retail baker . . . but I would think, too, that the first thing we would have to determine is whether or not there is really a public demand for it

... if there was a widespread demand on the part of the consumers for it, the grocers would hear about it . . . and we would probably come to the Legislature with that request, but it just doesn't exist."

Senator Stiern: "Well, you mean at the grocery level."

Mr. Goddard: "That's right."

Senator Stiern: "But it does exist in a small bakery and people come in asking for it and they cannot be provided with it because of this law."

Mr. Goddard: "I don't know from the standpoint of a small bakery, Senator."

At the suggestion of the chairman, subsequent meetings were held with Consumer Counsel Helen Nelson, Mr. Sizoo, counsel for the baking industry, and Committee Consultant W. W. Montgomery attempting to ascertain if there might be a possibility of working out some mutual solution to the questions raised at the hearing. The first such meeting was held in Sacramento, with a representative of the Continental Baking Company and Mr. Vince McKenzie, Advisor to the Consumer Counsel, also being present. This meeting was not very fruitful; discussion was largely a recapitulation of the material covered at the hearing in April. The industry representatives requested an opportunity to speak with their members, and suggested that a meeting with other industry representatives might yield more results. It was agreed that such a meeting would take place.

In December a meeting was held in San Francisco, attended by representatives of the major bakeries of the State of California, Consumer Counsel Helen Nelson, and Committee Consultant William Montgomery. Mr. Stanley Langendorf, head of Langendorf United Bakeries, acted as industry spokesman at this meeting. The position of the Langendorf Bakeries is enunciated in the 10 points raised by Mr. Langendorf, and his opposition to the bread bill is most explicit. In the course of the discussion, Consumer Counsel Helen Nelson suggested that if there were no agreements and the industry felt that competition would be the deciding factor, then perhaps all regulations pertaining to bread sizes should be repealed. If this were the case, the bakers could then bake such sizes as they might choose, and competition would dictate the price and size of a bread loaf without respect to state regulations. The representative of the Interstate Baking Company indicated that in many states where his firm operates there are no bread regulations, and that they would be most happy to see all rules and regulations dropped. The representatives of the other baking companies expressed a desire to see a 20-ounce loaf of bread placed on the market. It was quite obvious from the discussion that there is no consensus or agreement among members of the baking industry.

During this meeting, the question of the role of the so-called "captive" bakeries such as those operated by the Safeway and Purity chains was raised. It was pointed out that they had been solicited for their position on the legislation and had been noncommittal. They had evidenced no opposition to the legislation and there were indications that they were not opposed to it. It should be pointed out that these chains sell their own bread for from 2 cents to 4 cents less than that charged by the large commercial machine bakeries.

In these discussions, the bakeries indicated that they could not increase bread loaves to the proposed 16- and 24-ounce sizes without increasing their price. This would not necessarily be the fault of the proposed legislation, but is connected with the fact that the industry has negotiated a union contract covering labor costs in the production and distribution costs of bread. This contract provides for annual increases for the next three years for both the inside workers and the drivers. It seems apparent that the price of bread is going to increase irrespective of whether or not bread sizes are increased.

It should be emphasized that testimony by the industry itself indicates that the so-called balloon bread represents 52 percent of the bread sold in the state, and the price differential between the regular 15-ounce loaf and the balloon loaf is 4 cents, the regular loaf selling for 27 cents and the ballooned loaf for 31 cents. If it is necessary to raise the price of a loaf of bread because of the one-quarter cent ingredient cost increase predicted, there is certainly no logical reason for an increase in the price of the balloon loaf.

After the report was completed, the committee chairman received a letter from the Safeway Stores which stated that on March 1, 1965, they intended to increase their bread sizes to the 1-pound and 1½-pound loaf for their stores. This was to be done without any corresponding increase in price.

In the appendix are letters from both industry and consumer sources, supporting their respective positions on the proposed changes in bread size.

RECOMMENDATIONS OF THE COMMITTEE

As a result of the action on the part of Safeway Stores in raising their bread sizes to the 16-ounce and 24-ounce loaves, the committee feels that competition should compel the rest of the baking industry to follow suit. For this reason, it is felt that no legislation with respect to the 16- and 24-ounce bread sizes be introduced. However, the committee feels that the 16- and 24-ounce sizes should be the California standard.

Insofar as the 8-ounce loaf of bread is concerned, it is recommended that at this time, legislation be introduced that would permit bakeries to produce this size for sale on the bakery premises.

There is reason to believe that the baking industry is engaged in questionable selling practices that might be in possible violation of the Robinson-Patman and/or the Cartwright Act. Investigation by the Attorney General's Office is suggested.

With respect to these questionable selling practices, it seems apparent that they are harmful to the industry and of no benefit to the consuming public. It is recommended that the industry explore the possibility of a marketing order for the industry under the State Department of Agriculture.

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APPENDIX

AMENDED IN SENATE MAY 29, 1963

SENATE BILL

No. 1362

Introduced by Senators Christensen, Williams, Nisbet, Arnold,
Rattigan, Farr, and Cobey

April 23, 1963

REFERRED TO COMMITTEE ON BUSINESS AND PROFESSIONS

An act to amend Sections 19800, 19801, 19802, 19803, 19804, 19805, and 19806 of, and to add Section 19802.5 to, the Business and Professions Code, relating to bread.

The people of the State of California do enact as follows:

SECTION 1. Section 19800 of the Business and Professions Code is amended to read:

19800. All loaves of bread, sliced or unsliced, made or procured for the purpose of sale, sold, offered or exposed for sale in this State shall weigh, until 24 hours after baking, ~~within the tolerances prescribed by the Director of Agriculture pursuant to Section 12211~~ *baking, the weight prescribed by this chapter* for standard loaves, large loaves, or small loaves,; provided, however, that larger loaves having weights that are multiples of the mean weight of a standard loaf weight may be made or procured for sale to restaurants, caterers, sandwich makers, hotels, commissaries, institutions, or other public eating places. *Whether or not any lot of loaves of bread conforms to the weight requirements prescribed by this section shall be determined pursuant to Section 12211.*

SEC. 2. Section 19801 of said code is amended to read:

19801. "Standard loaf" shall weigh one pound avoirdupois *net weight*.

SEC. 3. Section 19802 of said code is amended to read:

19802. "Large loaf" shall weigh $1\frac{1}{2}$ pounds avoirdupois *net weight*.

SEC. 4. Section 19802.5 is added to said code, to read:

19802.5. "Small loaf" shall weigh one-half pound avoirdupois *net weight*.

SEC. 5. Section 19803 of said code is amended to read:

19803. Bread commonly known as "twin loaves" may be made or procured for the purpose of sale, sold, offered or exposed for sale, providing each unit of such twin loaf conforms to the standard weights as herein defined for standard loaf, large loaf, or small loaf.

SEC. 6. Section 19804 of said code is amended to read:

19804. ~~Whenever any bread is sold in any wrappings there shall appear on the body of the wrapping in letters so as to be clear and legible to the buyer or prospective buyer, in a color contrasting with the background, the words "standard loaf," "large loaf," or "small loaf," as the case may be, and such label shall also comply in all respects within the provisions of Chapter 6 (commencing with Section 12601) of Division 5 of this code.~~

19804. Whenever any bread is wrapped, in any wrapping, for sale through retail outlets, there shall appear on the body of the wrapping, or on the insert band, in letters clear and legible to the buyer or prospective buyer, in a color contrasting with the background, the words required by this section. Such label shall also comply in all respects with the requirements of Chapter 6 (commencing with Section 12601) of Division 5 of this code.

The words required on such label shall read "standard loaf, net weight one pound," "large loaf, net weight 1½ pounds," or "small loaf, net weight one-half pound," as the case may be, and the lettering shall be of a minimum height of one-quarter inch.

SEC. 7. Section 19805 of said code is amended to read:

19805. The provisions of this chapter shall not apply to crackers, pretzels, biscuits, buns, scones, rolls, muffins, or loaves of fancy bread weighing less than one-fourth of a pound avoirdupois or to what is commonly known as "stale bread," sold as such, provided the seller shall, at the time of sale, expressly state to the buyer that the bread so sold is stale bread.

SEC. 8. Section 19806 of said code is amended to read:

19806. Any person, firm or corporation who shall make or procure for the purpose of sale, sell, offer or expose for sale within this State any bread in loaves which do not conform to the requirements which are prescribed by this chapter, ~~or which do not weight within the tolerances prescribed by the Director of Agriculture pursuant to Section 12211, is guilty of a misdemeanor. this chapter is guilty of a misdemeanor.~~

Statement on Senate Bill 1362

BREAD WEIGHT

By Betsy Wood, Consumers Cooperative of Berkeley

My name is Betsy Wood. I work as a part-time home economist for the Consumers Cooperative of Berkeley. We have eight supermarkets in the East San Francisco Bay area and have over 30,000 member families. Our home economics program is aimed at helping our members be wise consumers.

We urge passage of Senate Bill No. 1362 because the present weights are so confusing that shoppers do not know how to compare prices on bread. Practically no one realizes that the 1-pound $6\frac{1}{2}$ -ounce loaf is 50 percent heavier than the 15-ounce loaf.

This past week I asked eight store managers or grocery managers about bread weights. Not one remembered the two legal minimum weights or even the relationship between them. I have never found *any* grocery person who knew the bread weights. It took me about four years of work in the field of consumer education before *I* realized that 15 ounces is two-thirds of $22\frac{1}{2}$ ounces.

On Monday night we distributed a questionnaire to dieticians, nutritionists, and teachers taking a course at the University of California medical school. The sheet read:

THERE ARE TWO STANDARD SIZES OF BREAD FOR
SALE IN CALIFORNIA RETAIL STORES.

THE MINIMUM WEIGHTS OF THESE BREADS ARE
----- and -----.

How much more does the larger loaf weigh than the smaller loaf?

20% more	-----
25%	-----
$33\frac{1}{3}\%$	-----
40%	-----
50%	-----
$66\frac{2}{3}\%$	-----
75%	-----
100%	-----

We received 56 sheets back. Three people out of 56 got all answers right, two more knew the minimum weights, but missed the relationship between the two.

Sixteen said the weights were 1 pound and $1\frac{1}{2}$ pounds. There were 21 other answers and 14 blanks, indicating that these people couldn't even guess.

I would like to give an example of the cost of confusion to the family who cannot compare prices.

A 15-ounce loaf of whole wheat costs 33 cents.

A $22\frac{1}{2}$ -ounce loaf of whole wheat costs 37 cents.

To get $22\frac{1}{2}$ ounces of bread at the rate of the smaller loaf you would pay $49\frac{1}{2}$. This is pretty expensive. If a family of four buys six small loaves a week, it would pay \$1.98.

The same weight of bread can be had in four large loaves for \$1.48. Therefore a person who does not know how to compare 15 ounces and $22\frac{1}{2}$ ounces might spend one-third more for the family bread. This would mean an extra cost of 50 cents/week, \$2.17/month, \$26/year.

Bread is a staple in our diet. Poor people and families with many children eat more bread than others. These people need weights that they can understand. As it is now, I think at least 90 percent of the people cannot compare "standard" and "large" loaves. If SB 1362 becomes law, and if the weights are clearly labeled, I predict that most people will learn how to compare one-half pound, one pound and $1\frac{1}{2}$ pounds.

ALLIED SENIOR CITIZENS CLUBS, INC.

427 West Fifth Street—Room 401

Los Angeles 13, California

Northern California Office: 2134 Grant Street, Berkeley, California 94703

March 31, 1964

HON. ALAN SHORT, *Chairman*
Senate Factfinding Committee on
Business and Commerce
State Capitol
Sacramento, California.

Dear Senator Short:

I am writing to express my organization's interest in SB 1362. This bill, restoring bread to prewar weights and authorizing a one-half-pound loaf, was unanimously endorsed by the 1,400 seniors attending our annual convention last May.

It has long seemed to me that bread and other flour products have been permitted to rise in price far above a legitimate profit level, so that bread can no longer be a mainstay of low-income families with growing children—the staff of life as we used to consider it.

We are particularly interested in seeing the half-pound loaf become a reality. As you know, a large percentage of our elderly live alone, and on extremely limited incomes. The smaller loaf is obviously more practical and more desirable for them. The can ill afford to pay for and then discard bread that has not been consumed within a reasonable time, as so often happens, with large loaves. A smaller bread would eliminate such waste of their limited food budget, and would make possible a little more variety in diets that are often too restricted because of food costs.

We hope also that SB 1286 will be enacted as a protection against "ballooning" of loaves and other deceptive practices. It is bad enough to have to pay today's inflated prices, let us at least not have "blowup, inflated bread" to boot!

Thank you very much for your efforts in behalf of consumer protection.

Sincerely yours,

MRS. ALEX VAN FRANK, *President*
Allied Senior Citizens Clubs

CONSUMERS COOPERATIVE OF SACRAMENTO, INC.

51st and Folsom Blvd., Sacramento

April 6, 1964

Senate Factfinding Committee on Business
and Commerce
California Legislature
State Capitol
Sacramento, California

Gentlemen :

Consumers Cooperative of Sacramento favors passage of SB 1362—Christensen, because it will return the loaf of bread in the store to its original standard weights. At the present time a loophole in the law permits unduly wide variation in the weights. The loaf of bread commonly understood to be a "one-pound size" may vary from 15–17 ounces. The large loaf may vary from 22½–25½ ounces. Obviously, the baking companies take advantage of this loophole, and the minimum under the law becomes the standard size.

Of four standard brand "large loaves" weighed by one of our representatives on Sunday, April 5, three weighed between 22½ and 23 ounces; one weighed about 23½ ounces. Thus, three out of four were at the minimum weight. All loaves were priced the same.

Senate Bill 1362 will correct this situation. Standard sizes will be set at 1 pound and 1½ pounds, respectively, within tolerances provided by the Department of Agriculture for all baked goods. The advantages to the consumer are obvious.

The bill also would permit manufacture of a one-half pound loaf of bread. Single persons, young couples, and retired people with limited incomes will be the major beneficiaries of this permissive legislation. No baking company is required to manufacture the small-size loaf. However, we believe there will be a ready market for one-half pound loaves of bread, if any manufacturer decides to meet the need.

We strongly urge favorable action by your committee on Senate Bill 1362—Christensen; and passage of the bill by the California State Legislature this spring.

Very truly yours,

BETTY MACFAIL
Consumers Cooperative of Sacramento
Legislative Action Committee
Betty MacFail, Chairman

3229 South Bonita Street
Spring Valley, California
May 20, 1963

THE HONORABLE ALAN SHORT
Chairman, Senate Business and Professions Committee
Capitol Annex Building
Sacramento 14, California

Dear Senator Short :

As a homemaker with a college major in home economics I am concerned with consumer problems and misrepresentation.

I understand that there will be a committee hearing on SB 1286—Deception in Bread, and SB 1362—Size of Bread Loaves, on May 27th.

It is my hope that the committee will act favorably on both of these bills.

Very truly yours,

MRS. LOUIS POLUZZI

cc: Senator Schrade
Assemblyman Donovan

STATEMENT OF MERLE J. GODDARD
Executive Director, California Grocers Association
before the
Senate Factfinding Committee on Business and Commerce
April, 9, 1964

SENATE BILL 1362

Mr. Chairman and members of the committee, my name is Merle J. Goddard, representing the California Grocers Association.

Senate Bill 1362 proposes to eliminate the present weight tolerances on bread that is manufactured and sold in California. The baking industry has or will testify in regard to this provision as set forth in the bill.

Senate Bill 1362 also proposes to add Section 19802.5 to the code which would authorize the manufacture and sale of a half-pound loaf. The California Grocers Association is opposed to this provision. The proponents might argue that the manufacture and sale of a half-pound loaf of bread would benefit persons living alone. We seriously believe that any public benefits that might be derived under this theory would be more than offset by other important disadvantages that must be taken into consideration.

1. Freshness of product. Bread can be kept frozen and maintain its freshness for indefinite periods of time. Therefore, little or

nothing would be added to freshness of product if Section 19802.5 were to become law.

2. On the surface, the passage of Section 19802.5 might lead us to believe that a person can purchase an 8-ounce loaf of bread at half price. This is not true. The only savings that could be accrued in the manufacture and sale of an 8-ounce loaf would be ingredient cost; all others, baking, wrapping, advertising, distribution and the sale of the 8-ounce loaf would not be reduced. In fact, it is reasonable to assume that the costs would be increased because of the inefficiency that the 8-ounce loaf would create for industry in general.

The California Grocers Association also has a more direct reason for opposing the bill. If you have ever visited a supermarket and noticed the bread rack, you will have seen that it has almost reached the point of utter confusion.

To satisfy demand, the baking industry provides a wide variety of breads. For example, one company reports that it manufactures some 50 different varieties of bread and, of course, to satisfy demand, the grocer has to handle a great many different varieties to please his customer.

If the law is changed whereby a half-pound loaf is legalized, it will only be a matter of time until it makes its appearance on the market. Bread is one of the most popular items in a food store and the efficiency in operation at the store level would be affected, and any time we affect operating efficiency, we tend to raise prices. The supermarket industry operates on less than 2 percent net profit before taxes and it is certainly in no position to absorb added costs.

Also, if Section 19802.5 is added to law, more shelf space for bakery products in the supermarket would be required, and shelf space in the food store costs money.

Another factor not to be overlooked is that placing half-pound loaves in food stores would have to increase the percentage of stale returns that are picked up by the bakers and this certainly adds to their cost.

We therefore ask that Section 19802.5 not be passed. This request is not at all unusual. The Legislature has historically entered into the field of container sizes when they deemed it necessary, referring to the many agricultural commodities that are so regulated—lettuce, oranges, grape and many others.

Respectfully submitted,

MERLE J. GODDARD
Executive Director

LANGENDORF UNITED BAKERIES, INC.

Executive Offices

1160 McAllister Street, San Francisco 15

Office of Stanley S. Langendorf, President and Chairman of the Board

April 2, 1964

HON. ALAN SHORT, *Chairman*,
Senate Factfinding Committee on Business and Commerce
State Capitol Building
Sacramento, California

Dear Senator Short:

We understand that SB 1362 which has been referred to your committee for interim study will come up for hearing on April 9, 1964. We wish to present our views on this proposed legislation. The industry unanimously opposed this bill in 1963 when it came before the Business and Professions Committee, and we would like to reiterate at this time our strong opposition to this bill.

Senate Bill 1362 proposed to change the bread standard minimum weight of 15 ounces to 1 pound, and 22½ ounces to 1½ pounds. The baking industry has been in a price-wage squeeze and a large number of bakers today are operating at a loss. To increase the weight approximately ½ to 1 ounce on the small loaf and 1 to 1½ ounce on the large loaf would not make a noticeable difference to the consumer. On the other hand, it is estimated that the increased cost to our company would amount to \$300,000 to \$500,000 per year on the volume of business in our various plants in California, which would practically wipe out the profit reported to our stockholders for the year ended June 30, 1962. Prices of bread cannot be readily adjusted to meet the increased cost of labor, raw materials, wrapping supplies and hundreds of other items which enter into the operation of a bakery.

The laws of the States of Oregon and Washington provide for the same standard weights as currently in effect for the standard minimum 15-ounce loaf and the standard 22½-ounce loaf, as currently in effect in California. Our company, as well as other bakers, cross the Oregon and Washington lines and any changes that would be made in the current bread weight laws would cause complications in a free flow of merchandise from California into the States of Washington and Oregon, and vice versa. The current bread weight law in California has proven to be satisfactory to the consumers in the state and there has been no point of complaint.

This proposed bill also provides for a one-half-pound loaf, with the assumption that this would make possible selling a small loaf at approximately one-half the price of the current standard 15- to 17-ounce loaf now provided by the California Standard Bread Weight Law. Manufacturing and distribution costs of a one-half-pound loaf would be identical to the current 15- to 17-ounce loaf of bread. The only saving would be in material. Even if it were sound and practical to market a one-half-pound loaf of bread, the saving to the consumer as

against a full standard-sized loaf would be negligible. *A one-half-pound loaf of bread is practically unknown in the baking industry throughout the United States and would not be economical or satisfactory to either the consumer or baker.* Furthermore, a one-half-pound loaf would not possess the flavor and would dry out quickly—almost comparable to a roll. The present-day bread will retain its freshness for at least five days.

An agreement was reached with the Bureau of Weights and Measures through the enactment of SB 377, to designate weight on wrappers or labels of bread in one-quarter-inch sized letters, in order to avoid any possible misunderstanding to the public.

The baking industry today is performing a real service to the consumers, giving them bread of high quality and nutrition, and with practically no complaint from the consuming public. Senate Bill 1362 if enacted would impose a serious financial problem on the baking industry and could lead to insolvency on part of a great number of bakers.

We trust you will see the wisdom of not recommending Senate Bill 1362 to the Legislature at the next session. We sincerely and strongly believe it would be disastrous and cause bankruptcy to a number of bakers in the industry.

Sincerely yours,

STANLEY S. LANGENDORF

INTERSTATE BAKERIES CORPORATION

1761 Riverside Drive, Los Angeles 39, California

April 2, 1964

THE HONORABLE ALAN SHORT
Senate Chamber
State Capitol
Sacramento, California

Sir:

We strongly protest the passage of proposed Senate Bill No. 1362, as we consider it costly and damaging to the baking industry, with ensuing increased costs to the buying public. The present requirements that minimum weights of 15 ounces and 22½ ounces be imprinted on all wrappers safeguard the consumer from any deception. And, the recent passage of Senate Bill No. 377 stipulating the size of type gives further assurance that the weight legend is obvious and legible.

In view of the fact that the consumer is not being deceived as to the weight of the bakery product, we can see no advantage to the consumer or the State of California in the passage of a bill that would impose such great additional costs to be borne by the bakers of this state.

The present minimum weight law recognizes the baker's problem with uncontrollable variables, such as machines not yet perfected to measure precise weights, atmospheric pressures, human error, etc. The removal of these tolerances will mean increased raw dough costs, in-

creased labor costs for additional processing, less yield from wrapping paper because of greater loaf volume, cost of changing weight legend on all wrappers (a cost just absorbed by the baking industry on passage of Senate Bill No. 377, which would now again be incurred), and increased inspection labor to insure compliance. No doubt the State of California would have increased payroll costs in its department of inspectors also.

To comply with the proposed exact weights of 1 pound and 1½ pounds, the baker will be compelled to increase baked weights to somewhat in excess of the 16-ounce and 24-ounce weights in order to overcome the variables. In making this increase in weight, the baker must recoup his cost of additional ingredients, wrappers, labor, etc., through an added cost to the consumer— and for the same number of slices of bread.

We sincerely urge defeat of this bill as not being in the interest of the public by being a financial burden to the baker and to the housewife.

Sincerely,

J. P. MENICHETTI
Regional Manager

INTERSTATE BAKERIES CORPORATION

BLUE SEAL BREAD

1010 46th Street, Oakland, California 94608
Mail Address: P.O. Box 8125

SENATOR ALAN SHORT
State Capitol
Sacramento, California

April 3, 1964

Subject: SB No. 1362

Dear Senator Short:

As one who has been in the baking business in both southern and northern California since 1931, I am very concerned as to the additional costs and difficulties the passing of the subject bill will create for the industry, if passed as now written.

Contrary to the belief of some persons, machinery has not been developed to accurately scale a piece of dough to the point of closer tolerance than the present law allows, except when the divider is new which condition cannot be maintained because of excessive cost of replacement.

It is my opinion that certain changes could be made in the present law that would protect the consumer and would add only slightly to the cost to the baker which no matter how slight, must be passed on to the consumer.

I am sure that at the hearing April 9th, the California Bakery Employers Association will present a program which will provide changes necessary to the improvement of the present laws.

Sincerely,

GLENN A. FULLERTON
Interstate Bakeries Corporation

CONTINENTAL BAKING COMPANY

(INCORPORATED)

Regional Office: 1790 Industrial Way, Redwood City, California 94063

April 1, 1964

HON. SENATOR ALAN SHORT

Senate Factfinding Committee on Business and Commerce

State Capitol

Sacramento, California

Sir:

It has come to our attention that Senate Bill No. 1362 will be heard on April 9, 1964, before the Senate Factfinding Committee on Business and Commerce. This particular bill has reference to the weights at which loaves of bread may be baked and sold in the State of California.

We would like to register our serious objections to the passage of this form of legislation. Although the essential idea behind the legislation may be a noble one, it is certainly impractical from a business standpoint. According to the language of the bill, a bakery selling bread which does not conform to the exact weight requirements, would be guilty of a misdemeanor.

We have been permitted a tolerance for a good many years which has permitted us to produce a baked loaf of bread to meet the stated weight requirements. We know of no state in the United States that does not, in practice, grant tolerances on weights of food products. The burden that would be imposed upon the baker by Senate Bill No. 1362 would be intolerable. Due to the nature of the industry and its equipment, it is physically impossible to scale the weights of each loaf of bread by scientific accuracy. There must be some variance.

If we are compelled to produce an exact 1 pound and 1½ pound, it would be necessary for the baker to increase his present scaled weights by approximately 7 percent over what we are now scaling. Again, it would be impossible, as mentioned above, to be exact in those finished weights even though we increased our scaling weights by 7 percent. Because of this increased cost, it would ultimately have to be passed on to the consumer. We can see no benefit to the consumer from such an increase.

We strongly suggest that you give serious consideration to this very rigid legislation and use your best efforts to defeat it at the time it is brought to a vote, which would permit us to continue operating as we now are. As you may not know, last year we were compelled to make certain changes in our weight listings (SB No. 377) which cost not only us but the industry as well, a large sum of money.

Very truly yours,

CONTINENTAL BAKING COMPANY

JAMES W. HOOKS

Regional Manager

THE SACRAMENTO BEE . . . Saturday, December 19, 1964
SUPERIOR CALIFORNIA NEWS

RENO BAKERY SUES TWO CHAINS ON PRICE CUTS

CARSON CITY, Nev. — UPI
Welsh's Bakery, Inc., of Reno has filed a \$600,000 damage suit in the federal court charging two bakery chains conspired to put the company out of business by undercutting prices and making kickbacks to certain key customers.

Welsh's Bakery, a bread wholesaler, named as defendants in a suit filed yesterday The Continental Baking Company, of Rye, NY, which markets Wonder brand bread, and Interstate Bakeries Corporation of Kansas City, Mo., which produces Blue Seal bread.

Reno, Tahoe Market

Welsh's Bakery said that since 1961 the two companies joined to monopolize the sale of bread and bread products in the Reno and Lake Tahoe markets, restaurants and clubs. The complaint said the

firms sold bread in Nevada at lower prices than it did in California, despite the fact the bread was made in plants in Sacramento.

Welsh's claimed the bread manufactured in California cost 2 to 3 cents a loaf to ship to Nevada. The complaint said loaves of bread sold in California weigh less than those sold in Nevada because of the difference of requirements in state law.

Rebates Charge

The Reno bakery charged certain "key customers" were offered 5 to 7½ percent rebates below the published wholesale prices and the defendants would keep prices low in Nevada while high in other areas.

The out-of-state firms also were accused of submitting "unreasonable low prices" to stop Welsh's from getting government contracts.

THE DRYCLEANING INDUSTRY

THE DRYCLEANING INDUSTRY

Three bills were introduced at the last session of the Legislature affecting the drycleaning industry: SB 61, SB 957, and SB 347. All three bills were formulated in response to problems that have arisen in the industry as a result of the expansion of the so-called agency operations and the growth of the coin-operated drycleaning establishments.

Senate Bill 61 would do away with that section of the Business and Professions Code requiring the operator of an agency to take an examination before he can secure his license. The wholesale operators depend on either pressing shops, or what are known as "drop shops," to keep their wholesale cleaning operation functioning at full capacity in the large metropolitan areas. This is a relatively large segment of the industry. A person rents a store, puts up racks, and generally sets himself forth as a cleaning and dyeing outlet at cut-rate prices. He receives the garments, they are picked up by the wholesaler, cleaned and sometimes pressed, and returned to the outlet for distribution.

The introduction of SB 61 came about because of incidents in the less populated areas, where a local barber or local mercantile store operator, as a convenience to his customers, would accept laundry and drycleaning to be picked up and returned by the wholesale route man. For this courtesy to his customers, it was necessary for him to pay a \$10 license fee, and also to pass an extensive examination dealing with the operation of a drycleaning plant, etc. In many instances, the total annual volume of this outlet would not exceed \$150. The mere cost of taking the examination and paying the license fee acted so as to greatly diminish the inducement to the agent; the extra expense and trouble were not worthwhile. As a result, the public suffered a reduction in service or had no service whatsoever.

Senate Bill 347 and SB 391 were the products of the rapid growth of the coin-operated drycleaning establishments, similar in operation to the laundromats that sprung up all over the state. The large manufacturers of equipment for these operations helped to set up and finance these establishments, and assisted in the training of the operators. Because of the wording of the present drycleaning act, anyone operating a cleaning plant must have an operator's license. In order to qualify for this license, he must have one year's experience or 360 hours of schooling in the industry.

Senate Bill 957 would exempt the coin-ops from the licensing provisions of the Dry Cleaning Act. Senate Bill 347 is even more drastic. It would abolish the State Board of Dry Cleaners and do away with the Dry Cleaning Act.

The present regulations were adopted in 1945 and the State Board of Dry Cleaners was then set up to regulate the drycleaning industry for the protection of the public. Prior to this time, the regulation of the drycleaning industry was vested in the State Fire Marshal's office, which for the past 40 years has made inspections of premises for fire safety and for the protection of the public. It still issues a permit for the coin-op plants, and for any plant using boilers.

In addition to the three bills that were introduced in the 1963 session of the Legislature, Senate Resolution 188 was introduced and passed. It requested the State Board of Dry Cleaners to adopt regulations giving

relief to the coin-ops with respect to those provisions requiring licensed operators and attendants.

The State Board of Dry Cleaners held a public hearing and did adopt certain changes in the regulations. They now have what is known as a cleaning plant owner classification with the designation "no spotting and pressing." In addition, they have the cleaning plant operator, "spotting and pressing"; and cleaning plant operator, "not spotting and pressing." The designation and classification "no spotting or pressing," for both the operator and the owner, are new categories and are for the purpose of meeting the special requirements of the coin-operated drycleaning plants.

The examinations for the new categories have also been changed. That of the plant owner and operator where spotting and pressing is done consists of a written examination and also a manual pressing and spotting examination. Where no spotting or pressing is to be done, there is a written examination only. Despite these changes, the operators of the coin-operated establishments are still desirous of further alterations, and also feel that they are being discriminated against.

The testimony of the industry representative, Mr. Guy Catterton, was along these lines.

Mr. Catterton: "Just to refresh your recollection on the problem that, we feel, faced the self-service drycleaning industry. These stores have wholly automatic drycleaning machines. The stores have typically some washing machines and some drycleaning machines. Some stores have coin-operated pressing machines, and they also have liquid detergents or liquid soaps that customers use to place on the garments before they place them in the machines for drycleaning. The problem that we have here today, is that under the present law, we must have a registered operator. Now, these stores that have these drycleaning machines, have heretofore, until a recent change, had to have a registered operator who was qualified to know all about drycleaning, know all about spotting and know all about pressing, even though some of their stores do not have pressing equipment. Many times they are self-service type pressing machines in which you put a coin in the machine, and you can then use the pressing equipment to press your own clothes. This has worked a hardship upon the people who own these stores because they themselves, unless they become qualified, cannot work in their own stores. To qualify for this, you have to pass the test, have a year's experience or schooling in lieu thereof, and this experience in the industry, even though we are again using wholly automatic equipment, is a new concept in the industry."

Senator Pittman: "You came up here with the idea of cleaning, spotting and pressing."

Mr. Catterton: "Yes, sir."

Senator Pittman: "You are aware now that the board has set up some new categories as a result of this last session?"

Mr. Catterton: "Yes, I am."

Senator Pittman: "Do you have time to make some comments as your feeling on this. Is this meeting the problem?"

Mr. Catterton: "No, it is not, Senator, they have set up a category of cleaning only."

Senator Pittman: "Clean and spot only?"

Mr. Catterton: "Yes, they still require for one thing, a year's experience or something in lieu thereof, for this operator to be able to work in a coin-operated store. They still have to have this year, and they still have to take an examination. Their examinations, from what I can gather in talking to people, are quite extensive, and they make the examination on items that are not related to the coin equipment but are related to many chemicals."

There was further discussion concerning the fact that the coin-operated industry has now gone into spotting, pressing, and dyeing in order to reduce its overhead.

Mr. Catterton: "Until recently, all the coin-operated stores have had to go into competition to help increase the growth with which to pay for a registered operator. The present law means that we have to shape our industry along the lines of competition with the commercial field instead of letting us shape the growth of our industry along with what we feel that the public will buy and accept in our own self-service concept. You see the problem as we see it, is to have reasonable regulations. We should recognize that this self-service concept or coin-operated concept is a new concept and should not have to be under the same laws applicable to the commercial drycleaning field. I said before that I felt that the law in the present form penalized the small operator, the small self-service clan, for this reason: under the present regulations you have to have a highly qualified operator. Any commercial establishment in the traditional drycleaning field may have 20 or 30 employees that do the work of drycleaning and spotting and pressing. Only one of them has to be a registered operator though he may have 20 or 30 people who actually do the work on the clothes. I do not know what this man's duty may be, but as long as he is on the premises this satisfies the law. Now, with the self-service store, even though it has only one employee, this employee must under the present law be the self-same, highly qualified man, even though the people are really doing the cleaning themselves and the pressing themselves. Also it means that unless the owner also happens to be this qualified person they cannot work in their own store and satisfy this legal requirement. What we hope to do is to obtain some new law that will recognize this new field and have a reasonable regulation which will enable people to take advantage of the low costs of drycleaning, doing it yourself, and still have available this regulation in its present form, if this is satisfactory with the present traditional drycleaning people, so that people who are protected are benefited by the laws who wish to continue to take advantage of sending their clothes out to be drycleaned, spotted and pressed."

In the testimony of the coin-op representatives, the industry is seeking to define the self-service establishment and write its place into law. They are also urging that the term "spotting" be spelled out under

the present rules. The addition of a soap or detergent on the clothes before they are cleaned is considered "spotting." The coin-ops feel that the present composition of the Board of Dry Cleaners should be changed. They are urging both greater public representation and representation from the self-service branch of the industry. The coin-op representatives also urge that the examination be more reflective of the categories being examined, and that the provisions requiring the examiner to have been in the industry for five years be changed. They urge that the one-year-experience requirement be deleted insofar as the self-service cleaning establishments are concerned. It is their feeling that an examination which would indicate competence to operate the machinery should be sufficient, and that the technical knowledge of chemicals and solvents is more detailed than necessary for their type of operations. It was the opinion of the industry representatives that the examination should take into account the machines that are being used, the solvents used in the machines, and the general health, fire, and safety regulations pertaining to that equipment and to the industry as a whole. It was not their opinion that the Board of Dry Cleaners should be eliminated. Testimony from an operator of nine self-service drycleaning plants in Southern California was of interest. Mr. Jules Moster owns and operates these plants and is also a distributor of the equipment used.

Jules Moster: "I have found from experience, not so much at the present day, but when the self-service drycleaning stores first opened this law, which required a licensed operator, actually operated to the detriment of the public and to the detriment of giving good service in these stores. This was simply due to the fact that there was a tremendous shortage of licensed operators with the large amounts of self-service drycleaning stores going in. . . . The whole thing apparently is being administered to restrict competition. Now, I do not think this is surprising. The State Board of Dry Cleaners is composed of six members from the so-called regular or professional drycleaning industry. I would say that it would be a little difficult for them to administer the law not in their own favor. It has been my experience, and I have attended, I would say, 90 percent of the meetings of the board in the last year and a half, that they are not at all interested in the public's welfare. They are only interested in restricting competition of the drycleaning industry. . . ."

Senator Short: "Let's get to the point. If you've got some hard blows to give, let's give them now. Now is the time"

Mr. Moster: "I contend, Senator, the State Board of Dry Cleaners does not run the board for the public's interest, but mainly to restrict competition in the industry, that they have attempted to prevent the coin-operated or the self-service drycleaning from succeeding. And they have succeeded in this attempt. A lot of them have gone bankrupt. I contend that they spend something . . ."

Senator Short: "May I ask you to back up on that last statement. You say they succeeded and that a lot of them have gone bankrupt. I read a little bit in the article in *Time* magazine, for example, that indicates that many of them that have gone into this particular business, many small operators investing their

life savings, just have not made it in these self-service businesses. I am sure that when the opponents of this bill are heard this afternoon they will make a big point of that. Would you comment on whether a lot of the people are going bankrupt, whether you think the drycleaning board as presently constituted with their present policies is responsible for any of this? I think that this is the heart of the matter."

Mr. Moster: "They are responsible in part for all of it and probably directly for some of it. I couldn't give you any definite figures. But it has created a hardship on us to have to hire operators that—who were technically supposed to know what they were doing but actually did a very bad job. This was the problem."

Senator Short: "Will you explain your statement, please. Now, the party responsible for all of it . . . go ahead."

Mr. Moster: "Well, sir, I can take a real good store that I have and put a bad operator in it and ruin that store overnight. I can take a store that is not doing very well because it has got a bad operator in there and I can make that store go by doing a little advertising and put a good operator in there. The heart of the matter is to have a good person running this store. And this law has forced us not to have good people running our plants but bad people ruining our plants because the law has created a shortage of licensed operators. We have had to take what was left over, or people who were supposed to be trained that were not actually doing a good job in practice."

Senator Short: "Do you think the drycleaning board is doing this deliberately?"

Mr. Moster: "Yes. I know for a fact that they did this deliberately."

Senator Short: "Do you think it would mean a savings to the householder, the average householder with a number of children, to be able to patronize a coin-operated establishment?"

Mr. Moster: "I think it would result in a savings and also in better quality drycleaning."

The testimony of owners of self-service drycleaning establishments was embellished with comments from another operator. Throughout the questioning and investigations that have taken place, it is evident that the operators of the self-service establishments feel that the composition of the present Board of Dry Cleaners works to the detriment of the self-service business. It is apparent from their testimony that they feel the regulations were adopted to protect old-time drycleaning establishments and do not necessarily reflect the needs of the new coin-ops. It is also evident that the purchasers of the coin-op equipment, who invest their money in the equipment and in the opening of a self-service store, feel that they should be permitted to run the establishment and that there should be a simple type of examination which would reflect the equipment used.

Mr. McConnell: "Samuel H. McConnell, 1624 University Avenue, Berkeley. I represent the East Bay Coin Operated Dry Cleaners Association. I am going to comment just briefly on a couple of points brought out in Mr. Catterton's recommendations

about the year's requirement. The people in our association have felt that if they own the stores—and, by the way, one of the chief complaints seems to be from owners of stores, not just employees—where the owners would like to have the relaxation of the rules and regulations so that they could operate their own establishments that they put their investment into. The year's requirement works a hardship upon them and they feel if they can pass the new examinations put out by the board, they should be able to do it without 370 hours of formal schooling or a year in the industry, especially in view of the fact that somebody can come in from out-of-state who has had a year out-of-state and they can get a job and the owner can't. So we would like you to give consideration to that in the overall picture. I am speaking to the two laws that were on the agenda.

The other point I think should be looked into. It would be quite interesting if you attend these sessions to see that the examinations given to the people apply to the type of equipment that they are going to operate and to the type of solvents that they are using and to the fire regulations that they are faced with actually. There will be a reluctance on the part of the board to remove from the examination ancient questions on fire, door linkage problems and solvent problems that our people are not involved in at all. I think with a little prodding you could get them to be realistic in the examination they give to all the people without coming back and saying, 'I guess it was in the book but it isn't. I never ran across it before and I missed that question and I am flunked.' Those are two of the main things. I think there should be consideration given to coin operated pressing as a way of doing business rather than making the people become so proficient when they are not going to be actually damaging the people's clothes with the poor crease in the pair of trousers."

The foregoing testimony by Samuel McConnell is in line with the thinking of the coin-op industry. At the previous hearings during the regular session on the legislation affecting the drycleaning industry, the self-service establishments were primarily interested in exemption from the state regulations. During the course of the hearing held by this committee, an apparent change in viewpoint occurred. In discussing the safety factors and features of the use of self-service equipment, the spokesmen for the industry praised the State Fire Marshal for the work he was doing to protect the public with respect to toxicity and fire prevention.

Senator Pittman: "I heard two remarks here when the abolition of the board bill was presented. Do you say now that some type of examination would be necessary, must be necessary, in order to run a coin operation?"

Mr. McConnell: "It seems to be insisted. No. I don't think it would be necessary. Our discussions with the Fire Marshal—he didn't think so. He thinks a person should be in attendance in the store in case something comes up."

Senator Pittman: "I want to get this attitude because you are now subscribing to some type of regulation."

Mr. McConnell: "Senator Pittman, you are discerning. We have changed our attitude from the time we appeared before the Senate where we asked for a fully automatic, no attendant store. That, I might explain to the Senators, was at the behest and insistence of the National Automatic Laundry and Cleaning Council who, over the whole United States in all but two states, are able to operate without attendants. We don't insist on that because all of our stores are going to—just for competitive reasons are going to have an attendant. We should have reconciled our differences ahead of time. But even at that it wouldn't have made much difference because they still insist on an elaborate examination. We think that a person on hand with personality to help produce the business would be more important to us than one who is extremely proficient in all kinds of spotting and pressing."

During the testimony of the self-service operators, it was repeatedly asserted that the examination given to them by the State Board of Dry Cleaners did not particularly fit the type of establishment they were operating, and further, that the time requirements were unrealistic. It is of interest to note some of the testimony which pointed this out.

Mr. McConnell: "We will go along with an examination and comply with the law. We appreciate what they have done to date. We don't think they have gone far enough. We would like our people to be as trained and proficient as possible, but we don't think it is necessary for the law to say they can't cross that line for a year and be an operator when the window washer from a dry-cleaning plant can come in and take the examination and he has not been cleaning clothes. This is how silly this thing can get. Whereas the same window washer in a laundry can't take the examination. So it is something that has worked a hardship on us and we would like to see some alleviation of it. I think we are on the right track."

It was quite apparent in the course of the hearing that there was no one desirous of abolishing the Board of Dry Cleaners, but that this bill had been introduced solely to provoke action and to call close attention to the needs of self-service drycleaning establishments as being out of alignment with the regulations enforced upon them. This was amply brought out in the statement of Chairman Short.

Chairman Short: "To conserve time I think if there is anyone that is here that is in favor of abolishing the Dry Cleaning Board you are certainly welcome to testify before this committee. But as I judge the temper of this committee they are not to go along with that recommendation. Is there anybody else that wants to testify in regard to eliminating some of the requirements as far as licensing the coin-operated industry is concerned? Is there anybody in opposition to Senate Bill 957 here?"

The opposition to the proposed legislation which had been referred to this committee was from the Board of Dry Cleaners, whose spokesman was Mr. Dwight Alquist, a member of the board and a proprietor of a drycleaning establishment in San Joaquin County. The gist of

Mr. Alquist's testimony was that passage of SB 957 would be discriminatory and would offer unfair advantage for coin-operated establishments as contrasted with the regular drycleaning establishments, in that the coin-op would not be licensed and would pay no fee.

Mr. Alquist: "First I would like to point out that the opinion of the board is that the board is responsible for the administration of the statutes as they exist, not for creative circumstances whereby the board controls the industry. In California there is roughly 600 coin-operation-type of plant. A portion of these offer self-service drycleaning and the rest offer spotting and pressing. The board would like to point out that if SB 957 were enacted the discrimination would exist in this respect: Those coin-operation-type plants offering spotting and pressing service would be required to be licensed and those coin-operation-type plants using exactly the same drycleaning machine but offering true self-service drycleaning only would not be required to be licensed. Now, the health and safety factors exist in the dry cleaning facility and not in the spotting. Also those plants offering a clean only service but not using machines activated by coins would be discriminatory."

The committee questioned Mr. Alquist relative to the activities of the Dry Cleaning Board in acting to protect the public. This was evidenced by Senator Short's questioning.

Senator Short: "May I interrupt here. I believe that the Dry Cleaning Board is set up to make sure that there are competent people cleaning clothes, removing spots of various types on fabrics and hides, leather and so forth. But what I want to know is over the past five years what action has been taken by the Dry Cleaning Board against any drycleaner in the way of suspension or revocation of license other than on these broad generic terms or moral turpitude which has nothing to do with cleaning clothes but nevertheless seems to be a prime cause of taking away or revoking licenses."

Mr. Alquist: "In this area I would like to use the year 1962 as the year that we have figures compiled. There were 762 notices of violations issued during the year 1962. By one means or another the board has gained compliance and closed 645 cases. There are presently 143 cases not yet closed. As of October 28, 1963, these cases that are not closed are in various phases of progress. Some have been tried by criminal procedure and decisions not rendered. Some prosecutions have been ordered and the Attorney General or the District Attorney have not prosecuted awaiting the outcome of the legislation. Some cases have been ordered to be handled by administrative hearing procedure. Now, the only provision that the board has not used to my personal knowledge is that it has not used the provision of the statute that relates to the injunctive procedure."

Senator Short: "May I go back to my original question? How many have been suspended and revoked, say, over the last five-year period that you know of, or the last year or the last two months or the last three years?"

The committee questioned Mr. Alquist as to what the board has done to meet the needs of the coin-op drycleaning establishments. He was advised that it was the feeling of the public and other people in the industry that a system of examinations has been set up which acts to exclude competition, particularly on the part of the self-service industry. The chairman asked Mr. Alquist what the board had done in answer to this allegation. Mr. Alquist indicated that the board had established two new categories that did not require full examination. The chairman wanted to know precisely what these were, and received the following explanation.

Mr. Alquist: "This test consist of 50 questions for an operator who would be termed a clean only. They are written questions. They do not contain questions that refer to outmoded chemicals or outmoded equipment that is still in use, but on a commercial basis or a larger scale basis not utilized by coin operation. I have first-hand knowledge of this in that Mr. Carroll and I prepared the first examination that was to be used for the clean only category. Does this satisfy that portion of your question?"

The committee was interested in the types of questions used, and it was apparent that these were based on safety factors and matters pertaining to the Health and Safety Code. The questions did not deal with the particular types of solutions or spotting; they did cover the type of machinery being used and its operation.

There was a recurrent question as to the effect which the attitude of the board might have in stifling competition, and Mr. Alquist's further testimony is of interest.

Mr. Alquist: "Are you asking the question, do we attempt to stifle competition? You mean the board?"

Senator Short: "Are you trying to do this with your examinations and outmoded rules and regulations, questions that apply to the conventional establishments that shouldn't apply to the coin-operated establishments?"

Mr. Alquist: "I am positively of the opinion that there has not been an attempt to stifle competition."

Senator Short: "Senator Stiern."

Senator Stiern: "You mean that the conventional operators have no fear of the machine-type operation, that they don't see it as a possible hazard to the conventional operation?"

Mr. Alquist: "You mean from a competitive standpoint?"

Senator Stiern: "Yes."

Mr. Alquist: "I believe that conventional drycleaners have had a great deal of apprehension in this area. However, I believe that is entirely quieted down and it doesn't seem to be a great big monster. I welcome it personally. I like to see any medium or method of selling. I am very happy to see it. When the public wants to buy it I think the public ought to have it."

In the course of hearing testimony from the industry representatives, the question arose as to the need for a licensed operator to be on the premises. It became obvious that the language of the law requiring this is rather loosely interpreted.

Senator Stiern: "I heard something said earlier about an operator always being on the premises. I know of operators who belong to service clubs who go to service club meetings."

Mr. Alquist: "They are the only operator. Is this not an uncommon thing to have a shop operating where the operator is not present? There is no reason why clothes can't be dispensed and taken in while the operator goes to a luncheon meeting. It is not an uncommon thing, is it, that there isn't an operator in the establishment? I am not positive that I get the essence of your question."

Senator Stiern: "Take yourself. Are you the only licensed operator in your shop?"

Mr. Alquist: "No, sir."

Senator Stiern: "If you were and you wanted to go to the Lodi Kiwanis Club you could go, your shop doesn't have to lock its doors."

Mr. Alquist: "That would be true."

Senator Stiern: "And so that the law says this but actually that is not the way it works out."

Mr. Alquist: "It states his absence may be for reasonable cause."

Senator Stiern: "Well, the law says, does it not, that you must have an operator on the premises when the premises is open and operating?"

Mr. Alquist: "That is correct."

Senator Stiern: "And in the actual fact of the case this isn't always true. Is this correct?"

Mr. Alquist: "I would say certainly that men go to lunch. I am sure this is a habit. I think they also go to service clubs. But inspections indicate that flagrant violations are not commonplace."

There was discussion on the question of public benefit from the operations of the Dry Cleaning Board. In the course of questioning, there had been comments made from time to time to the effect that the board either did not or could not take effective action on the complaint of someone who had made application to it because of shoddy workmanship on the part of the licensee.

Mr. Montgomery: "Is it true, Mr. Alquist, that a furrier who cleans furs as a sideline has to have a cleaner's and dyer's license?"

Mr. Alquist: The statute provides for a furrier's license, yes, sir."

Mr. Montgomery: "If Senator Short's wife had a mink coat and it was cleaned by this furrier . . . could he appeal to the board for a redress alleging that this licensee had done a job that had been improperly licensed?"

Mr. Alquist: "I feel that he could not."

Mr. Montgomery: "What would happen if he did complain about the type of cleaning that was done by one of your licensees?"

Mr. Alquist: "If repeated alleged misconduct of the licensee were obtained by the state board, in all probability they would authorize an administrative hearing procedure act and we could

request he place with the state board a bond of \$1,000. This bond could be used only for the purpose of satisfying the court claims. We could not dispense this money."

Mr. Montgomery: "Has this ever been done?"

Mr. Alquist: "Not to my knowledge of having dispensed any money."

Mr. Montgomery: "Has the public any protection at all from the board against operators who do poor workmanship?"

Mr. Alquist: "The statute does not provide anything. I have one little statement, if I may."

Senator Short: "Yes. Don't you think it should? This is the purpose of the board. I have something from the department, the purpose and function is to protect the public and employees of the drycleaning industry. But it says it is primarily to protect the public. To protect the public from what? From shabby work. If you are not cleaning it or if you are destroying his garment then there should be some avenue of relief, shouldn't there?"

Mr. Alquist: "That sounds very reasonable."

Senator Short: "But as far as you know there is none at the present time?"

Mr. Alquist: "The statute does not provide for anything in this area."

Senator Short: "Don't you think it should?"

Mr. Alquist: "Are you asking me for a personal opinion?"

Senator Short: "Yes."

Mr. Alquist: "Well, I would say that it would probably be highly impossible that 100-percent protection could be given to the public under any circumstances."

Senator Short: "Well, I understand that, Mr. Alquist. And I understand there have been goofs, including attorneys and veterinarians and real estate men and insurance men and everybody else—maybe reporters from time to time. Everybody is human. And you have a manner of conduct where a place is doing shabby, shoddy work. Don't you think then you ought to have the power to step in and stop that individual from doing business in the future?"

When witnesses were questioned about the activities of the board and the inspections made to protect the public, they placed a great deal of emphasis upon the fact that there were over 700 violations referred to the board for action and for handling. The allegation of a lack of confidence on the part of the public because of these violations and their handling cropped up again during a later part of the hearing. The industry representative testified, indicating that these 700 and some odd violations were in the main the result of coin-operated establishments failing to have a registered operator present. It was apparent from the questioning that there was a wide difference of opinion as to the purposes and reasons for existence of the board.

Senator Stiern: "May I ask you, do you agree with me in regard to my belief about boards in general, including your board, that the people of California establishes these boards by their elected Governor who appoints them for the protection of the people of

California, that people on individual boards are qualified and are not necessarily for the protection of those industries or professionals that the boards represent? Is this a statement that you agree with?"

Mr. Alquist: "Not wholeheartedly, Senator. In my opinion you are asking me these. The examinations that we conduct definitely educate the uneducated and inexperienced person. I have seen many cases where people have repeatedly applied for examinations, as much as five times, and I think there have been cases of more than this. They have educated themselves and they have become a better business person. They are more responsible to handle your clothing."

Senator Stiern: "That is not my point. My point is that you as a drycleaner and I as a member of the medical field hold a license because a board examined and found us satisfactory, not to protect us, to let me practice medicine or you drycleaning, but to protect the public with whom we come in contact, so that we are competent to do this job. Is this not correct?"

Mr. Alquist: "I am sure that the origin of all the boards comes from the industry which it represents. They were probably founded on the good, old, solid, American principle of greed."

The one area discussed which indicated the possibility of a need for a registered operator or experienced person in attendance in the self-service cleaning establishment was that of safety. The testimony of the State Fire Marshal was important along these lines. When questioned by the chairman and asked if there had been any incident of fire or asphyxiation coming to his attention, he replied:

Mr. Vance: "In one combination plant, Senator, we did have an individual who was cleaning—this is a combination coin operation and commercial, as I recall."

Senator Short: "The same building?"

Mr. Vance: "Same building. In cleaning out the muck—this is a term used in the industry—he was overcome. This was an employee."

Senator Short: "That is a coin-operated establishment and a commercial. . . ."

Mr. Vance: "As I recall they were a combination. They did have some commercial equipment and I think in the front of the store they had the other. Now, I will say this in mitigation. The muck was being cleaned from the commercial equipment. We have had some spills, some faulty equipment or malfunction that was quickly corrected in one or two instances where it ran into the streets."

The Fire Marshal's opinion was solicited relevant to the requirements of knowledge for the operator of a coin-operated plant, and his testimony was as follows:

Mr. Vance: "We would expect him to certainly know the details of the equipment. And it isn't completely simple. First the removal of the muck, the electrical system, to watch the joints and connections and gaskets, and some experience, certainly a knowledge, of boilers. We find there is a threshold where industrial

safety, for example, doesn't touch on the boiler less than 15 horsepower or 15 pounds per . . . 15 pounds per square inch. Now, these boilers are inspected regularly by our people. They would necessarily have to have some knowledge of that."

Further questioning by the chairman was as follows:

Senator Short: "Has the coin-operated industry been a problem to you at all?"

Mr. Vance: "Not mechanically or physically. We have had some problems with their machinery. Almost without exception they have been able to correct this—gasketing and so forth. We are finding that the public using equipment as opposed to maybe the heavier commercial machines . . . that this is causing more maintenance problems and we have to watch it more closely."

Senator Short: "They are rougher with it?"

Mr. Vance: "Yes."

Senator Short: "Have you had any resistance from the operators of the coin-operated plants in complying with the requests?"

Mr. Vance: "None whatsoever. They have been very gracious, particularly even the manufacturing end of the situation. These are top grade companies. I mean, these people are in the business to manufacture good equipment and I think they have been doing it."

The Fire Marshal was questioned during the course of his testimony as to the finances and monies received from the board for his work.

Mr. Montgomery: "Mr. Vance, you receive a good portion of your budget from this particular agency for inspection purposes, don't you?"

Mr. Vance: "To answer that, no. We first do not receive enough to entirely support the program in the last couple of years with the installation of a new investigating agency. They are taking substantially more money than we. I was very interested. They say we get 26 percent. To directly answer your question, 12 percent of our total operations is in the dry cleaning field."

Mr. Montgomery: "Are you under any pressure by the board to look closer at some operations because of this money?"

Mr. Vance: "By all means. And we have done things to try to accommodate them. First, we have to set our inspection program up now to 13, 14 months instead of once a year. Here again I was rather interested in the figure of 20,000 inspections. In California we have 10,532 cleaning establishments. This includes 7,218 shops, or stores as we would call them, where they have no direct cleaning equipment. Maybe some have presses only. That would mean as opposed to us—I didn't mean to bring a family situation out, but you did ask the question—that they are making twice as many inspections to determine whether the man who is operating the plant is the man whose name is on the license hanging on the wall than we are making as far as fire and life safety inspections. Maybe a little more than twice. Once we did check the licenses, possibly we can work something out."

Mr. Montgomery: "You couldn't check the license while you are checking the other factors?"

Mr. Vance: "This was recommended by the 1962 G & E Committee interim study in the same field, and they said this: 'Under the present program deputy state fire marshals and investigators from the Department of Professional and Vocational Standards survey the same cleaning establishments each year. The necessary surveys and inspections could be performed by a deputy state fire marshal in one visit.'

"And I would say this would be a saving to the drycleaners fund. Prior to 1945, of course, we did this, all through the years back to 1926. It would be nothing new to our deputies. I would say this in all respect to the Division of Investigation. We wouldn't want to be back in a position where there was a violation and we would have to camp on the doorstep, sit out and watch and see if they are diluting solvents with the wrong materials and so forth and then have to carry through a lengthy investigation. If there were enough investigators to follow up our reports of some violations, then I still think it would be a substantial economy."

In the course of subsequent investigation by the committee, the safety factor loomed more important. Information from the California State Fire Marshal, public health bulletins and newspaper items showed that the use of perchlorethylene was hazardous and prolonged exposure to its fumes highly toxic. The following are some of the cases in point:

A news item in the *Benton Harbor News Paladium* dated May 4, 1962, stated that two children were overcome from "perch" fumes emanating from a rug and drapes that their mother had just cleaned at a self-service cleaners. She had placed the items on the back seat of her car and then drove to the grocers. While there, the children rolled up the windows. When she returned, the children were unconscious.

The August 3, 1964, issue of "This Week in Public Health" which is published by the Massachusetts Department of Public Health related to a 16-year-old boy who had died after sleeping in a sleeping bag cleaned in perch at a self-service cleaners.

A Minnesota Health Department report indicated that two young children of a St. Paul mother were overcome by fumes coming from draperies she had hung in their bedroom shortly after cleaning them at a self service plant.

Reports from the State Fire Marshal showed incidents of employees and owners of conventional cleaning plants being overcome by perch fumes. These occurred through improper handling of the solvent and improper ventilation.

The State Industrial Accident Commission awarded almost \$35,000 to a former cleaning plant employee. A toxicologist testified that in his opinion exposure of the employee to perchlorethylene had caused post-necrotic cirrhosis of the liver.

The 1965 Buyers Guide published by Consumer Reports when referring to sleeping bags quotes on page 330 of that guide:

"In CU's opinion, no bag should be laundered, but any bag can be cleaned by competent professional drycleaners. No bag

should ever be cleaned in coin-op drycleaning machines. For one thing, this may damage the comforter; for another, *solvent residue in the bag not completely dry may release toxic vapors in high concentration.*" (The italic is for emphasis.)

RECOMMENDATIONS OF THE COMMITTEE

It is recommended: one, that the Board of Dry Cleaners not be abolished; two, that the powers of the Board of Dry Cleaners be enlarged so as to give it the authority to set up separate licensing categories wherever it is deemed necessary in order to meet the peculiar or new innovations in the industry, such as the coin-operating, self-service cleaning establishments.

It is recommended that the board be directed, in preparing its examinations, to consider the welfare of the public but also the needs peculiar to the type of license required. It is further recommended that the time requirements for the experience of operators be decreased and adjusted to the needs of the particular type of establishment.

It is recommended by this committee that every self-service dry cleaning establishment be required to have an attendant on duty at all times. It is the feeling of the committee that there is no comparison between the self-service laundry and the self-service drycleaning establishment other than the simple fact that a coin activates the operation of each machine. There is a demonstrable health hazard and danger in the use of cleaning solvents, and unless the clothing is properly cleaned and aired there could be irreparable harm to the public.

With respect to the agent or agency classification, the committee recommends that this category be exempt from examination, as the latter serves no useful purpose. It had been argued that these people who pick up clothing should know fabrics, in order to advise the patron that certain fibers could not be adequately cleaned, etc. But this argument is not justifiable, since no license or examination is required of a counter girl in any retail drycleaning establishment. In the course of many inquiries, the committee was unable to find anyone who had been questioned as to the fabric or had been told that a certain garment could not be cleaned.

It is the feeling of the committee that the prospective licensee for an agency license could be investigated and questioned by a staff member of the department to ascertain his knowledge of the basic rules and to check on his moral fitness, etc.

With respect to the composition of the board, there was testimony to the effect that the coin-ops should be represented per se and that there should also be union representation on the board.

The committee does not feel that special categories should be spelled out, and as a matter of fact recommends that the present system of having wholesalers and retail shops represented by designation be eliminated. It is further recommended that the powers of the board be expanded so that the public may be better protected and the board enabled to handle complaints made against licensees by customers charging shoddy workmanship, etc. In this connection, it is felt that the present bonding requirements should be altered so as to give the

board authority to require a bond when, in its considered opinion, this would offer a better protection for the public.

In the course of testimony presented to this committee, and also on the evidence of certain newspaper articles, a strong feeling exists that there has been a laxness on the part of manufacturers of drycleaning equipment, demonstrated by their sale of this equipment to less than qualified people. It is the recommendation of the committee that the manufacturers or the wholesalers of such equipment in the State of California be licensed to sell same. As a condition partied to this license, there should be a stipulation that prospective purchasers be advised that a state license and examination are required in order to operate a self-service drycleaning establishment.

APPENDIX

OUTLINE OF STATEMENT OF GUY B. CATTERTON, ATTORNEY AT LAW, 1111 AMERICAN TRUST CO. BUILDING, BERKELEY 4, CALIFORNIA, REPRESENTING LAUNDERETTE SALES AND EQUIPMENT CO., BERKELEY, AND VALLEY LAUNDERETTE SALES, SACRAMENTO, NORTHERN CALIFORNIA DISTRIBUTORS OF PHILCO BENDIX SELF-SERVICE (COIN-OPERATED) DRY CLEANING EQUIPMENT AND VARIOUS MAKES OF SELF-SERVICE PRESSING EQUIPMENT.

General Statement

Present drycleaners law should be amended to include reasonable regulation of the self-service drycleaning branch of the cleaning industry. Present laws were enacted years before self-service drycleaning came into being and the laws applicable to commercial drycleaning (the cleaning, spotting and pressing of clothes for other persons in consideration of a "fee" or charge) are equally applicable in all details to those stores that have coin-operated equipment that patrons use in the cleaning and pressing by them of their own clothes. Simply expressed—the present laws should be "up-dated" to reflect the new developments and concepts in the industry. The administrative board—the State Board of Dry Cleaners—should also be changed to provide representation for this new branch of the industry and to provide for more representation thereon by the public. The majority of persons on such board should be public members in order to avoid regulation of the industry by members in the industry and the conflicts of interest resulting therefrom.

Specific Recommendations

1. Amend Sections 9505, 9507, and 9511 of the Business and Professions Code to provide a separate category for stores exclusively using self-service or coin-operated drycleaning and/or self-service pressing equipment and upon whose premises the patrons themselves use liquid soaps or detergents in the cleaning of their clothes. The definition should include the requirement that the drycleaning equipment use non-volatile solvents.
2. Amend Sections 9505 and 9522.4 to delete from the definition of "spotting" the use of liquid soap or detergents by patrons of self-service cleaning and pressing establishments in the cleaning and pressing of their own clothes.
3. Amend Section 9530 to provide that the seven-member board be composed of following: four (4) public members, two (2) representatives from the commercial drycleaning industry and one (1) member from the self-service branch of the industry. This will provide technical advice to the board but at the same time keep majority control in the public members.
 - a. Amend Section 9531 to be consistent with above amendment.

4. Amend Section 9533 to include a category of self-service stores as outlined in (1) above. Delete the five-year requirement for examiners in the self-service category for such self-service equipment has not been used in California for five years.
5. Amend Sections 9540, 9540.5, 9540.51, 9540.53, 9541 and 9542 to provided a license for a self-service store referred to in (1) above.
6. Amend Section 9550 to provide the attendance of a registered operator at self-service stores.
7. Amend Section 9551.5 to delete the one-year-experience requirement for a registered operator. The passing of an examination should be sufficient. This will enable owners of self-service stores to work in their own stores if they pass the examination.
8. Provide in this article (4) pertaining to examinations, that the examinations for an operator of a self-service store shall be an examination on the coin equipment to be used in the store, the non-volatile solvents used in the automatic drycleaning machines, and general health, fire and safety regulations pertinent to self-service stores and equipment.
9. Amend Section 9580 to provide for inclusion of self-service drycleaning stores or establishments in the schedule of fees.
10. Amend such other sections of the drycleaners law as necessary to be consistent with the above.
11. Amend the rules and regulations of the State Board of Dry Cleaners to be consistent with the above changes and to establish reasonable examinations for the specific license and operator classifications pertaining to the coin-operated drycleaning and pressing categories.

Conclusion

The above changes will provide reasonable regulations and safety for coin-operated or self-service drycleaning stores and enable persons desiring such to do their own drycleaning with fully automatic equipment at considerable money savings while at the same time maintaining existing regulations for the benefit of persons desiring to have their clothes drycleaned, spotted and pressed by the "professional" drycleaners.

STATEMENT OF THE CALIFORNIA DRYCLEANERS ASSOCIATION CONCERNING SENATE BILL 347 BY SENATOR O'SULLIVAN

We are opposed to Senate Bill 347 which would repeal the present law licensing drycleaning establishments for the following reasons:

1. The present law aids in the protection of the public health. All drycleaning solvents used commercially today are highly volatile and produce toxic vapors. Without a qualified person in charge of a drycleaning establishment, these vapors can be and are dangerous to the health, and in some instances fatal. On January 29, 1963, Mr. Ralph E. Netz, Santa Ana, was overcome by fumes at a coin-operated drycleaning establishment. Fortunately he recovered, but if there had not been someone present to call an ambulance and get him to a hospital, the concentration of fumes could have been fatal.

This danger is greatest in coin-operated establishments because here the customer takes the garments from the drycleaning unit and if a unit should be out of adjustment or if the load should be too large for the machine, or consist of heavy fabrics or padded garments, the garments would not be fully dried and the solvent retained can result in vapors which can be highly dangerous.

Although this particular situation would occur only in a coin-operated establishment, the fumes, of course, are just as dangerous to employees of commercially operated attended drycleaning plants. A maximum permissible concentration of the vapor from perchlorethylene, which is the solvent used in virtually all coin-operated drycleaning establishments and over 50 percent of the commercial drycleaning establishments in California, is 100-parts-per-million parts of the air. Since the solvent is highly volatile this concentration can develop very rapidly if there is a leak in the system or solvent is spilled on the floor, or for some other reasons is exposed to the air.

The improper handling of clothing could contribute to the spread of communicable diseases. Persons who are licensed by the State Board of Drycleaners have passed an examination showing they have knowledge of proper operation of a drycleaning establishment.

2. The present law aids in the maintenance of public morals. A drycleaning agency is an excellent front for the distribution of narcotics or for other immoral uses. The investment required for opening a drycleaning agency is very nominal and it is normally used regularly by all types of people, so that anyone coming or going into the establishment would not necessarily be suspicious. It is particularly convenient to deliver narcotics in the pockets of garments which have been left for processing, and the State Board of Drycleaners have on many occasions refused licenses to applicants who had a record of narcotic violation.
3. The present law contributes to the financial welfare of the general public. A person wishing to defraud the public could open a drycleaning establishment, collect the garments and then disappear with the garments to be pawned or sold at considerable financial loss to his customers. The State Board of Drycleaners requires three character references so that a licensed establishment is operated by a person who can be traced in case of such action.

It has been reliably estimated that over two billion dollars in aggregate value of garments is handled by the drycleaners of California each year. There are approximately twenty different types of fibers used in the manufacture of yarn for fabrics. These fibers can be combined into hundreds of difference combinations, each of which will react differently to some of the spotting chemicals necessary to use in the drycleaning process. The improper drycleaning, spotting or finishing of garments can easily result in damage which makes the garment worthless. If lack of competence on the part of drycleaners were to result in only 1 percent loss of the aggregate value of garments handled by drycleaners each year in California, this would represent a loss in excess of twenty million dollars annually to the customers of such establishments.

The present law protects the investing public as well as the consuming public. A good example is that of coin-operated drycleaning. In California the development of this service for the public has been orderly and the investments have been much sounder than in some other parts of the country. In areas where no licensing is required a few unprincipled distributors of coin-operated equipment have promised extremely high return on investment and developed a chaotic condition which has resulted in the loss of a substantial amount of the invested value in some coin-operated establishments.

The drycleaners law has not resulted in prevention of new people entering the industry. In the fiscal year 1961-62, 2,079 new licenses were issued by the State Board of Drycleaners and this represents 20 percent of the total number of licenses in effect on June 30, 1962 of 10,422.

4. Many persons engaged in the drycleaning business in California could suffer substantial loss if Senate Bill 347 was passed.

The drycleaners of California sponsored legislation in 1927 which established the office of the State Fire Marshal and provided for license fees of members of the drycleaning industry to support this office. During the 36-year period since this time, the drycleaning industry of California has raised its own standards, eliminating racketeering and establishing a reputation of responsible business leadership. There have been a large number of persons who have not obtained licenses during this period of time because of their inability to prove competency sufficient to be responsible for the handling of the public's wearing apparel, or with criminal or immoral records sufficiently important to warrant their denial of a license to do business as a drycleaner in California.

If the cleaners law was repealed, it is highly probable that many of these people would immediately open up drycleaning establishments for the purpose of taking advantage of the unsuspecting public who have learned to rely on the competence and good moral character of drycleaners in California, or possibly for the purpose of engaging in illegal activities such as distribution of narcotics or other immoral or illegal activities. This would be detrimental to the public's health, morals and welfare of the people of California and could jeopardize the substantial investments of legitimate, qualified drycleaners now engaged in this service.

There are 10,422 licensed drycleaning establishments in California representing investments in excess of 250 million dollars. These firms are responsible for the livelihood of over 45 thousand workers. The repeal of the present cleaners law would certainly result in some readjustments in the industry if this should be responsible for the loss of only 10 percent of the investment mentioned above, it would represent over 25 million dollars in loss as well as the livelihood of thousands of employees.

5. The State of California would lose financial support if the law was repealed. Far from being a drain on the taxpayer, the cleaners law not only is fully supported in its administration by the drycleaning industry, but funds from this source are also used to sup-

port the Department of Professional and Vocational Standards, the State Fire Marshal and the Division of Investigation. If the State Board of Dry Cleaners were abolished there would still be a substantial portion of this revenue which would have to be obtained from other sources for the support now furnished from funds of the State Board of Dry Cleaners to the State Fire Marshal, Department of Professional and Vocational Standards and the Division of Investigation.

Because of stable conditions resulting at least in part from the licensing of the industry under the cleaners law, the drycleaners of California have maintained the highest average pay for employees that exists in any part of the country, and at the same time provides drycleaning services to the public at prices below that available in any other states surrounding California.

The drycleaners in California are recognized as the leaders of the industry throughout the United States, and the President of the National Institute of Drycleaning is from California and is a past president of our own state association. A research project has been conducted for the past eight years at the University of California with funds fully supplied by members of the industry for the purpose of developing better methods of serving the public who patronize drycleaning establishments.

The State Board of Dry Cleaners licenses schools of instruction in the field of drycleaning and the passage of Senate Bill 347 would eliminate this control of educational establishments in drycleaning processing, and students would lose this protection against fraudulent or incompetent persons operating such an educational institution.

The California Dry Cleaners Association with over 1,100 drycleaning plants as members, is committed to the maintenance of good drycleaning service rendered to the public at reasonable prices, and legislation leading to this end will be looked upon with favor by the association.

If the repeal of the present cleaners law is in the interest of better service to the public without the sacrifice of protective measures important to the public, we would support such action. However, from the information set forth above, it appears to us that the repeal of this law would be seriously detrimental to the interest of the consuming public and to the drycleaning industry of California.

CALIFORNIA DRYCLEANERS ASSOCIATION, INC.**1153 Lincoln Ave., San Jose 25, California****May 1, 1963**

To the Members of the
Business and Professions Committee

Senate Bill 957, which would remove self-service drycleaning establishments from the provisions of Chapter 18 of the Business and Professions Code is scheduled to be heard on Monday, May 6.

The California Dry Cleaners Association is opposed to this bill for the following reasons:

1. The public has been protected by the present law for 18 years, and Senate Bill 957 would remove this protection to the health, safety and welfare of the public. Perchloroethylene, the solvent used in self-service drycleaning establishments produces toxic vapors, and the maximum permissible concentration of such vapors is 100 parts per million parts of air in California. Also, many types of fabrics used in wearing apparel and household items can be ruined by improper drycleaning, and some cannot be dry-cleaned at all without serious damage. The present law provides for a licensed attendant who is qualified to give the public the protection it has grown to expect in California.
2. Senate Bill 957 would require a license and an attendant in self-service drycleaning establishments which do spotting or finishing, but remove this requirement from those where drycleaning only is done. At present about 50 percent of the self-service drycleaning establishments in California have spotting and finishing available, and more are adding these facilities all the time. The passage of Senate Bill 957 would make for an inequitable situation where one operator with the same type of cleaning equipment as another, but with added spotting or finishing equipment, would be at a competitive disadvantage.
3. Senate Bill 957 would reduce the revenue to the State Board of Dry Cleaners without commensurate reduction in operating expenses. It is difficult to determine the exact amount of the reduction in revenue, since it would depend on the number of self-service drycleaning establishments which do drycleaning only, but based upon the figure of 50 percent mentioned above, there would be approximately \$20,000 per year reduction in revenue to the board.

Your opposition to Senate Bill 957 is solicited and will be greatly appreciated.

Yours very truly,

G. M. SHEPHERD
Executive Secretary

ASSOCIATED RETAIL DRY CLEANERS ASSOCIATION, INC.

REPRESENTING SMALL PLANTS, SHOPS AND AGENCIES

326 W. 3rd St., Los Angeles 13, Calif.

Claude W. Carruth, President; Frank Evans, Vice President

October 29, 1963

Interim Committee on Business and Commerce Agency
Attn.: Senator Short, *Chairman*

Gentlemen:

We are asking your indulgence to read this entire letter. Perhaps we can enlighten you in a small way as to why the cleaners law was enacted. And, before going any further, may we state that it was the Associated Retail Dry Cleaners who instigated this action. And, if you would look up the records, you would find that Rudolph Henry, our public relations director, was the first president of the State Board of Dry Cleaners.

We are calling to your particular attention that previous to the time this board came into existence, racketeering, sabotage, stench bombs, and even murder were resorted to in order to stop unethical conditions. But, since the year 1945, there has been no violence of any kind. So this must prove to you why this law should be upheld.

Let us go a step further. If you repeal this law, where will you obtain funds to continue the work of the State Fire Marshal? You must not forget that the funds amounting to \$110,000 and, at times, a considerable more, is being given every year out of the funds collected from this industry. Not one penny is taken from the public taxes.

Secondly, the industry is paying all moneys needed to conduct the business of the board, plus thousands of dollars given to the Berkeley institute. This business is a highly professional business and through the work of this board another evil, and one that is important, is that undesirables under the guise of being cleaning shops have used these places for an outlet for dope, bookies and even prostitution, and an outlet for stolen merchandise. Through the board and its method of inspection, no more do the cleaners have this kind of reputation. They are gradually being classed as first-class citizens in the eyes of the public. Since the industry has established through the board, examinations, the public is being better served and have more confidence that those handling their garments are better qualified.

If any of you gentlemen are attorneys, and if not practicing under the rules set up by the Bar Association, many unethical lawyers would surely take over and we would feel sorry for those needing a lawyer. And particularly, if the layman, the real estate man, the banker, the notary, had a right to practice law without any control, what would happen? If this cleaners board is abolished, surely you would not expect to collect a license fee. We are certain the 20,000 or so licensed cleaners and operators would take exception, feeling why pay license without representation?

If this law is repealed, you are letting down the so-called Mama and Papa shop and placing the business in the hands of big business and you are adding insult to injury when and if you allow any segment of this big industry to be taken away from the jurisdiction of this board.

And if you decide to recommend the coin operators be taken out of this jurisdiction you definitely would be discriminating against the others in the industry.

We sincerely hope that you will accept this letter in the spirit it was written, and not a letter of a crackpot.

Thanking you for having read this letter, and hoping instead of recommending the repeal you will recommend the law to be amended to give more "teeth" to the board.

We remain your servants,

CLAUDE W. CARRUTH
President

RUDOLPH HENRY
Director of Public Relations

STATEMENT TO THE SENATE INTERIM COMMITTEE ON BUSINESS AND COMMERCE

By Glenn B. Vance, State Fire Marshal

October 30, 1963

Senate Bill No. 347

Senate Bill No. 347 would abolish the State Board of Dry Cleaners and, consequently, all funds collected by that agency through present licensing provisions would be discontinued.

Funds necessary for the administration and enforcement of Chapter 2 of Part 3, Division 12 of the Health and Safety Code by the State Fire Marshal are dependent upon appropriations made to the General Fund by the Board of Dry Cleaners. Discontinuance of these appropriations would place administration and enforcement responsibilities upon the State Fire Marshal without means of support, unless otherwise provided for from General Fund allocations for this purpose.

Chapter 2, Part 3, Division 12 of the Health and Safety Code authorizes the State Fire Marshal to adopt and enforce regulations to provide for the protection of life and property from fire, and to promote the occupational security of the operators in clothes cleaning establishments. The State Fire Marshal is required to approve all plans for new construction or reconstruction of existing plants and to make periodic inspections of all cleaning plants. During the 1963 fiscal year, the State Fire Marshal conducted 5,311 inspections and reviewed 965 plans.

There are 3,307 plants in the state. They are divided into three groups, based on the type of solvents used. The hazard of the various solvents determines the building construction and the type of equipment used.

Type	Number	Solvent	Solvent Hazard
1 Stoddard	367 Plants	Petroleum 100°F. flashpoint	Flammable
2 140 F	315 Plants	Petroleum 138.5°F. flashpoint	Flammable
3 Synthetic	2,571 Plants	Chlorinated hydrocarbon (perchloroethylene)	Toxic fumes (nonflammable)

Protection From Hazard

The primary hazard in Stoddard and 140 F cleaning plants is the use of a flammable solvent. The equipment in such plants is examined to determine its safe use with flammable solvents. Special construction of the cleaning room is required to prevent a flash fire from spreading to other areas of the plant or adjoining buildings. Because of the effective enforcement of the State Fire Marshal, the cleaning industry enjoys an insurance rate lower than that of the laundry industry, which incidentally, uses only water in their cleaning process. Further, local authorities have readily permitted establishment of Stoddard and 140 F plants in areas that are prohibited to other industries employing a flammable solvent.

The local authorities generally do not have the training or equipment to carry out the detailed field inspections.

Synthetic Cleaning Plants

The synthetic cleaning plants use chlorinated hydrocarbon solvents in their cleaning process. Perchlorethylene is used almost exclusively. There are other synthetic solvents that are less toxic, but the cost has limited their use. The hazard of perchlorethylene is from the toxic fumes.

The State Fire Marshal standards for synthetic plants are consistent with recommendations of the State Department of Public Health, National Board of Fire Underwriters and other recognized authorities.

A potential fire hazard in the plants using a synthetic solvent would be the use of a flammable solvent rather than a nonflammable one. The temptation to use flammable solvents exists because they cost about one-eighth the price of perchlorethylene. The electrical equipment on the synthetic machines, including coin-operated, is not designed for flammable vapor atmospheres.

Another common fire hazard in all cleaning plants, including synthetic plants, is the spotting area where various flammable solvents are used. The cleaning industry has responded to the State Fire Marshal's program regulating the synthetic plants.

The fire service and the cleaning industry have, in the past, given complete support to this program.

GLENN B. VANCE
State Fire Marshal

STATE BOARD OF DRY CLEANERS

Subject: Senate Business and Professions Factfinding Committee,
Re: Senate Bills 957 and 347—October 30, 1963

Senate Bill 957 would eliminate requirements for licensing coin-ops.
Senate Bill 347 would eliminate the Board of Dry Cleaners.

Purpose and Functions of the State Board of Dry Cleaners

The primary function of the State Board of Dry Cleaners is to protect the public and employees of the drycleaning industry from hazards to their health and safety, due to the use of highly flammable and toxic substances in the cleaning process; also to assure the public that only persons of experience and demonstrated skills are permitted to

work on their wearing apparel. This protection extends from cleaning plant operators, spotters and pressers, to hat, fur and leather renovators. The entire function is self-supporting from funds derived from fees charged to the industry, and these funds are also used to help support the operation of the State Fire Marshal.

I. What would be the effect on the board and the public if SB 957 became law?

- (A) The public would not be protected against the dangerous hazards of the highly toxic fumes from cleaning solvents (see attached copies of letters from the State Department of Public Health, attesting to the need of qualified attendants).
- (B) The self-servicing type of drycleaning equipment requires a permit issued by the State Fire Marshal after inspection and approval. The Attorney General has rules that these establishments are plants as defined in the Business and Professions Code, and therefore are licensed by the drycleaners' board as such and subject to the same regulations as other plants.
- (C) If coin-ops were eliminated, the board would suffer a loss of approximately \$41,000 annually in licensing fees.

II. Recent board action to correct inequities and problems:

- (A) In response to the needs of the self-service type of drycleaning establishment (coin-op) and in response to the reactions of various legislative committees, the new state board has established two new categories of operators: These are "clean only" and "clean and spot only." "Clean only" requires the applicant to pass a written examination composed of 50 questions, lasting 1½ hours; *no spotting or pressing tests required.*
- (B) The clean and spot examination requires 2 hours and 15 minutes; it is comprised of 50 written questions *and a manual test in spotting.*
- (C) The State Fire Marshal will receive \$115,260 during this fiscal year toward the support of his office from the Drycleaners Fund. If the Board of Dry Cleaners, by law, is unable to supply these funds to the State Fire Marshal in the support of the Health and Safety Code, *he will be forced to ask for an equal amount from the General Fund.*

III. Major problem in coin-op business for committee's consideration:

Coin-ops require large capital investments averaging from the small units, \$25,000, up to the larger units, \$100,000. Many unqualified persons who have capital but no experience in this type of business, have been encouraged by extensive national advertising into opening coin-ops. As a result of this lack of experience in the drycleaning industry, many have gone bankrupt and defaults of payments are rife throughout the coin-op plants in the State of California. Information has been received that 31 have closed in the Los Angeles area, alone. The Los Angeles office of Norge distributorship for this equipment is now closed. Coin-ops (due to the general financial arrangements) for the most part are under absentee management; the public therefore would not be protected from dangerous fumes, clothing damage and other haz-

ards without properly trained personnel on the premises to supervise, help and instruct the public in the use of equipment. (See Exhibit 2.)

IV. *What is the board doing to alleviate the shortage of trained operators and other qualified personnel?*

(A) To promote a better supply of trained operators, the board has been working closely with the Manpower Development Training Act for the unemployed and partially employed individuals interested in entering the drycleaning business. Schools are now being set up in Los Angeles and San Francisco which will be tuition-free and open to the public.

(B) Request of Legislature:

The Legislature can assist this board in this regard by amending the drycleaning law as proposed in Exhibit 1-D or by similar legislation.

V. *Enforcement—how is the law being enforced, and what improvements can be made?*

(A) The principal enforcement of the drycleaners laws is obtained through an inspection program. Previous board policy in enforcement was extremely lenient. This policy has led to a situation where the law in some areas is being flaunted.

(B) This committee can assist the board by recommending additional legislation to make the improved board program more efficient and less costly (see Exhibit No. 1, attached).

VI. CONCLUSIONS AND SUMMARY

(1) It is the considered opinion of the board, State Fire Marshal, and the State Department of Public Health, that safety and public health require a trained operator on duty during all times when self-service (coin-op) premises are open to the public—or in operation.

(2) To assist in securing trained personnel, the board has created the two new categories of clean only and clean and spot only.

(3) The board is working with federal and state authorities in establishing tuition-free drycleaning public schools.

(4) The Legislature can help by permitting the board to reduce the hourly equivalent to the one year's experience requirement for the two new categories established by the board. (For example: from 360 hours to 120 hours and from 360 hours to 240 hours).

(5) The present board has changed the former policy in regard to effective law enforcement and requests the assistance of the Legislature for statutory law changes to improve efficiency and reduce enforcement costs.

(6) The board is currently reviewing and has revamped examination procedures to assist all candidates to better performance in examinations.

(7) The board requests legislation such as proposed in Exhibit 1 to relieve the small agency from paying the same fee as the larger ones.

STATE OF CALIFORNIA
DEPARTMENT OF PUBLIC HEALTH

MALCOLM H. MERRILL, M.D., *Director of Public Health*

EDMUND G. BROWN, *Governor*

1930 Beverly Boulevard, Los Angeles 57, California

COIN-OPERATED DRYCLEANING MACHINES
A RÉSUMÉ OF FINDINGS OF SEVERAL INDUSTRIAL HYGIENE STUDIES

Report date: December 15, 1961

Report prepared by: State Department of Public Health
Bureau of Occupational Health
Paul E. Caplan, Senior Industrial Hygiene
Engineer

During the past year, industrial hygiene studies have been conducted in California to evaluate the health hazards associated with the installation and operation of several coin-operated drycleaning machines. Our concern has been directed toward exposures of perchlorethylene solvent vapors both to the employees maintaining the machines and to the customers using the machines. Studies were conducted during normal and abnormal operations to estimate existing exposure levels and to anticipate conditions that might occur as the result of malfunction of the equipment.

Summary of Findings

1. Two general types of equipment were observed: (1) a single combination machine (similar to a combination hot water clothes washer and drier), in which all operations of cleaning, draining, spin drying and final drying (or deodorizing) are performed in the same machine; and (2) two separate machines (similar to a clothes hot water washer and a clothes drier), in which cleaning, draining, and spin drying are performed in one machine, and the final tumbler drying (or deodorizing) is performed in a second machine.

2. During *normal* cleaning operations of these machines, atmospheric concentrations of perchlorethylene were maintained at low levels (less than 100 parts per million (ppm)) both in the customers' areas and in the maintenance areas. These optimum conditions were the result of the mechanical ventilation provided in all of the installations evaluated.

3. *Some of the installed equipment was found to contain improperly designed components, such as malfunctioning interlocking switches. As a result of these malfunctions, excessive vapor concentrations were observed during some unloading operations and during the periodic cleaning out of the filtration systems. Additionally, excessive concentrations were observed when heavy drapes (which became entangled in the drier) were removed from the drier while still excessively damp.*

General Procedures

Atmospheric concentrations of perchlorethylene vapor were measured during the operation of four types of installations, using a calibrated Davis Halide meter and (in some cases) a Varian Graphic Recorder, Model G-10, to obtain a written continuous record of the

variations in concentrations. The maximum allowable concentration (MAC)* for an eight-hour working day exposure to perchlorethylene is 100 parts per million (ppm) by volume. The Hygienic Guide of the American Industrial Hygiene Association for perchlorethylene states (1) "200 ppm is believed to represent the *maximum*, which should not be exceeded in repeated daily exposures; it is not to be used as an integrated average concentration. A level of 100 ppm would be more suitable for the latter."

Installation A consists of a bank of three tumbler driers which open both to the customer area and to the drycleaning operator's area (see Figure A), plus a single washer unit in the drycleaning operator's area. In this arrangement, the clothing is (1) placed by the customer in the clothes compartment adjacent to the front of the tumbler drier. The drycleaning operator then (2) removes the clothing from the back opening of the compartment; places it in the washer for cleaning, draining and spin drying. The operator then (3) transfers the damp load from the washer into the back of the tumbler drier for final deodorizing. At the end of this operation, a red light illuminates in the customer area, and the customer (4) removes the dried clothing from the front of the drier.

Installation B consists of eight combination cleaning units in one room. The facility is divided into a customer area and a maintenance area, separated by an air-tight wall, with a locked door between the two areas.

Installation C consists of a bank of six combination machines so arranged that the fronts of the machines are in the customer area, and the rears of the machines are in the maintenance area. These areas are separated by a partition wall.

Installation D consists of two combination units fitted together as one machine. The customer area is separated from the maintenance area by means of a wooden partition wall with an access door.

Measurements and Results

Atmospheric concentrations of perchlorethylene vapor were measured during various phases of the equipments' operation. The general concentration levels are shown in Table I. (See Table I.)

General Comments

Under *normal* operating conditions, no hazardous exposures to perchlorethylene vapor existed in either the customers' or operators' areas. Excessive exposures were developed when heavy loads were removed from the machines after tumbler drying. This was caused by solvent retention within the clothing. Precautions must be taken to insure that overloading is not permitted, and that loads are properly dried. *This may indicate that the operator should supervise all loading and unloading operations.*

Additionally, high concentrations persist for several minutes during the removal of used filter-residue material from the cooker during routine maintenance operations. This operation normally is performed once a week, for about 10 to 15 minutes. For a short period of time, approximately 5 minutes, the concentrations may exceed the 100 ppm.

* California General Industry Safety Orders.

or even the 200 ppm limit. Respiratory equipment should be available and used, if excessive levels are developed. It is recommended that this operation be performed after the regular store hours, so that customers will not be inadvertently exposed to these vapors.

The front door of one machine was so designed that the fan activating interlock switch functioned only after the door was opened 45 degrees. As a result, a slight opening of the door permitted vapors to escape into the customer area. Particular emphasis should be placed on the proper design of interlock switches, so that they are activated immediately upon door opening.

In California it is required that a qualified operator be present at all times during the operation of these machines. The Association of Casualty and Surety Companies suggests "A competent, full-time attendant is recommended when the center is open. If this is not possible, frequent supervision and inspection services should be provided." In the Michigan survey two occasions are described where "a gasket blew out of the equipment which treats solvent for the . . . machine in an attended laundry . . . the maintenance man, who was fortunately available, was able to enter the back room and repair the break. On another occasion in the same plant, a lint bag plugged up. The dike and underfloor drain took care of the leaking solvent, making possible rapid repair and cleanup."

In consideration of the toxicity potential of this solvent, the proven need for evacuation of the building in time of equipment breakdown, the demand for immediate action for the minimizing of exposures in the event of equipment casualty; the necessity for proper use (and limitations involved in use) of respiratory protective equipment; supervision requirements for proper loading and unloading of machines; we feel that all of these factors suggest the need for a qualified operator on the premises at all times that the equipment is available for customer use.

Summary of Recommendations

1. Require the presence of a qualified operator at all times during operation of equipment.
2. Require an organic vapor mask in proper working condition for use in emergency situation.
3. Supervise the use of weighing scales to insure proper loading of the machines.
4. Require the presence of the operator during unloading of machines to insure that loads are properly dried.
5. Provide sufficient mechanical exhaust ventilation in the customer and maintenance areas to insure rapid removal of solvent vapors and to prevent leakage from the machines into the occupied areas.

Report prepared by:

PAUL E. CAPLAN
Senior Industrial Hygiene Engineer

TABLE I
Atmospheric Concentrations of Perchloroethylene

Operation	Atmospheric concentration—ppm ¹				Remarks
	A	B	C	D	
A. Customer area					
1. Front of machine—general area	< 5*	< 5	< 5	< 5	During normal operation, levels low
2. Front of machine—normal loading	< 5	< 5	----	----	Normally levels low
3. Front of machine—normal unloading	<10	<10	----	0-20	Normally levels low
4. Front of machine—in clothing normal load	----	10 to 20	----	45	Most clothing properly dried
5. Above front door-----	<10	----	20	----	
6. Front of machine—unloading heavy load	----	50	>400†	<400	Excessive vapors in damp clothes or if interlock not operating
B. Maintenance and operators' area					
1. Behind machines, taking out drained filter bags	----	100 to 180	290	----	Cleaning out of filters—develops vapors for a short period once a week
2. Behind machines, general area, dumping filter bags	----	50 to 100	45		
3. Behind machines, general area, normal machines operation	10 to 15	<10	----	45 to 90	
4. Transferring damp clothes from washer to tumbler drier	28 to 50				

¹ ppm = parts per million parts of air by volume.

Maximum allowable concentration for weighted average exposure = 100 ppm, for peaked concentrations = 200 ppm.

* < = less than.

† > = greater than.

STATE OF CALIFORNIA
DEPARTMENT OF PUBLIC HEALTH
 BUREAU OF OCCUPATIONAL HEALTH
 1930 Beverly Boulevard, Los Angeles 57, California

**REPORT OF AN INDUSTRIAL HYGIENE STUDY OF COIN-OPERATED DRY
 CLEANING MACHINES AT PACIFIC DRY CLEANING, INC., 205
 SOUTH GLENDALE BOULEVARD, GLENDALE, CALIFORNIA**

Study No.: S-1532

Report date: March 24, 1961

Study requested by:
 State Fire Marshal's Office
 Mr. William Garrett

Study conducted by:
 Bureau of Occupational Health

Robert R. Johnson, M.D., Medical Officer in Charge
 Paul E. Caplan, Industrial Hygiene Engineer

General Comments

Under normal operating conditions observed, no hazardous exposures to either the customers or the operators of this equipment were developed. The major consideration, from a health standpoint, should be

directed towards plans and provisions in the event of breakdown of the equipment. *We suggest that the inherent toxicity of perchlorethylene is sufficient to warrant the continuous presence of an attendant who is cognizant of the hazards of overexposure to this solvent, and instructed in the measures to be taken in the event of equipment failure. We refer you to the "general requirements" mentioned in the "Michigan Occupational Health" bulletin on "Coin-op Dry Cleaning—New Development", Vol. 6, No. 2.*

We particularly would emphasize the need for proper respiratory protective equipment, ready for immediate use; the use of scales for weighing load; and the presence of an attendant at all times that the equipment is in use, to insure prompt and proper action in the case of equipment failure. This operator should be instructed concerning the toxicity and hazards associated with the use of chlorinated solvents.

Summary of Recommendations

1. Require the presence of a qualified operator at all times during the operation of the machines.
2. Require respiratory protective equipment, in proper repair, for use in emergency situations.
3. Require a means for weighing garment loads, and requiring the operator to supervise the customers' proper use of the scale and equipment.

Report prepared by :

PAUL E. CAPLAN
Industrial Hygiene Engineer

TIME MAGAZINE

April 5, 1963

Vol. LXXXI, No. 14

CLEANING WITH COINS

More Misery Than Money

SMALL BUSINESS The Troubles of Coin-Ops

Potential investors poured into the convention of the National Institute of Drycleaning two years ago, clamoring to find out about a new "wonder business" that was virtually guaranteed to coin profits while they went fishing. Last week in Washington, the institute met again, and this time it was hard to hear a good word said for the business of coin-operated drycleaning shops. In the two years between the two gatherings, the coin-op industry blossomed into a \$120 million-a-year business with

7,300 shops across the U.S. But coin-ops have made more owners miserable than millionaires.

Not for Amateurs. Coin-operated drycleaning machines look and operate much like coin-operated laundry machines. Promising to clean an eight-pound load of clothes for \$1.50 to \$2, they were expected to be just as successful. The Norge division of Chicago's Borg Warner Corp. got into the market early and now had 50 percent of it. Soon 32 other firms followed—including G.M.'s, Frigidaire, Whirlpool, Westinghouse, Philco—and the competition was

on. Most of the machines were sold not to established and experienced drycleaners, but to investors who swallowed the high-powered promises of "profits while you sleep." Hard-talking salesmen urged investors to take out 90 percent loans on equipment worth up to \$100,000. Many cities were quickly swamped with coin-ops; Denver at one point had 1,800 machines vying for business that 500 could have handled. Drycleaning even by machine turned out to be no business for beginners. The plumbers, insurance men, and merchants who set up shops found that almost every fabric posed a different cleaning problem and that customers expected them to take out spots and stains just like the more expensive professionals, whose drycleaning process takes 14 separate steps. Coin-op cleaning proved to be better suited for such bulky items as blankets and draperies than for men's suits and outerwear. Full-time attendant (often required by local laws) sent up labor costs. Electric bills were high, and machines frequently proved unreliable. Clothes often came out smell-

ing like sulphur. Many began to echo the wry dismay of Irwin Gott, a Houston jeweler-turned-drycleaner, "I didn't intend this to be a nonprofit corporation; it just turned out that way."

Little Extras. When coin-ops first started, the talk was that they would soon put professional drycleaners out of business. Something quite different is happening. To attract customers, the successful coin-ops have had to expand their operations into spotting, pressing and other services, thus are becoming somewhat professional themselves. Many professionals, having lost some business to the coin-ops, have turned to selling coin-op-type service as a sideline, for cleaning materials from around the house and old clothes that do not need pressing. The general feeling at last week's convention was that there is a continuing place for coin-ops, but that the most successful will probably be managed by professional cleaners in big operations that put coin laundry and coin drycleaning under the same roof with a full line of professional drycleaning.

Page 1, Column 5

THE WALL STREET JOURNAL

Thursday, September 19, 1963

Coin-operated drycleaning boom loses some of its steam. Some of the estimated 7,000 shops housing coin-operated drycleaning machines are feeling a competitive pinch. Dikran P. Conchian, president of an eight-store chain in the New York area, says his company has closed one shop and "it's quite conceivable we may have to close another," because of market saturation and difficulties in getting people to try the service. *Norge fashions a \$1 million advertising campaign to boost patronage at Norge-equipped stores.*

Makers of coin-operated cleaning machines report sales are off 50 percent from last year. *John Crouse*, general manager of *Whirlpool's* commercial laundry and drycleaning division, *predicts the sharp sales drop will eliminate many of the weaker producers of such equipment.* "We grew faster than the public accepted the new idea," says William A. Douglass, a Westinghouse executive. Most firms in the field remain optimistic about long-term prospects however.



LICENSING OF FORESTERS

LICENSING OF FORESTERS

Senate Bill No. 991

Senate Bill 991, authored by Senator Carl Christensen of Eureka, was introduced in the 1963 session of the Legislature. The bill was referred to the Senate Interim Committee on Business and Commerce for further study.

Senate Bill 991 creates a board of registration for professional foresters within the Department of Professional and Vocational Standards. It sets forth the minimum requirements for licensing and registration, which require an applicant to be 23 years of age, a graduate of a forestry school, and to have two years of practical experience as a forester; in addition, he must pass an examination which has been prescribed by the Board of Registration. The act does not apply to any governmental agencies nor employees or agents of landowners working their own lands.

There are approximately 1,400 people engaged in the field of forestry within the State of California that could be affected by this legislation, if enacted. At the present time, seven other states have licensing provisions similar to those proposed by SB 991. The committee has been advised that five other states are contemplating such legislation. The committee staff contacted officials of those states known to have laws pertaining to the licensing of foresters. The States of Florida, Alabama, South Carolina, and Michigan responded to the requests for information. Information from the State of Georgia was received subsequent to the hearing.

Officials of the Society of American Foresters were contacted in an effort to secure the best possible witnesses for the hearing held by the committee on April 7, 1964. In addition, F. H. Raymond, State Forester of the State of California, was asked for suggestions as to possible witnesses. He also appeared personally to testify. Inquiry was made of the U.S. Forest Service, in order to secure the views of the federal officials in forest protection and forest management. Finally, the large lumber companies were requested to express their views, and did so at the hearing, through a spokesman. The public hearing covered as broad a spectrum as possible in an effort to obtain the views of those directly concerned. Only one letter was received that opposed the licensing and registration of foresters.

Testimony in Support of Proposed Legislation

The bulk of the testimony was actively in support of SB 991. Any opposition, as such, arose out of incidental questioning by the various members of the committee. As was previously indicated, the proponents of the measure are either officials of public agencies or members of the Society of American Foresters.

The Society of American Foresters is a nonprofit organization with about 50,000 members. In the main, the membership is comprised of graduates of professional forestry schools with a four-year course of study. The society has been instrumental in securing the licensing and registration of foresters in the states of Alabama, Florida, Georgia, Michigan, Oklahoma, South Carolina, and West Virginia. 1,100 of the 1,400 persons engaged in this activity in the State of California

are members of the northern and southern California sections of the national society.

Testimony by Mr. Tobe Arvola, Chairman of the Northern California Section of the Society of American Foresters, indicated the scope and extent of professional activity in this field:

Mr. Arvola: "The principal employers of foresters in California are the private timber industry, the two professional forestry schools in the state, the U.S. Forest Service, the U.S. Bureau of Land Management, the U.S. Bureau of Indian Affairs and the California Division of Forestry. Twenty forest consultant firms are resident in California. A number of consultants from outside the state practice here, too. Foresters are also employed as specialists in a number of other state and federal agencies concerned with wild land management, outdoor recreation, and taxation. In aggregate, the foresters in these many organizations have technical responsibilities for the protection and management of over 17 million acres of private and public commercial forestland in California."

The State Forester, F. H. Raymond, concurred in testimony that there are 17 million acres of commercial timber in the State of California, half of which is privately owned. He indicated that we are the second largest producer of timber in the United States, with an output of $5\frac{1}{2}$ million board feet each year. Sixteen percent of the nation's lumber manufactures and wood products originates in the State of California. The value of this timber harvest is 270 million dollars. In addition, $2\frac{1}{4}$ billion dollars are brought into the economy through those engaged in enterprises dependent on wood. There are 250,000 jobs supported by the lumber industry in the State of California.

Needless to say, the old method of harvesting timber is no longer used. The old procedure of ruthless cutting, leaving the small trees and denuding the land as a result of the operation, has been succeeded by enlightened forest management. With the aid of the professional, the concept of a perpetual timber crop is the keystone of the continuance of the forest industry, not only in California, but throughout the country.

It was the opinion of the State Forester that the successful continuation of good timber practice requires highly trained men in the management of both public and private forest lands, and that fire protection, proper control, and other related practices are dependent upon this supply of personnel.

In addition to the question of recreational use of public and private timber lands, everyone is aware of the acute water problems. Eighty-five percent of the water supply in California is produced or affected by the watersheds lying within the erodable forest lands of the state. This situation entails fire protection, pest control, production and distribution of tree planting stock, advisory services, research, and last but not least, regulation of the forestry harvesting practices on private lands.

Section 4901 to 4973.5 of the Public Resources Code spells out the minimum standards for the harvesting of timber. The Forest Practice Act of California provides for the establishment of forest districts

and each district has its own rules. These rules are developed by the Forest Practices Committee, comprised of timber owners and operators within the area, who are appointed by the Governor. Public hearings are held to develop the rules, and interested parties make recommendations as to their scope and content. When the rules have been adopted, they have the force of law.

Under the Forest Practice Act, timber owners are permitted to deviate from specific requirements to alternate procedures which have been approved by the state. The State Forester indicated some of the implications of these practices:

Mr. F. H. Raymond: "As forestry becomes more intensive in California, I expect that more and more use of the alternative plan of forest management will come to govern their practices. Foresters are often used by private operators to develop these plans, and execution of such practices as seeding and planting is sometimes subcontracted to private consulting foresters. It is becoming quite apparent that the Forest Practice Committee and the Board of Forestry will need to place greater reliance upon professional foresters within and outside the Division of Forestry to evaluate these plans before they are approved."

Forester Raymond touched on the controversial nature and problems of private timber cutting in the redwood area:

Mr. Raymond: "Some of the cutting that has been publicly condemned is the clear cutting of trees. Because of unstable soils, considerable wind throws of trees have occurred in selectively cut areas. To prevent this loss, the operators applied for and received approval for alternate plans which permit block cutting followed by seeding or planting to provide for a new forest crop. This type of operation is a sound silviculture practice under certain conditions, but it has to be evaluated and applied under professional forestry direction."

It was Forester Raymond's contention that the role of the professional forester is a key factor in the success of the development, practice, and application of forest practice rules and forest management plans. Approximately half of the forest lands in California are privately owned. These 8½ million acres are under the combined ownership of 30,000 people. This statistic is misleading, in view of the fact that almost half of this acreage is under the management of 23 large industrial tree farms which have made rapid strides and now have reached sustained yields from their properties. These industrial tree farms all employ professional foresters.

State Forester Raymond indicated that the main problem concerns the 4½ million acres comprised of small firms, ranchers, and absentee owners and investors, who have little or no knowledge about the value of their timber and property. This group of landowners represents the largest problem with respect to improper forest use. Because of their lack of knowledge, these owners have absorbed financial loss and have suffered damage to their properties. The general public has also suffered because these properties have been damaged by soil erosion, fire, stream and watershed damage, etc. These conditions exist despite the

efforts of the forestry division to provide help with their advisory services. The division is able to work with only a portion of the owners.

In urging passage of the bill, Mr. Raymond concluded his statement as follows:

Mr. Raymond: "This bill is not sponsored by our agency; it has been promoted by the Society of American Foresters, to which most foresters of the Division of Forestry belong. Nonetheless, in principal we endorse this bill like the State Foresters of seven other states have done with respect to similar legislation. I believe that the licensing of professional foresters will help maintain the importance of forestry in California, contribute to the success of this state forestry program, improve the forestry services that are needed by thousands of owners, and benefit the operations of your state forestry agency."

The value of a professional forester, a man with the proper education, training, and experience, was pointed out by Robert Kleiner, a member of the Society of American Foresters, and also a consulting forester. He gave three examples showing the indispensable nature of this service for a person who wants his property evaluated. He indicated that an inexperienced man would not have the necessary knowledge as to locations, would not know where to look for boundaries, etc. He related an example of one case in which an inexperienced person made a survey and classified the land as brush and range land, with the value estimated on that basis. After this land was sold, the seller prepared to take legal action because the property actually had a valuable stand of timber on it. This error resulted from the fact that the boundaries were not clear, and the party making the survey did not take this into consideration. It was pointed out that an experienced forester would have raised the question of the improper boundaries, and would have called attention to the difficulties involved in making a proper evaluation until the land survey itself were made.

Referring to another situation, Mr. Kleiner demonstrated the dangers of having an inexperienced man "cruise" his timber for the purpose of selling trees to a lumber mill. Reports in this case were made by two "cruisers" and a comparison of the reports showed that there were wide variances in the timber quantities estimated by the two. When a comparison of these reports was made it was obvious that the second report was merely a copy of the first, using exaggerated figures with respect to the timber contained on the property. Both the landowner and the prospective buyer could have ended up in court had the error not been corrected.

The third type of situation concerns the appraisal of the real estate irrespective of the timber. If the real estate brokers making the appraisals are inexperienced in forest matters, and do not know timber values, their appraisal could be far enough off to hurt the property owner and/or the property buyer. It was pointed out that a real estate broker would ordinarily consult an experienced forester when making his appraisal of the property.

In connection with Mr. Kleiner's testimony, Senator Pittman raised the following question:

Senator Pittman: "I happen to be a real estate broker and I am curious about the relationship you have indicated. A real estate broker active in this type of work normally hires a timber firm to take care of that chattel of personal property. Would this bill exclude real estate brokers from appraising the land?"

Mr. Kleiner: "No, I don't think this bill would exclude the appraisal by professional brokers or could exclude them from the services they now render, but I think it should be pointed out that there are foresters trained to assist in and to appraise timber or forest lands and forest values, and I think in these examples if these appraisers had foresters to advise them, these mistakes would not be made."

The chairman of the committee suggested that the bill could be restrictive:

Chairman Short: "Of course, you might want to take a good look at this part in this section, 7802, which bags a lot of people, including evaluation, and I think you want to make the boundary clear and real stiff and permanent. I don't think they want to be limited. Do they want to be limited?"

Senator Pittman: "It would be a little touchy."

Chairman Short: "There are a lot more real estate brokers than foresters."

Continuing testimony on the types of problems that crop up when unqualified people give advice, Walter Bemis, a professional forester, indicated how people using this kind of service suffer. He stated that in one section of northern California an individual advertised in the phone book, and his business cards indicated, that he was competent to furnish services common to the forestry profession. Mr. Bemis testified that he had observed this gentleman's work, and had seen him apply chemicals to take care of an infestation where the insects had actually left the trees.

He stated that a person posing as a forester had induced two elderly women who had inherited a 5,000-acre tract of timber to allow him to represent them. The results of this person's activities to date indicate that he has sold the timber for these elderly women for less than half of the going rate. He has negotiated sales contracts which were disadvantageous to them and has received eight promises to do cultural work of which he has insufficient knowledge.

Mr. Bemis cited a third case concerning an absentee owner living in South America. The virgin timber on this person's property had been burned over. This individual had been given permission to harvest the timber and prepare the area for reforestation. The arrangement between the so-called expert and the absentee owner was made by mail. The net result of this transaction was that the owner received one-fourth of the actual value of the merchantable timber, and the presumed expert endeavored to charge the owner three times the going rate in preparing the ground for reforestation. This resulted in a loss of almost \$25,000 to this owner.

Mr. Bemis cited other examples wherein the owners of forest land had followed the advice of the so-called experts and had suffered

financial loss and irreparable harm to their property after following such advice.

Additional testimony in favor of the bill was given by Mr. Herbert Sampert, Chairman of the Licensing Committee for the Society of American Foresters. Mr. Sampert is employed by the University of California School of Forestry. He teaches logging, engineering, production, and is also in charge of the university research forest. He dealt with the various aspects of the bill, and indicated that he felt that the public employees who were excluded by the bill would voluntarily become members.

Further testimony was given by Mr. Grant Morse, Assistant Regional Forester, United States Forest Service. In part, he stated:

Mr. Morse: "We believe such a law can offer to the client of the professional consultant forester the same kind of protection that is given by licensing legislation to the client or patient of the doctor, the dentist, the lawyer. The increasing demand upon land managers for all of the products of forest lands—water, recreation, wildlife, and forage, as well as timber and other wood products—places a grave responsibility on the forestry profession to do an even better job. The profession must constantly provide a high level of performance, etc. It should prevent untrained and unqualified persons from offering professional forestry services to clients who have no basis for judging their qualifications as professional foresters."

He concluded his statement by saying:

Mr. Morse: "I have carefully studied the provisions of SB 991 and believe it will be of real benefit to the state in meeting those objectives if passed into law."

Additional testimony, representing the thinking of the timber owners, was given by Mr. John Callaghan, Secretary-Manager of the Forest Protective Association. This organization generally represents the mill owners and some of the large manufacturers who own most of the private timberland in the state. His organization was in favor of the bill because forestry is a prime industry in the state, and the utilization of timber resources is becoming more complex. It was his opinion that licensing would raise the standards of the profession and be a benefit to the general public.

Chairman Short raised the question of the financing of the registration and licensing project, and was answered by Mr. Sampert:

Chairman Short: "Do you have a budget? Have you worked this out to determine that you can support and sustain this and if you can get assistance from the Attorney General's office, legal assistance, then you have to pay it at the rate of \$12 an hour, which is kind of cheap, frankly, but the rate of \$12 an hour is what you will have to pay. . . . You are setting up a five-man board. One has to be a layman. That, you know, under the law. How are you going to support it?"

Mr. Sampert: "That's a long question."

Chairman Short: "You have to pay the members of the board, you know. You just don't have enough money here to do the job."

Mr. Sampert: "We have not prepared a budget as such. We feel that in view of the experience of other professional groups, some of which have a license fee of less than \$25, we feel that this figure of \$25 was, we will call it, a happy medium."

Chairman Short: "How many members do they have that pay this \$25?"

Mr. Sampert: "Substantially more."

The chairman suggested that it would be problematical whether they could get by for \$25 a year, and that \$100 a year might be more realistic. The question of exclusions was referred to throughout the hearing by all of the witnesses. All witnesses indicated that they felt all of the foresters would become registered and licensed, as a matter of principle.

The exclusions in SB 991 are as follows: Section 7810: the provisions of this chapter do not apply to the following persons: A. Any person performing the services of a professional forester who is employed by the federal government, or any political subdivision or agency thereof, or an employee of the State of California, or political subdivision or agency thereof. B. Any landowner, his agent, or employee who performs the services of a professional forester on lands owned by such individual landowners.

The size of the group to be registered becomes a large factor, upon examination of these exclusions and evaluation of the testimony of witnesses.

The testimony of Tobe Arvola indicated that half of the foresters of the state are employed by private industry and the other half are publicly employed. If this estimate is taken to be correct, and judged in connection with testimony that there are approximately 1,400 foresters within the State of California, then half of them would be excluded because they are employed by political subdivisions. The other exclusion, providing exemption for a landowner or an employee of a landowner would, of itself, eliminate the bulk of the remaining 700 foresters.

The testimony and statement of John Callaghan, Secretary-manager, California Forest Protective Association, takes on more significance when this exclusion is considered. He pointed out, appropriately, that SB 991 does not require that a landowner or his employee obtain a professional forester's license to practice forestry on his own lands.

The testimony of the State Forester, F. H. Raymond, indicated that approximately half of the acreage in private forests is under the management of 23 large industrial tree farms. It would then appear logical that there could be no more than 300 to 350 foresters who would come under the licensing provisions of the proposed act. It appears that either the exclusions should be eliminated and that all persons in this work should become registered and licensed, or that the license fee should be raised to a minimum of \$150 a year, which would make the fee the second largest in the Department of Professional and Vocational Standards. It would be the largest fee charged to any profession.

Comparison With Laws of Other States

The information received from the States of Michigan, South Carolina, Georgia, Alabama, and Florida was helpful to the committee and

should be compared with the proposed SB 991. The bills received from the states were very similar to SB 991; each of them provided for registration, each set forth the definition of a registered or licensed forester, each of them spelled the exclusions, each listed the requirements for becoming a forester, each was governed by a board, and each of them provided for a minimum license fee. The license fees ranged from \$10 in the States of Florida, Alabama, and Georgia, to \$15 in the State of South Carolina and \$25 in the State of Michigan. In Florida the registration was permissive; in the other four states, where information was received, registration of those covered was mandatory.

The exclusions in the Michigan act had the effect of nullifying the legislation. They provided that so long as an individual did not set himself forth as a registered forester, or use the term, he could engage in the same activities that a registered forester might. The act reads, in part: "Nothing contained in this action will be construed as preventing any person, firm, partnership, or corporation from practicing forestry, landscape architecture, or from managing woodlands, forestry trees, or from operating the removal of any products therefrom or planting trees on any part of land in any manner desired."

We were able to ascertain that in the State of South Carolina there are a total of 315 registered foresters. Figures are not available for the four other states. All of the acts had a so-called grandfather clause, which permitted those who had been practicing in the field to secure coverage under the act, either by being blanketed in or by taking an examination. Each of the acts provided for minimum education requirements of four years study in an accredited school. All provided for the substitution of experience for education. In some of the states, a written examination was required of those who had the college education; in one, this was not a requirement. Each of the states indicated that the laws had been in effect for a short time, and that their experience in this connection was not sufficient to allow them to render any opinions.

Numerous letters and statements were received by the committee and are made part of the record as an appendix to this report.

RECOMMENDATIONS OF THE COMMITTEE

It is the conclusion of the committee that the size of the group that would be covered by the mandatory provisions of the proposed legislation is much too small to support a regulatory and licensing agency without extremely high licensing fees. Experience with other programs that provide for permissive registration is poor. In our opinion the large fee required to license foresters would be self-defeating and a barrier to voluntary registration.

In view of the fact that the State Division of Forestry does oversee the practice of good land management, and that the services of many public agencies are available for this purpose, it should follow that the public benefit is adequately protected. If not, then perhaps additional employees should be hired by the state for this purpose. The committee feels that the registration of foresters is neither feasible nor advisable at this time.

APPENDIX

SENATE BILL

No. 991

Introduced by Senator Christensen

March 18, 1963

REFERRED TO COMMITTEE ON GOVERNMENTAL EFFICIENCY

An act to add Chapter 12.5 (commencing with Section 7800) to Division 3 of the Business and Professions Code, relating to the licensing and regulation of professional foresters, creating a State Board of Registration for Professional Foresters, prescribing its organization, powers and duties, and making an appropriation therefor.

The people of the State of California do enact as follows:

SECTION 1. Chapter 12.5 (commencing with Section 7800) is added to Division 3 of the Business and Professions Code, to read:

CHAPTER 12.5. PROFESSIONAL FORESTERS

Article 1. General Provisions

7800. This chapter may be known and cited as the Professional Foresters Law.

7801. "Board," as used in this chapter, means the State Board of Registration for Professional Foresters.

7802. "Professional forester," as used in this chapter, means a person who, by reason of his knowledge of the natural sciences, mathematics and the principles of forestry, acquired by forestry education, performs services including, but not limited to, consultation,

LEGISLATIVE COUNSEL'S DIGEST

SB 991, as introduced, Christensen (Gov. Eff.). Professional foresters.

Adds Ch. 12.5 (commencing with Sec. 7800), Div. 3, B. & P.C.

Creates within the jurisdiction of the Department of Professional and Vocational Standards a State Board of Registration for Professional Foresters consisting of five members appointed by the Governor for four-year terms.

Vests board with power to license and regulate professional foresters. Prohibits a person from engaging in activity as a professional forester without such a license.

investigation, evaluation, planning, or responsible supervision of forestry activities when such professional services require the application of forestry principles and techniques.

Article 2. Exclusions

7810. The provisions of this chapter do not apply to the following persons:

(a) Any person performing services of a professional forester who is employed by the federal government, or any political subdivision or agency thereof, or an employee of the State of California, or any political subdivision or agency thereof.

(b) Any landowner, his agent, or employee who performs services of a professional forester on lands owned by such individual landowner.

Article 3. Administration

7820. There is in the Department of Professional and Vocational Standards a State Board of Registration for Professional Foresters consisting of five members appointed by the Governor.

7821. Each member of the board shall be a resident of this State and qualified under the terms of this chapter as a forester.

7822. Of the five members appointed to the board, one shall be a practicing consulting forester of at least 10 years practice in the field of professional forestry and not more than two of the appointees shall be employed by public agencies.

7823. The first members of the board shall be appointed within 60 days after the date when this chapter becomes effective. Of the members first appointed the terms of each shall expire as follows: the term of one member January 15, 1965, the term of two members January 15, 1966 and the term of two members January 15, 1967.

After the first appointees, each member of the board shall hold office for a term of four years, and shall serve until the appointment and qualification of his successor or until six months have elapsed since the expiration of the term for which he was appointed, whichever first occurs.

Vacancies occurring in the membership of the board for any cause shall be filled by appointment for the unexpired term within 30 days after such vacancy.

7824. The Governor may remove any member of the board for misconduct, incompetency, or neglect of duty.

7825. The board shall meet at Sacramento, within 30 days after its members are appointed, for the purpose of electing officers and, within 60 days of the first meeting, adopt rules to govern its action. Thereafter, the board shall not hold less than three regular meetings each year, once in June, once in October and once in February for the purpose of transacting such business as may properly come before it. At the June meeting of each year the board shall elect officers consisting of a chairman and a vice chairman.

Special meetings of the board may be held at such times as the board may provide in its rules. Three members of the board may call a meeting at any time.

7826. Three members shall constitute a quorum at a board meeting.

Due notice of each meeting and the time and place thereof shall be given each member in the manner provided in the rules.

7827. Any member or committee of the board may administer oaths and may take testimony and proof concerning all matters within the jurisdiction of the board.

7828. The board is vested with all functions and duties relating to the administration of this chapter, except those functions and duties vested in the director under the provisions of Division 1 (commencing with Section 100) of this code.

7829. Each member of the board shall receive a per diem and expenses as provided in Section 103.

7830. The board, with the approval of the director, shall appoint an executive secretary who may not be a member of the board and may employ such other clerical and technical assistance as may be necessary properly to administer the work of the board in accordance with civil service regulations.

Upon recommendation of the board, and with the approval of the Director of Finance, the director shall employ investigators and attorneys to assist the board in prosecuting violations of this chapter, whose compensation and expenses shall be payable only out of the Professional Foresters Fund.

7831. The executive secretary shall keep a complete record of all applications for licensing and the board's action thereon and shall prepare annually a roster showing the names, places of business, and residence of all licensed professional foresters. A copy thereof shall be furnished to each professional forester licensed under the provisions of this chapter. Copies of such roster shall be available on application to the secretary, at such price per copy as may be fixed by the board.

7832. The board, in addition to the usual periodic reports, shall within 30 days prior to the meeting of the general session of the Legislature submit to the Governor a full and true report of its transactions during the preceding biennium, including a complete statement of the receipts and expenditures of the board during the period.

A copy of the report shall be filed with the Secretary of State.

All records shall be public records.

Article 4. Application of Chapter

7850. It is unlawful for any person to engage in the business or act in the capacity of a professional forester within the state without having a license therefor, unless such person is particularly exempted from the provisions of this chapter.

7851. Any person who acts in the capacity of a professional forester without a license, and any person who conspires with another person to violate any of the provisions of this chapter, is guilty of a misdemeanor.

7852. No person engaged in the business or acting in the capacity of a professional forester may bring or maintain any action in any court of this state for the collection of compensation for the performance or any act or contract for which a license is required by this chapter without alleging and proving that he was a duly licensed pro-

professional forester at all times during the performance of such act or contract.

Article 5. Licensing

7860. Under rules and regulations adopted by the board, the executive secretary may investigate and qualify applicants for professional foresters' licenses by written or oral examination, or both.

7861. To obtain an original license, an applicant shall submit to the executive secretary an application in writing under oath containing the statement that the applicant desires the issuance of a license under the terms of this chapter.

The application shall be made on the form prescribed by the board in accordance with the rules and regulations adopted by the board and shall be accompanied by the fee fixed by this chapter.

7862. The board shall require an applicant to show such degree of experience, and such general knowledge of the profession of forestry as the board deems necessary for the protection of the public.

An applicant shall meet all of the following qualifications:

- (a) Be at least 23 years of age.
- (b) Be of good moral character and have a good reputation for honesty and integrity.
- (c) Be a four-year forestry school graduate.
- (d) Furnish evidence of two years or more experience satisfactory to the board evidencing that the applicant is competent to practice as a professional forester.
- (e) Successfully pass an examination or examinations prescribed by the board.

7863. Examinations shall be given by the board as often as it deems necessary, but at least once every six months.

7864. An applicant failing in an examination may be examined again upon filing a new application after a six-months lapse and on paying the application fee. After two failures, the applicant shall wait one year before taking an additional examination or examinations.

7865. From the effective date of this chapter until 180 days thereafter have expired, the board shall waive the examination in the case of any applicant as well as the requirement of subdivision (a) of Section 7862, if the applicant is practicing in the profession of forestry and has done so for six years during the last 10-year period and accompanies such application with letters from two practicing professional foresters who have carried on such profession in the state for at least 10 years, certifying to the qualifications of the applicant and his experience. One year of college education may be substituted for one year of experience, not to exceed four years of the required six years of experience in the practice of the profession of forestry.

7866. If information brought to the attention of the board is such that in the board's discretion, it would be proper to deny the application, the board shall forthwith notify the applicant to show cause within not more than 30 days, why the application should not be denied. The proceedings shall be conducted in accordance with the provisions of Chapter 5 (commencing with Section 11500) of Part

1 of Division 3 of Title 2 of the Government Code, and the board shall have all the powers granted therein.

7867. Should an application for an original license be denied for any of the reasons provided in this article, or should any applicant for an original license, after having been notified to do so, fail to appear for the examination at the time set therefor, without cause, the fees paid by the applicant in connection with the filing of such an application shall be forfeited and shall be credited to the board as an earned fee. Any reapplication for a license shall be accompanied by the fixed fee for this chapter.

7868. The license shall be signed by the licensee, shall be non-transferable and shall be displayed in the licensee's main office or chief place of business. Satisfactory evidence of the possession of his license and the current annual renewal thereof shall be exhibited by the licensee upon demand.

Article 6. Licenses and Seals

7880. Each applicant who has passed the examination and otherwise qualified as a professional forester shall, upon payment of the license fee, be issued a license as a professional forester. The license shall be signed by the chairman and the executive secretary of the board, and shall be issued under the seal of the board.

7881. A duplicate license to replace one lost, destroyed, or mutilated, may be issued, subject to the rules and regulations of the board, upon payment of the duplicate license fee.

7882. The board shall maintain at the office of the board in Sacramento, open to public inspection during office hours, a complete, indexed record of all applications, licenses issued, licenses renewed and all revocations, cancellations, and suspensions of licenses.

7883. Each professional forester licensed under the provisions of this chapter shall, upon receipt of a license, obtain a seal of the design authorized by the board, bearing the licensee's name and number of his license. It shall be unlawful to use this seal unless the certificate of the licensee is currently in full force and is not suspended, revoked, or expired.

7884. All reports, coming within the purview of this chapter shall be signed by the licensee issuing the report, and shall bear his seal, and it shall be unlawful for any such report to be issued without such a signature and seal affixed.

7885. Any license issued under the provisions of this chapter shall expire on June 30th of each year.

A license may be renewed without penalty by the filing of a renewal application with the board not later than June 30th of each year. To be effective, such renewal application shall be made upon forms prescribed by the board and shall be accompanied by the annual renewal fee prescribed in this chapter. Otherwise, a license, application for renewal of which has not been so filed on or before June 30th of each year, shall automatically be suspended until a renewal application is properly filed, and shall be renewable only if such renewal application is filed with the board not later than September

30th of each year and is accompanied by the penalty fee prescribed herein, in addition to the current renewal fee.

7886. The filing of a renewal application within the time, in the form and with the fees prescribed in this article, authorizes operation as a professional forester by the licensee until the actual issuance of the renewal license for the ensuing fiscal year; provided, that the license of such applicant is not otherwise under suspension by reason of the decision of the board in a disciplinary proceeding.

Article 7. Disciplinary Proceedings

7900. The board may upon its own motion and shall upon the verified complaint in writing of any person, investigate the actions of any licensee within the State and may temporarily suspend or permanently revoke any license if the holder, while a licensee or applicant hereunder, is guilty of or commits any one or more of the acts or omissions constituting cause for disciplinary action.

7901. All accusations against licensees shall be filed within two years after the act or omission alleged as the ground for disciplinary action. The proceedings under this article shall be conducted in accordance with the provisions of Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code and the board shall have all the powers granted therein.

7902. The decision may:

(a) Provide for the immediate complete suspension by the licensee of all operations as a professional forester during the period fixed by the decision.

(b) Permit the licensee to complete any or all contracts shown by competent evidence taken at the hearing to be then uncompleted.

(c) Impose upon the licensee compliance with such specific conditions as may be just in connection with his operations as a professional forester disclosed at the hearing and may further provide that until such conditions are complied with no application for restoration of the suspended or revoked license shall be accepted by the board.

7903. A licensee shall be subject to disciplinary action who:

(a) Has been convicted of a felony.

(b) Is not of good moral character.

(c) Has been found guilty by the board of any deceit, misrepresentation, violation of contract, fraud, or gross incompetence in his practice.

(d) Fails or refuses, without legal excuse, to prosecute his services with reasonable diligence causing material injury to another.

(e) Has been guilty of any fraud or deceit in obtaining his license.

(f) Aids or abets any person in the violation of any provision of this chapter.

(g) Fails in any material respect to comply with the provisions of this chapter.

7904. The profession of forestry is hereby declared to be one requiring the actual and nondelegated services of the forester, and a licensed professional forester may use the services of nonlicensed assistants only to the extent that he may be able to certify that he has personally been in charge of the work involved.

7905. Every person is guilty of a misdemeanor and for each offense of which he is convicted is punishable by a fine of not more than five hundred dollars (\$500) or by imprisonment not to exceed three months, or by both fine and imprisonment, who:

(a) Unless exempt from licensing under this chapter, practices or offers to practice forestry in this State without having a valid license.

(b) Presents as his own the license of another.

(c) Knowingly gives false evidence of any kind to the board, or to any member thereof, in obtaining a license.

(d) Impersonates or uses the seal of any other professional forester.

(e) Uses an expired or revoked license.

(f) Represents himself as, or uses the title of licensed professional forester, or any other title representing himself as practicing or offering to practice forestry unless he is qualified by licensing as a professional forester, under this chapter.

(g) Violates any provision of this chapter.

Article 8. Revenue, License Renewals

7920. The fees received under this chapter shall be deposited in the Professional Forester License Fund, which fund is hereby created.

7921. The money paid into the Professional Forester License Fund is continuously appropriated to the board for the purpose of carrying out the provisions of this chapter.

7922. The director shall designate a sum not to exceed 10 percent of the total income of the State Board of Registration for Professional Foresters, for each fiscal year to be transferred to the Professional and Vocational Standards Fund as the board's share of the cost of administration of the department.

7923. The amount of fees prescribed by this chapter is that fixed by the following schedule:

(a) The application fee for an original license is fifteen dollars (\$15).

(b) The registration fee for a professional forester is twenty-five dollars (\$25), for each certificate issued.

(c) The duplicate certificate fee is one dollar (\$1).

(d) The annual renewal fee for professional foresters shall be twenty-five dollars (\$25).

(e) The penalty for failure to apply for a renewal of a license is five dollars (\$5) for each month of delinquency.

AMENDED IN SENATE APRIL 25, 1963

SENATE BILL

No. 991

Introduced by Senator Christensen

March 18, 1963

REFERRED TO COMMITTEE ON GOVERNMENTAL EFFICIENCY

An act to add Chapter 12.5 (commencing with Section 7800) to Division 3 of the Business and Professions Code, relating to the licensing and regulation of professional foresters, creating a State Board of Registration for Professional Foresters, prescribing its organization, powers and duties, and making an appropriation therefor.

The people of the State of California do enact as follows:

SECTION 1. Chapter 12.5 (commencing with Section 7800) is added to Division 3 of the Business and Professions Code, to read:

CHAPTER 12.5. PROFESSIONAL FORESTERS

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7800. This chapter may be known and cited as the Professional Foresters Law.

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7802. "Professional forester," as used in this chapter, means a person who, by reason of his knowledge of the natural sciences, mathematics and the principles of forestry, acquired by forestry education, performs services including, but not limited to, consultation, investigation, evaluation, planning, or responsible supervision of forestry activities when such professional services require the application of forestry principles and techniques.

Article 2. Exclusions

7810. The provisions of this chapter do not apply to the following persons:

(a) Any person performing services of a professional forester who is employed by the federal government, or any political subdivision or agency thereof, or an employee of the State of California, or any political subdivision or agency thereof.

(b) Any landowner, his agent, or employee who performs services of a professional forester on lands owned by such individual landowner.

Article 3. Administration

7820. There is in the Department of Professional and Vocational Standards a State Board of Registration for Professional Foresters consisting of five members appointed by the Governor.

7821. Each member of the board shall be a resident of this State and qualified under the terms of this chapter as a forester.

7822. Of the five members appointed to the board, one shall be a practicing consulting forester of at least 10 years practice in the field of professional forestry and not more than two of the appointees shall be employed by public agencies.

7823. The first members of the board shall be appointed within 60 days after the date when this chapter becomes effective. Of the members first appointed the terms of each shall expire as follows: the term of one member January 15, 1965, the term of two members January 15, 1966 and the term of two members January 15, 1967.

After the first appointees, each member of the board shall hold office for a term of four years, and shall serve until the appointment and qualification of his successor or until six months have elapsed since the expiration of the term for which he was appointed, whichever first occurs.

Vacancies occurring in the membership of the board for any cause shall be filled by appointment for the unexpired term within 30 days after such vacancy.

7824. The Governor may remove any member of the board for misconduct, incompetency, or neglect of duty.

7825. The board shall meet at Sacramento, within 30 days after its members are appointed, for the purpose of electing officers and, within 60 days of the first meeting, adopt rules to govern its action. Thereafter, the board shall not hold less than three regular meetings each year, once in June, once in October and once in February for the purpose of transacting such business as may properly come before it. At the June meeting of each year the board shall elect officers consisting of a chairman and a vice chairman.

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7826. Three members shall constitute a quorum at a board meeting.

Due notice of each meeting and the time and place thereof shall be given each member in the manner provided in the rules.

7827. Any member or committee of the board may administer oaths and may take testimony and proof concerning all matters within the jurisdiction of the board.

7828. The board is vested with all functions and duties relating to the administration of this chapter, except those functions and duties vested in the director under the provisions of Division 1 (commencing with Section 100) of this code.

7829. Each member of the board shall receive a per diem and expenses as provided in Section 103.

7830. The board, with the approval of the director, shall appoint an executive secretary who may not be a member of the board and may employ such other clerical and technical assistance as may be necessary properly to administer the work of the board in accordance with civil service regulations.

Upon recommendation of the board, and with the approval of the Director of Finance, the director shall employ investigators and attorneys to assist the board in prosecuting violations of this chapter, whose compensation and expenses shall be payable only out of the Professional Foresters Fund.

7831. The executive secretary shall keep a complete record of all applications for licensing and the board's action thereon and shall prepare annually a roster showing the names, places of business, and residence of all licensed professional foresters. A copy thereof shall be furnished to each professional forester licensed under the provisions of this chapter. Copies of such roster shall be available on application to the secretary, at such price per copy as may be fixed by the board.

7832. The board, in addition to the usual periodic reports, shall within 30 days prior to the meeting of the general session of the Legislature submit to the Governor a full and true report of its transactions during the preceding biennium, including a complete statement of the receipts and expenditures of the board during the period.

A copy of the report shall be filed with the Secretary of State.

All records shall be public records.

Article 4. Application of Chapter

7850. It is unlawful for any person to engage in the business or act in the capacity of a professional forester within the State without having a license therefor, unless such person is particularly exempted from the provisions of this chapter.

7851. Any person who acts in the capacity of a professional forester without a license, and any person who conspires with another person to violate any of the provisions of this chapter, is guilty of a misdemeanor.

7852. No person engaged in the business or acting in the capacity of a professional forester may bring or maintain any action in any court of this State for the collection of compensation for the performance ~~or any act of any act~~ or contract for which a license is required by this chapter without alleging and proving that he was a duly licensed professional forester at all times during the performance of such act or contract.

Article 5. Licensing

7860. Under rules and regulations adopted by the board, the executive secretary may investigate and qualify applicants for professional foresters' licenses by written or oral examination, or both.

7861. To obtain an original license, an applicant shall submit to the executive secretary an application in writing under oath containing the statement that the applicant desires the issuance of a license under the terms of this chapter.

The application shall be made on the form prescribed by the board in accordance with the rules and regulations adopted by the board and shall be accompanied by the fee fixed by this chapter.

7862. The board shall require an applicant to show such degree of experience, and such general knowledge of the profession of forestry as the board deems necessary for the protection of the public.

An applicant shall meet all of the following qualifications:

- (a) Be at least 23 years of age.
- (b) Be of good moral character and have a good reputation for honesty and integrity.
- (c) Be a four-year forestry school graduate.
- (d) Furnish evidence of two years or more experience satisfactory to the board evidencing that the applicant is competent to practice as a professional forester.
- (e) Successfully pass an examination or examinations prescribed by the board.

7863. Examinations shall be given by the board as often as it deems necessary, but at least once every six months.

7864. An applicant failing in an examination may be examined again upon filing a new application after a six-months lapse and on paying the application fee. After two failures, the applicant shall wait one year before taking an additional examination or examinations.

7865. From the effective date of this chapter until 180 days thereafter have expired, the board shall waive the examination in the case of any applicant as well as the requirement of subdivision (a) (c) of Section 7862, if the applicant is practicing in the profession of forestry and has done so for six years during the last 10-year period and accompanies such application with letters from two practicing professional foresters who have carried on such profession in the State for at least 10 years, certifying to the qualifications of the applicant and his experience. One year of college education may be substituted for one year of experience, not to exceed four years of the required six years of experience in the practice of the profession of forestry.

7866. If information brought to the attention of the board is such that in the board's discretion, it would be proper to deny the application, the board shall forthwith notify the applicant to show cause within not more than 30 days, why the application should not be denied. The proceedings shall be conducted in accordance with the provisions of Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, and the board shall have all the powers granted therein.

7867. Should an application for an original license be denied for any of the reasons provided in this article, or should any applicant

for an original license, after having been notified to do so, fail to appear for the examination at the time set therefor, without cause, the fees paid by the applicant in connection with the filing of such an application shall be forfeited and shall be credited to the board as an earned fee. Any reapplication for a license shall accompany the fixed fee for this chapter.

7868. The license shall be signed by the licensee, shall be nontransferable and shall be displayed in the licensee's main office or chief place of business. Satisfactory evidence of the possession of his license and the current annual renewal thereof shall be exhibited by the licensee upon demand.

Article 6. Licenses and Seals

7880. Each applicant who has passed the examination and otherwise qualified as a professional forester shall, upon payment of the license fee, be issued a license as a professional forester. The license shall be signed by the chairman and the executive secretary of the board, and shall be issued under the seal of the board.

7881. A duplicate license to replace one lost, destroyed, or mutilated, may be issued, subject to the rules and regulations of the board, upon payment of the duplicate license fee.

7882. The board shall maintain at the office of the board in Sacramento, open to public inspection during office hours, a complete, indexed record of all applications, licenses issued, licenses renewed and all revocations, cancellations, and suspensions of licenses.

7883. Each professional forester licensed under the provisions of this chapter shall, upon receipt of a license, obtain a seal of the design authorized by the board, bearing the licensee's name and number of his license. It shall be unlawful to use this seal unless the certificate of the licensee is currently in full force and is not suspended, revoked, or expired.

7884. All reports, coming within the purview of this chapter shall be signed by the licensee issuing the report, and shall bear his seal, and it shall be unlawful for any such report to be issued without such a signature and seal affixed.

7885. Any license issued under the provisions of this chapter shall expire on June 30th of each year.

A license may be renewed without penalty by the filing of a renewal application with the board not later than June 30th of each year. To be effective, such renewal application shall be made upon forms prescribed by the board and shall be accompanied by the annual renewal fee prescribed in this chapter. Otherwise, a license, application for renewal of which has not been so filed on or before June 30th of each year, shall automatically be suspended until a renewal application is properly filed, and shall be renewable only if such renewal application is filed with the board not later than September 30th of each year and is accompanied by the penalty fee prescribed herein, in addition to the current renewal fee.

7886. The filing of a renewal application within the time, in the form and with the fees prescribed in this article, authorizes operation as a professional forester by the licensee until the actual issuance of the renewal license for the ensuing fiscal year; provided, that the li-

cense of such applicant is not otherwise under suspension by reason of the decision of the board in a disciplinary proceeding.

Article 7. Disciplinary Proceedings

7900. The board may upon its own motion and shall upon the verified complaint in writing of any person, investigate the actions of any licensee within the state and may temporarily suspend or permanently revoke any license if the holder, while a licensee or applicant hereunder, is guilty of or commits any one or more of the acts or omissions constituting cause for disciplinary action.

7901. All accusations against licensees shall be filed within two years after the act or omission alleged as the ground for disciplinary action. The proceedings under this article shall be conducted in accordance with the provisions of Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code and the board shall have all the powers granted therein.

7902. The decision may:

(a) Provide for the immediate complete suspension by the licensee of all operations as a professional forester during the period fixed by the decision.

(b) Permit the licensee to complete any or all contracts shown by competent evidence taken at the hearing to be then uncompleted.

(c) Impose upon the licensee compliance with such specific conditions as may be just in connection with his operations as a professional forester disclosed at the hearing and may further provide that until such conditions are complied with no application for restoration of the suspended or revoked license shall be accepted by the board.

7903. A licensee shall be subject to disciplinary action who:

(a) Has been convicted of a felony.

(b) Is not of good moral character.

(c) Has been found guilty by the board of any deceit, misrepresentation, violation of contract, fraud, or gross incompetence in his practice.

(d) Fails or refuses, without legal excuse, to prosecute his services with reasonable diligence causing material injury to another.

(e) Has been guilty of any fraud or deceit in obtaining his license.

(f) Aids or abets any person in the violation of any provision of this chapter.

(g) Fails in any material respect to comply with the provisions of this chapter.

7904. The profession of forestry is hereby declared to be one requiring the actual and nondelegated services of the forester, and a licensed professional forester may use the services of nonlicensed assistants only to the extent that he may be able to certify that he has personally been in charge of the work involved.

7905. Every person is guilty of a misdemeanor and for each offense of which he is convicted is punishable by a fine of not more than five hundred dollars (\$500) or by imprisonment not to exceed three months, or by both fine and imprisonment, who:

(a) Unless exempt from licensing under this chapter, practices or offers to practice forestry in this State without having a valid license.

- (b) Presents as his own the license of another.
- (c) Knowingly gives false evidence of any kind to the board, or to any member thereof, in obtaining a license.
- (d) Impersonates or uses the seal of any other professional forester.
- (e) Uses an expired or revoked license.
- (f) Represents himself as, or uses the title of licensed professional forester, or any other title representing himself as practicing or offering to practice forestry unless he is qualified by licensing as a professional forester, under this chapter.
- (g) Violates any provision of this chapter.

Article 8. Revenue, License Renewals

7920. The fees received under this chapter shall be deposited in the Professional Forester License Fund, which fund is hereby created.

7921. The money paid into the Professional Forester License Fund is continuously appropriated to the board for the purpose of carrying out the provisions of this chapter.

7922. The director shall designate a sum not to exceed 10 percent of the total income of the State Board of Registration for Professional Foresters, for each fiscal year to be transferred to the Professional and Vocational Standards Fund as the board's share of the cost of administration of the department.

7923. The amount of fees prescribed by this chapter is that fixed by the following schedule:

- (a) The application fee for an original license is fifteen dollars (\$15).
- (b) The registration fee for a professional forester is twenty-five dollars (\$25), for each certificate issued.
- (c) The duplicate certificate fee is one dollar (\$1).
- (d) The annual renewal fee for professional foresters shall be twenty-five dollars (\$25).
- (e) The penalty for failure to apply for a renewal of a license is five dollars (\$5) for each month of delinquency.

STATEMENT OF THE STATE FORESTER *

Senate Bill No. 991

Mr. William Montgomery, consultant to your committee, has asked that I submit a statement with respect to S.B. 991 relating to the licensing of professional foresters. As State Forester, I assume you would expect me to inform you about (1) the importance of forestry in California, (2) forestry programs related to this bill, (3) the problems brought about by inadequate forestry knowledge available to some owners and (4) the effect of this proposed bill on your state forestry agency.

Forestry in California

Forestry is one of the most important economic activities in California. We have over 17 million acres of commercial timber, half of which is privately owned. With 339 billion board feet, we rank second among the states in standing timber volume. This enables us to be the second highest producer of timber with about 5.5 billion board feet cut each year. About 16 percent of the nation's lumber manufacture and substantial quantities of other wood products originate in this state.

Value of the annual timber products harvested is on the order of 270 million dollars, and over 2¼ billion dollars are added by enterprises dependent upon wood. This industry supports about a quarter of a million of all kinds of jobs in California.

Professional foresters have a vital role in this economic sector. The concept of growing perpetual crops of timber, which forms the basis for the continuance of this forest industry, is put into practice by these highly trained men. They are employed in the management of both public and private forest lands, and in forest fire protection, forest pest control, and other programs of state and federal agencies. Forests are important, too, for many other purposes—for protection of our watersheds, for outdoor recreation, and as a home for fish and wildlife. Hugo Fisher, Administrator of the Resources Agency, recently said, "I believe that the most important crop, in the long run, is the water that these lands produce." He based this statement on the fact that 85 percent of our water supply in California is produced or affected by the watersheds lying within the commercial forest area. Foresters are skilled in the application of management practices to use and enhance the multiple benefits these lands offer.

Related Forestry Programs

The public interest in these forest lands has been long recognized by the State of California. This is evidenced through our programs for forest fire protection, forest pest control, production and distribution of tree planting stock, forest advisory services and demonstrations and research, and in regulation of forest harvesting practices on private lands.

* Prepared for hearing of Senate Factfinding Committee on Business and Commerce. Sacramento, April 7, 1964, by F. H. Raymond, State Forester.

Probably the closest connection with the proposed licensing of foresters is with regard to the latter; i.e., the regulation of private forest practices by the state. This program, which is authorized by the Forest Practice Act (Sections 4901-4973.5, Public Resources Code), sets forth minimum standards for the harvesting of timber. Four forest districts are established under law and each has its separate rules. These rules govern practices pertaining to fire prevention and control, protection of residual trees and soil, prevention and control of damage by forest pests, and restocking of the land with trees. The act also requires timber operators to *obtain permits* from the State Forester to conduct such operations, and further *requires inspections of operations by forest officers of the Division of Forestry*, and establishes certain enforcement measures.

The rules are developed locally by forest practice committees appointed by the Governor, whose members represent timber owners and operators. Hearings are held to develop the rules at which timber owners, operators, and private foresters make recommendations as to scope and content. Upon promulgation by the committees and adoption by the State Board of Forestry, the rules have the force of law.

Under the act, timber owners are permitted to deviate from specific rule requirements through *approved alternate plan procedures*, or by *forest management plans* that are more efficient substitutes for the forest practice rules. These two methods provide the flexibility that is occasionally needed to meet the diverse forest growing conditions found in California and to meet special management objectives. However, these plans must incorporate practices that are equal to or exceed forest practice rule requirements and must be approved by both the local forest practice committee and the State Board of Forestry.

As forestry becomes more intensive in California, I expect that more and more timber operations will use the alternate plan or forest management plan to govern their practices. Today, there are some 41 alternate plans on file with the Board of Forestry. Foresters are often used by private operators to develop these plans, and the execution of such practices like seeding and planting is sometimes contracted to private consulting foresters. It is becoming quite apparent that the forest practice committees and the Board of Forestry will need to place greater reliance upon professional foresters within and outside the Division of Forestry to evaluate these plans before they are approved.

As an example of this, there is quite a controversy today about private timber cutting in the redwood area. Some of the cutting that has been publicly condemned is the clear cutting of trees. Because of unstable soils, considerable windthrow of trees has occurred in selectively cut areas. To prevent this loss, the operators applied for and received approval for alternate plans which permit block cutting followed by seeding or planting to provide for the new forest crop. This type of operation is a sound silvicultural practice under certain conditions, but it has to be evaluated and applied under professional forestry direction.

I would say that in such a program as the regulation of forest practices, the professional forester employed by the industry or as a consultant, is a key factor in its success—in the development and applica-

tion of the forest practice rules, alternate plans, and forest management plans.

Inadequate Forestry Knowledge of Owners

Now, despite state regulation, I would not want to mislead you in believing that good forest practices can be legislated. State regulation cannot serve as a substitute for good forest management; it involves a great deal more than what is covered by current regulations. In fact it would be impractical, if not impossible, to draft rules covering every aspect of forest management under the many complex conditions that exist in California. Regulations are intended to only establish minimum standards to favor continuance of forest productivity and merely to set the limits within which an operation must be conducted to meet this objective.

To achieve optimum forest management, we need in addition to a favorable economic climate, an understanding government, an informed public, knowledgeable timber owners and operators, and greater dependence on professional forestry skills. Basically, these are human factors that are difficult to cope with.

The 8.5 million acres of private forests in California are owned by about 30 thousand people. About 42 percent of this acreage is under management of 23 large industrial tree farms, which are making rapid strides in sustained yield from their properties. All of them employ professional foresters.

The hard core of the problem of improper forest use is with the other 4.6 million acres. These lands mostly belong to small firms, ranchers, rural residents, absentee owners, and investors, who usually have little knowledge about the value of their timber, its potential, how it might be properly protected, improved, harvested, and marketed. Without adequate knowledge many of these owners have absorbed financial loss and irreparable damage to their properties when they entered into transactions for the cutting of their timber with timber buyers and gypo loggers, some of whom have claimed to be foresters. These agents also have promoted many owners to embark on unwise ventures to try to convert their forest land to agricultural use, which is permitted by law with only limited controls. The general public interest has suffered also because of problems caused by soil erosion, fire hazards, stream and watershed damage, and loss of esthetic values caused by such operations.

Throughout the years we have received many complaints of this nature. As best we can we investigate them and try to apply the laws under our jurisdiction, but sometimes it is too late or the laws do not offer a complete solution. I shall not cite any cases since you have heard or will receive specific testimony on this from other witnesses.

This abuse of forest land has continued despite the fact that the Division of Forestry does offer limited advisory services on forest management to these owners. We can only work with a portion of them and only go so far in giving them advice and assistance. Usually, we try to refer as many as we can to private consulting foresters.

Effect on the Division of Forestry

I believe that this bill will not have any material effect upon the internal operations of the Division of Forestry. Public agencies such as ours are exempted under the provisions of the present bill.

Exclusive of supervisors, we employ 50 professional foresters in technical programs. Although they will not have to be licensed, I feel certain that all these men, plus a number of other professional foresters in the division, will want to do so.

It will be particularly advantageous to the individuals concerned and to the state for some of them to become licensed. These are managers of our three state forests having active management programs, forest practice inspectors who are often called upon to testify in court and hearings, and the foresters that advise and assist owners with regard to forest management.

Conclusion

This bill is not sponsored by our agency; it has been promoted by the Society of American Foresters to which most foresters of the Division of Forestry belong. Nonetheless, in principle I endorse this bill, like the state foresters of seven other states have done in respect to similar legislation. I believe that the licensing of professional foresters will help maintain the importance of forestry in California, contribute to the success of this state's forestry programs, improve the forestry services that are needed by thousands of owners, and benefit the operations of your state forestry agency.

**TESTIMONY BEFORE THE SENATE FACT FINDING COMMITTEE
ON BUSINESS AND COMMERCE**

Sacramento, California, April 7, 1964, Regarding Senate Bill No. 991

Mr. Chairman and Members of the Committee:

My name is Henry J. Vaux, Dean of the School of Forestry, University of California at Berkeley. From 1957 to 1961 I was Chairman of the Membership Committee, Society of American Foresters, Washington, D. C., and currently I am chairman of that society's committee on programs in forestry education. That society is the only national association of professional foresters in the United States and has as one of its objectives the advancement and protection of the standards of professional forestry. I mention these affiliations in order to qualify myself as a witness before this committee. My testimony, however, is offered as that of an individual and I do not speak on behalf of the organizations I have mentioned.

Passage of Senate Bill 991 relating to the licensing and regulation of professional foresters would, in my opinion, provide a valuable means for safeguarding public interests which are important in the State of California. In support of this opinion I would like to testify to four related points: (1) the proper protection and management of forest lands is recognized as in the public interest; (2) owners of forest land are dependent on the counsel of foresters in deter-

mining what practices to apply on their lands; (3) the forest protection and management practices proper for particular areas can only be formulated by foresters with intensive training in the natural sciences and in technical forestry subjects; and (4) licensing of professional foresters as proposed in Senate Bill 991 would serve the public interest by certifying to forest landowners and other members of the public that licensees possessed these essential scientific and technical qualifications.

The Public Interest in Forest Protection and Management

The California Legislature has recognized the existence of a public interest in the forest lands of the state. There are approximately 42½ million acres of commercial and non-commercial forest land in California, accounting for about 42 percent of the total land surface of the state. Each year, these lands yield upwards of 6 billion board feet of forest products. In 1960 over 88,700 people were directly employed in harvesting and processing industries engaged in wood manufacture. These same lands yield more than 97 percent of the water runoff comprising California's basic water supply. They are also the environment for more than 100 million man-days of recreation use each year, or roughly 6 days of recreation use per year per inhabitant of the state.

With respect to such lands, the Legislature has stated: "It is in the public interest and to the benefit of the state that forest and vegetative cover be maintained and preserved on forest and watershed lands to conserve water and soil and to prevent destructive floods." (Section 4006.5, Public Resources Code.) The Legislature has also acted "to declare the existence of a public interest in the forest resources and timberlands of this state; to declare the necessity of good forest practices in the harvesting of forest resources to conserve and maintain the productivity of the timberlands in the interests of the economic welfare of the state and the continuance of the forest industry." (Section 4901, Public Resources Code.) In the same section, the Legislature has further declared: "The public interest is affected by the management of forests, timberlands, watersheds and soil resources of the state, and it is the policy of this state to encourage, promote and require such development, use and management of forests and timberlands as will maintain the continuous production of forest products."

Section 4361, Public Resources Code, states: "It is hereby declared to be in the interest of the welfare of the people of the State of California that the need for wood, lumber, poles, piling, wood pulp and other forest products, augmented by the growth in population, requires all forest lands to be kept in fully productive condition. . . . It is further declared to be in the interest of the people of California that the state determine feasible means and methods for reforesting nonproducing forest lands to the end that all forest lands will be eventually brought up to their maximum growth capacity."

Thus, the existence of a public interest in the proper protection, management and reforestation of forest lands in the state has been, and is, clearly recognized by existing legislation.

Landowners and the Public Dependent on Professional Advice

Almost half--46½ percent--of the commercial forest land in California is privately owned, much of it in relatively small tracts. For example, in Mendocino County in 1957 there were 3,865 owners of forest tracts less than 5,000 acres in size. In aggregate these people owned 54 percent of the private commercial forest in the county. Only a handful of these owners were qualified foresters and almost 90 percent of them were not personally connected with forestry or timber products businesses. Thus, in the case of Mendocino County there are more than 3,500 forest owners who must rely on the counsel of qualified foresters if they are to carry out on their lands those practices of forest production, forest management, and reforestation which will protect both their own interests and those of the public which the Legislature has recognized.

The situation which I have described for Mendocino County is representative of that in the other major forested counties of the state. Thus, large numbers of landowners in California are dependent on professional foresters for advice essential to proper management of their lands. Certification of foresters by the means proposed in Senate Bill 991 appears to be a feasible way of providing some assurance to such landowners that the advice they receive on forest protection, forest management and reforestation matters is based on adequate professional background.

Intensive Training Needed for Professional Forestry Practice

The need for certification of the qualifications of professional foresters results from the fact that the practice of forestry is a complex activity for which extensive training in scientific and technical subjects is essential. The growth of a forest, its effectiveness as a protection for watersheds, its response to timber harvesting, and the proper methods for reforesting it all depend on a complicated set of interrelations. The kind of soil on which the forest grows, the species of trees and shrubs which compose it, the kind of microclimate which prevails in each specific forest tract, and the kinds and numbers of animals and insects present in the forest, all affect strongly what is required to protect and manage the forest and to reforest nonproducing areas. Moreover, throughout California there is great variability from place to place in each of these characteristics. The soils which are typical of one valley may behave quite differently from those typical of the next valley. The microclimate on one side of a ridge may produce very different forest conditions from that on the opposite side. Thus, the forester must be able to analyze each forest situation in terms of its basic components. He cannot rely on "cookbook" formulas, whether he is fighting fire or insects, planning a harvesting operation, or designing a program for rehabilitating a denuded area.

The intensive training needed to produce a professional forester who is qualified to interpret complex forestry problems and to prescribe forest practices is represented by the curricula of the 28 accredited schools of forestry in the United States. These schools, each of which is attached to a major university or college, have developed the needed training programs through 65 years of experience in professional forestry education. Although the curricula of these 28 schools are not

identical, they show great uniformity in the kinds of scientific and technical subject matters which they include. Virtually all require professional forestry students to complete one or more courses in the following basic natural and social sciences: botany, chemistry, mathematics, soil science, economics and physics. Most of them also require zoology and geology.

After completion of this scientific foundation, forestry curricula all require intensive study of forest mensuration and statistical methods, silviculture, wood technology, valuation, finance, and economics. In addition, virtually all require intensive courses in forest ecology, forest protection, entomology, and pathology. These studies which are universally recognized as the minimum educational preparation of the professional forester require at least four years of university-level study to complete. Men without this preparation or its substantial equivalent do not have the scientific and technical knowledge to make competent decisions in matters of forest protection, forest management, and reforestation.

Thus, the programs of professional forestry education which have been long established in the United States serve to define quite specifically the particular scientific and technical knowledge which is essential for the competent practice of forestry as a profession. These existing programs could also serve as the background against which the qualifying examinations provided for in Section 7860 of Senate Bill 991 could be established in an adequate and equitable manner.

In this connection, it may be noted that both the California State Personnel Board and the U.S. Civil Service Commission use such examinations to establish the professional qualifications of all persons appointed to professional forester positions in the public services.

Licensing Would Insure Minimum Standards of Competence

Since forestry decisions can only be properly made by people possessing a sound scientific and technical background, and since large numbers of California forest landowners must rely on professional foresters to provide the competent guidance needed if the use of their land is to sustain the public interests established by the Legislature, I believe it is important that the state assume some responsibility for the competence of foresters through its licensing procedures. In the absence of some such basis for certifying competence, landowners can all too easily be misled by unqualified practitioners and the public interest in forest lands may consequently be jeopardized.

The School of Forestry at the University of California has over the past 50 years made continuing efforts to establish and maintain high standards of professional education. Its faculty continually makes improvements in the program designed to make its graduates highly competent insofar as scientific and technical training can assure it. However, I believe that high standards of professional education are, by themselves, insufficient to guarantee high standards of professional practice. High educational standards must be complemented by some means of insuring that persons who have not attained the professional competence equivalent to that of the educational standard are not permitted to designate themselves as professional foresters. Senate Bill 991, if adopted, would serve this important end.

HENRY J. VAUX

UNITED STATES DEPARTMENT OF THE INTERIOR
NATIONAL PARK SERVICE

March 19, 1964

MR. ALAN SHORT, *Chairman*

Senate Factfinding Committee on Business and Commerce
California Legislature, State Capitol
Sacramento, California 95814

Dear Mr. Short,

I submit the following statement rather than appear in person before the Senate Factfinding Committee on Business and Commerce regarding the hearing on April 7, 1964, on Senate Bill 991.

As a professional forester employed by the National Park Service, Department of the Interior, my personal position is that I am not interested in registration as a professional forester and would not apply for the license. I do not plan to pursue private professional forestry upon retirement, nor do I participate in consulting or professional activities in addition to my duties with the National Park Service. The Federal Civil Service trend is, however, to recognize registration and licensing of professional personnel.

On the other hand, I *support* the registration of those professional foresters practicing privately. I believe that there is a dual necessity for licensing foresters. The public should have the assurance of competent professional services. This can be provided by licensing. The state government can be equally assured of competence by the same licensing process and required qualifications.

Sincerely,

JOHN M. MAHONEY, *Member*
Society of American Foresters

HUMBOLDT STATE COLLEGE DEPARTMENT OF FORESTRY
ARCATA, CALIFORNIA

April 4, 1964

MR. ALAN SHORT, *Chairman*

Senate Factfinding Committee on Business and Commerce
State Capitol, Sacramento, California

Dear Chairman Short:

I respectfully submit herewith a recommendation for the support of Senate Bill 991 pertaining to the registration of professional foresters.

The profession of forestry is growing today more rapidly than ever before. About 17,000 college-trained graduates of four-year forestry schools are employed by the conservation agencies of federal and state governments and by private forest industries. More than 14,000 of these professional foresters are members of the Society of American Foresters, a professional society striving to improve the profession in the United States.

The nation's forestry schools are now graduating annually about 1,600 foresters with bachelor's degrees, 350 with master's degrees, and 80 with the doctorate. The Dana report on forestry education in the United States indicates that the five-year curriculum for the bachelor's degree in forestry is needed to provide the broad coverage of subject matter needed to educate the professional forester to meet the challenge of his profession.

At Humboldt State College about 300 students are enrolled in the forestry curriculum and are educated at state expense. From 35 to 50 students will graduate in this program each year. The curriculum is being revised periodically to meet professional needs. The concept of integrated management of natural resources is recognized in order to meet the demands on the forester to manage forest lands for all goods and services. The master's degree is now being offered.

The State of California should follow the lead of other states and pass a registration act for the benefit of professional foresters serving the public good.

EDWARD E. STURGEON
Coordinator of Forestry
Humboldt State College

**STATEMENT OF GRANT A. MORSE, ASSISTANT REGIONAL FORESTER, U. S.
FOREST SERVICE, BEFORE THE SENATE FACTFINDING COMMITTEE
COMMERCE, APRIL 7, 1964—SACRAMENTO, CALIFORNIA**

While the proposed forester licensing bill SB 991 appropriately excludes employees of the federal government, we in the U.S. Forest Service see advantages to the passage of such legislation. We believe such a law can offer to the client of the professional consulting forester the same kind of protection that is given by licensing legislation to the client or patient of the doctor, the dentist, the lawyer. Members of the forestry profession have done much to assure a strong resource base upon which the social structure and the economy of California depends. The increasing demand upon land managers for all of the products of forest lands—water, recreation, wildlife, and forage as well as timber and other wood products—places a grave responsibility on the forestry profession to do an even better job. The profession must consistently provide a high level of performance to assure increasing production of goods and services for California's increasing population. Licensing can help in meeting that obligation. It should prevent untrained and unqualified persons from offering professional forestry services to clients who have no basis for judging their qualifications as a professional forester. To that extent it will help upgrade the level of management of California's forest lands. At the same time it will provide a degree of protection to the landowner who pays for services and whose decisions should be based on sound technical forestry advice.

I have carefully studied the provisions of SB 991 and believe it will be of real benefit to the state in meeting those objectives if passed into law.

STATEMENT BY JOHN CALLAGHAN, SECRETARY-MANAGER, CALIFORNIA
FOREST PROTECTIVE ASSOCIATION, SAN FRANCISCO, CALIFORNIA
BEFORE SENATE FACTFINDING COMMITTEE ON BUSINESS AND
COMMERCE APRIL 7, 1964—SACRAMENTO, CALIFORNIA

Relative to SB 991 (1963 Legislature) Licensing of Professional Foresters

My name is John Callaghan. I am secretary-manager of the California Forest Protective Association. Members of this association own most of the private industrially operated timberland of California.

Their lands are under long-term forest management which will result in their continuing to produce a substantial portion of the timber which provides the basic economy of many counties in northern California. The woods product industry directly supports between 80,000 and 100,000 employees in California and directly supplies 20 percent to 40 percent of all employment in several counties.

Because California was blessed with a tremendous quantity of virgin forests, the major need in forest management in years past has been for access so that the high-quality old-growth timber could be harvested before it succumbed to insects, fire or disease. The major forestry job involved has been to determine methods and rates of harvesting best suited to the particular forest and economic conditions encountered and to permit leaving the land in a productive condition. Private industry has employed several hundred foresters to plan and supervise this process. The timber industry has also sponsored and supported a State Forest Practice Act under which forest practice rules have been developed to reasonably assure that on all harvested timberlands, other crops of timber to supply the state's economy would grow. As timberlands come under more intensive management an increasing number of specific forest practice proposals, alternate to the general rules, may be expected, for forestry is too complex a subject to be fully legislated. Increasingly then, professional forestry assistance will be required to assure that forest practices are in compliance with the law.

Private commercial timberlands occupy slightly more than 8 million acres in California and constitute somewhat less than half of the commercial timberland of the state. Since they have, for many years, produced 75 percent to 80 percent of the state's timber production, a high percentage of them have had at least one harvest operation. On these lands, where new crops of timber are growing, the need for professional forest management, to insure that the lands produce the kinds and quantities of material for which they are best suited, is increasing. Increasingly heavy investments are being made in pulp, plywood, flakeboard, hardboard and other manufacturing plants. These require an adequate supply of a great variety of raw wood materials. The economics of wood products manufacturing and marketing will increasingly require that each forest acre produce.

SB 991, which provides for the licensing of professional foresters, appropriately does not require that a landowner or his employee obtain a professional forester's license to practice forestry on his own lands. However, it does seem probable that a licensing procedure will tend to insure the maintenance of and perhaps raise the standards of

the forestry profession. Thus timber owners will be assured of obtaining competent and effective forestry assistance in the increasingly complex job of raising millions of acres of trees under a great variety of soil, climatic and topographic conditions.

For this reason, it is my feeling that SB 991 should receive favorable consideration. I believe most major timber owners would agree with me.

17 Highland Boulevard
Berkeley 7, California
March 20, 1964

THE HONORABLE ALAN SHORT
California Legislature
State Capitol
Sacramento, California 95814

Dear Senator Short:

I wish to thank you for sending me on March 6 a "Notice of Hearing" to be held on April 7, 1964, relative to the registration of professional foresters. I regret that I will not be able to appear in person. However, I am opposed to Senator Christensen's Senate Bill 991 for the reasons given below and *wish this letter to be made a part of the hearing record.*

I am retired from the U.S. Forest Service after 37 years service and for the past seven years have been engaged in consulting forestry work for private landowners. I have discovered that the amount of consulting forestry work in California is extremely limited. The preponderance of private forest land is held by large timber companies. These companies, almost without exception, have foresters on their payroll. The acreage controlled by large organizations will increase in the future.

The small timberland owner cannot afford the services of a consulting forester. Service to this type of owner must be furnished by foresters in public employ. This type of service is proffered by the Agricultural Extension Service, Soil Conservation Service and the farm foresters employed by the State Division of Forestry. As time goes on, these services must be enlarged.

In view of the foregoing, I can see no real need to license foresters in California. The cost of administering such a program would be out of proportion to any benefits that might accrue. Licensing might benefit the earnings of a few consulting foresters, but I do not believe it would improve the services now available to timberland owners. In fact, there is a good chance that licensing would restrict the services available to them in the future.

Very truly yours,

RUSSELL W. BEESON

LICENSING OF FORESTERS NEEDED TO PROTECT LANDOWNERS¹

I am Walter P. Bemis of Sacramento, a member of, and appearing on behalf of the Licensing Committee of the Northern California Section of the Society of American Foresters. In my job as a public forester, I advise and assist small landowners on how they might apply the principles of forest management to their properties. As such I have become familiar with many cases where owners have been misled by nonprofessional advice and assistance.

The following cases are generally representative of the conduct of individuals who portray themselves as foresters but have little knowledge of the profession and still less ethics.

I. One individual maintains a tree service in the high Sierras of Placer County. His business cards and advertisements in the yellow pages of the phone book (see appendix) are designed to make the public believe that he is competent to furnish many services common to the forestry profession. His yellow page ad insinuates that he has been licensed, as proof of his competence. In actuality he has no formal forestry training and his forestry employment experience was limited to a beginning fire control job of little responsibility working for a public agency. I have personally observed his work while he pretended to be a forest entomologist and observed that on one property he negligently or knowingly applied chemicals (insecticides supposedly) to trees that had been infested but where the brood had already left the trees. On other occasions he has treated many trees that were not infested after convincing the owner that they might be.

This individual also wrongly claims to be knowledgeable in silviculture. Silviculture is the art of producing and tending a forest; the application of the knowledge of the many environmental factors in controlling forest establishment, composition, and growth. All professional foresters and many of the other residents in the area regard this individual as a confidence man.

II. Two elderly women inherited a 5,000-acre timber estate in the Counties of Nevada and Placer. An individual convinced them that he should represent them as their forester. The individual had purchased timber from the deceased owner in the past and had some knowledge of the values he wished to control. This would-be forester was successful in negotiating a timber management and sale contract and a Christmas tree sale contract with the owners. This person lacked the formal training of a forester and also had little forestry experience and is apparently unethical. The results to date are:

1. He has sold timber to buyers other than those named in the sales agreement.
2. He sold the owners' timber for less than one-half of the going rate.
3. In general, he has negotiated sales contracts for the landowners which are not advantageous for them.
4. He has promised to do cultural (silvicultural) work on the owners' Christmas tree stands without knowledge of how to do it.

¹ Statement submitted by Wallter P. Bemis to Senate Factfinding Committee on Business and Commerce, April 7, 1964, Sacramento, with regard to S.B. 991.

5. He has proved himself to be incompetent in carrying out many forestry managerial duties that he agreed to accomplish and other duties which would be assumed for his position.

III. One case involves an absentee owner living in Brazil. In his case a central Sierra virgin stand of timber was burned over. An entrepreneur posing as a forester received the endorsement of a public employee and was given permission to harvest the timber and to prepare the area for reforestation. The arrangements were made by mail and the landowner was convinced that the scorched timber had little value and therefore agreed to sell it for one-fourth its actual value. Also the operator charged three times the going rate for preparing the ground for reforestation. As a result of the misrepresentation and unethical practices the property owner lost \$24,300 and was hard pressed to finance the tree planting.

The above example with some changes was repeated a number of times during the catastrophic timber fires which swept the Central Sierras from 1959-1962.

IV. A forest property owner in Nevada County who is a mechanic by trade was approached by a person claiming to be an expert in Christmas tree stand management. This "expert" promised to use his professional knowledge to make the stand healthier and more productive by thinning in discretion; also he promised to provide the owner with some revenue. The expert sold himself well by using scientific terms which were foreign to the landowner.

The cutter felled trees that were nearly of timber size and removed the tops for Christmas trees; also, the removal of other trees was not accomplished scientifically to benefit the stand. To make matters worse the landowner was never paid and cannot locate the cutter.

V. Another case occurred in Sierra County's Sierra Valley where the landowner was principally a dairyman. The property owner was approached by a Reno entrepreneur who promised to practice his knowledge of forestry and harvest Christmas trees only where they were too thick to grow into timber size. The result was that the operator cut down large Jeffrey pines which were 16"-18" in diameter just to get the tops. A brief investigation revealed that this "knowledgeable forester" had read some articles in a Christmas tree growers magazine but was usually engaged in selling used cars in Reno. Ironically, the landowner had previously denied Christmas tree cutters entry because "they are not usually very trustworthy."

VI. In the Counties of Shasta, Trinity and Siskiyou, one self-appointed expert canvasses forest properties to determine timber values. Where the properties have been recently logged and where little of the timber is large enough to be legally merchantable, this expert handles the situation as the following example depicts:

The owner of a young, healthy stand of fastgrowing trees was approached by this self-appointed forestry expert and told that his trees should be harvested. The timber owner was further advised that his timber stand was decadent, infested with insects and disease and also needed thinning. Moreover, the owner was advised that he should obtain a conversion affidavit so that trees smaller than legal size could be harvested. In this case, the young stand was not cut since the owner was

unwilling to go on record as intending to convert their land to something other than timber growth.

An adjacent forest landowner was not so wise and believed the "expert." As a result his land was "slicked off"; the land was never converted to another use as per the land conversion affidavit and its growth potential has been lost for many years.

There are a number of such examples throughout the Sierra and Cascade Ranges and in total they will have a substantial impact on California's ability to produce timber.

VII. In this case an elderly woman in her seventies who owned property in Butte County was approached by two small timber operators professing they were foresters and interested in the saw timber stumpage on her property. One offer was for \$4,500; the other, \$11,500. Since the offers varied considerably, the owner approached a forest consultant firm and asked them to examine the lands and handle the sale of her timber in a businesslike manner. They conducted an inventory, placed the timber on the market, and at a total cost of \$800, obtained \$24,000 for the client. The successful bidder was one of the original negotiators for the stumpage.

I have personally observed that the above cases have many variations and occur with alarming frequency.

WALTER P. BEMIS
3637 French Avenue
Sacramento, California 95821

APPENDIX

Copies of the business card and yellow page ad referred to in Case I.

(Business Card)

Tree Falling — Forest Products — Pruning
Forest Gardening — Topping — Free Estimates

XXXXXX TREE CO.

→ **SILVICULTURE—TREE SERVICE**
Fire, Insect, Parasite Hazard Reduction

XXXXXXXX XXXXXX
XXXXXX XXXX XXXXX
XXXXXXXX XXXXXXXX

Licensed Contractor
Insured
Phone XXXXXXXXXX

Silviculture, Insect Control and Prevention, and Parasite Hazard Reduction require competent professional people of professional supervision.

(Current Yellow Page Advertisement)

XXXXXXXX

TREE SERVICE

SUBDIVISION TREE IMPROVEMENTS

- *FIRE CONTROL**
- *INSECT CONTROL (SPRAYING)**
- *PARASITE CONTROL**
- *SAW LOGS**
- *CORD WOOD**
- *TREE PRUNING**
- *TREE FELLING**
- *TREE REMOVING**
- *TREE FEEDING**

**Tree
Surgeons**

→ **FREE ESTIMATES GIVEN BY QUALIFIED FOREST TECHNICIAN**

Licensed Timber Operator—State of California—Division of Forestry
CALIFORNIA FULLY INSURED NEVADA

XXXXXXXXXXXXXXXXXXXX

2 Offices to Serve You on Hwy. in
XXXXXXXXXXXXXXXXXXXX

XXXXXXXXXXXX TREE SERVICE

XXXX XXXX XXXX

Has a permit to engage in logging but is *not licensed* to accomplish any of the enumerated jobs.

STATEMENT

Presented to the Senate Factfinding Committee on Business and Commerce
State Capitol, Sacramento, California

By: Robert E. Kleiner, President, Western Timber Services, Inc.
Arcata, California.

Re: Senate Bill 991, Professional Foresters Law.

Date: Tuesday, April 7, 1964.

The firm I represent employs five professional foresters. These consultants work on assignments for a large range of private, industrial and public agency clients in California, Oregon, and other states. In the 12 years that our firm has been in business in California our professional foresters have come in contact with a great number of people interested in or concerned with the field of forestry. These contacts have convinced me that the registration of professional foresters by the State of California is a measure which will definitely protect and serve the public interest.

I respectfully request the opportunity of describing several "type situations" that I can recall which well illustrate how the best interests of the public have not been served because of actions of persons who offered services connected with forestry although they were not fully qualified as professional foresters. These "type situations" are based upon actual incidents but they represent situations which I have recollection of that have occurred repeatedly.

Type Situation 1—A man without the training or the experience of a professional forester was hired to examine and evaluate several parcels of timbered or other wild land which were to be sold. This assignment was performed on a weekend or part-time basis. One parcel was in an area where very few survey corners could be found and, accordingly, it was very difficult to locate the property accurately. This man classified the parcel as brush and range land and evaluated it accordingly. After sale a later survey indicated that the property actually had a valuable stand of timber worth a lot more than the sale price. The seller prepared to take legal action against the buyer alleging that the examiner had been misled as to the location of the property. Fortunately, still later surveys indicated that this charge was not correct.

The important lesson from this situation was that the man who made the examination and evaluation was not qualified to do a job which required the judgment and experience of a professional forester. Furthermore, an experienced forester would have included in his report a description of the survey problem he encountered with recommendations that sale be delayed until a survey by a licensed surveyor could be made.

Type Situation 2—An absentee landowner sold his timber to certain buyers after having it cruised by Cruiser "A." The buyers later offered it for sale to a third party based upon a cruise report by Cruiser "B." That second report was almost a copy of that made by the first cruiser

with one important exception; the timber quantity figures on the second report were far in excess of those listed on the first. Comparison of the two reports indicated that the second was probably copied from the first but that the figures which determined the price for the resale offering had been greatly increased. This appeared to be a situation of a false report, an altered report, or a representation of timber volumes and values based upon something other than a complete examination and cruise.

The important lesson from this situation is that almost anyone can prepare a report of this type without any qualifications as to education and experience required by state registration laws. Further, if a false report is so prepared by a person not qualified there does not exist the disciplinary provisions of the proposed act which would dissuade such actions. I feel sure that in many instances individuals or companies have suffered damage because of the circumstances of situations very similar to this one.

Type Situation 3—A real estate appraisal firm contracted for the appraisal of a number of timbered properties. In their appraisal they made direct comparisons of the prices paid for other timbered tracts sold on a per acre basis with the parcels being appraised without properly allowing for the differences in timber volumes and quality. As a result, some of the parcels were overappraised and did not sell and some of those which sold were probably underappraised and sold at prices far below their market value.

The important lesson from this situation is that persons unfamiliar with timber values performed an appraisal in such a manner that the best interests of the owner were not served. A registered professional forester should have been retained to consult on this appraisal assignment or, the timber appraisal should have been the responsibility of a qualified forester. Appraisal is a very important part of a forester's work and the problems peculiar to timber appraisal require the training and qualifications of a professional forester.

SUMMARY

The forest resources of our state are becoming of increasing importance for the wood products they account for, for the recreational opportunities they offer, for the vital purposes of watershed protection, and for their many other influences on our everyday life. The people need the services of trained and qualified professional foresters in the management of these forest resources, in the planning of their best use, in the sale and purchase of timbered properties, in the determination of values, in the preparation and administration of timber sale contract, and in many other regards. I feel certain that the needs for these services will be well served by the provision for the registration of professional foresters under state law.

I thank you,

ROBERT E. KLEINER

EXAMPLES ABLE TO BE CONFIRMED OF WRONGFUL FORESTER ACTIVITIES

1. An erstwhile logger with limited timber cruising knowledge reporting in Mattele area on timber volumes with notarized signature on reports claiming "Notarized Cruise."
2. A real estate agent typing out on other paper valid cruise data of a recognized timber cruiser presenting said paper as the cruise report.
3. A disgruntled employee with access to company files divulging cruise information to a rival company.
4. A sometime employee of the United States Forest Service represented himself as a forester, sold his ideas and self to a landowner in form of a management plan which in essence was a gimmick to gain a fee for an ordinary complete cutting of the timber.
5. An individual, since in trouble with the law for fraud, taking valid cruise data, modifying the information for his purposes caused undue expense to several landowners.
6. A timber cruiser uses a "seal" of official appearance, misleads many individuals.
7. A recognized timber cruising firm, out-of-state, stating within reports that the cruise is a "certified cruise" by the firm, thus implying undue validity.
8. A logger with knowledge of logging procedure, but not any technical forestry nor little savvy on field procedures of forestry matters, who served his employer as logging advisor, stated in superior court he was the company forester. Court accepted testimony of more than fact knowledge.

GEORGIA STATUTES

FORESTERS—STATE BOARD OF REGISTRATION.

An Act to create a board to be known as the State Board of Registration for Foresters; to provide for the qualification of members of said board; to provide for the appointment of the members of said board; to provide for their terms of office; to provide for the organization of said board; to provide for the powers and duties of said board; to provide for the registration of foresters; to provide for the recording of licenses; to provide for the definition of the practice of forestry; to provide for the revocation of licenses; to provide for fees; to provide for reciprocity; to repeal all conflicting laws; and for other purposes.

Be it enacted by the General Assembly of Georgia, and it is hereby enacted by authority of the same:

Section 1. General Provisions. (a) No person shall use in connection with his name or otherwise assume, use or advertise any title or description tending directly or indirectly to convey the impression that he is a registered forester, without first having been licensed and registered as a registered forester as hereinafter provided.

(b) Except as hereinafter specifically authorized, no person shall engage in the practice of professional forestry as defined in this Act, or in any manner advertise or hold himself out as engaged in such practice, without first being licensed as a registered forester under this Act.

(c) Notwithstanding paragraph (b) or any other provisions of this Act, nothing herein shall be construed as preventing or prohibiting any person from managing or otherwise conducting forestry practices on land owned, leased, rented or held by such person; nor shall anything herein prohibit any regular employee or official of any person, corporation, agency, institution or other entity from engaging in professional or other forestry practices on lands owned, leased, rented or held by such person, corporation, agency or other entity; nor shall anything herein prohibit any graduate of a school of forestry from practicing forestry under supervision as hereinafter authorized, so as to qualify for licensing as provided in Section 12 hereof.

(d) It is the purpose of this Act to protect the public by improving the standards relative to the practice of professional forestry.

Section 2. As used herein, the following terms shall have the meaning and definitions hereafter stated:

(a) "Registered forester" shall mean a person who has registered and qualified under this law to engage in professional forestry practices as hereinafter defined.

(b) "Professional forestry" or "Practice of professional forestry" shall mean any professional service relating to forestry, such as investigation, evaluation, development or forest management plans or responsible supervision of forest management, forest production, silviculture, forest utilization, forest economics, or other forestry activities in connection with any public or private lands. Provided, that forestry instructional and educational activities shall be exempted. Provided further, however, any person, who on the effective date of this Act, shall have been engaged in the active practice of forestry as defined herein for at least ten years with such practice to be acceptable to the board as defined in Section 12 (b), shall be eligible for registration as a registered forester without reference to the requirements set forth in Section 12 (a) of this Act, provided that he file application for registration with the board within six months from the effective date of this Act. The board shall issue licenses only to those applicants who meet the requirements of this section. Provided that no person shall be eligible for registration as a registered forester who is not of good character and reputation. Provided further, that employees of the State and Federal government assisting farmers in agricultural programs shall be exempt from the provisions of this Act.

(c) "Board" shall mean the State Board of Registration for Registered Foresters, provided for by this Act.

Section 3. State Board of Registration for Foresters; appointment of members; terms: A State Board of Registration for Foresters is hereby created whose duty it shall be to administer the provisions of this Act. The board shall consist of five foresters, who shall be selected and appointed by the Governor of Georgia from among ten nominees recommended by the Georgia Chapter of the Society of American For-

esters and shall have the qualifications required by Paragraph IV of this Act. Every member of the board shall receive a certificate of his appointment from the Governor and before beginning his term of office shall file with the Secretary of State his written oath of affirmation for the faithful discharge of his official duty. The five members of the initial board will be appointed for terms of one, two, three, four and five years, respectively. On the expiration of the term of any member of the initial board, the Governor shall in the manner hereinbefore provided appoint for a term of five years a registered forester having the qualifications required by Paragraph IV of this Act to take the place of the member whose term on said board is expiring. If the Governor fails to make appointment in 90 days after expiration of any term, the board shall make the necessary appointment. Each member shall hold office until the expiration of the term for which such member is appointed or until a successor shall have been duly appointed and shall have qualified.

Section 4. Qualifications of members of the board. Each member of the board shall be a citizen of the United States and a resident of Georgia, a member or Fellow of the Society of American Foresters, and shall have been engaged in the practice of forestry for at least ten years.

Section 5. Compensation and expenses of board members. Each member of the board shall receive a nominal sum of ten dollars per diem when actually attending to the work of the board or of any of its committees and for the time spent in necessary travel and, in addition thereto, shall be reimbursed for all actual traveling, incidental and clerical expenses necessarily incurred in carrying out the provisions of this Act, paid by the State Treasurer out of the general fund.

Section 6. Removal of members of the board; vacancies: The Governor may remove any member of the board for misconduct, incompetency, or neglect of duty. Vacancies in the membership of the board shall be filled for the unexpired term by appointment only as provided in this Act.

Section 7. Organization and meetings of the board. The original members of said board shall be named and appointed by the Governor within 30 days after the passage of this Act. The board shall hold a meeting within 30 days after its members are first appointed and thereafter shall hold at least two regular meetings each year. Special meetings shall be held at such time and place as the by-laws of the board may provide; provided that not more than one meeting may be held during any one calendar month. Notice of all meetings shall be given in such manner as the by-laws may provide. The board shall elect or appoint annually the following officers: A chairman and a vice-chairman. The Joint Secretary of the State Examining Boards shall serve as secretary of the board herein created in the same manner as provided by Section 84-101 and 102 of the Georgia Code. A quorum of the board shall consist of not less than three voting members.

Section 8. Powers of the Board. The Board shall have the power to make all by-laws and rules, not inconsistent with the Constitution and laws of this State, which may be reasonably necessary for the proper performance of its duties and the regulation of the proceedings before it. The Board shall adopt and have an official seal. In carry-

ing into effect the provisions of this Act, the Board may, under the hands of its chairman and the seal of the Board, subpoena witnesses and compel their attendance and may also require them to produce books, papers, documents, etc. in a case involving the revocation of a license or practicing or offering to practice under the title of registered forester without a license. Any member of the Board may administer oaths or affirmation to witnesses appearing before the Board. Such witnesses officially called by the Board shall receive the same compensation and shall be reimbursed for expenses in the same amount as the members of the Board as outlined in Section V of this Act. If any person shall refuse to testify or produce any books, papers, or documents, the Board may present its petition to any court of competent jurisdiction, setting forth the facts, and thereupon such court shall, in a proper case, issue an attachment for contempt against such person requiring him to show cause why he should not be held in contempt; provided, such person shall be permitted to purge himself of contempt by compliance with such order as the Court may render.

Section 9. Receipts and disbursements. The Secretary of the Joint Examining Board shall receive and account for all monies derived under the provisions of this Act, and shall pay the same monthly to the State Treasurer.

Section 10. Records and reports. The board shall keep a record of its proceedings and a register of all applications for registration; which register shall show the name, age, and residence of each applicant; the date of the application; the place of business of such applicant; his educational and other qualifications; whether or not an examination was required; whether the application was rejected; whether a license was granted; the date of the action of the board; and such other information as may be deemed necessary by the board. The records of the board shall be prima facie evidence of the proceedings of the board set forth therein, and a transcript thereof, duly certified by the secretary of the board under seal, shall be admissible in evidence with the same force and effect as if the original were produced. Annually, as of June thirtieth, the board shall submit to the Governor a report of its transactions of the proceeding year.

Section 11. Roster of registered foresters. A roster showing the names and places of business of all registered foresters qualified according to the provisions of this Act, shall be prepared by the Secretary of the Joint Examining Boards during the month of March of each year. Copies of this roster shall be mailed to each person so registered, placed on file with the Secretary of State, and furnished to the public upon request.

Section 12. (a) General Requirements for Registration. The minimum qualifications and requirements for registration as a registered forester shall be as follows: (1) Graduation from a school, college, or department of forestry approved by the Board, and a specific record of an additional two years' or more experience in forestry work of a character satisfactory to the Board indicating that the applicant is competent to practice forestry. Such two years' experience need not be obtained on lands owned, leased, rented or held by the applicant or by any person, corporation, agency, entity or institution by which such applicant is employed, so long as said applicant works under su-

pervision of a registered forester or under other supervision acceptable to the Board. (2) Graduates of schools of forestry not approved by the Board may be licensed after two years' of experience of a character satisfactory to the Board and under the supervision of a Registered Forester or under other supervision acceptable to the Board, and who shall have successfully passed a written examination designed to show knowledge and skill approximating that obtained by graduation from a school, college or department of forestry approved by the Board. The Board shall issue licenses only to those applicants who meet the requirements of this Section; provided, however, that no person shall be eligible for registration as a registered forester who is not of good moral character and reputation.

(b) It shall be the duty of the Board by rule of regulation to define "supervision" and "experience" as used in this Act, and in so doing, the Board shall consider and give effect to the directness, immediacy, scope, extent, quality and constancy of such supervision, and as to "experience," the nature, quality and extent thereof.

Section 13. Application and registration fees. Applications for registration shall be made on forms prescribed and furnished by the board; shall contain statements made under oath, showing the applicant's education and a detailed summary of his technical work, and shall contain not less than five references, of whom three or more shall be foresters having personal or professional knowledge of his forestry experience. The registration fee for a license as a "Registered Forester" shall be ten dollars, five dollars of which shall accompany the application, the remaining five dollars of which to be paid before issuance of license. Should the applicant fail or refuse to remit the said remaining five dollars within thirty days after being notified, in the usual manner, that the applicant has successfully qualified, the applicant shall forfeit the right to have a license so issued and said applicant may be required to again submit an original application and pay an original fee therefor. Should the board deny the issuance of a license to any applicant the initial fee deposited shall be retained by the board as an application fee.

Section 14. Examination. When written examinations are required, they shall be held at such time and place as the board shall determine. The methods of procedure shall be prescribed by the board. A candidate failing on examination may apply for re-examination at the expiration of six months and will be re-examined without payment of additional fee. Subsequent examination will be granted upon payment of a fee to be determined by the board.

Section 15. Licenses. The board shall issue a license upon payment of a registration fee as provided for in this Act to any applicant, who, in the opinion of the board, has satisfactorily met all of the requirements of this Act. Licenses shall show the full name of the registrant, shall have a serial number and shall be signed by the chairman of the board and the Secretary of the Joint Examining Boards under seal of the board. The issuance of a license by the board shall be evidence that the person named herein is entitled to all the rights and privileges of a registered forester while the said license remains unrevoked or unexpired. Plans, maps, specifications and reports issued by a registrant shall be endorsed with his name and li-

license number during the life of the registrant's license, but it shall be a misdemeanor for anyone to endorse any documents with said name and license number after the license of the registrant named thereon has expired or has been revoked, unless said license shall have been renewed or reissued. It shall be a misdemeanor for any registered forester to endorse any plan, specification, estimate, or map unless he shall have actually prepared such plan, specification, estimate or map or shall have been in the actual charge of the preparation thereof.

Section 16. Expiration and renewals. Licenses shall expire on the last day of the month of December following their issuance or renewal and shall become invalid on that date unless renewed. It shall be the duty of the Secretary of the Joint Examining Boards to notify, at his last registered address, every person registered under this Act, of the date of expiration of his license and the amount of the fee that shall be required for its renewal for one year; such notice shall be mailed at least one month in advance of the date of the expiration of said license. The annual renewal fee shall be five dollars. Renewal of licenses for the following year may be affected at any time during the month of December of the year in which the license has been issued or renewed by the payment of the renewal fee. Such licenses may also be renewed during the ensuing ten months by the payment of an additional fee of fifty cents for each month or fraction thereof that payment of the fixed renewal fee is delayed beyond the month of December. The Board shall make an exception to the foregoing renewal provisions in the case of a person who is in the armed services of the United States.

Section 17. Firms, partnerships, and corporations. Registration shall be determined upon a basis of individual personal qualifications. No firms, company, partnership or corporation can be licensed.

Section 18. (a) Any non-resident of Georgia, or any person within six months after becoming a resident of Georgia, who has been licensed as a registered forester under the laws of another state, may be licensed and registered under the laws of Georgia by reciprocity without having to qualify under the other provisions of this Act subject to the following conditions: (1) That the requirements and qualifications for licensing and registration under the laws of the state in which such person is licensed are substantially equivalent to those of Georgia, to be determined by the Board. (2) That such state permits licensing of foresters registered in Georgia on terms substantially equivalent to those of this Section, to be determined by the Board. (3) Notwithstanding the foregoing, the Board may decline to license by reciprocity any such person on an individual basis where the Board determines that such applicant does not possess good character, has been guilty of fraud in making application under the laws of Georgia or of any other state, or where the Board determines by examination or otherwise that such applicant is not in fact qualified to become licensed as a registered forester.

(b) Any person desiring to become registered under this Section shall make application under oath on blanks to be furnished by the Board, shall accompany such application with the same fee now or hereafter required for licensing and registration under Section 13 hereof, as amended, and shall cause to be sent to the Board a certificate from

the proper authority of the state under which such person is already registered certifying thereto.

(c) Any license issued under this Section shall be subject to all provisions of this Act governing expiration, renewal, renewal fees, revocation, and any and all other provisions of law now or hereafter governing or relating to registered foresters.

Section 19. Revocations and re-issuance of licenses. The board shall have the power to revoke the license of any registrant who is found guilty by the board of gross negligence, incompetency, or misconduct in the practice of forestry. The board is empowered to designate a person or persons to investigate and report to it upon any charges of fraud, deceit, gross negligence, incompetency or other misconduct in connection with any forestry practice against any registrant, as may come to its attention. Such person or persons so designated by the board shall receive the same compensation and shall be reimbursed for expenses in the same amount as the Board as outlined in Section V of this Act. Any person may prefer charges of fraud, deceit, gross negligence, incompetency or misconduct in connection with any forestry practice, against any registrant. Such charges shall be in writing, shall be sworn to by the person making them and shall be filed with the Secretary of the Joint Examining Records. All charges, unless dismissed by the board as unfounded or trivial, shall be heard by the board within three months after the date on which they shall have been preferred. The time and place for said hearing shall be fixed by the board, and a copy of the charges, together with a notice of the time and place of the hearing, shall be personally served on, or mailed to the last known address of such registrant, at least thirty days before the date fixed for the hearing. At any hearing, the accused registrant shall have the right to appear personally and by counsel, to cross-examine witnesses appearing against him, and to produce evidence and witnesses in his own defense. If, after such hearing three or more members of the board vote in favor of finding the accused guilty, the board shall revoke the license of such registered forester. Any applicant whose license has been revoked as above may apply for a review of the proceedings with reference to such revocation of his license by any court of competent jurisdiction. The only record to be considered in such appeal shall be the record made before the board. New evidence must be presented to the board, in session, before it may be used in court proceedings. The board, for reasons it may deem sufficient, may reissue a license to any person whose license has been revoked by three or more members of the board who vote in favor of such re-issuance. A new license, to replace any license revoked, lost, destroyed, or mutilated, may be issued, subject to the rules of the board, and a charge of three dollars made for such issuance.

Section 20. Any person violating the provisions of Section 1 of this Act, as amended, or any person refusing upon request to surrender to the Board or any duly authorized agent thereof any license of such person, or any person displaying his license after revocation thereof, or expiration thereof for nonpayment of renewal fees or any other cause, or any person who shall present or attempt to use as his own the license of another, or any person who shall give any false or forged evidence of any kind to the Board or any member thereof in obtaining

a license, or any person who shall attempt to use an expired or revoked license, or any person, firm, partnership, or corporation who shall violate any of the provisions of this Act, shall be guilty of a misdemeanor, and upon conviction thereof shall be punished as provided by law. The Board, or such person or persons as may be designated by the Board to act in its stead, is empowered to prefer charges for any of the violations of this Act in any person of contempt jurisdiction, and where reasonable ground existed to believe or suspect the guilt of the accused, such person bringing charges shall be immune from liability in damages or otherwise, notwithstanding that the accused was acquitted thereof. It shall be the duty of all duly constituted officers of the law, of this State, or any political subdivision thereof, to enforce the provisions of this Act and to prosecute any persons, firms, partnerships, or corporations violating the same. The Attorney General of the State and his assistants shall act as legal advisor to the Board and render such legal assistance as may be necessary in carrying out the provisions of this Act.

Section 21. Repealing clause. That all laws and parts of laws in conflict with the provisions of this Act be and the same are hereby repealed. If any provision of this Act shall be held unconstitutional, the same shall not apply to other provisions thereof.

MICHIGAN LAW

[No. 78.]

AN ACT to provide for the registration and regulation of foresters; to create a state board of registration for foresters and to prescribe its powers and duties; to authorize imposition and collection of fees; to authorize appropriations and disbursements therefrom; and to provide penalties for the violation of provisions of this act.

The People of the State of Michigan enact:

338.721 Registered forester act; licenses; construction of act. [M.S.A. 13.215(1)]

Sec. 1. No person shall use in connection with his name or otherwise assume, use or advertise any title or description tending to convey the impression that he is a registered forester, unless he shall be licensed as hereinafter provided. Nothing contained in this act shall be construed as preventing any person, firm, partnership or corporation from practicing forestry, landscape architecture, or managing woodlands, forests or trees or from operating the removal of any products therefrom, or planting trees on any plat of land, in any manner desired. This act is for the benefit and protection of the public.

338.722 Same; definitions. [M.S.A. 13.215(2)]

Sec. 2. As used in this act:

(1) The term "forester" means a person who, by reason of his knowledge of the natural sciences, mathematics and the principles of forestry, acquired by forestry education, as set forth in section 12 (1)

of this act, and/or practical experience, is qualified to engage in the practice of professional forestry as hereinafter defined;

(2) The term "registered forester" means a person who has been licensed pursuant to this act;

(3) The term "practice of professional forestry" means professional forestry services, including but not limited to consultation, investigation, evaluation, planning or responsible supervision of any forestry activities when such professional service requires the application of forestry principles and techniques; and

(4) The term "board" means the state board of registration for registered foresters.

338.723 State Board of registration for foresters; membership, appointment, term. [M.S.A. 13.215(3)]

Sec. 3. A state board of registration for foresters is hereby created whose duty it shall be to administer the provisions of this act. The board shall consist of 5 foresters who shall be selected and appointed by the governor of Michigan by and with the advice and consent of the senate, and who shall possess the qualifications set forth under section 4 of this act. Each qualified member of the board shall receive a certificate of his appointment from the governor and before beginning his term of office shall file with the secretary of state his written oath or affirmation for the faithful discharge of his official duties. The 5 members of the initial board shall be appointed for terms of 1, 2, 3, 4 and 5 years, respectively. At least 2 members of the board shall be residents of the Upper Peninsula. On the expiration of the term of any member of the initial board, the governor shall, in the manner hereinbefore provided, appoint for a term of 5 years a registered forester having the qualifications set forth in section 4 of this act to take the place of the member whose term on said board is expiring. Each member shall hold office until the expiration of the term for which such member is appointed and until a successor shall have been duly appointed and qualified.

338.724 Same; qualifications of members. [M.S.A. 13.215(4)]

Sec. 4. Each member of the board shall be a citizen of the United States and a resident of this state, qualify as a forester under the terms of this act, and shall have been engaged in the practice of professional forestry for at least 10 years.

338.725 Same; compensation; expenses. [M.S.A. 13.215(5)]

Sec. 5. Each member of the board shall receive not to exceed \$10.00 per day when actually attending to the work of the board or of any of its committees and for the time spent in necessary travel and, in addition thereto, may be reimbursed for all actual traveling and incidental expenses necessarily incurred in carrying out the provisions of this act.

338.726 Same; removal; vacancies. [M.S.A. 13.215(6)]

Sec. 6. The governor may remove any member of the board for official misconduct or habitual or wilful neglect of duty in the manner provided by law. Vacancies in the membership of the board shall be filled for the unexpired term in the same manner as for an appointment for a full term.

338.727 Same; appointment; meetings; officers; quorum. [M.S.A. 13.215(7)]

Sec. 7. The members of the initial board shall be named and appointed by the governor within 30 days after the effective date of this act. The board shall hold a meeting within 30 days after its members are first appointed and thereafter the board shall hold at least 2 regular meetings each year.

Meetings shall be held at such time and place as the by-laws of the board may provide. Notice of all meetings shall be given in such manner as the by-laws may provide. The board shall elect annually the following officers: A chairman, a vice-chairman and a secretary. A quorum of the board shall consist of a majority of the qualified members serving thereon.

338.728 Same; by-laws; rules; seal; witnesses. [M.S.A. 13.215(8)]

Sec. 8. The board shall have the power to make all by-laws and rules reasonably necessary for the proper performance of its duties and the regulations of the proceedings before it, pursuant to Act No. 88 of the Public Acts of 1943, as amended, being sections 24.71 to 24.82, inclusive, of the Compiled Laws of 1948, and Act No. 197 of the Public Acts of 1952, as amended, being sections 24.101 to 24.110, inclusive, of the Compiled Laws of 1948. The board shall adopt and have an official seal. Any member of the board may administer oaths or affirmations to witnesses appearing before the board. If any person shall refuse to testify or to produce any books, papers or documents, the board may present its petition to any court of competent jurisdiction, setting forth the facts, and thereupon such court may, in a proper case, issue its subpoena to such person, requiring his attendance before said court and there to testify or to produce such books, papers and documents as may be deemed necessary and pertinent thereto. Any person failing or refusing to obey the subpoena of said court may be proceeded against in the same manner as for refusal to obey any other subpoena of said court.

338.729 Same; disposition of receipts; payment of expenses. [M.S.A. 13.215(9)]

Sec. 9. All moneys received by said board shall be paid to the state treasurer in accordance with the provisions of law and state regulation. Bills for all expenses incurred by the board, including such clerical help as shall be needed, shall be approved by said board and be paid in accordance with the accounting laws of the state within the appropriation made therefor by the legislature: Provided, That in no case shall the board expend in any fiscal year more moneys than the amount of fees collected.

338.730 Same; records; registry of applicants, contents; report. [M.S.A. 13.215(10)]

Sec. 10. The board shall keep a record of its proceedings and a register of all applications for registration, which register shall show the name, age and residence of each applicant; the date of the application; an address for the receipt of mail and the place of business of such applicant; his educational and other qualifications; whether or

not an examination was required; whether the application was rejected; whether a license was granted; the date of the action of the board; and such other information as may be deemed necessary by the board. Annually, as of June thirtieth, the board shall submit to the governor a report on its transactions.

338.731 Roster; distribution, filing. [M.S.A. 13.215(11)]

Sec. 11. A roster showing the names and places of business of all registered foresters qualified according to the provisions of this act shall be prepared by the secretary of the board during the month of March of each year. Copies of such roster shall be mailed to each person so registered, placed on file with the secretary of state and made available to the public upon request.

338.732 Foresters; qualifications of applicants for registration. [M.S.A. 13.215(12)]

Sec. 12. (a) The following shall be considered as minimum evidence satisfactory to the board that the applicant is qualified for registration as a registered forester: (1) Graduation from a university or college with a curriculum in forestry acceptable to the board, including 1 3-credit course in each of the following subjects: Silviculture, forest protection, forest management, forest economics, and forest utilization; and a record of an additional 2 years' or more experience in forestry work of a character satisfactory to the board, and indicating that the applicant is competent to practice professional forestry; or (2) successfully passing a written examination designed to show knowledge approximating that obtained through graduation from an acceptable 4-year curriculum in forestry, and a record of 4 years or more of active practice in forestry work of a character satisfactory to the board, and indicating that the applicant is competent to practice professional forestry; or (3) any person who shall have been engaged in the practice of professional forestry as defined in section 2 of this act for at least 10 years in a period of 15 years immediately preceding the effective date of this act shall be eligible for registration as a registered forester without reference to the requirements set forth in subdivisions (1) and (2) hereof: Provided, That such person files application for registration with the board within 14 months from the effective date of this act.

(b) No person shall be eligible for registration as a registered forester who is not of good character and reputation. The completion of the junior year of a curriculum in forestry in a university or college acceptable to the board shall be considered as equivalent to 2 years of the practice of professional forestry; the completion of the senior year of a curriculum in forestry, without graduation, in a university or college acceptable to the board, shall be considered as equivalent to 3 years of the practice of professional forestry.

338.733 Applications for registration; form, fees.**[M.S.A. 13.215(13)]**

Sec. 13. Applications for registration shall be made on forms prescribed and furnished by the board, shall contain statements made under oath as to citizenship, residence and the applicant's education and detailed summary of his technical work, and shall contain names of not less than 5 persons, of whom 3 or more shall be foresters having personal or professional knowledge of his forestry experience. The forms shall also contain a code of ethics prepared and approved by the board. The registration fee for a certificate as a "registered forester" shall be fixed by the board, but not to exceed \$25.00, $\frac{1}{2}$ of which fee shall accompany the application, the balance to be paid before issuance of the certificate. Should the applicant fail or refuse to remit the said remaining balance within 30 days after being notified by registered mail, that the applicant, has successfully qualified, the applicant shall forfeit the right to have a certificate so issued and said applicant may be required to again submit an original application and pay an original fee therefor. Should the board deny the issuance of a certificate of registration to any applicant, the fee deposited shall be retained by the board as an application fee.

338.734 Examinations; re-examinations, fees. [M.S.A. 13.215(14)]

Sec. 14. When written examinations are required, they shall be held at such time and place as the board shall determine. The methods of procedure shall be prescribed by the board, a candidate failing an examination may apply for re-examination at the expiration of 6 months and shall be entitled to 1 re-examination without payment of an additional fee. Subsequent examinations may be granted upon payment of a fee to be determined by the board, but not in excess of \$25.00.

338.735 Licenses; issuance, endorsement of number on plans, maps, specifications and reports. [M.S.A. 13.215(15)]

Sec. 15. The board shall issue a license upon payment of the registration fee as provided for in this act to any applicant who, in the opinion of the board, has satisfactorily met all the requirements of this act. Licenses shall show the full name of the registrant, shall have a serial number and shall be signed by the chairman and secretary of the board under seal of the board. The issuance of a license by the board shall be evidence that the person named therein is entitled to all the rights and privileges of a registered forester while the said license remains unrevoked or unexpired. Plans, maps, specifications and reports issued by a registrant shall be endorsed with his name and license number during the life of the registrant's license, but it shall be a misdemeanor for anyone to endorse any documents with said name and license number after the license of the registrant named thereon has expired or has been revoked, unless said license shall have been renewed or reissued. It shall be a misdemeanor for any registered forester to endorse any plan, specification, estimate or map unless he shall have actually prepared such plan, specification, estimate or map shall have been in the actual charge of the preparation and/or responsible therefor.

338.736 Same; renewal, fees, exceptions. [M.S.A. 13.215(16)]

Sec. 16. Licenses shall expire 1 year after the date of their issuance or renewal and shall become invalid on that date unless renewed. It shall be the duty of the secretary of the board to notify, at his last registered address, every person registered under this act of the date of the expiration of his license and the amount of the fee that shall be required for its renewal for 1 year; such notice shall be mailed at least 3 months in advance of the date of the expiration of said license. The fee for renewal of licenses shall be \$10.00. The board shall make an exception to the foregoing renewal provisions in the case of a person while on active duty in any of the armed forces of the United States.

338.737 Registration; determination of eligibility. [M.S.A. 13.215(17)]

Sec. 17. Registration shall be determined upon a basis of individual personal qualifications. No firm, company, partnership, corporation or public agency shall be licensed as a registered forester.

338.738 Registered forester; use of title by reciprocity. [M.S.A. 13.215(18)]

Sec. 18. A person not a resident of and having no established place of business in Michigan, or who has recently become a resident thereof, may use the title of registered forester in Michigan provided: (1) Such person is legally licensed as a registered forester in his own state or country and has submitted evidence to the board that he is so licensed and that the requirements for registration therein are at least substantially equivalent to the requirements of this act; and (2) the state or country in which he is so licensed observes these same rules of reciprocity in regard to persons originally licensed under the provisions of this act.

338.739 Revocation of license; preferment of charges, court review, replacement license, fees. [M.S.A. 13.215(19)]

Sec. 19. The board shall have the power to revoke the license of any registrant who is found guilty by the board of fraud, deceit, gross negligence, incompetency or misconduct in the practice of professional forestry.

Any person may prefer charges of fraud, deceit, gross negligence, incompetency or misconduct in connection with any forestry practice against any registrant. Such charges shall be in writing, shall be sworn to by the person making them and shall be filed with the secretary of the board. All charges shall be heard by the board pursuant to its rules and regulations and subject to the requirements of Act No. 197 of the Public Acts of 1952, as amended, being sections 24.101 to 24.110, inclusive, of the Compiled Laws of 1948. Any applicant whose license has been revoked by the board may apply for a review of the proceedings with reference to such revocation of his license by any court of competent jurisdiction, pursuant to said Act No. 197 of the Public Acts of 1952, as amended. A quorum of the board, for reasons it may deem sufficient, may reissue a license to any person whose license has been revoked. A new license to replace any license revoked,

lost, destroyed or mutilated may be issued, subject to the rules of the board, and upon payment of a fee of \$3.00.

338.740 Violation of act, penalty; duties of officers. [M.S.A. 13.215(20)]

Sec. 20. Any person who shall practice or offer to practice the profession of forestry as a registered forester in this state, without being registered in accordance with the provisions of this act, or any person who shall use in connection with his name or otherwise assume, use or advertise any title or description tending to convey the impression that he is a registered forester, without being registered in accordance with the provisions of this act, or any person who shall present or attempt to use as his own the license of another, or any person who shall give any false or forged evidence of any kind to the board or any member thereof in obtaining a license, or any person who shall attempt to use an expired or revoked license, or any person, firm, partnership or corporation who shall violate any of the provisions of this act, shall be guilty of a misdemeanor and upon conviction thereof shall be fined not more than \$100.00. The board, or such person or persons as may be designated by the board to act in its stead, is empowered to prefer charges for any violations of this act in any court of competent jurisdiction. It shall be the duty of all duly constituted officers of the law of this state to enforce the provisions of this act and to prosecute any persons, firms, partnerships or corporations violating the same. The attorney general of the state or his designated assistant shall act as legal advisor of the board and render such assistance as may be necessary in carrying out the provisions of this act.

Approved May 26, 1955.

[No. 169 of 1958.]

AN ACT to amend section 12 of Act No. 78 of the Public Acts of 1955, entitled "An act to provide for the registration and regulation of foresters; to create a state board of registration for foresters and to prescribe its powers and duties; to authorize imposition and collection of fees; to authorize appropriations and disbursements therefrom; and to provide penalties for the violation of provisions of this act," being section 338.732 of the compiled Laws of 1948.

The People of the State of Michigan enact:

Section amended

Section 1. Section 12 of Act No. 78 of the Public Acts of 1955, being section 338.732 of the Compiled Laws of 1948, is hereby amended to read as follows:

338.732 Registered forester; qualifications of applicant; education, examination, experience. [M.S.A. 13.215(12)]

Sec. 12. (a) The following shall be considered as minimum evidence satisfactory to the board that the applicant is qualified for registration as a registered forester: (1) Graduation from a university or college with a curriculum in forestry acceptable to the board, including 1

3-credit course in each of the following subjects: Silviculture, forest protection, forest management, forest economics, and forest utilization; and a record of an additional 2 years' or more experience in forestry work of a character satisfactory to the board, and indicating that the applicant is competent to practice professional forestry; or (2) successfully passing a written examination designed to show knowledge approximating that obtained through graduation from an acceptable 4-year curriculum in forestry, and a record of 4 years or more of active practice in forestry work of a character satisfactory to the board, and indicating that the applicant is competent to practice professional forestry: Provided, That after 5 years from the effective date of this act no person shall qualify as a registered forester unless such person shall have graduated from a university or college with a curriculum in forestry acceptable to the board, and who has a record of an additional 2 years or more of experience in forestry work of a character satisfactory to the board, and indicating that the applicant is competent to practice professional forestry; or (3) any person who shall have been engaged in the practice of professional forestry as defined in section 2 of this act for at least 10 years in a period of 25 years immediately preceding the effective date of this act and is of the age of 70 years or more shall be eligible for registration as a registered forester without reference to the requirements set forth in subdivisions (1) and (2) hereof: Provided, That such person files application for registration with the board within 3 months from the effective date of this amendatory act.

(b) No person shall be eligible for registration as a registered forester who is not of good character and reputation. The completion of the junior year of a curriculum in forestry in a university or college acceptable to the board shall be considered as equivalent to 2 years of the practice of professional forestry; the completion of the senior year of a curriculum in forestry, without graduation, in a university or college acceptable to the board, shall be considered as equivalent to 3 years of the practice of professional forestry.

Approved April 18, 1958.

ALABAMA LAW

(Act 533, 1957 General Acts, as Amended by Act 141, Acts of Alabama 1961, Approved September 15, 1961)

To create a Board to be known as the State Board of Registration for Foresters; to provide for the qualification of members of said Board; to provide for the appointment of the members of said Board; to provide for their terms of office; to provide for the organization of said Board; to provide for the powers and duties of said Board; to provide for the registration of Foresters; to provide for the recording of licenses; to provide for the definition of the practice of Forestry; to provide for the revocation of licences; to provide for fees for the issuance and recording of such licenses; to provide for reciprocity; to create a special fund to be known as the "Professional Foresters Fund", and to regulate expenditures therefrom; to repeal all laws in conflict with this Act; and to make an appropriation.

Be It Enacted by the Legislature of Alabama :

Section 1. GENERAL PROVISIONS: Any person using in connection with his name of otherwise assuming, using or advertising any title or description tending to convey the impression that he is a Registered Forester, shall be licensed as hereinafter provided. Nothing contained in this Act shall be construed as preventing any person, firm, partnership or corporation from practicing forestry; or managing timberlands, woodlands or forest, or any timberlands, woodlands or forest in which such person owns any interest, or from operating the removal of any products therefrom, in any manner desired. It is the intention of this Act to be for the benefit and protection of the public.

Section 2. DEFINITIONS: That the term "Registered Forester" as used in this Act shall mean a person, who, by reason of his knowledge of the natural sciences, mathematics, and the principles of Forestry acquired by professional Forestry Education and/or practical experience, is qualified to engage in Forestry practice as hereinafter defined. The "Practice of Professional Forestry" within the meaning and intent of this Act includes any professional service, such as consultation, investigation, evaluation, planning, or responsible supervision of any Forestry Activities in connection with any public or private lands, wherein the public welfare and property is concerned or involved when such professional service requires the application of Forestry principles and data. The term "Board" as used in this Act shall mean the State Board of Registration for Registered Foresters, provided for by this Act.

Section 3. STATE BOARD OF REGISTRATION FOR FORESTERS: Appointment of members, and the terms of office for such members; a State Board of Registration for foresters is hereby created whose duty it shall be to administer the provisions of this Act. The Board shall consist of five Foresters, who shall be selected and appointed by the Governor of Alabama from among ten nominees recommended by the Alabama Chapter of the Society of American Foresters and shall have the qualifications required by Section 4 of this Act. Each member of the Board shall receive a certificate of his appointment from the Governor, and before beginning his term of office shall file with the Secretary of State his written oath of affirmation for the faithful discharge of his official duties. The five members of the initial Board shall be appointed for terms of one, two, three, four and five years, respectively, and in making the appointment the Governor shall designate the term for which each of said members is appointed as provided for above. At the expiration of the term of any member of the initial Board, the Governor shall in the same manner as hereinabove provided appoint for a term of five years a Registered Forester having the qualifications required by Section 4 of this Act of succeed the member whose term on said Board is expiring. Nothing contained in this Act shall prohibit any member whose term expires to be reappointed to succeed himself on said Board. If the Governor fails to make appointment in 90 days after expiration of any term, the Board

shall make the necessary appointment from nominees submitted as hereinabove provided and who meet the qualifications set out by Section 4 of this Act. Each member of said Board shall hold office until the expiration of the term for which such member is appointed or until a successor shall have been duly appointed and shall have qualified.

Section 4. QUALIFICATIONS OF MEMBERS OF THE BOARD: Each member of the Board shall be a citizen of the United States and a resident of the State of Alabama, a member or fellow of the Society of American Foresters, and shall have been engaged in the practice of the profession of Forestry for the last ten years prior to such appointment.

Section 5. COMPENSATION AND EXPENSES OF BOARD MEMBERS: Each member of the Board shall receive a nominal sum of \$10.00 per diem when actually attending to the work of the Board or any of its committees and for the time spent in necessary travel, and in addition thereto, shall be reimbursed for all actual traveling, incidental and clerical expenses necessarily incurred in carrying out the provisions of this Act. Such compensation and expenses shall be paid out of the "Professional Foresters Fund" in the manner prescribed herein.

Section 6. REMOVAL OF MEMBERS OF THE BOARD; VACANCIES: The Governor may remove any member of the Board for misconduct, incompetency or neglect of duty. Vacancies in the membership of the Board shall be filled for the unexpired term by appointment only in the manner provided by this Act for the appointment of members of the Board.

Section 7. ORGANIZATION AND MEETINGS OF THE BOARD: The members of said Board shall be named and appointed by the Governor within 60 days after the passage of this Act. The Board shall hold a meeting within 30 days after its members are first appointed and thereafter shall hold at least two regular meetings each year. Special meetings shall be held at such time and place as the by-laws of the Board may provide; provided that not more than one meeting may be held in any one calendar month. Notice of all meetings shall be given in such manner as the by-laws may provide. The Board shall elect or appoint annually the following officers: a Chairman, Vice Chairman and a Secretary, who shall each be members of the Board. A quorum of the Board shall consist of not less than three voting members.

Section 8. POWERS OF THE BOARD: The Board shall have the power to make all by-laws and rules, not inconsistent with the constitution and laws of this state which may be reasonably necessary for the proper performance of its duties and the regulations of the proceedings before it. The Board shall adopt and have an official seal. In carrying into effect the provisions of this Act, the Board may, under the hand of its Chairman and the seal of the Board, subpoena witnesses and compel their attendance and may also require them to produce books, papers, or documents in a case involving the revocation of a license or practicing or offering to practice under the title of Regis-

tered Forester without a license. Any member of the Board may administer oaths of affirmation to witnesses appearing before the Board. Such witnesses officially called by the Board shall receive the same compensation and shall be reimbursed for expenses in the same amount as the members of the Board as provided and set out in Section 5 of this Act. If any person shall refuse to appear as a witness before said Board, or refuse to testify, refuse to produce any books, papers, or documents, the Board may present its petition to the Circuit Court of the County in which the State Capitol is located, setting forth the facts, and thereupon such Court shall, in a proper case, issue a subpoena to such person, requiring his attendance before such Circuit Court and there to testify or to produce such books, papers and documents, as may be deemed necessary and pertinent by the Board. Any person failing or refusing to obey the subpoena or order of said Circuit Court may be proceeded against in the same manner as for refusal to obey any other subpoena or order of said Court.

Section 9. RECEIPTS AND DISBURSEMENTS: The Secretary of the Board shall receive and account for all moneys derived under the provisions of this Act, and shall pay the same monthly to the State treasurer, who shall keep such moneys in a separate fund to be known as the "Professional Foresters Fund." Such fund shall be kept separate and apart from all other moneys in and treasury, and shall be paid out only by warrant of the comptroller upon the State treasurer, upon itemized vouchers approved by the Chairman and attested by the Secretary of the Board. All moneys in the "Professional Foresters Fund" are hereby specifically appropriated for the use of the Board. The Secretary of the Board shall give surety bond to the State in such sum as the Board may determine. The premium on said bond shall be regarded as a proper and necessary expense of the Board and shall be paid from the "Professional Foresters Fund."

The Board may employ such clerical and other assistants as are necessary for the proper performance of its work, or, in lieu of employing clerical assistants, the Board may contract with any state department or agency to furnish the board with such clerical assistance as the Board deems necessary. The compensation of such assistants, or the cost of contracting for such clerical assistance, shall be paid out of the "Professional Foresters Fund" in the manner prescribed herein.

The Board is authorized to accept all gifts, bequests, and donations from any source whatsoever, and such gifts, bequests, and donations shall be used or expended in accordance with their terms or stipulations, but in the absence of any such terms or stipulations, such gifts, bequests, or donations may be used or expended for such purposes as the Board may determine.

Except as otherwise provided herein, the Board may make expenditures for any purpose which, in the opinion of the Board, is reasonably necessary for the proper performance of its duties under the provisions of this act, including the expenses of the Board's delegates to any annual conventions of, and membership dues to, the Society of American Foresters. Provided, however, that under no circumstances shall the total amount of warrants issued by the com-

troller in **payment** of the expenses and compensation provided for by this Act exceed the amount of the examination and registration fees, **license fees, donations** and other moneys collected by the Board as herein provided.

Section 10. **RECORDS AND REPORTS:** The Board shall keep a record of its proceedings and a register of all applications for registration which register shall show the name, age and residence of each applicant; the date of the application; the place of business of such applicant; his educational and other qualifications; whether or not an examination was required; whether or not the application was rejected; whether or not a license of registration was granted, the date of the action by the Board; and such other information as may be deemed necessary by the Board. The records of the Board shall be prima facie evidence of the proceedings of the Board set forth therein, and a transcript thereof, duly certified by the Secretary of the Board under seal, shall be admissible in evidence with the same force and effect as if the original were produced. Annually, as of the thirtieth day of September each year, the Board shall submit to the Governor a report of its transactions of the preceding year, and shall transmit to him as a part of said report a complete statement of the receipts and expenditures of the Board and the statement shall be attested by the Chairman and the Secretary of the Board.

Section 11. **ROSTER OF REGISTERED FORESTERS:** A Roster showing the names and place of business of all registered foresters qualified according to the provisions of this Act, shall be prepared by the Secretary of the Board during the month of March of each year. Copies of this roster shall be mailed to each person so registered, placed on file with the Secretary of the State and, furnished to the public upon request.

Section 12. **GENERAL REQUIREMENTS FOR REGISTRATION:** The following shall be considered as minimum evidence satisfactory to the Board that the applicant is qualified for registration as a Registered and licensed Forester: (1) Graduation from a curriculum in Forestry of four years or more in a school or college approved by the Board, or accredited by the Society of American Foresters, and a specific record of an additional one year or more experience in Forestry work of a character satisfactory to the Board, and indicating that the applicant is competent to practice Forestry; (1-a) Graduation from a curriculum in Forestry of four or more years in a school or college not approved by the Board, or accredited by the Society of American Foresters, and a specific record of an additional one year or more experience in Forestry work of a character satisfactory to the Board, and indicating that the applicant is competent to practice Forestry and successfully passing a written and/or oral examination designed to show knowledge and skill approximating that obtained through graduation from an accredited and approved four-year curriculum in Forestry; (2) Or successfully passing a written and/or oral examination designed to show the knowledge and skill approximating that obtained through graduation from an accredited and approved four year curriculum in Forestry, and a specific record of six

years or more of active practice in Forestry work of such character that is satisfactory to the Board; and indicating that the applicant is competent to practice Forestry and to be placed in responsible charge of such work, provided, that after September 13, 1962, no person shall qualify as a Registered Forester or be granted a license to practice Forestry by the Board excepting that person who shall have graduated from a curriculum in Forestry of four years or more in a school or college approved by the Board or accredited by the Society of American Foresters or has graduated from a curriculum in Forestry of four years or more in a school or college not approved by the Board or accredited by the Society of American Foresters and successfully passed a written and/or oral examination designed to show the knowledge and skill approximating that obtained through graduation from an accredited and approved four-year curriculum in Forestry and who in addition to the educational or examination requirements just set out has a specific record of an additional two years or more of experience in Forestry work of a character satisfactory to the Board, and indicating that the applicant is competent to practice Forestry. The Board shall issue licenses only to those applicants who meet the requirements of this Section, and to none other, provided, that no person shall be eligible for registration as a registered or licensed Forester who is not of good character and reputation. In considering the qualifications of applicants, Forestry teaching in Department, school or college of Forestry, shall be construed as Forestry work. The completion of the Junior year of a curriculum in Forestry in a school or college approved by the Board or accredited by the Society of American Foresters shall be considered as equivalent to two years of active practice; the completion of the Senior year of a curriculum in Forestry, without graduation, in a school or college approved by the Board or accredited by the Society of American Foresters shall be considered as the equivalent to three years of active practice.

Section 13. APPLICATION AND REGISTRATION FEES: Application for Registration shall be made on forms prescribed and furnished by the Board; shall contain statements made under oath, showing the applicant's education and a detailed summary of his technical work, and shall contain not less than five references, of whom three or more shall be Foresters having personal or professional knowledge of his Forestry experience. The registration fee for a license as a "Registered Forester" shall be ten dollars, five dollars of which shall accompany the application, the remaining five dollars of which to be paid upon issuance of license. Should the applicant fail or refuse to remit the said remaining five dollars within 30 days after being notified, in the usual manner, that the applicant has successfully qualified, the applicant shall forfeit the right to have a license so issued under that application, and said applicant may be required to again submit an original application and pay an original fee therefor. Should the Board deny the issuance of a license to any applicant, the initial fee deposited shall be retained by the Board as an application fee.

Section 14. EXAMINATION: When written and/or oral examinations are required, they shall be held at such time and place as the Board may determine. The methods of procedure shall be prescribed

by the Board. A candidate failing on examination may apply for reexamination at the expiration of six months and will be reexamined without payment of additional fee. Subsequent examination will be granted upon payment of a fee to be determined by the Board, not to exceed five dollars in each instance.

Section 15. **LICENSES:** The Board shall issue a license upon payment of a registration fee as provided for in this Act to an applicant, who, in the opinion of the Board has satisfactorily met all of the requirements set out by this Act. Licenses shall show the full name of the Registrant, shall have a serial number, and shall be signed by the Chairman of the Board. The issuance of a license by the Board shall be evidence that the person named therein is entitled to all of rights and privileges of a registered forester while the said license remains unrevoked or unexpired. Plans, maps, specifications and reports issued by a Registrant shall be endorsed with his name and license number during the life of the Registrant's license, but it shall be a misdemeanor for any one to endorse any document with said name and license number after the license of the Registrant named therein has expired or has been revoked, unless said license shall have been renewed or reissued. It shall be a misdemeanor for any registered forester to endorse any plan, specification, estimate or map unless he shall have actually prepared such plan, specification, estimate or map, or shall have been in the actual charge of the preparation thereof.

Section 16. **EXPIRATION AND RENEWALS:** Licenses shall expire on the thirtieth day of September next following their issuance or renewal and shall become invalid on that date unless renewed. It shall be the duty of the Secretary of the Board to notify, at his last registered address, every person registered under this Act of the date of the expiration of his license and the amount of the fee that shall be required for its renewal for one year; such notice shall be mailed at least one month in advance of the date of the expiration of said licenses. The Board shall each year, prior to issuing renewal notices for the ensuing year, fix the annual renewal fee for licenses, which renewal fee shall not exceed the sum of ten dollars. Renewal of licenses for the following year may be affected at any time during the month of September of the year in which such license has been issued or renewed by the payment of the renewal fee so fixed by the Board. Such licenses may also be renewed during the ensuing ten months by the payment of an additional fee of fifty cents for each month, or fraction thereof, that payment of the fixed renewal fee is delayed beyond the month of September. The Board shall make an exception to the foregoing renewal provision in the case of a person who is in the Armed Services of the United States.

Section 17. **FIRMS, PARTNERSHIPS AND CORPORATIONS:** Registration shall be determined upon a basis of individual, personal qualifications. No Firms, Companies, Partnerships or Corporations can be licensed under this Act.

Section 18. **RECIPROCITY:** A person not a resident of, and having no established place of business, in Alabama, or who has recently become a resident thereof may use the title of Registered Forester pro-

vided: (1) Such person is legally licensed as a Registered Forester in his own State or Country and has submitted evidence to the Board that he is so licensed; (2) The State or Country in which he is so licensed observe these same rules of reciprocity in regard to persons licensed under the provisions of this Act.

Section 19. REVOCATIONS AND REISSUANCE OF LICENSES: The Board shall have the power to revoke the license of any Registrant who is found guilty by the Board of gross negligence, incompetency, or misconduct in the practice of Forestry. The Board is empowered to designate a person or persons to investigate and report to it upon any charges of fraud, deceit, gross negligence, incompetency or other misconduct in connection with any Forestry practice against any Registrant, as may come to its attention. Such person or persons so designated by the Board shall receive the same compensation and shall be reimbursed for expenses in the same amount as the Board as outlined in Section 5 of this Act. Any person may prefer charges of fraud, deceit, gross negligence, incompetency or other misconduct in connection with any Forestry practice against any Registrant. Such charges shall be in writing, shall be sworn to by the person making them, and shall be filed with the Secretary of the Board. All charges, unless dismissed by the Board as unfounded or trivial, shall be heard by the Board within three months after the date on which they shall have been preferred. The time and place for said hearing shall be fixed by the Board, and a copy of the charges, together with a notice of the time and place of the hearing, shall be personally served on, or mailed to the last known address of such registrant, at least 30 days before the date fixed for the hearing. At any hearing, the accused Registrant shall have the right to appear personally and by counsel, to cross-examine witnesses appearing against him, and to produce evidence and witnesses in his own defense. If, after such hearing three or more members of the Board vote in favor of finding the accused guilty, the Board shall revoke the license of such Registered Forester. Any applicant whose license has been revoked as above may apply for a review of the proceedings with reference to such revocation of his license by the aforementioned Circuit Court and from there by appeal to the Supreme Court of Alabama. The only record to be considered by either the said Circuit Court or by the Supreme Court shall be the record made before the Board. New evidence must be presented to the Board, in session, before it may be used in Court proceedings. The Board, for reasons it may deem sufficient, may reissue a license to any person whose license has been revoked when three or more members of the Board vote in favor of such reissuance. A new license to replace any license revoked, lost, destroyed, or mutilated, may be issued, subject to the rules of the Board, and a charge of three dollars for such issuance.

Section 20. VIOLATIONS AND PENALTIES: Any person who shall practice or offer to practice the profession of Forestry as a Registered Forester in this State, without being registered or exempted in accordance with the provisions of this Act, or any person who shall use in connection with his name or otherwise assume, use or advertise any title or description tending to convey the impression that he

is a registered Forester, without being registered or exempted in accordance with the provisions of this Act, or any person who shall present or attempt to use as his own the license of another, or any person who shall give any false or forged evidence of any kind to the Board or any member thereof in obtaining a license, or any person who shall attempt to use an expired or revoked license, or any person, firm, partnership or corporation, who shall violate any of the provisions of this Act, shall be guilty of a misdemeanor, and upon conviction thereof shall be fined not less than one hundred dollars nor more than five hundred dollars for each offense. The Board, or such person or persons as may be designated by the Board to act in its stead, is empowered to prefer charges for any of the violations of this Act in any Circuit Court in any County in this State in which such violations may have occurred. It shall be the duty of all duly constituted officers of the law, of this State, or any political subdivision thereof, to enforce the provisions of this Act and to prosecute any persons, firms, partnerships or corporations violating the same. The Attorney General of the State and his assistants shall act as legal advisers of the Board and render such legal assistance as may be necessary in carrying out the provisions of this Act.

All fines collected for the violation of any provisions of this Act shall be paid over to the Secretary of the Board to be by him delivered to the State Treasurer to be placed in the "Professional Foresters Fund" in the same manner as funds received for the issuance of licenses.

Section 21. **REPEALING CLAUSE:** All laws and parts of laws in conflict with the provisions of this Act be, and the same are hereby repealed. If any provisions of this Act shall be held unconstitutional, the same shall not apply to other provisions hereof.

Section 22. **EFFECTIVE DATE:** This Act shall become effective immediately upon its passage and approval by the Governor, or upon its otherwise becoming a law.

**BY-LAWS OF THE STATE BOARD OF REGISTRATION FOR FORESTERS
AS ADOPTED BY THE BOARD AT ITS MEETING
ON MARCH 11, 1958**

PREAMBLE

Act No. 533, approved September 13, 1957, which was passed by the Alabama Legislature in 1957 to create a State Board of Registration for Foresters, shall be the Constitution of that Board. As authorized in Section 8 of Act No. 533, the State Board of Registration for Foresters hereby adopts the following by-laws for the conduct of its business.

ARTICLE 1—BOARD

1. Name: The name of this Board shall be the State Board of Registration for Foresters. For the purpose of brevity in the succeeding by-laws, this organization shall be hereinafter referred to as the Board.

2. Officers: The officers of the Board shall be a Chairman, Vice-Chairman, and a Secretary. The latter office is to be held by a person who is also a member of the Board.

3. Meetings: Regular meetings of the Board shall be held in the City of Montgomery, one on the fourth Wednesday in January and the other on the fourth Wednesday in July. Special meetings may be called from time to time by the Chairman when, in his opinion, it is necessary provided that not more than one meeting shall be held in any one calendar month and that the Secretary shall notify each Board member in writing of the time and place of the special meeting at least forty-eight hours in advance of the meeting date, and provided further that the time and meeting place are convenient to at least four members of the Board. Special meetings may be held at points in Alabama other than the City of Montgomery.

4. Quorum: Three members of the Board shall at all regular and special meetings constitute a quorum for the transaction of business.

5. Election of Officers: At the regular meeting in July of each year the Board shall elect a Chairman, Vice-Chairman, and a Secretary, who shall take office the following October 1 and shall serve until the following September 30, or until such times as their successors shall have been duly elected.

6. Seals: The Seal of the Board shall be circular in form and 2 inches in diameter and in accordance with the following design approved by the Board on March 11, 1958:

All official papers, registration certificates, and other formal documents of the Board shall bear the imprint of this seal.

Each registered forester may use an impression seal, as adopted by the Board, on his plans, maps, specifications, and reports. The seal for registrants adopted by the Board shall be circular in form, $1\frac{1}{2}$ inches in diameter, and shall bear the name of the registrant and his license number. The official seal for registrants shall be similar to the seal shown in the following illustration:

ARTICLE II—DUTIES

1. Chairman: The Chairman shall, when present, preside at all meetings, shall appoint all committees and shall sign all certificates and other official documents. He shall call a special meeting of the Board when, in his opinion, business necessitates. The chairman shall, annually as of September 30, prepare the report as required by law for submission to the governor. He shall notify all State Boards of Registration for Foresters, now existing or that may be created, and that are known to the Board, of the reciprocity provisions of the Act. He shall each year, prior to August 1, notify the Chairman, Alabama Chapter, Society of American Foresters to submit to the Governor in writing, with copy to the Board, the names of ten registered foresters from whom one will be appointed to serve on the Board for period of five years. He shall otherwise perform all duties pertaining to the office of Chairman.

2. Vice-Chairman: The Vice-Chairman shall perform the duties of the Chairman during his absence from a Board meeting, or incapacity, or absence from the State.

3. Secretary: The Secretary, with the assistance of such clerical help as may be provided, shall conduct and care for all correspondence in the name of, and shall keep a record of the proceedings of the Board, shall attest all certificates of registration, and shall notify members of the Board of all regular and special meetings, unless such notice is waived in writing by all members of the Board, and shall perform any other duties required by law or that may be assigned to him by the Board.

4. Rules and Regulations Committee: The Rules and Regulations Committee shall consist of one member, and shall from time to time consider and recommend to the Board such amendments to the by-laws and modification of the rules and regulations governing examinations, registration, and procedure as will give the best operating results. All proposed revisions of the by-laws, rules and regulations of procedure must be referred to this committee for a report and said committee shall report to the Board its recommendations relative to rules and regulations.

5. Public Information Committee: The Public Information Committee shall consist of the Chairman. It shall be the duty of this committee to pass upon and recommend to the Board data for publication and circulation setting forth the policy, purpose and principles of the Board.

6. Examination Committee: The Committee on Examinations shall consist of one or more members. It shall be the duty of this Committee to prepare and recommend to the Board for its approval the nature and scope of all the examinations to be held by the Board.

7. Special Committees: The duties of all special committees shall be as directed by the Chairman at the time of appointment and such committees shall cease to function as soon as the work assigned them shall have been completed and approved by the Board.

8. Presiding Officers: In the absence of the Chairman and Vice-Chairman, the members present at a meeting shall elect a presiding officer.

ARTICLE III—PROCEDURE

1. Order of Business: The order of business of the Board shall be as follows:

- (a) Call meeting to order
- (b) Reading of minutes
- (c) Communications (written or oral)
- (d) Committee reports
 1. Rules and Regulations Committee
 2. Public Information Committee
 3. Examination Committee
 4. Special Committees

- (e) Unfinished business
- (f) New business
- (g) Reading and considering applications
- (h) Adjournment

2. Rules or Order: Robert's Rules of Order shall govern the procedure of the Board, except as may otherwise be provided by the by-laws and when not in conflict with the requirements of the Act.

3. Suspension of Rules: The Board, by unanimous consent of those present may, if circumstances require, waive or suspend temporarily any of the provisions of these by-laws, for the expedition of the business or conduct of the Board, provided, however, the minutes of the meeting at which such suspension is made shall show clearly and definitely the reasons for such suspension.

ARTICLE IV—AMENDMENTS

1. Amendments: Amendments to the by-laws must be presented by a member of the Board in writing at a regular or special meeting of said Board, and may be adopted at the meeting at which such amendments are presented. Copies of the proposed amendments must be submitted in writing to each member of the Board one week prior to the Board meeting.

ARTICLE V—VOTING

1. Voting: A majority vote of the Board members shall govern the action of the Board. The presiding officer shall vote on any motion presented before the Board. If only three members are present, then a unanimous vote will be required on any matter presented to the Board for official action.

ARTICLE VI—FUNDS

1. Funds: All funds received by the Secretary shall be paid monthly to the State Treasurer, who shall keep such moneys in a separate fund to be known as the "Alabama Professional Foresters Fund." Such fund shall be paid out only by warrant of the Comptroller upon the State Treasurer, upon itemized vouchers approved by the Chairman and attested by the Secretary of the Board.

RULES

Adopted by the State Board of Registration for Foresters

Rule 1 It shall be the policy of the Board that no member shall discuss the business and transactions of the Board, outside the Board meeting, except confidentially with another member of the Board.

Rule 2 Any person may obtain an audience with the Board by directing a request, in writing, to the Chairman, stating his reasons therefor, provided that the request is approved by the Chairman.

Rule 3 A resident of Alabama, licensed in another state, cannot practice in Alabama under the reciprocity provision.

Rule 4 If a person is registered in another state and moves his residence to Alabama, he may be granted reciprocity, but such provision expires when the license expires.

Rule 5 An applicant who is a resident of a state which does not have licensing law, will not be granted reciprocity in Alabama, even though he does hold a license or licenses from another state or states.

Rule 6 Any registrant who becomes delinquent in the payment of his license renewal fee as of September 30 shall be notified prior to October 10 of his delinquency and the penalty therefor, beginning October 1. On July 1 of the following calendar year, which is nine months after the date of expiration and one month prior to expiration of renewal period, the delinquent shall again and finally be notified of his delinquency and that payment of license fee and penalties must be received by the Board prior to July 31, or lose the right to renew his license.

Rule 7 Requests for information concerning the financial affairs of the Board shall be released only by the *Secretary of the Board* and then only upon receipt of written request. The office manager is authorized to release to any person upon request only that information which has been released by the Board through the *Publicity Chairman*, and/or through the *Roster of Registered Foresters* and the *Annual Report of the Board to the Governor*. The *Foresters Registration Record* shall be used as a reference in the event a registrant's name does not currently appear in the published Roster.

Rule 8 An initial application for reciprocity shall be acted upon by the Board. An application for renewal of reciprocity shall be handled administratively by the office manager. The office manager will report to the Board all renewals handled between meetings.

Rule 9 At each regular meeting of the Board, and at any special meeting when so directed by the Chairman, the office manager will present to the Board, in accordance with the established agenda of the meeting, the number of foresters registered to date; deaths of any registrants reported or known; movement of domicile of any registrants to other states; a report on the renewals of reciprocity handled administratively; the number of registrants delinquent in payment of fees; the number of applications requiring action by the Board; the needs for equipment and supplies and estimated cost of each item; the status and condition of the Board's property; a financial statement as of the end of the month immediately preceding the meeting; and any other information or items considered pertinent to the deliberations of the Board.

Rule 10 Professional experience as set forth in Section 12 (1) shall be acquired after graduation.

Rule 11 A revoked, expired, or invalid license shall not be displayed in any public office or place of business by any registrant, person or firm in connection with the practice of forestry. Any violation of this rule will be cause for the Board to require the possessor of said license to surrender the same to the Board.

Rule 12 The Board shall issue a new license identified by the same number as that of the original to replace any license lost, destroyed,

or mutilated upon receipt by the Board of a written request and a fee of three dollars from the licensee, provided the Board's records show the original license is valid. This new license shall bear the signatures of current officers, the date of reissue, and below the license number the following:

"Original license approved _____ (date)."

Rule 13 Any release, article, manuscript or other material concerning Board policy, controversial matters or the philosophy of licensing, which is prepared by a Board member for presentation or publication and is represented as having approval of the Board, shall be submitted to the Chairman in five copies. The Chairman will then submit a copy to each Board member for approval or disapproval. On the concurrence of three members of the Board, the Chairman shall then have authority to release the material for publication or presentation. A Board member will be considered as approving the material submitted unless he expresses a written opinion to the contrary within two weeks from the date of the Chairman's letter of transmittal. Board members may make addresses, radio and television presentations, and prepare articles for restricted distribution if their statements are confined to factual data and do not disclose confidential information. Articles prepared by the Chairman, which are strictly in the field of reporting and are confined to factual data, may or may not be submitted to Board members for approval prior to publication.

CODE OF ETHICS FOR THE PROFESSION OF FORESTRY

Adopted by the Society of American Foresters, November 12, 1948

The purpose of these canons is to formulate guiding principles of professional conduct for foresters in their relations with each other, with their employers, and with the public. The observance of these canons secures decent and honorable professional and human relationships, establishes enduring mutual confidence and respect, and enables the profession to give its maximum service.

Professional Life

1. The professional forester will utilize his knowledge and skill for the benefit of society. He will cooperate in extending the effectiveness of the forestry profession by interchanging information and experience with other foresters, and by contributing to the work of forestry societies, associations, schools, and publications.

2. He will advertise only in a dignified manner, setting forth in truthful and factual statements the services he is prepared to render for his prospective clients and for the public.

Relations With the Public

3. He will strive for correct and increasing knowledge of forestry and the dissemination of this knowledge, and will discourage and condemn the spreading of untrue, unfair, and exaggerated statements concerning forestry.

4. He will not issue statements, criticism, or arguments on matters connected with public forestry policies, without indicating, at the same time, on whose behalf he is acting.

5. When serving as an expert witness on forestry matters, in a public or private fact finding proceeding, he will base his testimony on adequate knowledge of the subject matter, and render his opinion on his own honest convictions.

6. He will refrain from expressing publicly an opinion on a technical subject unless he is informed as to the facts relating thereto, and will not distort or withhold data of a substantial or other nature for the purpose of substantiating a point of view.

Relations With Clients, Principals, and Employers

7. He will be loyal to his client or to the organization in which he is employed and will faithfully perform his work and assignments.

8. He will present clearly the consequences to be expected from deviations proposed if his professional forestry judgement is overruled by non-technical authority in cases where he is responsible for the technical adequacy of forestry or related work.

9. He will not voluntarily disclose information concerning the business affairs of his employers, principals, or clients, which they desire to keep confidential, unless express permission is first obtained.

10. He will not, without the full knowledge and consent of his client or employer, have an interest in any business which may influence his judgement in regard to the work for which he is engaged.

11. He will not, for the same service, accept compensation of any kind, other than from his client, principal, or employer, without full disclosure, knowledge, and consent of all parties concerned.

12. He will engage, or advise his client or employer to engage, other experts and specialists in forestry and related fields whenever the client's or employer's interests would be best served by such actions, and will cooperate freely with them in their work.

Relations With Professional Foresters

13. He will at all times strive to protect the forestry profession collectively and individually from misrepresentation and misunderstanding.

14. He will aid in safeguarding the profession against the admission to its ranks, of persons unqualified because of lack of good moral character or of adequate training.

15. In writing or in speech, he will be scrupulous to give full credit to others, in so far as his knowledge goes, for procedures and methods devised or discovered and ideas advanced or aid given.

16. He will not intentionally and without just cause, directly or indirectly, injure the reputation or business of another forester.

17. If he has substantial and convincing evidence of unprofessional conduct of a forester, he will present the information to the proper authority for action.

18. He will not compete with another forester on the basis of charges for work by underbidding through reduction of his quoted fee after being informed of the fee quoted by a competitor.

19. He will not use the advantages of a salaried position to compete unfairly with another forester.

20. He will not attempt to supplant another forester in a particular employment, after becoming aware that the later has been definitely engaged.

21. He will not review the work of another forester, for the latter's employer, without the other's knowledge, unless the latter's connection with the work has been terminated.

22. He will base all letters of reference or oral recommendation on a fair and unbiased evaluation of the party concerned.

23. To the best of his ability he will support, work for, and adhere to the principles of the merit system of employment.

24. He will not participate in soliciting or collecting financial contributions from subordinates or employees for political purposes.

25. He will uphold the principle of appropriate and adequate compensation for those engaged in forestry work, including those in subordinate positions, as being in the public interest and maintaining the standards of the profession.

Approved Forms of Certification for Use by

REGISTERED FORESTERS

STATE OF _____

_____ COUNTY

I, _____ John Doe _____, a Registered Forester, hereby certify that to the best of my knowledge and ability this is a true and correct report (or plan, document, map, etc.).

John Doe
Registered Forester
Alabama License No. _____

STATE OF _____

_____ COUNTY

I, _____ John Doe _____, a Registered Forester, hereby certify to the best of my knowledge and belief that this report (or plan, document, map, etc.), prepared by me (or under my supervision) is true and correct.

GIVEN UNDER MY HAND AND SEAL

_____ DAY OF _____ 19 _____

(SEAL)

John Doe
Registered Forester
Alabama License No. _____

FLORIDA LAW

CHAPTER 61-260

HOUSE BILL NO. 1684

AN ACT to create and establish a board for the optional registration of foresters; providing for the qualifications and appointment of its members; granting authority to examine qualifications of applicants for registration; to collect fees for such registration; to issue certificate and title registered forester to qualified applicants and providing for penalties for unauthorized use of the title registered forester.

WHEREAS, in order to safeguard health, life and property, establish professional standards, promote and safeguard the management and perpetuation of one of Florida's greatest natural resources, it is desirable to establish by law certain professional standards which must be met by all persons who engage in the public practice of forestry as registered foresters, and

WHEREAS, this act is primarily for the benefit and protection of the public, and

WHEREAS, qualifications for registration require attainment of certain professional standards of training, experience and demonstrated ability, as well as integrity of character, NOW, THEREFORE,

Be It Enacted by the Legislature of the State of Florida:

Section 1. *General provisions.*—Any person practicing or offering to practice the profession of forestry in this state as a registered forester shall be required to submit evidence that he is qualified so to practice, and may be registered as hereinafter provided; and it is unlawful for any person to practice the profession of forestry in this state as a registered forester unless such person is duly registered, and to use in connection with his name or otherwise assume, use, or advertise any title or description tending to convey the impression that he is a registered forester, as hereinafter defined, unless such person has been duly registered.

Section 2. *Definitions.*—The term registered forester as used in this act means a person who, by reason of his knowledge of the natural sciences, mathematics, economics, and the principles of forestry, acquired by professional training and/or practical experience, is qualified to engage in forestry practices as herein defined, and has been duly registered.

The terms forestry practices or practice of forestry as used in this act mean any professional service (such as consultation, investigation, evaluation, planning, or responsible supervision of any forestry activity) which requires the application of special knowledge of the principles of forestry. Provided, however, that nothing in this act shall be construed as applying to any vocational class of forest workers, including, but not limited to, such classes as timber cruisers, timber

markers, naval stores woods riders, vocational forestry teachers and agents, fire guards, lookouts, and employees of forest industry plants and logging operators.

The term board as used in this act means the state board of registration for foresters.

The term responsible charge as used in this act means the direction of professional foresters' services in evaluation, investigation, or research, requiring initiative, technical knowledge, professional skill, and independent judgment in the practice of forestry.

Section 3. *State board of registration for foresters; appointment of members; terms.*—A state board of registration for foresters is hereby created whose duty it is to administer the provisions of this act. The board shall consist of five (5) foresters who shall be appointed by the governor. Nominees for appointment to the board may be recommended to the governor by the offices of the Florida chapter of the society of American foresters, which nominees shall be at least three (3) in number for each position, and who shall have the qualifications required by section 4 of this act, and the governor may make appointments from the persons so nominated. Every member of the board shall be commissioned by the governor and before beginning his term of office shall file with the secretary of state his written oath or affirmation for the faithful discharge of his duties. The five (5) members of the board shall be appointed for terms as follows: one (1) for one (1) year, one (1) for two (2) years, one (1) for three (3) years and two (2) for four (4) years. On the expiration of the term of any member of the board the governor shall, in the manner herein provided, appoint for a term of four (4) years a registered forester having the qualifications required by section 4 of this act to take the place of the member whose term on said board is expiring. Each member shall hold office until the expiration of the term for which such member has been appointed or until his successor shall have been duly appointed and qualified. Appointments to fill vacancies caused by death or resignation shall be for the unexpired term only.

Section 4. *Qualifications of members of the board.*—Each member of the board shall be a citizen of the United States and a citizen and resident of this state, and shall have been engaged in the practice of forestry as herein defined, or in the teaching of forestry, for at least ten (10) years, during at least five (5) years of which he shall have been in responsible charge of such activity, and after the initial appointment to the board shall be registered under the provisions of this act.

Section 5. *Compensation and expenses of board members.*—The members of the board shall receive no compensation for their services but shall be entitled to any per diem or travel expenses as provided by section 112.061, Florida Statutes.

Section 6. *Removal of members of the board.*—The governor may remove any member of the board as prescribed under section 15 of article IV of the state constitution.

Section 7. *Organization and meetings of the board.*—The board shall have its headquarters in Tallahassee, Leon county. It shall hold at least two (2) regular meetings each year. The two (2) regular meetings shall be held in Tallahassee, Leon county. Special meetings of the board shall be held at such time and place within the state as the by-laws of the board shall provide. The board shall elect or appoint annually the following officers: a chairman and a vice-chairman from the board; and a secretary who need not be a member of the board. A quorum of the board shall consist of three (3) members.

Section 8. *General powers of the board.*—The board shall have the power to make all bylaws and rules, not inconsistent with the constitution and laws of this state, which are reasonably necessary for the proper performance of its duties and the regulation of the proceedings before it. The board shall adopt and have an official seal. In carrying into effect the provisions of this act, the board may, under the hand of its chairman and the seal of the board, subpoena witnesses and compel their attendance and may also require them to produce books, papers, documents, etc., in a case involving the revocation or suspension of registration. Any member of the board may administer oaths or affirmations to witnesses.

Section 9. *Receipts and disbursements.*—The secretary of the board shall receive and account for all moneys derived under the provisions of this act, and shall pay the same to the state treasurer, who shall keep such moneys in a separate fund to be known as the registered foresters licensing fund. Such fund shall be kept separate and apart from all other moneys in the treasury, and shall be paid out only by warrant of the comptroller upon the treasurer, upon itemized vouchers, approved by the chairman and attested by the secretary of the board. The comptroller be and he is hereby authorized to retain and withdraw out of the funds collected hereunder 10% of the gross amount collected, as a service charge. The secretary of the board shall give a surety bond to the state in such sum as the board may determine. The premium on said bond shall be regarded as a proper and necessary expense of the board and shall be paid out of the registered foresters licensing fund. The board is authorized to negotiate with the state forester of the Florida board of forestry to act as secretary of the board and furnish such clerical assistance as is needed to carry out the duties of the board. The board is further authorized to reimburse the Florida board of forestry for such clerical services in accordance with procedures prescribed in this section.

The board may employ counsel and clerical or other assistants as are necessary for the proper performance of its work and may make expenditures of this fund for any purpose which, in the opinion of the board, is reasonably necessary for the proper performance of its duties under this act. Under no circumstances shall the total amount of warrants issued by the comptroller in payment of the expenses and compensation provided for in this act exceed the amount in the hands of the state treasurer known as the registered foresters licensing fund, and such appropriations as may be made by the legislature.

Section 10. *Records and reports.*—The board shall keep a record of its proceedings and a register of all applications for registration and of any action taken thereon. The records of the board shall be prima facie evidence of the proceedings of the board set forth therein, and a transcript thereof, duly certified by the secretary of the board under seal, shall be admissible in evidence with the same force and effect as if the original were produced. Annually, as of December 31, the board shall submit to the governor a report of its transactions of the preceding year, and shall also transmit to him a complete statement of the receipts and expenditures of the board, attested by its chairman and secretary.

Section 11. *Roster of registered foresters.*—A roster of the names and places of business of all registered foresters qualified hereunder shall be prepared annually by the secretary of the board. Copies of this roster shall be placed on file with the secretary of state, and furnished to the public upon request.

Section 12. *General requirements for registration.*—

(1) Any graduate with a bachelor's, master's or doctor's degree from a school or college of forestry accredited by the national society of American foresters and who in addition to such education, shall have a specific record of two (2) years or more of active practice of forestry work, indicating that the applicant is qualified to be placed in responsible charge of such work, and who is of good moral character and integrity, shall be eligible.

(2) Any person who is not a graduate of a school or college of forestry accredited by the national society of American foresters shall be eligible to take a written or oral examination or both to determine his qualifications for registration as a registered forester provided he submits to the board evidence verified by oath and satisfactory to the board that he:

(a) Is twenty-one (21) years of age or older;

(b) Is of good moral character and integrity;

(c) Has been employed or engaged in the practice of forestry for at least seven (7) years and during that time has been in responsible charge of forestry work for at least two (2) years.

Any applicant who shall pass such written or oral examination, or both, in a manner satisfactory to the board shall be eligible for registration as a registered forester.

(3) Any person, who, on the effective date of this act, has been engaged in the active practice of forestry, as defined in section 2 of this act, for at least seven (7) years, with no substitution of education for active practice, and who is of good moral character and integrity, shall be eligible for registration as a registered forester without reference to the requirements set forth in subsections (1) and (2) of this section, provided that he file application for registration with the board within two (2) years from the effective date of this act, or men in military service within one (1) year after release.

(4) In considering the qualifications of applicants under subsections (1) and (2) of this section, responsible charge of forestry teaching in

a department, school, or college of forestry may be regarded as responsible charge of forestry work. The satisfactory completion of each year of an approved course in forestry in a ranger school or college of forestry shall be considered the equivalent of one (1) year of active practice.

Section 13. *Application and registration fees.*—Applications for registration shall be made on forms prescribed and furnished by the board; shall contain statements made under oath, showing among other things, the applicant's education and a detailed summary of his technical work, and shall contain not less than five (5) references, who possess professional qualifications necessary for such membership, and who have personal or professional knowledge of his forestry experience. The application fee for a certificate of registration as a registered forester shall be five dollars (\$5.00), which shall accompany the application. An additional fee of five dollars (\$5.00) shall be paid upon issuance of the certificate of registration. Should the applicant fail or refuse to remit the certificate fee within thirty (30) days after being notified in the usual manner that the applicant has successfully qualified, he shall forfeit the right to have the certificate so issued and said applicant may be required to again submit an original application fee therefor. Should the board deny the issuance of a certificate of registration to any applicant, the initial application fee deposited by the applicant shall be retained by the board.

Section 14. *Examinations.*—Examinations shall be held at such time and place as the board shall determine. The method of procedure for examinations shall be prescribed by the board and shall test the applicant's knowledge of natural sciences, mathematics, economics and principles of forestry, and his ability to conduct forestry practices as herein defined. A candidate failing an examination may apply for re-examination at the expiration of six (6) months and will be re-examined upon payment of an additional fee of five dollars (\$5.00).

Section 15. *Certificate.*—The board shall issue a certificate of registration upon payment of registration fee as provided for in this act to any applicant who has satisfactorily met all the requirements of this act. The certificate shall authorize the practice of forestry. Certificates of registration shall show the full name of the registrant, shall have a registration number, and shall be signed by the chairman and the secretary of the board under seal of the board. The issuance of a certificate of registration by the board shall be evidence that the person named therein is entitled to all rights and privileges of a registered forester, while the said certificate remains unrevoked or unexpired. Plans, maps, specifications, reports, and other instruments issued by a registrant shall be endorsed with his name and registration number.

Section 16. *Expiration and renewals.*—All certificates of registration shall expire on December 31 following their issuance or renewal and shall become invalid on that date unless renewed. The board shall, each year, fix the annual renewal fee for certificates of registration, which fee shall not exceed the sum of five dollars (\$5.00). Renewal of certificates of registration for the following year may be ef-

fectcd at any time during the month of December of the year in which such certificate has been issued by the payment of the renewal fee so fixed by the board. Such certificates may be later renewed by the payment of an additional fee of fifty cents (\$.50) for each month, or fraction thereof, that payment of the fixed renewal fee is delayed beyond the month of December. The board, in its discretion, may make an exception in meritorious cases.

Section 17. *Reciprocity*.—A person not a resident and having no established place of business in Florida, or who has recently become a resident thereof, may use the title of registered forester provided:

(1) Such person is legally licensed as a registered forester in his own state or county, and has submitted evidence to the board that he is so licensed.

(2) The state or county in which he is so licensed observes these same rules of reciprocity in regard to persons licensed under the provisions of this act.

(3) That requirements for registration in his own state or county are comparable to those set forth in this act and acceptable to the board.

Section 18. *Revocations and re-issuance of certificates*.—The board shall have the power after notice and hearing to revoke, or to suspend for such period less than one (1) year as the board may determine, the certificate of registration of any registrant who is found guilty of violating the code of ethics adopted by the board, gross negligence, incompetency, or professional misconduct in the practice of forestry. The board is empowered to designate a person or persons to investigate and report to it upon any charges of fraud, deceit, gross negligence, incompetency, or professional misconduct in connection with any forestry practices against any registrant as may come to its attention. Any person preferring such charges against any registrant shall submit them in writing and under oath to the secretary of the board. All charges, unless dismissed by the board as unfounded and trivial, shall be heard by the board within three (3) months, where practicable, after the date on which they have been preferred, and the board shall dispose of them as speedily as is feasible. The time and place for said hearing shall be fixed by the board, and a copy of the charges, together with a notice of the time and place of hearing, shall be personally served on, or mailed by registered or certified mail to the last known address of, such registrant, at least thirty (30) days before the date fixed for the hearing. At any hearing, the accused registrant shall have the right to appear personally and by counsel, to cross-examine witnesses appearing against him, and to produce witnesses and evidence in his own defense. If, after such hearing, a majority of the board present votes in favor of finding the accused guilty, the board shall revoke or suspend the certificate of registration of such registered forester. The board, upon petition being filed by the applicant for restoration and hearing being held thereon, may reissue a certificate of registration to any person whose certificate has been revoked, or may restore the certificate of any person whose certificate has been

suspended, by vote of three (3) or more members of the board who favor such reissuance or restoration. A new certificate of registration, to replace any certificate revoked or suspended, may be issued subject to the rules of the board, and a charge of five dollars (\$5.00) made for such reissuance. A new certificate, to replace any certificate lost, destroyed, or mutilated, may be issued, subject to the rules of the board, and a charge of one dollar (\$1.00) made for such reissuance.

Section 19. *Violations.*—It is unlawful for any person to practice or offer to practice the profession of forestry as a registered forester in this state, without being registered in accordance with the provisions of this act; or to present or attempt to use as his own the certificate of another; or to give any false or forged evidence of any kind to the board or any member thereof in obtaining a certificate of registration; or to use or attempt to use in any manner an expired, revoked, or suspended certificate of registration; or to endorse any plan, specification, estimate, map or other instrument as a registered forester unless he shall have actually prepared such plan, specification, estimate, map or other instrument, or shall have been in actual responsible charge of the preparation thereof, or to violate any other provisions of this act. The board, or such person or persons as may be designated by the board to act in its stead, is empowered to prefer charges for any of the violations of this title in any court of any county of this state having jurisdiction. Nothing contained in this act shall be construed as preventing any landowner, lessee, or owner of any timber rights, whether as an individual, firm, partnership, or corporation from managing his own timberlands, woodlands, or forest, or from operating the removal of any products therefrom, in any lawful manner desired. It shall be the duty of all duly constituted officers of the law of this state, or any political subdivision thereof, to enforce the provisions of this act to prosecute any persons, firms, partnerships, or corporations violating the same, by using the title registered forester without being duly registered. The attorney general of the state shall act as legal advisor of the board and render such legal assistance as may be necessary in carrying out the provisions of this act. The board may, at its discretion, employ such other legal assistance as it may deem necessary.

Section 20. *Penalties.*—Any person, firm, partnership, or corporation violating any of the provisions of this act shall be guilty of a misdemeanor, and shall, upon conviction, be punished as for the commission of a misdemeanor.

Section 21. If any provision of this act shall be held unconstitutional, the same shall not apply to other provisions hereof.

Section 22. All laws or parts of laws, in conflict herewith are hereby repealed.

Approved by the Governor June 16, 1961.

Filed in Office Secretary of State June 16, 1961.

SOUTH CAROLINA LAW

An Act To Create The State Board Of Registration For Foresters And To Define Its Powers And Duties; To Provide For The Registration And Licensing Of Foresters; To Define The Practice Of Forestry; And To Provide Penalties For Violations Thereof.

Be it enacted by the General Assembly of the State of South Carolina:

SECTION 1. (a) No person shall use in connection with his name or otherwise assume, use or advertise any title or description tending directly or indirectly to convey the impression that he is a registered forester, without first having been licensed and registered as a registered forester as hereinafter provided.

(b) Except as hereinafter specifically authorized, no person shall engage in the practice of professional forestry as defined in this act, or in any manner advertise or hold himself out as engaged in such practice, without first being licensed as a registered forester under this act.

(c) Notwithstanding paragraph (b) or any other provision of this act, nothing herein shall be construed as preventing or prohibiting any person from managing or otherwise conducting forestry practices on land owned, leased, rented or held by such person; nor shall anything herein prohibit any regular employee or official or any person from engaging in professional or other forestry practices on lands owned, leased, rented or held by such person, nor shall anything herein prohibit any person from practicing forestry under supervision as hereinafter authorized, so as to qualify for licensing as provided in Section 12 of this act; also, notwithstanding the provisions of Subsections (a) and (b) of Section 1 of this act, any landowner or person in possession of lands in this State under lease may employ any person whom he may desire for services relating to forestry such as consultation, evaluation, protection, measurements or determining the number of board feet in trees located or situated upon the land whether such person be a registered forester or not; also, notwithstanding paragraph (b), Section 1, or any other provision of this act, nothing herein shall be construed as preventing or prohibiting professional employees of public agricultural agencies from rendering forestry information, education, demonstration and conservation planning in line of duty; *provided* that such employees do not represent themselves to be professional foresters unless properly licensed or registered under the provisions of this act.

(d) It is the purpose of this act to protect the public by improving the standards relative to the practice of professional forestry and the provisions of this act shall apply to State Foresters.

(e) Nothing herein provided shall prohibit any forestry work by unlicensed persons working under the supervision of a registered forester.

SECTION 2. (a) "Registered forester" shall mean a person who has registered and qualified under this act to engage in professional forestry practices as hereinafter defined.

(b) "Forestry" or "practice of forestry" shall mean any professional service relating to forestry, such as consultation, investigation, evaluation, planning or responsible supervision of forest management, protection, silviculture, measurements, utilization, economics, education, or other forestry activities in connection with any public or private lands.

(c) "Board" shall mean the State Board of Registration for Foresters, provided for by this act.

SECTION 3. A State Board of Registration for Foresters is hereby created whose duty it shall be to administer the provisions of this act. The board shall consist of five foresters, who shall be appointed by the Governor of South Carolina from among ten nominees recommended by the Foresters Council of South Carolina and who shall have the qualifications required by Section 4 of this act. Each member of the board shall be commissioned by the Governor and, before beginning his term of office, shall file with the Secretary of State his written oath of affirmation for the faithful discharge of his official duty. The five members of the initial board will be appointed for terms of one, two, three, four and five years, respectively, such terms beginning on the first day of the first month following the effective date of this act. On the expiration of the term of any member of the initial board, three nominees recommended by the Foresters Council of South Carolina shall be submitted to the Governor from which he shall appoint for a term of five years a registered forester having the qualifications required by Section 4 of this act to take the place of the member whose term on the board is expiring. Any vacancy occurring for a reason other than the expiration of office shall be filled by the Governor from three nominees recommended by the Foresters Council of South Carolina to fill the unexpired term of such member. If the Governor fails to make appointment in ninety days after expiration of any term, the board shall make the necessary appointment. Each member shall hold office until the expiration of the term for which such member is appointed or until a successor shall have been duly appointed and shall have qualified.

SECTION 4. Each member of the board shall be a citizen of the United States and a resident of South Carolina and shall have been engaged in the practice of forestry for at least ten years.

SECTION 5. Every member of the board shall receive a per diem allowance when actually attending to the work of the board or any of its committees and for the time spent in necessary travel and, in addition thereto, shall be reimbursed for all actual traveling, incidental and clerical expenses necessarily incurred in carrying out the provisions of this act.

SECTION 6. The Governor may remove any member of the board for misconduct, incompetency, or neglect of duty.

SECTION 7. The original members of the board shall be named and appointed by the Governor within thirty days after the passage of this act. The board shall hold a meeting within thirty days after its members are first appointed, elect its officers, and thereafter shall

hold at least two regular meetings each year. Special meetings shall be held at such time and place as the bylaws of the board may provide. Notice of all meetings shall be given in such manner as the bylaws may provide. The board shall elect or appoint annually the following officers: a chairman, a vice-chairman, and a secretary.

SECTION 8. The secretary of the board shall give a surety bond to the State in such sum as the board may determine. The premium on such bond shall be regarded as a proper and necessary expense of the board and shall be paid out of the fund of the Board of Registration for Foresters. The secretary shall receive such salary as the board shall determine in addition to the expenses provided for in Section 5 of this act.

SECTION 9. The board shall have the power to adopt and amend all bylaws and rules of procedure, not inconsistent with the Constitution and laws of this State, which may be reasonably necessary for the proper performance of its duties and the regulation of the proceedings before it. The board shall adopt and have an official seal. In carrying into effect the provisions of this act, the board may, under the hand of its chairman and seal of the board, subpoena witnesses and compel their attendance and may also require the production of books, papers, and documents in a case involving the revocation of a license or practicing or offering to practice without a license under the title of registered forester. Any member of the board may administer oaths or affirmations to witnesses appearing before the board. Such witnesses officially called by the board shall receive the same compensation and shall be reimbursed for expenses as is provided for witnesses in the court of common pleas in the county in which this board may sit.

SECTION 10. The board shall keep a record of its proceedings and a register of all applications for registration, which register shall show: the name, age, and residence of each applicant; the date of the application; the place of business of such applicant; his educational and other qualifications; whether or not an examination was required; whether the application was rejected; whether a license was granted; the date of the action of the board; and such other information as may be deemed necessary by the board. The records of the board shall be prima facie evidence of the proceedings of the board set forth therein, and a transcript thereof duly certified by the secretary of the board under seal shall have the same force and effect as if the original were produced. Annually, as of June thirtieth, the board shall submit to the Governor a report of its transactions of the preceding year.

SECTION 11. A roster, showing the names and places of business of all registered foresters qualified according to the provisions of this act, shall be prepared by the secretary of the board during the month of July of each year. Copies of this roster shall be mailed to each person so registered, placed on file with the Secretary of State, and furnished to the public on request.

SECTION 12. The following shall be considered as minimum evidence satisfactory to the board that the applicant is qualified for a registration as a registered forester:

(1) Graduation from a curriculum in forestry of four years or more in a department, school or college approved by the board, and a specific record of an additional two years' or more experience in forestry of a character satisfactory to the board, and indicating that the applicant is competent to practice forestry; or

(2) Successfully passing a written examination designed to show knowledge and skill approximating that obtained through graduation from an approved four-year curriculum in forestry, and a specific record of six years or more of practice in forestry of a character satisfactory to the board, and indicating that the applicant is competent to practice forestry.

(3) Any person who, on the effective date of this act, shall have been engaged in the practice of forestry as defined in Section 2 of this act, for at least eight years, shall be eligible for registration as a registered forester without reference to the requirements set forth in Items (1) and (2) of this section, provided that he file application for registration with the board within six months from the effective date of this act, or the organization of the board. The board shall issue licenses only to those applicants who meet the requirements of this section. *Provided*, that no person shall be eligible for registration as a registered forester who is not of good character and reputation. The completion of the junior year of a curriculum in forestry in a school or college approved by the board shall be considered as equivalent to two years of practice; the completion of the senior year of a curriculum in forestry, without graduation, in a school or college approved by the board shall be considered as equivalent to three years of practice.

SECTION 13. Applicants for registration shall make application on forms prescribed and furnished by the board. The applications shall contain statements made under oath showing the applicant's education and a detailed summary of his technical work and shall include not less than five references, of whom three or more shall be foresters having personal or professional knowledge of his forestry experience. The registration fee for a license as a registered forester shall be fifteen dollars, ten dollars of which shall accompany the application, the remaining five dollars of which is to be paid upon issuance of license. Should the applicant fail or refuse to remit the remaining five dollars within thirty days after being notified that he has successfully qualified, the applicant shall forfeit the right to have a license issued and the applicant may be required to again submit an original application and pay an original fee therefor. Should the board deny the issuance of a license to any applicant, the initial fee deposited shall be retained by the board as an application fee.

SECTION 14. The secretary of the board shall receive and account for all moneys derived under the provisions of this act and shall pay them to the State Treasurer, who shall keep such moneys in a separate fund to be known as the fund of the State Board of Registration for Foresters. Such fund shall be kept separate and apart from all other

moneys in the State Treasury and shall be paid out only by warrants regularly drawn by the chairman and secretary of the board. All moneys in the fund of the State Board of Registration for Foresters are hereby specifically appropriated for the use of the board. Under no circumstances shall the total amount of warrants issued by the Comptroller General in payment of the expenses and compensation provided for in this act exceed the amount of the examination, registration and renewal fees collected as herein provided.

SECTION 15. When written examinations are required, they shall be held at such time and place as the board shall determine. The methods of procedure shall be prescribed by the board. A candidate failing on examination may apply for re-examination at the expiration of six months and will be re-examined without payment of an additional fee. Subsequent examination will be granted upon payment of a fee to be determined by the board.

SECTION 16. The board shall issue a license upon payment of a registration fee as provided for in this act to any applicant who, in the opinion of the board, has satisfactorily met all of the requirements of this act. Licenses shall show the full name of the registrant, shall have a serial number and shall be signed by the chairman and the secretary of the board under seal of the board. The issuance of a license by the board shall be evidence that the registrant is entitled to all the rights and privileges of a registered forester while his license remains unrevoked or unexpired. Plans, maps, specifications and reports issued by a registrant shall be endorsed with his name and license number and it shall be a misdemeanor for anyone to endorse any documents after his license has expired or has been revoked. It shall be a misdemeanor for any registered forester to endorse any plan, specification, estimate, or map unless he shall have actually prepared such plan, specification, estimate, or map or shall have been in actual charge of the preparation thereof.

SECTION 17. Licenses shall expire on the last day of the month of June following their issuance or renewal and shall become invalid on that date unless renewed. It shall be the duty of the secretary of the board of notify, at his last registered address, every person registered under this act, of the date of the expiration of his license and the amount of the fee that shall be required for its renewal for one year. Such notice shall be mailed at least one month in advance of the date of the expiration of such license. The board shall, each year, prior to issuing notices for the ensuing year, fix the annual renewal fee for licenses, which fee shall not exceed the sum of ten dollars. Renewal of licenses for the following year may be effected at any time during the month of June of the year in which such license has been issued or renewed by the payment of the renewal fee so fixed by the board. Such licenses may also be renewed during the ensuing ten months by the payment of an additional fee of fifty cents for each month or fraction thereof that payment of the fixed renewal fee is delayed beyond the month of June. The board shall make an exception to the foregoing renewal provisions in the case of a person who is in the armed services of the United States.

SECTION 18. Registration shall be determined upon a basis of individual personal qualifications. No firm, company, partnership, or corporation shall be licensed.

SECTION 19. Any person of good moral character licensed to practice forestry by any other state or country whose requirements are commensurate with the requirements of this State may, upon payment of fifteen dollars, be registered and licensed to practice forestry in this State, with renewal privileges as set forth in Section 17 of this act.

SECTION 20. The board shall have the power to revoke the license of any registrant who is found guilty by the board of gross negligence, incompetency, or misconduct in the practice of forestry. The board is empowered to designate a person or persons to investigate and report to it upon any charges of fraud, deceit, gross negligence, incompetency or other misconduct in connection with any forestry practice against any registrant, as may come to its attention. Any person may prefer charges of fraud, deceit, gross negligence, incompetency or misconduct in connection with any forestry practice, against any registrant. Such charges shall be in writing, shall be sworn to by the person making them and shall be filed with the secretary of the board. All charges, unless dismissed by the board as unfounded or trivial, shall be heard by the board within three months after the date on which they shall have been preferred. The time and place for the hearing shall be fixed by the board, and a copy of the charges, together with a notice of the time and place of the hearing, shall be personally served on, or mailed to the last known address of such registrant, at least thirty days before the date fixed for the hearing. At any hearing, the accused registrant shall have the right to appear personally and by counsel, to cross-examine witnesses appearing against him, and to produce evidence and witnesses in his own defense. If, after such hearing, the board finds the accused guilty, the board shall revoke the license of such registered forester. Any applicant whose license has been revoked may apply for a review of the proceedings with reference to such revocation of his license in the circuit courts of this State. Such review shall be upon the record made before the board. Petition for review of this act of the board shall be served upon the board within ten days from the date of the service of the order or decision of the board upon such person. Upon service upon it of a petition for review, the board shall within fifteen days certify the record made before it to the clerk of the circuit court. The board, for reasons it may deem sufficient, may reissue a license to any person whose license has been revoked. A new license to replace any license revoked, lost, destroyed, or mutilated, may be issued, subject to the rules of the board. A charge of three dollars shall be made for such issuance.

SECTION 21. Any person violating the provisions of this act shall be deemed guilty of a misdemeanor and, upon conviction, shall be fined or imprisoned in the discretion of the court.

SECTION 22. All acts or parts of acts inconsistent herewith are repealed.

SECTION 23. This act shall take effect upon approval by the Governor.

In the Senate House the 18th day of May.

In the Year of Our Lord One Thousand Nine Hundred and Sixty-One.

EDGAR A. BROWN,
President Pro Tempore of the Senate.

SOLOMON BLATT,
Speaker of the House of Representatives

Approved the 23rd day of May, 1961.

ERNEST F. HOLLINGS,
Governor.

**SOUTH CAROLINA STATE BOARD OF REGISTRATION FOR FORESTERS
BYLAWS, REGULATIONS AND PROCEDURES OF THE SOUTH
CAROLINA STATE BOARD OF REGISTRATION FOR FOR-
ESTERS AS ADOPTED NOVEMBER 17, 1961, AND AMENDED
TO DATE SHOWN ON LAST SHEET.**

Pursuant to the powers granted in the Act approved May 23, 1961, the South Carolina State Board of Registration for Foresters hereby adopts the following rules, regulations and procedures for the furtherance of the Act:

1. *Headquarters:* William J. Barker, Clemson College, Clemson, South Carolina, or
2. *Officers:* The Board will elect officers each year at the regular summer meeting to serve for one year commencing at the following regular winter meeting (Section 7). The following officers will be elected:
 - a. *Chairman*—Whose duties shall be:
 - (1) To preside at meetings of the Board.
 - (2) To appoint all committees.
 - (3) To sign all certificates and other official documents.
 - (4) To call special meetings as required.
 - (5) To submit to the Governor, as of June 30, each year, a report of the Board transactions for the preceding year.
 - (6) To notify all other State Boards of Registration for Foresters of the reciprocity provision of the Act (Section 19).
 - (7) With Secretary, sign all warrants to pay for legal expenses of Board (Section 14).
 - (8) Perform all duties pertaining to the office of the Chairman.
 - b. *Vice Chairman*—Whose duties shall be:
 - (1) To perform duties of the Chairman during his absence.
 - (2) To publicize action, policy, purpose and principles of the Board.
 - c. *Secretary*—Whose duties shall be:
 - (1) To give a surety bond to the State in amount of \$3,000.00, premium to be paid for out of the fund of the Board (Section 8).

- (2) Receive and account for all money (Section 14).
 - (3) With Chairman sign warrants.
 - (4) To conduct and care for all correspondence in the name of the Board.
 - (5) To keep a record of the proceedings of the Board (Section 10).
 - (6) To keep a record of filing of applications for licenses and all other evidence of qualifications, including examination papers and other pertinent documents submitted by each applicant and an official register of all Certificates of Registration and of renewals.
 - (7) To give notice in writing of the expiration of any license to the holder thereof and keep the Register up to date (Section 17).
 - (8) A roster will be prepared during the month of July each year, showing names and places of business of all registered foresters. Copies will be mailed to each registrant and it will be placed on file with the Secretary of State (Section 11).
 - (9) To attest all Certificates of Registration.
 - (10) To notify members of meetings.
 - (11) Any other duties required by law or that may be assigned by the Board.
3. *Meetings*: Regular meetings of the Board for examining applicants or reviewing applications, and for other business will be held in Columbia in July and January if practical on dates designated by the Chairman.
- Special meetings of the Board will be called by the Chairman by giving ten (10) days notice of the meeting to members.
4. *Quorum*: Three (3) members of the Board shall constitute a quorum but no action may be taken without three (3) votes in accord.
5. *Seals*: The Seal of the Board was adopted at the meeting on October 13, 1961. It shall be used on all official papers, registration certificates and other formal documents of the Board.
- Each registered forester may use an impression seal or stamp on his plans, maps, specifications and reports. The seal shall be circular, 1 and $\frac{5}{8}$ inches in diameter and the stamp shall be 1 and $\frac{3}{4}$ inches in diameter both of which are standard size.
6. *Committees*: The Chairman shall appoint committees as needed by the Board (Section 9).
7. *Application for Registration*: (Section 13) Requests for registration will be made to the Secretary, State Board of Registration for Foresters, Clemson College, Clemson, South Carolina. Application forms will be supplied upon request.
- Applicants shall supply all information requested on the forms or otherwise required and must execute the form. In each case, the applicant must provide unequivocal proof that he meets requirements for registration. Failure to follow the instructions will necessitate rejection of the application or its return for completion.

Fee for registration will be \$15.00 (Section 13). Applications will be accompanied by check or money order in amount of \$10.00 and the remaining \$5.00 will be paid within 30 days after being notified that he has successfully qualified. Failure to pay the \$5.00 (second payment) within thirty (30) days may require the applicant to reapply in which case the original fee (\$10.00) will be forfeited and a second payment of \$10.00 must accompany the second application.

8. *Requirements for Registration:* (Section 12) (1) (2) (3) will, with other provisions of the Act, completely govern actions of the Board in considering each application. Specific rulings and interpretations will be added to those listed below as the need for them arises.

Section 12 (1) :

Schools accredited by the Society of American Foresters will automatically be accepted by the Board. Other schools will be considered as they come up.

Two or more years experience must be subsequent to date of receiving degree in Forestry except in unusual circumstances as approved by the Board.

Section 12 (2) :

The passing grade on all written examinations shall be 70%.

Section 12 (3) :

Time limit for applying under this section is hereby set as May 17, 1962.

At least 8 years experience in the practice of forestry shall mean professional services relating to forestry (Section 2, b).

The Board will consider each applicant on the basis of his qualifications as they meet requirements of the Act.

9. *Expiration and Renewal:* (Section 17) Licenses shall expire on the last day of June, each year, and shall become invalid on that date unless renewed. At least one month prior to expiration date of any license, the Secretary will notify each registrant of the date of expiration of his license and the fee required for its renewal for one year. The annual renewal fee until changed by the board is hereby set at \$5.00. Renewal payment must be made during the month of June each year or within the ensuing 10 months by payment of an additional fee of 50¢ for each month or fraction thereof beyond the month of June. The Board will make an exception to the foregoing renewal provisions in the case of a person who is in the Armed Services of the United States.
10. Registration will be determined on a basis of individual, personal qualifications and no firm, company, partnership, or corporation shall be licensed. (Section 18).
11. *Reciprocity (Section 19):* Any person of good moral character licensed to practice forestry by any other state or country whose requirements are commensurate with the requirements of this state may upon payment of \$15.00 fee, be registered to practice forestry in this state.

Any applicant, a resident of another state who wishes to be registered in South Carolina must first be registered in the State of residence provided there is a State Board of Registration in that State except in unusual cases as determined by unanimous consent of the Board.

12. *Information:* All correspondence regarding registration should be addressed to Mr. William J. Barker, Secretary, State Board for Registration for Foresters, Clemson College, Clemson, South Carolina.
13. *Statement of Guiding Definitions:* The following definitions will guide the Board in evaluating applications for a license as Registered Forester. For other forestry definitions the Board will be guided by FORESTRY TERMINOLOGY, published by Society of American Foresters.
 - a. Professional—Webster Unabridged:

“The occupation, if not purely commercial, mechanical, agricultural or the like, to which one devotes oneself; a calling in which one professes to have acquired some special knowledge used by way of instructing, guiding, or advising others or of serving them in some art.”
 - b. Forestry—SAF “FOREST TERMINOLOGY”

“The scientific management of forests for the continuous production of goods and services.”
 - c. Forestry—Webster Unabridged:

“The science and art of forming, caring for or cultivating forests; the management of growing timber.”
 - d. Forester—SAF “FOREST TERMINOLOGY”

“A person who has been professionally educated in forestry or who possess qualifications for the practice of forestry essentially equivalent to graduation from a recognized school of forestry.”
 - e. Forester—Webster Unabridged:

“A person who is trained in forestry, especially one in charge of public or private forests or charged with the promotion of the interests of forestry.”
14. *Activities:* (services) which are not considered by the Board to be qualifying under Section 2(b) of the Act.
 - a. Marking timber as a member of a crew without responsibility for determination of objectives, volumes, values or other purposes for which the timber is being marked is not considered professional forestry service.
 - b. Business managers, administrators, plant managers and accountants are not considered to be engaged in professional forestry service unless such a person is responsible for the application and practice of forest management and forest economics.
 - c. Sealing of forest products is not considered to be professional forestry service. Measurement in terms of forestry is defined as the science of the measurement of volume, growth and development of individual trees and stands and the determination of various products obtainable from them.

- d. Management of woodyards, and the duties incident thereto, is not considered to be professional forestry service or responsible supervision of the forestry specialties enumerated in the Act.
 - e. Cutting, hauling, loading, storing and processing forest products are not considered professional forestry services.
 - f. Forest protection for purpose of professional forestry service will be limited to those persons specializing in the formulation of plans and programs and the administration of all activities concerned with the prevention and control of damage to forests from fire, insects, disease, or other injurious and destructive agencies. Forest workers or forest fire fighters including tractor plow operators, fire or crew bosses, dispatchers, lookouts, scouts, crewforemen, forest pest control workers, and the like, will not be considered as serving in a professional capacity.
 - g. Silvicultural practices such as reforestation and timber stand improvement will not be considered professional services unless the applicant has responsibility of technical determinations and not just physical labor involved in applying the practice.
 - h. The buying and selling of woodlands, or the products therefor, shall not be considered professional forestry services unless such dealer, broker or real estate operator shall also be actively engaged in forest management and such operations are part of the forest management function.
 - i. Compassmen and tallymen in timber cruising parties are not considered to be performing professional forestry services.
15. *Training and Apprenticeship Periods:* It is the consensus of the Board that an applicant cannot initially transfer from unrelated activity to a forestry activity and be immediately qualified to perform professional forestry services. A substantial period (at least one year) of education, training and apprenticeship is considered to be a prerequisite.

With Amendments to August 24, 1962



ENGINEERING GEOLOGISTS

ENGINEERING GEOLOGISTS

SENATE BILL 1349

Senate Bill 1349 was introduced at the 1963 session of the Legislature and referred to the Senate Factfinding Committee on Business and Commerce for interim study. The bill sets up a registration for the field of engineering geology and regulates its operations. It also increases the membership on the board of Civil Professional Engineers to provide for a place on said board by an engineering geologist. In addition, the term "engineering geology" is defined, and the educational and experience qualifications are set forth, along with an examination procedure. Under the proposed bill, a registrant will be required to have either a graduate degree in geology, or its equivalent where no such degree was given, or seven years of professional geological experience, in order to qualify.

A hearing on the bill was held in Sacramento on April 7, 1964. At the present time the County of Los Angeles, the County of Orange, and the City of Los Angeles have local ordinances dealing with the registration for engineering geologists. These county and city jurisdictions passed these ordinances because of the necessity to secure competent data on building sites. It was felt that some of the building fiascoes could have been avoided had there been competent engineering geology surveys, and had geologists advised the contractors before construction started. The proponents contend that more and more hillside land is being developed, and landslides and earth movements could be prevented with the proper geological information that engineering geologists could supply.

The primary opposition to the bill comes from those geologists who are practicing in other specialties, and principally from those in the petroleum industry. Hearing testimony and correspondence both indicate that these professionals feel the definition in the proposed bill to be restrictive. They feel that it might have the effect of preventing them from practicing in their chosen fields. It was apparent during the hearing that there might not be an enmity of feeling if a bill were drafted that would incorporate all fields of geology and provide for registration of all geologists. There have been meetings with the various groupings and societies in this field in an effort to resolve their differences, but thus far no answer has been formulated.

The local ordinances in Southern California were adopted as an outgrowth of a requirement that written specifications and geological studies be presented to these governmental jurisdictions before a building permit would be issued. After some of the early reports were studied, it became apparent that these had been prepared by people who did not have the necessary background and experience in this type of work. Because of this, it was necessary for the Los Angeles County Board of Supervisors to pass an ordinance establishing the Los Angeles County Engineering Geologists Qualifications Board. This provides that the board establish minimum standards of experience

and training for the qualification of engineering geologists, that the board examine and evaluate candidates applying for certification, and issue the appropriate certification to those found properly qualified. The board also acts as a board of review for the interpretation of data opinions and conclusions contained in the reports.

Committee staff investigation discovered that the registration requirements of the three political subdivisions overlap in some aspects, with resulting problems. Certain geologists are certified and have passed the requirements in one area, and some of these have been unable to secure registration in another area.

The question concerning the work of an engineering geologist and the limits of his field was answered by a statement from John A. Lambie, the Los Angeles County Engineer, presented by Harvey T. Brandt, the Chief Deputy County Engineer of Los Angeles:

"Although engineering geology is a branch of the geological sciences, it is noteworthy that the somewhat unique professional responsibilities of the engineering geologist make it necessary to define the scope of his work separately. Engineering geology may be defined as the application of geologic knowledge, principles, and techniques in the observation and evaluation of the influence of earth materials in the planning, construction, and maintenance of earth slopes and engineering structures. In the application of this knowledge and these principles and techniques, the engineering geologist is primarily a geologist. However, to make his work effective, he must think like an engineer and translate this geologic knowledge into terms an engineer can use for the design of structures. For this reason, registration as an engineering geologist should include requirements for a substantial working knowledge of civil engineering soil mechanics."

The influx of people into southern California has created a critical situation with respect to use of available land for homesites. While this problem is crucial in the Los Angeles metropolitan area, it is apparent that the San Francisco Bay area is beginning to feel the same acute pains that are now being experienced in a more dramatic fashion in southern California. The testimony of Harvey Brandt on this particular aspect of the problem was enlightening:

"The continuing utilization of marginal land and hillside areas for building construction sites, not only in Los Angeles and adjacent counties but throughout the state, requires proper building procedures and soil evaluation methods in order to insure that structures will be built on stable foundation material. These procedures cover many potential landslide areas, unstable soil, soil compaction, erosion control, grading and excavating, and drainage control."

Mr. Brandt's testimony with respect to the hillside areas in the Los Angeles area sharpened the focus on the problems:

"On the hundreds of acres of hillside areas remaining undeveloped in Los Angeles County, many present such serious geologic problems that building construction must be prevented. When conditions warrant, the county engineer requires plans to be sub-

mitted. In checking grading plans, particular attention is given to compliance with the engineering geologist's recommendations, methods of compaction, slopes of banks, drainage devices, and proper erosion control methods. Sewage and sewage disposal facilities, both on the property directly concerned and on nearby properties, need careful consideration because the accumulation of subsurface drainage water, for example, from private disposal facilities may cause subsidence or slippage of surface soil."

Additional testimony indicated a great need for better geologic maps, which would provide basic knowledge for the public engineering staffs, and facilitate careful planning for future expansion and/or development. Existing maps are for the most part of little use for engineering purposes, since they largely emphasize mineral economics or academic geology. They are on too small a scale, and do not have sufficient detail regarding geologic structure, landslides, and the distribution and engineering properties of the soil and rock units, as Mr. Brandt carefully noted.

Since 1960, the Los Angeles County Board of Supervisors, in cooperation with the United States Geological Survey Department and the California State Division of Mines and Geology, has been engaged in a geological mapping program. The results to date of this survey have shown that home construction is not feasible and should be prevented in what might be regarded as some highly desirable living areas. Mr. Brandt stated that on the coastal 10 square miles of the Malibu Beach area there are 83 existing landslides, some of which are presently active; 30 of these are greater than five acres in area, and one is approximately 1,500 feet wide and one-half mile in length. The San Gabriel Mountains has a slide with an area of two square miles. A study of the Palos Verdes area indicated 150 landslides. Each of these areas would be otherwise regarded as choice residential property, and construction in these localities would have led to complications and serious problems had the mapping program not been underway. When the survey is completed, these maps will be available to the public, engineers, subdividers, etc., so that the best use can be made of the available lands for expansion in the area.

Mr. Brandt gave it as his opinion that the problems were sufficiently great to preclude viewing this question as a local matter, and that it could best be resolved through state registration and regulation. In his view, the provisions of the proposed bill will assist the people of California in developing hillsides and marginal areas, by assuring the existence of a competent system of qualified engineering geologists. Mr. Brandt foresees a further advantage in that all professionals engaged in this type of work will thereby attain an equality of status:

"The complexity and economic significance of hillside development work requires the cooperative evaluation exchange of data between the design engineer, soils engineer, and the engineering geologist. The highest level of cooperation can be obtained when the three groups are of equal professional status."

He pointed out that more and more of the "flatland" and favorable hillside areas have been developed with the coming of additional millions of people to California. Developers are now looking to all land,

no matter how rugged or marginal, for improvement as building sites. For the safety and welfare of the citizens, this development will require the most careful control and evaluation by highly qualified engineering geologists. Mr. Brandt concluded his testimony by remarking that certification and regulation of engineering geologists can be more efficiently and effectively handled at the State level.

Mr. H. R. Taber, President of the Association of Engineering Geologists, represented his organization at the hearing and testified in favor of the bill. Mr. Taber stated that his organization represented 270 practicing geologists in the State of California. It was their feeling that conditions in the southern California area particularly have demonstrated the need for registration and for adequate reports. It was their opinion that local regulation would not be as good as statewide regulation.

Testimony by Mr. Martin Van Couvering, who spoke on behalf of the American Institute of Professional Geologists, brought out the differences of opinion between the various organizations and the clash in viewpoints. He stated, in part:

"The attitude of most of the geologists in the State has been against registration until fairly recently. In fact, until the State came up against the problems they are now concerned with and if you had taken a ballot a year ago or so you would find an overwhelming vote against registration but we don't believe in division within the geological profession, particularly by the exclusion of some geologists. We feel content and so our opposition here is based upon this matter of division, not upon the problem of the engineering geologist."

During the testimony at the hearing, the various phases of geology were alluded to, but never specified. This was brought up and covered when the chairman asked Mr. Van Couvering some questions.

Senator Short: "Mr. Van Couvering, are there two different types of geologists?"

Mr. Van Couvering: "Largely through experience, I mean in geology, there isn't much difference until someone graduates and goes out into the field. When you go out you find yourself employed in the mining end of it or a job in petroleum or whatever it may be and you have got to do the thing that comes along. Then you just naturally get into a group, more or less, and begin to specialize but we can't all do the same thing."

Senator Short: "Would you say that there are three types of geology? I have heard the term engineering and then you mentioned mining and petroleum."

Mr. Van Couvering: "Many more than that. There are marine geologists and oh, I won't try to go into them now but I am sure that if I had time and a pencil and a paper I could probably give you 20 different categories of geologists."

Senator Short: "You have indicated that the basic educations are the same or similar in all cases."

Mr. Van Couvering: "Yes."

Senator Short: "After the education then you specialize?"

Mr. Van Couvering: "Yes."

Senator Short: "Specialize to what extent? If you wanted a degree, a higher degree, such as to become a petroleum geologist, is there a particular course that would lead to a master's or a doctor's degree that you know of, that is a higher degree?"

Mr. Van Couvering: "No, but there is naturally such a tendency because, as you know, in one line and another it isn't a question of school degrees, it is a question of much more than that, of what kind of work you are engaged in. Now, as to these differences, if you wish to I will be glad to write you and say what they do and what they are."

There was further discussion, pro and con, on the divisions within the geological profession. Senator Backstrand clarified the matter as follows:

Senator Backstrand: "In order to summarize and make the comparison, it is like a person going to medical school. They have principally the same background, physiology and so forth, and after they graduate they then drift into various specialties that concerns the medical profession."

Mr. Van Couvering: "That's an excellent analysis."

The testimony of Peter Gester, Chairman of the San Joaquin Geological Society Legislative Committee, again referred to the opposition by geological groups, which is predicated mainly on the problems raised by a possible division within the profession.

The San Joaquin Geological Society is headquartered in Bakersfield and has 219 members. The membership is composed primarily of geologists in the petroleum industry, but does include some in the mining, engineering, and groundwater fields, as well as teachers and government employees. This group felt that the passage of SB 1349 could and would have the effect of depriving people already in these specialized fields of the right to practice in their chosen specialty. The testimony and presentation indicated that this would decrease the stature now held by geologists in the fields of petroleum, mining, paleontology, and geophysics. As a substitute, the society submitted a proposed bill which would register all geologists and provide for the method of registration and for the administration of the act. Basically, this bill would set up a separate bureau within the Department of Professional and Vocational Standards, for the sole purpose of registering and regulating the geological profession. In this and other respects this would differ from SB 1349, which places the engineering geologists under the Board of Professional Engineers.

The testimony of Mr. Gester and the San Joaquin Geological Society was supported by John E. Kilkenny, president of the American Association of Petroleum Geologists, Pacific Section. This group has a membership of 15,000, including an active membership of 1,050 in California, and Mr. Kilkenny felt that they represented the largest single group of geologists in the state. He testified as follows:

"Our group opposes this bill because we feel that it will fragment the profession of geology. Secondly, there are many of our members who practice petroleum geology part time and engage in the field of engineering geology. A number of them are licensed

under the various cities and counties of southern California, but they would not be permitted to practice under the Senate Bill 1349 if that becomes a law."

He stated, in effect, that his association supported registration, but not as outlined in SB 1349.

"We believe it is to the best interest of the people of California that a bill be passed, but we feel that it should be an overall bill that would encompass all geologists and take care of the provisions that the engineering geologists want. For the benefit of the public we feel that the bill should include all geologists and there should not be a specialization of the engineering geologists as opposed to an overall bill."

Senator Gibson interjected the question of control initiated by the state:

Senator Gibson: "Do you believe you would like to come under provisions of an act here where the government supervises and gives examinations and controls your whole being, you might say, from here on in? Would you like to be free from the government? After all, there is one basic thing as far as the state licensing people in the State of California, it is the interest of the public. If there is none, we have no right whatsoever to act."

Mr. Kilkenny: "I appreciate your statement. I think that most geologists would rather be free, but a feeling of most of our members right now is that the profession is coming under a certain amount of abuse, and we feel that it would benefit the public to have a law that would regulate us. We hope not too severely, so that it wouldn't destroy our freedom, but yet we want it to serve the purpose."

Mr. Kilkenny was questioned by the various committee members as to the application of any such law and how the categories would be handled.

Senator Gibson: "Will you please attempt to glean out the categories that you would need after you once get licensed?"

Mr. Kilkenny: "Well, I think personally it should be as simple as possible. I feel that a geologist should be licensed and then live up to their code of ethics."

Senator Gibson: "Well, how do you think it should be established to have the best protection of the public?"

Mr. Kilkenny: "Well, I believe the present engineering bill would be a guide. As to how regulation would be necessary, we have different kinds of engineers, civil, electrical and so on."

Senator Pittman: "Thank you very much."

Additional testimony on the aspects of the bill was given by Mr. Arthur Spaulding, who is a member of the American Institute of Professional Geologists, the American Association of Petroleum Geologists, the American Institute of Mining Engineers and the Society of Petroleum Engineers. His organization was objecting to the bill that was introduced, SB 1349, as such. His testimony indicated that they were not opposed to regulation.

Senator Pittman: "Let me ask you this: Is it your desire to participate in licensing or registration, as it may be? Could that be stimulated from the desire to do this on your own, or is it stimulated because of the action of other people wanting to be?"

Mr. Spaulding: "I think both."

Senator Pittman: "You are all going to have to get together."

Mr. Spaulding: "This is a part of the proposal, to combine with the Association of Geologists, and, in fact, we do have an offer to these people to join with us on our committees so that we can prepare legislation which would be reasonable to all geologists, but my interest has been stimulated by both my individual reasons and also by my associates'."

Senator Backstrand: "I think what we have to keep in mind is that as legislators we are not in the business of trying to protect a particular profession against others that might want to encroach in that profession. I mean, in your order of the present enterprise system, this is taken care of in the marketplace. However, we are in the business of trying to protect the public. I believe this is particularly what Senator Gibson has in mind. I think most of us who have been around here for some time have seen occasions where a particular group would wish to be licensed or accredited or registered, or that they have something up on the competitors so that they can have inter-road into the inter sanctorum with their customers, and then they would end up and sooner or later they end up in a situation where they keep increasing the standards and increasing the standards to where eventually they want to keep competition out."

The question of how a new agency would be supported became quite apparent in discussing the fee schedule with the various witnesses. The number of potential licensees ranges from a low of 270 to a high of 1,200. The board budget was not worked out and information had to be gleaned from the Department of Professional and Vocational Standards as to the operation of a typical agency of this size. In questioning and discussion by the committee:

Senator Pittman: "We were talking this morning, something along this line about a \$25 fee. Our Chairman, Senator Short, just arrived. We were now talking about the number of people and the fees we pay, Senator."

Senator Short: "Well, as I mentioned this morning, it has been our experience that on these boards, commissions and bureaus, that they first set up a yearly fee at rock bottom and then they are back the next year and the next year and the next and the next asking for more because it does cost money. It costs money to support members of the board, it costs money for secretarial services, it costs money for—because you want to have the Attorney General or one of his deputies, and all this is chargeable to the organization. We have had an association this morning, where possible 500 licensed members were to set up their own board at \$25 a year. Well, they are so far off base that they haven't even begun. But we as members of the Committee, would like you to do is to get a balance sheet of what it will cost to administer the num-

ber of people that you expect to license, with some kind of projection for the future.”

One of the witnesses indicated that this was the reason that they were trying to become a part of the Professional Engineers Board. It seems apparent from the witnesses, aside from the Association of Engineering Geologists, that it would be impractical to set up another agency in the Board of Civil Engineers. The sole unqualified opposition to SB 1349 and the licensing of geologists came from the California Legislative Council of Professional Engineers, which represents 18 member organizations. Their organization was represented by Mr. Donald R. Wright, secretary of the association. Their position is as follows:

“After careful consideration of the proposed measure our committee report and our official position indicates that this proposed legislation would infringe upon the Civil Engineers Act, and that it is difficult to determine the difference between ‘geology’ and ‘engineering geology’.

“Civil engineers in general, and specifically civil engineers specializing in soils work, utilize the services of geologists. Merely because some geologists specialize in investigations affecting civil engineering facilities, it does not necessarily mean that a special classification should be established.

“If the committee should find that it is in the public interest to provide licensing and/or registration for geologists, we would have no particular objection. It is our opinion that the title ‘engineering geologist’ is misleading to the public.”

Subsequent testimony by Mr. George D. Roberts, a member of the Association of Engineering Geologists in San Francisco, indicated support for SB 1349 with some modification.

Mr. George D. Roberts: “I am for the bill with some modifications. I believe those modifications are up to the gentlemen here, not the legislators. I might say that I graduated as an engineer of mines and put in almost 30 years at this, about half as an engineer and the other time working as a geologist, and all in all it is kind of confusing. It is helpful to some of these people because it is sort of a subsidy. It would seem to me that if they were selected by the civil engineers board, at least for a few years, that would take care of most of our problems. Mr. Brandt showed a very good example of what is going on down in Los Angeles. We have bigger problems in the Bay area. We have quakes up there and they are building right on the faults, the San Andreas fault, and they are doing all kinds of things. These people, some of these people, are trying to horn in on others.”

In the addendum to the committee report, there are letters from professors of geology and distinguished members in the profession. These letters, pro and con, are worthy of consideration and are of course subject to rebuttal by the testimony of the witnesses.

RECOMMENDATIONS OF THE COMMITTEE

After careful consideration of the testimony of those appearing before the committee at its hearing, and after careful review of the material subsequently presented to the committee, it is the consensus that the public welfare can best be served by a registration and licensing of geologists, and that all geologists in the State of California should be so registered and licensed.

Inasmuch as all geologists receive the same academic training, it is the opinion of the committee that there should be a separate bureau or board within the Department of Professional and Vocational Standards, and that the licensing and regulation of geologists should be handled by a Board of Geologists, and not the Board of Civil Engineers. If all practicing geologists in the State of California are licensed and regulated, then the committee feels that their number is sufficient to warrant the setting up of a separate agency, having a fee in keeping with other fees in the department. The Board of Geologists should have the authority to issue certificates of competency in the various specialties within the field of geology.

The committee further concludes that growth and land-use problems in the state are quite apparent and show a compelling need for adequate and competent geological reports. State regulations would fix statewide standards so that those communities, builders, and developers requiring these services could have access to a group of qualified people to fulfill their needs.

APPENDIX

SENATE BILL

No. 1349

Introduced by Senator Rodda

April 23, 1963

REFERRED TO COMMITTEE ON BUSINESS AND PROFESSIONS

An act to amend Sections 6710, 6711, and 6712 of, and to add Chapter 12.5 (commencing with Section 7800) to Division 3 of, the Business and Professions Code, relating to the registration and regulation of engineering geologists and making an appropriation therefor.

The people of the State of California do enact as follows:

SECTION 1. This chapter is enacted in order to introduce qualifying criteria in a presently unregulated professional field. Such action recommends itself through benefits to the safety, health, and welfare of the people of California. These benefits are in the fields of engineering geology as related to civil engineering problems including the conservation of ground waters within the State.

SEC. 2. Section 6710 of the Business and Professions Code is amended to read:

6710. There is in the Department of Professional and Vocational Standards a State Board of Registration for Civil and Professional Engineers, which consists of 9 10 members appointed by the Governor.

SEC. 3. Section 6711 of said code is amended to read:

6711. Each member of the board shall be a citizen of the United States. Seven members shall be registered under this chapter, one member shall be licensed under the Land Surveyors' Act (commencing with Section 8700 of this code), *one member shall be registered under the Engineering Geologist Act (Chapter 12.5, commencing with Sec-*

LEGISLATIVE COUNSEL'S DIGEST

S.B. 1349, as introduced, Rodda (B. & P.). Engineering geologists.

Amends Secs. 6710, 6711, and 6712, adds Ch. 12.5 (commencing with Sec. 7800) Div. 3, B. & P.C.

Provides for the registration and regulation of engineering geologists by the State Board of Registration for Civil and Professional Engineers. Increases the membership of that board from nine to ten by adding an engineering geologist thereto.

tion 7800, of Division 3), and one member shall be a public member who is not registered under this act or, licensed under the Land Surveyors' Act, or registered under the Engineering Geologist Act. Each member, except the public member, shall have at least 12 years active experience and shall be of good standing in his profession. Each member shall be at least 30 years of age, and shall have been a resident of this State for at least five years immediately preceding his appointment.

SEC. 4. Section 6712 of said code is amended to read:

6712. Members of the State Board of Registration for Civil and Professional Engineers in office when this act takes effect shall continue as members of the State Board of Registration for Civil and Professional Engineers without change in their terms so that the terms of said members presently in office shall expire as follows: the term of one member, January 15, 1952; the term of two members, January 15, 1953; the term of two members, January 15, 1954, and the term of two members, January 15, 1955. Thereafter, all appointments to said board shall be for a term of four years, and vacancies shall be filled by appointment for the unexpired term. Each such member appointed to fill a new term or vacancy shall be a registered professional engineer in the same branch as his predecessor.

The term of the first land surveyor member shall expire January 15, 1960. Thereafter all such appointments shall be for a term of four years, and vacancies shall be filled by appointment for the unexpired term.

The Governor shall, on or before January 1, 1962, appoint the first public member of the board, and his term shall expire January 15, 1965. Thereafter all such appointments shall be for a term of four years, and vacancies shall be filled by appointment for the unexpired term.

The Governor shall, on or before January 1, 1964, appoint the first engineering geologist member of the board, and his term shall expire January 15, 1966. Thereafter all such appointments shall be for a term of four years, and vacancies shall be filled by appointment for the unexpired term.

Each member shall hold office until the appointment and qualification of his successor or until six months shall have elapsed since the expiration of the term for which he was appointed, whichever first occurs. No person shall serve as a member of the board for more than three consecutive terms, but this provision shall not apply to any member in office on September 7, 1955.

SEC. 5. Chapter 12.5 (commencing with Section 7800) is added to Division 3 of said code, to read:

CHAPTER 12.5. ENGINEERING GEOLOGIST

Article 1. General Provisions

7800. This chapter of the Business and Professions Code constitutes the chapter on engineering geologists. It may be cited as the Engineering Geologist Act.

7801. "Board," as used in this chapter, means the State Board of Registration for Civil and Professional Engineers.

7803. "Engineering geology," as used in this chapter, refers to the application of geologic data, techniques, and principles to the study of naturally occurring rock, soil materials, and ground water for the purpose of assuring that geologic factors affecting the planning, design, construction, operation, and maintenance of civil engineering works and the conservation of ground water resources are recognized, adequately interpreted, and utilized.

7804. "Engineering geologist," as used in this chapter, refers to a person who practices engineering geology.

7805. Only a person registered under the provisions of this chapter shall be entitled to take and use the title "engineering geologist."

7806. The term "responsible charge of work" means the independent control and direction by the use of initiative, skill and independent judgment of engineering geological work or the supervision of such work.

7807. A subordinate is any person who assists a registered engineering geologist in the practice of engineering geology without assuming the responsible charge of work.

7808. A qualified engineering geologist is a person who possesses all the qualifications specified in Section 7841 for registration except that he is not registered.

Article 2. Administration

7810. The board is vested with power to administer the provisions and requirements of this chapter and may make and enforce such rules and regulations which are reasonably necessary to carry out its provisions.

7811. Each engineering geologist member of the board shall be a citizen of the United States, at least 30 years of age, and shall have been a resident of this State for at least five years immediately preceding his appointment. After the first appointee, each engineering geologist member shall be registered under this chapter, shall have at least 12 years, active experience, and shall be of good standing in his profession.

7812. In selecting the first engineering geologist appointee to the Board of Registration for Civil and Professional Engineers, the Governor shall select a person who meets all the qualifications for registration. Thereafter, he shall appoint persons registered under this chapter.

7814. The secretary of the board shall keep a complete record of all applications for registration and the board's action thereon, and, between July 1 and December 1 in each even-numbered year, shall prepare a roster showing the names and addresses of all registered engineering geologists. Between July 1 and December 1 in each odd-numbered year he shall prepare a supplemental roster showing changes in and additions to the roster. The roster shall be a part of the roster of registered professional engineers and engineering geologists issued by the board.

A copy of the roster and the supplemental roster shall be filed with the Secretary of State and with the clerk of each county in the State,

and a copy of each shall be furnished to each engineering geologist registered under the provisions of this chapter. Copies of each shall be available on application to the secretary, at such price per copy as may be fixed by the board.

All records shall be public records.

Article 3. Scope of Regulation

7830. It is unlawful for anyone other than an engineering geologist registered under this chapter to stamp or seal any plans, specifications, plats, reports, or other documents with the seal or stamp of an engineering geologist, or to in any manner use the title "engineering geologist" unless registered hereunder.

7831. It is unlawful for anyone to stamp or seal any plans, specifications, plats, reports, or other documents with the seal after the certificate of the registrant, named thereon, has expired or has been suspended or revoked, unless the certificate has been renewed or re-issued.

7832. Any person practices engineering geology and is subject to the provisions of this chapter when he professes to be an engineering geologist or is in responsible charge of engineering geology work.

7832.1. This chapter does not prohibit one or more engineering geologists from practicing through the medium of a sole proprietorship, partnership, or corporation. In a partnership all partners must be registered as engineering geologists or civil engineers, or hold certificates to practice architecture in the State of California. In a corporation, the president and all directors shall be registered as engineering geologists or civil engineers, or hold certificates to practice architecture in the State of California.

7832.2. This chapter does not prevent or prohibit an individual, firm, company, association or corporation engaged in any business other than the practice of engineering geology from employing an engineering geologist to perform professional services in engineering geology incidental to the conduct of their business.

7833. All engineering geology plans, specifications, reports or documents shall be prepared by a registered engineering geologist or by a subordinate employee under his direction. In addition, they shall be signed by him or stamped with his seal, either of which shall indicate his responsibility for them.

7834. Officers and employees of the United States of America practicing solely as such officers or employees are exempt from registration under the provisions of this chapter.

7835. A subordinate to an engineering geologist registered under this chapter, insofar as he acts solely in such capacity, is exempt from registration under the provisions of this chapter. This exemption, however, does not permit any such subordinate to practice engineering geology in his own right or to use the title "engineering geologist."

7836. A civil engineer empowered to practice civil engineering in this state under provisions of Chapter 7 (commencing with Section 6700) of Division 3 of this code insofar as he practices civil engineering in its various branches is exempt from registration under the provisions of this chapter.

Article 4. Registration

7840. An application for registration as an engineering geologist or certificate as engineering geologist-in-training shall be made to the board on a form prescribed by it and shall be accompanied by the application fee fixed by this chapter.

7841. An applicant for registration as an engineering geologist shall have all the following qualifications:

(a) Be of good moral character.

(b) Meet one of the following educational requirements fulfilled at a school or university whose geological curricula meet criteria established by rules of the board:

(1) Graduation with a major in geology.

(2) Completion of sufficient courses in the geological sciences to qualify for a geology major in that school or university.

(3) Completion of 30 semester units in geological science courses leading to a major in geology, of which at least 24 units are in the third or fourth year, or graduate courses.

(c) Have at least seven years of professional geological work which shall include:

(1) At least four years of professional geological work under the supervision of a qualified geologist or a registered civil engineer. A qualified geologist is one who has had a minimum of five years' experience in responsible charge of geological studies.

Each year of undergraduate study in the geological sciences shall count as one-half year of training up to a maximum of two years, and each year of graduate study or research counts as a year of training.

Teaching in the geological sciences at college level shall be credited year for year toward meeting the requirement in this category, provided that the total teaching experience includes six semester units of third or fourth year or graduate courses.

(2) At least three full years of professional work in the field of engineering geology under the supervision of a registered engineering geologist, or a registered civil engineer, except that prior to January 1, 1967, a person applying for registration shall qualify under this subdivision if his work is under the supervision of a qualified engineering geologist.

The ability of the applicant shall have been demonstrated by his having performed the work in a responsible position. For out-of-state applicants, the adequacy of the supervision and experience shall be determined by the board.

(d) Successfully pass an examination.

7842. An applicant for registration as an engineering geologist-in-training shall have all the following qualifications:

(a) Be of good moral character.

(b) Have the educational requirements specified in paragraph (1) of subdivision (b) of Section 7841.

(c) Successfully pass an examination.

7843. The board shall waive the examination requirement for a certificate as an engineering geologist for one who complies with all of the following:

(a) Who makes written application to the board under this section not later than one year following the effective date of this chapter.

(b) Who has at least three full years of professional work in the field of engineering geology under the supervision of a qualified engineering geologist or a registered civil engineer, or who has been in responsible charge of work. The ability of the applicant shall have been demonstrated by his having performed the work in a responsible position. For out-of-state applicants, the adequacy of the experience shall be determined by the board.

(c) Who complies with the provisions (a) and (b) of, and paragraph (1) of subdivision (c), of, Section 7841.

7844. Examination for registration shall be held at regular or special meetings of the board, at the times and places within the state as the board shall determine.

The work of the board relating to examination and registration may be divided into subcommittees. The scope of examinations and the methods of procedure may be prescribed by rule of the board.

7845. Examinations shall be designed to conform to the following general principle: One division of the examination shall test the applicant's knowledge of subjects fundamental to engineering geology, including geology and other earth sciences, mathematics and the basic sciences; and another division of the examination shall test the applicant's ability to apply his knowledge and experience and to assume responsible charge in the professional practice of engineering geology.

7846. An applicant for a certificate as an engineering geologist-in-training shall, upon making a passing grade in that division of the examination prescribed in Section 7845, relating to subjects fundamental to engineering geology, be certified as an engineering geologist-in-training.

No renewal or other fee, other than the application fee, shall be charged for this certification.

Such certification shall become invalid when (a) the holder has qualified as an engineering geologist as provided in this chapter; or (b) on the 30th day of June of the 8th year after the date of issuance, if the holder has not at that time secured registration as an engineering geologist.

7847. An engineering geologist-in-training certificate does not authorize the holder thereof to practice or offer to practice engineering geology or to assume responsible charge of engineering geology work, in his own right, or to use the title specified in Section 7803.

7848. An applicant failing in an examination may be examined again upon filing a new application and the payment of the application fee fixed by this chapter.

7849. The board, upon application therefor, on its prescribed form, and the payment of the application and registration fees fixed by this chapter, which fees shall be retained by the board, may issue a certificate of registration as an engineering geologist to any person holding a certificate of registration issued to him by any state or country when the applicant's qualifications meet the requirements of this chapter and the rules established by the board and may in such case waive the written examination required by this chapter.

7850. A temporary authorization for the practice of engineering geology may be granted, for a specific project, upon application and payment of the fee prescribed in Section 7887 for a period not to exceed 60 consecutive days in any calendar year; provided:

(a) He maintains no place of business in this State.

(b) He is legally qualified to practice engineering geology in the state or country where he maintains a place of business.

(c) The applicant demonstrates by means of an individual appearance before the board satisfactory evidence of adequate knowledge in that phase of engineering geology for which the applicant proposes to practice under the temporary authorization.

(d) If the applicant can satisfy the board that the completion of the specific project for which the authorization is granted will require more than 60 consecutive calendar days, the board may extend the authorization to a period not to exceed a total of 120 days.

Upon completion of these requirements as necessary, the secretary on direction of the board shall issue a temporary authorization to the applicant.

7851. In determining the qualifications of an applicant for registration, a majority vote of the board is required.

7852. Any applicant who has passed the examination and has otherwise qualified hereunder as an engineering geologist, upon payment of the registration fee fixed by this chapter shall have a certificate of registration issued to him as an engineering geologist.

A certificate of registration for an engineering geologist shall be signed by the president and secretary and issued under the seal of the board.

7853. If an applicant for registration as an engineering geologist or for a certificate as an engineering geologist-in-training is found by the board to lack the qualifications required for admission to the examination for such registration or certificate, the board shall, notwithstanding the provisions of Section 153 of this code, refund to him one-half of the amount of his application fee.

7854. Each engineering geologist registered under this chapter may, upon registration, obtain a seal of the design authorized by the board bearing the registrant's name, number of his certificate, and the legend "engineering geologist."

7855. A duplicate certificate of registration to replace one lost, destroyed, or mutilated may be issued subject to the rules and regulations of the board. The duplicate certificate fee fixed by this chapter shall be charged.

7856. An unsuspended, unrevoked and unexpired certificate and endorsement of registry made under this chapter is presumptive evidence in all courts and places that the person named therein is legally registered.

Article 5. Disciplinary Proceedings

7860. The board may receive and investigate complaints against registered engineering geologists, and make findings thereon.

By a majority vote, the board may reprove, privately or publicly, or may suspend for a period not to exceed two years, or may revoke the certificate of any engineering geologist registered hereunder:

(a) Who has been convicted of a felony, arising from or in connection with the practice of geology, or of a crime involving moral turpitude, in which case the certified record of conviction shall be conclusive evidence thereof.

(b) Who has not a good character.

(c) Who has been found guilty by the board of any deceit, misrepresentation, violation of contract, fraud or incompetency in his practice.

(d) Who has been found guilty of any fraud or deceit in obtaining his certificate or violation of any provision of this chapter.

(e) Who aids or abets any person in the violation of any provisions of this chapter.

(f) Who violates any provision of this chapter.

7861. The proceedings under this article shall be conducted in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, and the board shall have all the powers granted.

7862. The board may reissue a certificate of registration, certification, or authority, to any person whose certificate has been revoked if a majority of the members of the board vote in favor of such reissuance for reasons the board deems sufficient.

7863. A plea or verdict of guilty or a conviction following a plea of nolo contendere made to a charge of a felony is deemed to be a conviction within the meaning of this article. The board may order the certificate suspended or revoked, or may decline to issue a certificate, when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal, or when an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under the provisions of Section 1203.4 of the Penal Code **allowing** such person to withdraw his plea of guilty and to enter a plea of not guilty, or setting aside the verdict of guilty, or dismissing the accusation, information or indictment.

7864. The adjudication of insanity or mental illness, or the voluntary commitment or admission to a state hospital of any certificate holder for a mental illness shall operate as a suspension of the right to practice of such certificate holder under this chapter, such suspension to continue until restoration to or declaration of sanity and until it is satisfied that, with due regard for the public interest, said person's right to practice may be safely restored.

Article 6. Offenses Against the Chapter

7870. The board shall have the power, duty and authority to investigate violations of the provisions of this chapter.

7871. It shall be the duty of the respective officers charged with the enforcement of laws and ordinances to prosecute all persons charged with the violation of any of the provisions of this chapter.

It shall be the duty of the secretary of the board, under the direction of the board, to aid such officers in the enforcement of this chapter.

7872. Every person is guilty of a misdemeanor and for each offense of which he is convicted is punishable by a fine or not more than five hundred dollars (\$500) or by imprisonment not to exceed three months, or by both fine and imprisonment:

(a) Who, unless he is exempt from registration under this chapter, practices or offers to practice engineering geology in this State according to the provisions of this chapter without legal authorization.

(b) Who presents or attempts to file as his own the certificate of registration of another.

(c) Who gives false evidence of any kind to the board, or to any member thereof, in obtaining a certificate of registration.

(d) Who impersonates or uses the seal of any other practitioner.

(e) Who uses an expired or revoked certificate of registration.

(f) Who shall represent himself as, or use the title of, registered engineering geologist, or any other title whereby such person could be considered as practicing or offering to practice engineering geology, unless he is qualified by registration as an engineering geologist under this chapter.

(g) Who manages, or conducts as manager, proprietor, or agent, any place of business from which engineering geology work is solicited, performed or practiced, unless such work is supervised or performed by a registered engineering geologist.

(h) Who violates any provision of this chapter.

Article 7. Revenue

7880. A certificate of registration as an engineering geologist expires at 12 p.m. on June 30 of each even-numbered year, if not renewed. To renew an unexpired certificate, the certificate holder shall, on or before June 30, of each even-numbered year, apply for renewal on a form prescribed by the board, and pay the renewal fee prescribed by this chapter.

7881. Except as otherwise provided in this article, certificates of registration as an engineering geologist may be renewed at any time within five years after expiration on filing of application for renewal on a form prescribed by the board and payment of the renewal fee in effect on the last preceding regular renewal date. If the certificate is renewed more than 30 days after its expiration, the certificate holder, as a condition precedent to renewal, shall also pay the delinquency fee prescribed by this chapter. Renewal under this section shall be effective on the date on which the application is filed, on the date on which the renewal fee is paid, or on the date on which the delinquency fee, if any, is paid, whichever last occurs. If so renewed, the certificate shall continue in effect through the date provided in Section 7880 which next occurs after the effective date of the renewal, when it shall expire if it is not again renewed.

7882. A suspended certificate is subject to expiration and shall be renewed as provided in this article, but such renewal does not entitle the holder of the certificate, while it remains suspended and until it is reinstated, to engage in the activity to which the certificate relates, or in any other activity or conduct in violation of the order or judgment by which it was suspended.

7883. A revoked certificate is subject to expiration as provided in this article, but it may not be renewed. If it is reinstated after its expiration, the holder of the certificate, as a condition precedent to its reinstatement, shall pay a reinstatement fee in an amount equal to

the renewal fee in effect on the last regular date before the date on which it is reinstated, plus the delinquency fee, if any, accrued at the time of its revocation.

7884. Certificates of registration as an engineering geologist which are not renewed within five years after expiration may not be renewed, restored, reinstated, or reissued thereafter. The holder of such certificate may apply for and obtain a new certificate, however, if:

(a) He is of good moral character.

(b) No fact, circumstance, or condition exists which, if the certificate were issued, would justify its revocation or suspension.

(c) He takes and passes the examination, if any, which would be required of him if he were then applying for the certificate for the first time.

The board may, by regulation, provide for the waiver or refund of all or any part of the application fee in those cases in which a certificate is issued without an examination pursuant to the provisions of this section.

7885. The department shall receive and account for all money derived under the operation of this chapter and, at the end of each month, shall report such money to the State Controller and shall pay it to the State Treasurer, who shall keep the money in a separate fund known as the Professional Engineer's Fund. All necessary expenses incurred in carrying out the provisions of this chapter shall, in accordance with law, be paid from the Professional Engineer's Fund.

7886. The department may make refunds of all fees in accordance with Section 158 of this code.

7887. The amount of the fees prescribed by this chapter shall be fixed by the board in accordance with the following schedule:

(a) The fee for filing each application for registration as an engineering geologist at not less than twenty-five dollars (\$25) and not more than forty dollars (\$40) and for each application for certification as engineering geologist-in-training at not less than fifteen dollars (\$15) and not more than twenty-five dollars (\$25).

(b) The registration fee for engineering geologist shall be fixed at an amount equal to the renewal fee in effect on the last regular renewal date before the date on which the certificate is issued, except that, with respect to certificates which will expire less than one year after issuance, the fee shall be fixed at an amount equal to 50 percent of the renewal fee in effect on the last regular renewal date before the date on which the certificate is issued. The board may, by appropriate regulation, provide for the waiver or refund of the initial certificate fee where the certificate is issued less than 45 days before the date on which it will expire.

(c) The duplicate certificate fee at not less than one dollar (\$1) and not more than three dollars (\$3).

(d) The temporary registration fee for engineering geologist at not less than ten dollars (\$10) and not more than forty dollars (\$40).

(e) The renewal fee for an engineering geologist shall be fixed by the board at not more than sixteen dollars (\$16) and not less than eight dollars (\$8).

(f) The delinquency fee for a certificate is an amount equal to the renewal fee in effect on the date of its expiration.

TESTIMONY GIVEN IN REGARD TO

SENATE BILL 1349

STATE REGISTRATION OF ENGINEERING GEOLOGISTS

Sacramento, California

April 7, 1964

JOHN A. LAMBIE, *Los Angeles County Engineer,*Presented by HARVEY T. BRANDT, *Chief Deputy Engineer*

Thank you for the opportunity to present testimony to your committee in regard to Senate Bill 1349, pertaining to state registration of engineering geologists. *The Los Angeles County Board of Supervisors*, on March 31, 1964, upon recommendation of County Engineer John A. Lambie, adopted a motion "*strongly urging the passage of Senate Bill 1349* for establishing registration for engineering geologists on a statewide basis *similar* to the certification procedures for civil engineers and land surveyors." The County of Los Angeles *recommends* this bill as being necessary to insure the *orderly development of safe building sites* in the foothill and mountain areas.

Although engineering geology is a branch of the geological sciences, it is noteworthy that the somewhat unique professional responsibilities of the engineering geologist make it necessary to define the scope of his work separately. Engineering geology may be defined as the application of geologic knowledge, principles and techniques in the observation and evaluation of the influence of earth materials in the planning, construction and maintenance of earth slopes and engineering structures. In the application of this knowledge and these principles and techniques, the engineering geologist is primarily a geologist. However, to make his work effective, he must think like an engineer and translate this geologic knowledge into terms an engineer can use for the design of structures. For this reason, registration as an engineering geologist should include requirements for a substantial working knowledge of civil engineering and soil mechanics.

The continuing utilization of marginal land and hillside areas for building construction sites, not only in Los Angeles and adjacent counties but throughout the state, requires proper *building procedures and soil evaluation methods* in order to insure that structures will be built on stable foundation material. These procedures cover many complex problems including the stability of existing and potential landslide areas, unstable soil, soil compaction, erosion control, grading and excavating, and drainage control.

Before the adoption of a grading ordinance by the Los Angeles County Board of Supervisors, many capable and conscientious builders and developers were careful to follow sound engineering practices in making cuts and fills and in proving adequate soil compaction and erosion control. Others, accustomed only to flatland sites, began leveling

shelves for hillside homes without sufficiently understanding the type of soil, geology and drainage factors involved. Individual homeowners and even developers were sometimes unaware that on hillside lots many problems must be solved beyond providing level or suitably graded locations for building foundations.

To prevent property damage which could occur from unregulated grading practices and to insure that proper considerations be given to such problems as erosion, compaction, slope cuts and drainage, the board of supervisors adopted a grading ordinance effective March 22, 1957. To date, our department has issued over 4,000 grading permits covering some 85,000,000 cubic yards of earthwork.

On the hundreds of acres of hillside areas remaining undeveloped in Los Angeles County, *many present such serious geologic problems that building construction must be prevented.* When conditions warrant, the county engineer requires to be submitted, with the building permit application, a geologic report prepared by an engineering geologist approved by the Los Angeles County Engineering Geologist Qualifications Board. Under the requirements of the subdivision ordinance, engineering geologic reports may also be required prior to consideration of a tentative subdivision map by the regional planning commission's subdivision committee. In checking grading plans, particular attention is given to compliance with the engineering geologist's recommendations, methods of compaction, slopes of banks, drainage devices, and proper erosion control methods. Sewage and sewage disposal facilities, both on the property directly concerned and on nearby properties, need careful consideration because the accumulation of subsurface drainage water, for example, from private disposal facilities may cause subsidence or slippage of surface soil.

Since the beginning of the major development of building sites in the foothill and mountainous areas of Los Angeles County, it has been apparent that, in addition to administrative controls, engineering geologic maps are essential to provide basic knowledge of the county's "problem" areas. These maps are indispensable to the more detailed studies of building areas performed by the private consultants and to the county for its land use studies, road and tunnel facilities, and other engineering works. The nature and distribution of the soil and rock formations, as well as the geologic structural features of a particular area, have a profound effect on slope stability, subsidence, erosion, ground water seepages, grading excavation and other problems. Most of the existing geologic maps have been inadequate for engineering uses because the emphasis had been placed on the mineral economics or academic geology rather than on the engineering aspects. These existing maps usually are of too small a scale and lack the necessary details regarding landslides, geologic structure, and the distribution and engineering properties of the soil and rock units.

Recognizing that in order to properly plan and control both county projects and private construction good geologic base maps were essential, the Los Angeles County Board of Supervisors, in October of 1960, initiated a continuing cooperative geologic mapping program with the United States Geological Survey Department and with the California State Division of Mines and Geology. The United States Geological Survey Department has undertaken the mapping of portions

of the western Santa Monica Mountains, beginning with the critical Malibu Beach Quadrangle. The California State Division of Mines and Geology has undertaken the mapping of portions of the Palos Verdes Hills and the foothills of the San Gabriel Mountains.

In the coastal 10 square miles of the Malibu Beach quadrangle, most of which is highly desirable living area, 83 existing landslides have been located, some of which are presently active. Thirty of these are over five acres in area, and one is approximately 1,500 feet wide and one-half mile in length. The Palos Verdes study has located some 150 landslides and in the San Gabriel Mountains a slide with an area of two square miles has been mapped. Upon completion of this cooperative engineering geological mapping program, these engineering geological maps will be made available to developers, subdividers, engineers and the general public.

Detection and evaluation of the problems for which solutions must be found in order to provide stable soils for building sites are items requiring thoroughly competent engineering geologists. The County of Los Angeles is painfully aware of the fact that a disregard for these problems can be disastrous.

The Department of County Engineer has, for several years, been requiring written reports and geologic studies for most hillside development work within its jurisdictional area. It was apparent, after studying some of the earlier reports, that they had been prepared by persons who lacked the necessary background and experience in this type of work. In order to prevent such unqualified persons continuing to represent themselves as being capable of evaluating geological hazards and recommending corrective remedies, it was necessary for the Los Angeles County Board of Supervisors to enact an ordinance establishing the Los Angeles County Engineering Geologist Qualifications Board. The ordinance provides that Engineering Geologist Qualifications Board serve to (1) establish minimum standards of experience and professional training for qualification of engineering geologists, (2) examine and evaluate candidates applying for certification and to issue appropriate certification to those found to be properly qualified, and (3) in special cases, act as a board of review to provide for interpretation of data, opinions and conclusions contained in geological reports.

The provisions of Senate Bill 1349 will accomplish the first two functions of the engineering geologist qualifications board and in this way assist the people of California in developing hillside and marginal areas by assuring that the competent assistance of qualified engineering geologists will be provided. Another aspect of the registration of engineering geologists is that of equal professional levels. The complexity and economic significance of hillside development work requires the cooperative evaluation and exchange of data between the design engineer, soils engineer and the engineering geologist. The highest level of this cooperation can be obtained when the three groups are of equal professional status.

Certification and regulation of *engineering geologists* can be more *efficiently and effectively* handled at a state level.

Two members of the Los Angeles County Engineering Geologist Qualifications Board are practicing engineering geologists. Although

these members are of the highest caliber, this function could be construed as a conflict of interest.

Orange County and the City of Los Angeles maintain separate engineering geologist qualifications boards, creating the necessity for an engineering geologist to obtain three certificates in order to practice in southern California. Although the certificate requirements are essentially the same, it is possible for an applicant to become qualified through examination by one local agency and then fail to qualify with another.

As more and more of the "flatland" and favorable hillside areas are developed with the coming of additional millions of people to California, developers are looking to *all* land, no matter how rugged or marginal, for improvement as building sites. For the safety and welfare of the citizens, this development will require the most careful control and evaluation by highly qualified and experienced engineering geologists.

As in the case of the engineering profession, the work performed by the engineering geologist directly affects the safety and welfare of the people of California. It is therefore our recommendation that the practice of engineering geology be regulated by State registration.

Original signed
JOHN A. LAMBIE
County Engineer

LOS ANGELES ORDINANCE REGULATING ENGINEERING GEOLOGISTS

Ordinance No. 7754

An Ordinance adding Article XXX to Ordinance No. 4099, the Administrative Code, relating to the Engineering Geologist Qualifications Board.

The Board of Supervisors of the County of Los Angeles do ordain as follows:

Section 1. Article XXX is added to Ordinance No. 4099, entitled "the Administrative Code of the County of Los Angeles, adopted May 19, 1942, to read:

Article XXX

ENGINEERING GEOLOGIST QUALIFICATIONS BOARD

Section 451. A Board designated as the Engineering Geologist Qualifications Board is hereby established. The Board shall consist of five regular members and one ex-officio member. The five regular members of the Engineering Geologist Qualifications Board shall be appointed by the Board of Supervisors. Two members shall be qualified by education, training, experience and prominence in the field of engineering geology, two members shall be qualified by education, State registration, experience, and prominence in the field of civil engineering, and one member shall be qualified by education, training, experience and prominence in the field of soil mechanics. The ex-officio member shall be the County Engineer of Los Angeles County or his duly authorized representative.

Section 452. The Board of Supervisors shall appoint all regular members of the Qualifications Board, subject to the right of the said Board, to remove any member at its pleasure, for a minimum of three (3) years or until an office becomes vacant due to death or resignation, or until qualified successors are appointed or as exempted below.

Appointments shall be for a full term of three (3) years or for the remainder of an unexpired term as the case may be, except that two of the initial appointments shall be for two (2) years duration and three of the initial appointments shall be for three (3) years duration.

Section 453. Chairman and Vice Chairman. At the first meeting and annually thereafter the Qualifications Board shall choose from among its members a chairman and a vice chairman such other officers as it sees fit to serve for one year. The County Engineer or his representative shall act as secretary to the Qualifications Board.

Section 454. As used in this article, "Qualifications Board" means the Los Angeles County Engineering Geologist Qualifications Board created by this article.

As used in this article, "engineering geology" is the application of geologic knowledge, principles, and techniques in the observation and evaluation of the influence of earth materials, including ground water, in the planning, construction and maintenance of earth slopes and engineering structures.

Section 455. The Qualifications Board shall hold at least one regular meeting each month. Any combination of regular members numbering three (3) constitutes a quorum. At a meeting at which a quorum is present, the expressed concurrent will or vote of a majority of those members of the Qualifications Board participating or voting, as the case may be, but in no event less than two (2), shall be the will or action of the Qualifications Board.

Section 456. The members of the Qualifications Board shall receive the compensation provided from time to time in the current Salary Ordinance. In the absence of any provision therefor in said current Salary Ordinance, the members of the Qualifications Board shall serve without compensation, except when required to travel in the performance of their duties, they shall be reimbursed for their necessary travel expenses, including transportation, meals and lodging in accordance with applicable provisions of this Ordinance.

Section 457. The Qualifications Board shall recommend to the Board of Supervisors for adoption, rules and regulations for the procedures of the Qualifications Board of this County. These rules and regulations shall be available to the public.

Section 458. A person shall not submit any engineering geological reports required by County Ordinances unless he has applied for and obtained a valid certificate of registration issued by the Qualifications Board as provided in this article. This requirement shall become effective six (6) months after the effective date of this article.

Section 459. The Qualifications Board shall examine each applicant and determine his qualifications to prepare and submit geological reports based on minimum standards established by the Qualifications Board. The Qualifications Board shall certify those applicants who pass

the examination successfully and issue the applicant a certificate of registration.

Section 460. The Qualifications Board shall maintain a roster of persons holding valid certificates of registration issued pursuant to this article. Such roster shall be available to the public.

Section 461. It shall be the duty of every holder of a certificate of registration issued by the Qualifications Board to comply with all requirements and conditions of registration as set forth by the Board of Supervisors.

Section 462. Should the Qualifications Board after holding a public hearing as required by Section 463, find that a certificate of registration has been obtained by fraud or misrepresentation, it shall immediately revoke such certification.

Should the Qualifications Board find that the holder of a certificate of registration has violated any of the requirements of the Qualifications Board, the Qualifications Board may, at its discretion, suspend or revoke the certificate, or deny a renewal thereof, or deny a new certificate to the same person.

The signing and presentation of an engineering geological report, as required by County Ordinances, which was not prepared by or under the immediate direction of the geologist submitting the report, shall be cause for revocation of a certificate of registration.

The Qualifications Board shall consider charges against the holder of any certificate of registration concerning professional competence and may, where the facts warrant, suspend or revoke the registration.

Section 463. The Qualifications Board shall not deny, suspend or revoke a certificate of registration until the Qualifications Board has given the holder thereof at least ten (10) days notice to appear before the said Qualifications Board and show cause why his certificate should not be suspended or revoked. In showing such cause he may be represented by an attorney and may introduce evidence.

Section 464. The Qualifications Board shall also serve as a Board of Review to provide for interpretation of data, opinions, conclusions or any one or more thereof included in and adequacy of geological reports.

Section 465. The Qualifications Board shall keep a record of its decisions and findings.

Section 466. The Qualifications Board shall compile and keep current a list of cities and other public agencies maintaining satisfactory examination and qualification procedures for engineering geologists who submit reports on geology involving engineering matters.

Section 467. Any applicant who fails to appear for examination after being duly notified, or any applicant who fails to pass the Qualifications Board's examinations satisfactorily, may reapply for examination after the expiration of thirty (30) days. Should such person fail to pass the second time, the Qualifications Board may refuse a third application for examination until after the expiration of six (6) months from the date of the first examination.

Section 468. Each applicant for a certificate of registration shall pay a fee of Five Dollars (\$5.00) for each examination to the Department of County Engineer at the time of filing and acceptance of his application therefor.

(a) When an applicant fails to take the examination for good cause shown, he may apply for and receive a refund of eighty per cent (80%) of his application fee.

(b) Every certificate of registration provided for by this article, unless sooner revoked, shall expire one year after the date of issuance, and each such certificate may be renewed prior to its expiration by payment of Two and One Half Dollars (\$2.50) renewal fee on or before the date of expiration.

Section 2. This ordinance shall be published in the Journal of Commerce & Independent Review, a newspaper printed and published in the County of Los Angeles.

FRANK G. BONELLI,

Chairman of the Board of Supervisors
of the County of Los Angeles.

Attest: GORDON T. NESVIG,

Clerk of the Board of Supervisors of the County of Los Angeles.

I hereby certify that at its meeting of March 15, 1960, the foregoing ordinance was adopted by the Board of Supervisors of said County of Los Angeles by the following vote, to wit:

Ayes: Supervisors Kenneth Hahn, Ernest E. Debs, Burton W. Chace, Warren M. Dorn, and Frank G. Bonelli.

Noes: None.

GORDON T. NESVIG,

Clerk of the Board of Supervisors
of the County of Los Angeles.

Effective date April 15, 1960.
(18639) Mar 25

C. W. DONOHUE
Superintendent of Building and Safety
HAROLD L. GOLDY
Chief Building Inspector

ALBERT B. NELSON
Land Use Administrator
FLOYD G. McLELLAN, JR.
Senior Civil Engineer

COUNTY OF ORANGE

DEPARTMENT OF BUILDING AND SAFETY

400 West Eighth Street, Santa Ana, California

April 1, 1964

THE HONORABLE ALAN SHORT
Chairman of Senate Factfinding Committee
on Business and Commerce
California Legislature
State Capitol
Sacramento, California 95814

Re: Hearings on proposed Registration Bill (SB 1349)

Dear Sir:

In reference to your notice of hearing for April 7, 1964, it will not be possible for my staff personnel to be present. We enclosed a copy

of our excavation and grading code and requirements pertaining to engineering geologists in our letter of October 22, 1963.

We stated our position in the above letter; however, I will elaborate to clarify our problem and possibly better illustrate our need of setting standards for professional performance of engineering geologists to protect the public health and safety.

The County of Orange, California, is approximately 782 square miles in area, of which approximately 542 square miles is unincorporated. Over 90 percent of this unincorporated area is composed of moderate to very high relief and is considered hillside area. The whole county has experienced a 225.6 percent increase of population between 1950 and 1960. If our population growth continues at the present rate of 8,000 people per month we will have over 3 million people by 1985. A large percentage of this future growth will reside in foothill and mountainous areas. On much of this terrain, geological hazards are inherent and their effects have to be neutralized or eliminated if extensive damage to public and private property is to be avoided.

We not only need qualified engineering geologists in our hillside residential and commercial development, but also in the construction of public and private roads, dams, reservoirs, bridges, tunnels, flood control works, railroads and schools. We are aware of considerable damage to public and private properties and waste of taxpayers' money due to the lack of qualified geologic control in these fields of construction.

Water is a premium and a necessity in the development of our county specifically and southern California generally. We need qualified engineering geologists to assist in the development and management of ground water basins and in the control of pollution in our potable supplies.

In order that we may assure the public that we have qualified engineering geological control of our hillside development, we have established an engineering geologist qualification board in our grading ordinance. These engineering geologists are qualified by the board by reason of knowledge and experience in their profession. Only those found qualified by the board are allowed to submit reports based on the minimum standards established by the board. However, those qualified by the boards in the City and County of Los Angeles are not necessarily accepted by the board here in Orange County. State registration will reduce or prevent multiplicity of these local boards.

We feel that stability per se cannot be governed by legislation, ordinances, or governmental agencies. Each site or problem must be investigated on its own merit by qualified investigators. State registration for engineering geologists will set standards and qualifications for their professional performances and will clarify their legal responsibilities.

Very truly yours,

C. W. DONOHUE

Superintendent of Building and Safety

THE AMERICAN INSTITUTE OF PROFESSIONAL GEOLOGISTS

Post Office Box 836, Golden, Colorado 80402

Executive Committee
MARTIN VAN COUVERING
President

THOMAS R. BEVERIDGE
Secretary-Treasurer

BEN H. PARKER
Chairman, Advisory Board

OFFICE OF THE PRESIDENT
 1560 Knollwood Terrace
 Pasadena, California 91103

OFFICE OF THE CHAIRMAN
 c/o Frontier Refining Co.
 4040 East Louisiana Avenue
 Denver, Colorado 80222

OFFICE OF THE SECRETARY-TREASURER
 Missouri Geological Survey
 Rolla, Missouri

April 7, 1964

THE HONORABLE ALAN SHORT, *Chairman*
 Senate Factfinding Committee on Business and Commerce
 California State Senate
 Sacramento, California

Dear Senator Short:

My name is Martin Van Couvering and my address is 1560 Knollwood Terrace, Pasadena, California 91103. I am a consulting petroleum geologist and engineer, licensed under the Professional Engineers Act of the State of California. My engineer's certificate number is P-281, and I have been a member of the American Association of Petroleum Geologists for 40 years.

I am appearing before your committee on behalf of the American Institute of Professional Geologists, a newly-formed nationwide geological society of which I am the president. (Reference is made to our information brochure, "All About AIPG," and our basic documents, which are submitted herewith. (In order that my remarks may have greater meaning to you, I should like to describe the American Institute of Professional Geologists to you and illustrate some of its goals.

The American Institute of Professional Geologists was formed last November to meet the needs of practicing geologists in every field of specialization for an organization which would raise professional standards, enhance and preserve the standing of the profession with the public, and insure the protection of the public welfare from non-professional practices of geology. To achieve these aims, the code of ethics, constitution and by-laws of the institute set forth very exacting qualifications for membership (for example, a minimum of 12 years of professional experience).

Because of the romance which attaches to our profession, and because we deal largely in forecasting the unknown, our profession has always been prone to invasion by charlatans and otherwise incompetent pseudo-geologists. Also, as in any other profession, there have been cases where competent geologists have disregarded professional ethics in the conduct of their business. Finally, in recent years, certification and registration of geologists have become quite important in many states. The

American Institute of Professional Geologists is solely a professional society, and, as such, we believe we may render valuable service in elevating the legal status of geologists in such areas.

To obtain these objectives, and at the request of most of the scientifically-oriented geological societies in California (whose memberships comprise the great majority of California geologists), the California Section of the American Institute of Professional Geologists has assumed the role of spokesman in *opposing passage of Senate Bill 1349*.

Accordingly, I wish to state that we oppose Senate Bill 1349 because the bill is too circumscribed: it would accord legal status to a *small segment* of the geological profession and totally ignore a vastly larger group of no less competent earth scientists. It also disregards the fact that there are no sharp lines of definition between many of the fields of geological specialization, and individual geologists often are proficient in more than one field. The obvious result of such preferential and parochial registration is the division of the geological profession into distinct and probably alien factions. At a time when geologists should be striving for unity in the interest of upgrading their standards, to the benefit of the general public, we are confronted with a proposal which can only lead to misunderstanding and dissension among geologists themselves. Such fractionation of the profession would be detrimental to the public welfare.

In the interest of offering constructive advice to the committee, while at the same time opposing Senate Bill 1349, the California Section of the American Institute of Professional Geologists submits that the registration of all qualified geologists is preferable to the division of the profession by passage of Senate Bill 1349. We certainly recognize the need which engineering geologists feel for registration, but we suggest to them that universal registration of all qualified geologists in California would fulfill that need and bring harmony to the profession. We therefore recommend that consideration of Senate Bill 1349 be postponed until a more general and suitable bill is introduced.

To expedite this program, the California Section of the American Institute of Professional Geologists has appointed a legislative committee, consisting of representatives from the various geological societies. Mr. Arthur O. Spaulding is chairman of this committee, which intends to work diligently toward multilateral registration. The Legislative Committee of the California Section of the American Institute of Professional Geologists has had its first meeting, and Mr. Spaulding will report on its progress.

Thank you for the opportunity you have provided me in addressing you.

Yours very truly,

MARTIN VAN COUVERING

WASHINGTON UNIVERSITY

DEPARTMENT OF EARTH SCIENCES, ST. LOUIS, MISSOURI 63130

March 27, 1964

Re: Senate Bill 1349

Mr. ALAN SHORT, *Chairman*

Senate Factfinding Committee on Business and Commerce

State Capitol

Sacramento, California 95814

Gentlemen:

The importance of Senate Bill 1349, providing for the registration of *engineering geologists*, cannot be overemphasized. The public's safety and protection against nonqualified "experts" in those areas where civil engineering projects into critical "fields" of the geological disciplines, is an absolute necessity.

Some states have seen fit to require the registration and licensing of *mining and petroleum geologists*, who may or may not also be called engineering geologists; but in many, perhaps in most instances these same specialists may NOT be qualified by training or experience to pass judgements upon foundations, damsites, vehicular tunnels, landslide problems, and ground water hydrology, to mention just a few examples.

The same may be said of civil engineers and soils engineers, although some of the latter may have been exposed to geological training where their discipline overlaps that of the engineering geologist.

My experience as an engineering geologist, both as a consultant and teacher, since 1933, and as a registered professional engineer, has given me a firm conviction of the importance of permitting only qualified geologists and/or engineering geologists, to pass judgements of a technical nature on civil engineering projects. It is fair to state that close to fifty percent of my consulting work involves errors in judgement and understanding of fundamental geological principles made by persons not qualified to make geological decisions relative to civil engineering projects.

This does not imply that no geologists other than engineering geologists may contribute to such projects. For example; the geophysicist, the geochemist, the X-ray mineralogist, the ground water geologist or hydrologist, and others in highly specialized geological disciplines, may play a most important role in contributing essential information to the engineering geologist. However, many of these specialists may NOT be qualified by experience and training to assume the geological responsibility involved in highway geology, tunnel problems, damsite foundations, landslide investigations and similar fields of engineering geological applications.

In view of my experience in more than fourteen foreign countries, and throughout the United States, I speak with some feeling on this subject.

As former chief geologist for the Pennsylvania Turnpike Commission; and such present affiliations as consultant for Parsons Brinckerhoff Quade and Douglas (New York); Ammann & Whitney (New York) the Board of Consultants for the Tennessee Valley Authority; Elec-

troconsult (Milano, Italy); Wabash Drilling Company (Missouri), and others: and with experience as a consultant on the St. Lawrence Seaway; for the World Bank in Lebanon; for the California Division of Highways; on the Fort Ritchie Project in Maryland; NORAD in Colorado; SAC in Nebraska; several missile sites; the Autopista in Venezuela, and many others (see Who's Who); it is my conviction that your Senate Bill 1349 is extremely important to the public safety and welfare of the citizens of the State of California.

The qualifications of engineering geologists in California should be examined closely and standards of examination, training, and experience determined in large part by such qualified personnel as may be found on the roster of the *Association of Engineering Geologists* with headquarters in Sacramento.

It is my hope that a strong and wise licensing law may find favor with your committee, to the benefit of all Californians.

Very truly yours,

ARTHUR B. CLEAVES
Professor, Engineering Geology
at Washington University (St. Louis)

STATEMENT OF MR. JOHN E. KILKENNY

To the Senate Factfinding Committee on Business and Commerce

April 7, 1964

Mr. Chairman—Members of the Committee:

My name is John E. Kilkenny and I am employed by the Union Oil Company of California, P.O. Box 7600, Los Angeles, California, in the capacity of domestic geological coordinator.

In behalf of the Pacific Section of the American Association of Petroleum Geologists, which I have served as president during the year 1963-64, I wish to make a statement to your honorable body opposing Senate Bill 1349.

In order that the committee may be acquainted with the organization that I represent, I should like to review for you the structure of our society and the size and scope of its membership.

The Pacific Section of the American Association of Petroleum Geologists is affiliated with and subordinate to the American Association of Petroleum Geologists, a worldwide organization having a membership of 14,907 geologists as of March 1964. The Pacific Section in turn consists of 1,015 active members, 825 of whom currently reside and practice in California. Many of our members belong not only to the parent Pacific Section but also to its subsidiary societies, namely the Coast Geological Society, the San Joaquin Geological Society, the Northern California Geological Society, and the Sacramento Petroleum Association. With this brief introduction, it should be evident that the organization which I represent as president constitutes a significant body of practicing geologists in California.

The Pacific Section of AAPG opposes Senate Bill 1349 on the grounds that the bill, if passed, would restrict the practice of certain phases of geology in California and, further, would divide the geological pro-

fession into two antagonistic elements. As presently worded, S.B. 1349 would confine the practice of ground water geology, for example, to those who would be licensed as engineering geologists. Thus, other able geologists, especially those experienced in petroleum exploration and production, would be proscribed from practicing ground water geology unless they first qualified as engineering geologists. Under S.B. 1349 petroleum geologists do not possess the minimum qualifications and experience to so qualify. As we believe there are as many, if not more, petroleum geologists who are competent in the field of ground water geology as there are engineering geologists, passage of S.B. 1349 would work to the advantage of the few at the expense of the many. Indeed, certain petroleum geologists depend almost entirely for their livelihood on income derived from ground water studies. These geologists would be prevented by S.B. 1349 from earning their living unless they first obtained licenses as engineering geologists.

The Pacific Section of AAPG has a far more fundamental objection to S.B. 1349. Passage of the bill would permit a comparatively small segment of the geological profession in California to obtain licenses to practice, whereas a much larger group would remain unlicensed. This is not to deny the need of the engineering geologists to obtain registration and status equivalent to that of the civil engineers with whom they so closely associate, but it is our feeling that registration of engineering geologists alone would lead to alarming disunity within the profession. We may cite, by way of example, the two basic professions—medicine and law. In both these traditional vocations the practitioner is first and foremost a doctor and a lawyer, and secondarily a specialist. In the same way, we believe that an earth scientist should be a geologist first and an engineering geologist, petroleum geologist, economic geologist, mineralogist, mining geologist, etc., only after he has presented acceptable basic credentials. Should the engineering geologists be successful in their movement for registration, we may expect other geological specialists to seek similar recognition and ultimately the total fragmentation of the profession.

The Pacific Section of AAPG believes that the public health, safety and welfare of California would be best served by the registration of all qualified geologists in the state. The Pacific Section agrees with the Association of Engineering Geologists that engineering geologists should be registered so that they may enjoy the same status as do the engineers with whom they work. Overriding this necessity, however, is the need for unity in the profession and the Pacific Section regards S.B. 1349 as a wedge which would split geologists with essentially the same background, and in many cases training, into two disparate groups. Because the Pacific Section is sympathetic to the needs of the engineering geologists, we do not seek to abolish efforts to achieve geological registration and we respectfully urge your honorable body to postpone consideration of S.B. 1349 until a substitute bill designed to register all qualified geologists can be introduced. Such a bill is currently in preparation under the sponsorship of the American Institute of Professional Geologists.

Thank you for the privilege of allowing me to address you.

STATEMENT BY ARTHUR O. SPAULDING

To the Senate Factfinding Committee on Business and Commerce

April 7, 1964

Mr. Chairman—Members of the Committee:

My name is Arthur O. Spaulding and I am employed by the City of Los Angeles as the city's oil administrator. I am a member of the Society of Petroleum Engineers of the American Institute of Mining Engineers, and a member of the American Association of Petroleum Geologists. For the year 1963-64 I have held the elective office of secretary for the Pacific Section, American Association of Petroleum Geologists. Recently I have been appointed by Martin Van Couvering as the Chairman of the Legislative Committee, California Section, American Institute of Professional Geologists.

I am appearing before you in order to report progress in connection with the preparation of a bill which would be a substitute for Senate Bill 1349 to which the AIPG Legislative Committee has declared its opposition. Before I submit such a progress report I should like to tell you something of the makeup of our committee, in that, from what Mr. Van Couvering has told you, the American Institute of Professional Geologists is an organization which, hopefully, will field a membership from all walks of the geological profession. To be properly representative then, our committee should be composed of various kinds of geologists.

Our chief problem in staffing a legislative committee now is that there has been very little time to assemble it. Only recently has the American Institute of Professional Geologists been requested to carry the ball for a number of geological groups in California, and we have found it difficult to collect a diversified committee of geologists in time to plan constructively for this public hearing. In any event, the AIPG Legislative Committee presently consists of the following members:

1. Mr. Tom Baldwin, of the Humble Oil and Refining Co., a member of the AAPG and former Pacific Section president.
2. Mr. Harold Clark, retired chief reservoir engineer from the conservation Committee of California Oil Producers; member of both AAPG and the Society of Petroleum Engineers of AIME.
3. Mr. Linn F. Adams, exploration manager for the Standard Oil Company in La Habra.
4. Dr. James A. Noble, formerly on the staff of Caltech, now a consulting mining geologist, and a member of the Society of Economic Geologists.
5. Dr. Thomas L. Bailey, general geological and ground water consultant and a member of AAPG.

(It should be worth noting, in connection with Dr. Bailey, that he derives a substantial proportion of his income from activities which the Association of Engineering Geologists cherish as their own professions. Dr. Bailey would be unable to continue practice if S.B. 1349 were passed and he were not registered under this bill.)

6. Mr. Elmo W. Adams, consulting geologist and registered engineer; a member of both AAPG and AIME.

7. Mr. Robert H. Paschall, Senior Mineral Deposit Evaluation Engineer for the State of California; a member of both AAPG and AIME.

From this list it is evident that our committee consists of a wide spectrum of geological interests with heavy accent on petroleum geology, naturally, because of the preeminence of petroleum as a mineral commodity in California. As our committee matures, we hope to have a greater range of geological representation and to this end we have invited the Association of Engineering Geologists to participate in objective discussions. To date the latter group has not answered our invitation and has remained silent on our suggestion that they join with the American Institute of Professional Geologists to secure multilateral registration.

On April 2, 1964, the Legislative Committee of the AIPG held a meeting in order to discuss the legislative goals for the AIPG in California. Consonant with the objectives which have been described for the AIPG by Mr. Van Couvering, the primary purpose of our committee has been to consider legislation which would register all qualified members of the geological profession in California. I am happy to report to you at this time that a preliminary draft of such legislation has been prepared and is currently under modification by our committee. The chief revision which we contemplate in this early draft of legislation is the elimination of the descriptions of any geological specialties which may be practiced by geologists in California. In order that our proposed legislation would have universal appeal among all practicing geologists, we believe it appropriate not to define, as an elemental part of our bill, any of the so-called specialties of petroleum geologist, engineering geologist, mining geologist, etc. Rather, we would establish simple criteria for the registration of all geologists who meet certain minimum standards. Should there be a desire for emphasis upon specialties, such as engineering geologists and petroleum geologists, these might be better defined at a later date or in a subsidiary bill. Unfortunately, our work is not in such a stage of completion that we may furnish your committee with a draft of our proposal so that you might consider it in comparison with S.B. 1349. But it is our hope that before the 1965 General Session of the California State Legislature our committee will have completed such an all inclusive bill to register all qualified geologists in California.

We respectfully solicit your committee's indulgence until a date later in 1964 when we may present such a bill to you for your consideration.

RESOLUTION

Passed and Adopted by San Joaquin Geological Society

December 9, 1963

WHEREAS, San Joaquin Geological Society has reviewed State of California Senate Bill 1349 entitled, "A Proposed Act to Register and Regulate Engineering Geologists," and

WHEREAS, It is believed that the passage of Senate Bill 1349 in its present form would be inimical to the best interests of the geological profession in the State of California, and

WHEREAS, San Joaquin Geological Society recognizes the need for the registration and regulation of professional geologists and believes that assistance and encouragement should be given to the passage of legislation which would benefit the geological profession as a whole.

IT IS HEREBY RESOLVED that the San Joaquin Geological Society shall:

1. Inform the Pacific Section of the American Association of Petroleum Geologists and the Business and Commerce Committee of the Senate of the State of California and any other interested parties of its opposition to Senate Bill 1349.
2. Indicate to the Pacific Section of the American Association of Petroleum Geologists and to the Business and Commerce Committee of the Senate of the State of California that it is in favor of acceptable legislation which would provide for the registration and regulation of all professional geologists.

Senate Factfinding Committee on Business and Commerce

Senator Alan Short, *Chairman*

HEARING ON S.B. 1349, APRIL 7, 1964

Testimony of H. R. Taber, President, Association of Engineering Geologists

As President of the Association of Engineering Geologists, representing some 270 practicing geologists in the State of California, I wish to express the support of the association for S.B. 1349 under consideration by this committee. Written statements, previously submitted by W. I. Gardner and P. J. Guthrie, cochairmen of the association committee on registration, express the policy of the association on this legislation. Suggested changes in S.B. 1349 as outlined by Mr. Guthrie are to meet two objectives.

First, the deletion of the phrase "or a registered civil engineer" in lines 35 and 36, Section 2841 (1) is to implement the essential qualification that an engineering geologist have training under direction of a geologist.

Second, the balance of the deletions are intended to have the effect of restricting the proposed legislation to protection of the title "engineering geologist" without restricting the practice of geology or the use of the titles "Geologist," "groundwater geologist," "petroleum geologist" or other title. We believe that a law implementing such title protection would not conflict with existing definition of "civil engineering" or definitions of field expressed by other geologists; such conflicts would no doubt occur under a law regulating the practice of engineering geology. It is our opinion that regulation of the use of the title "engineering geologist" would enable those jurisdictions, agencies and organizations within which the need arises, to specify that certain work be done by an engineering geologist without requiring that all work within the State and within an arbitrary definition be performed by a licensed engineering geologist.

It is not the intention of the association to hinder efforts of the geologic profession as a whole in seeking or attaining registration under the laws of the State of California. We believe that such legislation could be integrated with the "Engineering Geologists Act" at such time as this may be desirable. We do believe, in addition, that there is present need for legislation recognizing and regulating the field of engineering geology on a statewide level.

The urgency of such regulation is demonstrated by existing local regulation and the overriding consideration of the public welfare. Conditions arising, particularly in southern California, in the past few years have prompted the officials of local governmental agencies to require submission of geologic reports in addition to engineering reports for certain types of projects; and further, that the submission of such geologic reports be by engineering geologists approved by the local agency. In view of the facts that the conditions leading to this situation are closely related to intensive urbanization and that such urbanization may now occur in almost any portion of the state, it is apparent that such local regulation of a professional field may proliferate rapidly. In addition to the very real possibility of wide variations in standards, there would be almost certain confusion to the public, to the agencies and to the practicing professionals in an activity regulated by several tens of local agencies. We believe that the required regulation can be administered more economically and effectively by an existing State agency which has the present responsibility of statewide regulation of related professional practice.

Existing local regulation is, of course, a manifestation of the underlying consideration of the public interest, i.e., regulation was found necessary to the public safety and welfare. In addition to this publicly recognized relationship of engineering geology to public welfare, a review of major news events within the past year further indicates how the assessment of geologic conditions is of concern to the public safety and the economy. These events have been associated with situations as diverse as dam foundations, reservoir conditions, landslides and nuclear developments. We believe it to be evident that the assessment of geologic conditions and factors furnished to professional engineers is an integral part of the engineering works and should thus be recognized as a professional activity by the State. The responsibility of the engineering geologist for a vital part in engineering projects would thus be established and standards set for practice in his field.

The association believes that S.B. 1349 with the modifications suggested by the Association would effectively control a now unregulated field in the public interest; that it would be a supplement to and not interfere with the Civil Engineers Act and that it would not preclude licensing of any other part or the whole of the geologic profession.

HARMON RAY TABER, *President*
Association of Engineering Geologists

SOUTHERN CALIFORNIA EDISON COMPANY

Edison Building—P.O. Box 351

Los Angeles 53, California

April 3, 1964

SENATOR ALAN SHORT, *Chairman*Senate Factfinding Committee On Business and Commerce
State Capitol

Gentlemen :

As chief civil engineer and head of the civil engineering division for the Southern California Edison Company, I am directly accountable to management for the design of all company civil engineering facilities. Within my organization are two engineering geologists whom I must depend upon for advice in regard to the multiplicity of geologic problems which intimately relate to the safe design, construction, and maintenance of civil engineering features.

It is readily obvious and I have found that there must be a close working relationship between the engineering geologist and the civil engineer and that there should be a common responsibility by the two disciplines to protect the public health, safety, and welfare. Such responsibility can only be realized by establishing standards for professional performance.

I urge passage of this legislation.

R. W. DENNIS
Chief Civil Engineer
C-5621

STRUCTURAL ENGINEERS ASSOCIATION OF NORTHERN CALIFORNIA

417 Market Street

San Francisco 5, California

DOuglas 2-1721

ROBERT D. DALTON, JR., *President*

6 April 1964

SENATOR ALAN SHORT

Business and Professions Committee
State Capitol Building
Sacramento 14, California

Dear Senator Short :

We are taking this opportunity to comment on your committee's interim study of S.B. 1349 (1963 legislative session) concerning the registration of "engineering geologists".

Because of our interest in all matters which may effect the protection to the public provided by the "engineer's act" we have made a careful study of the matter you are about to consider. We will not presume to comment on the general subject of registration for geologists but will comment only on those facets of the proposed legislation which we feel are not consistent with the public interest.

Our first objection is to the title itself. "Engineering geologist" carries with it the implication that the holder of such a title, if not

an engineer, certainly has an engineering background. The proposed legislation, however makes no provision for either engineering education or training.

The stated reason for the legislation and the definition appear to continue the fiction that an "engineering geologist" is somehow qualified to perform engineering services despite the fact that he is not so trained.

It is our contention that no person should perform civil engineering functions unless properly educated, experienced, examined and licensed. The "engineering geologist" as described in the proposed bill will be allowed to perform some civil engineering functions without meeting any of these requirements.

The proposed inclusion of a geologist on the Board of Registration for Civil and Professional Engineers creates another problem. While it is recognized that geology is a scientific field and has much direct relationship to civil engineering problems, geologists, in general are not engineers. A geologist member of the board would not be in a position to properly function in the duties relating to engineering and would provide the public with a source of confusion of identity.

In the interest of brevity, we will not cite specific objections to the wording in S.B. 1349. There are many, but most are directed to the general objections above, however, we would like to state that if the committee should find that it is in the public interest to provide registration for geologists, we feel that very careful study is warranted to insure that the field is limited to the area for which the registrants are trained and that the public is protected from a confusion in title and function.

Very truly yours,

ROBERT D. DALTON, JR., *President*

Bakersfield, California

March 23, 1964

THE HONORABLE ALAN SHORT, *Chairman*

Senate Factfinding Committee on Business and Commerce

The State Senate

State Capitol

Sacramento, California

Dear Sir:

We, the undersigned officers of the Pacific Section Society of Economic Paleontologists and Mineralogists, a geological society, which has a membership of 126 practicing professional geologists, wish to bring to your attention that Senate Bill 1349, as presently composed and worded to register a small segment of the geological profession, is not in the best interest of the public health, welfare, and safety, and it restricts the rights of practice and tends to divide and separate fields of professional geologists.

We are in support of a bill which is now being prepared to register all qualified geologists who, in the interest of public health, safety, and

welfare, may be required to register or who may wish to register under the Business and Professions Code of the State of California.

We urge that action on S.B. 1349 be deferred until a bill is prepared which would register all qualified geologists.

Sincerely,

RICHARD L. PIERCE

President

JAMES I. WATKINS

Secretary

C. C. CHURCH

Vice President

ROBERT E. STEINERT

Treasurer

DEPARTMENT OF CONSERVATION, STATE OF TENNESSEE

G-5 State Office Building, Nashville 3, Tennessee

FRANK G. CLEMENT, Governor

Donald M. McSween, Commissioner

Sam Morris, Deputy Commissioner

April 2, 1964

HONORABLE ALAN SHORT, *Chairman*

Senate Factfinding Committee on Business and Commerce

State Capitol

Sacramento, California 95814

Re: Senate Bill 1349

Registration of Engineering Geologists in California

Gentlemen:

I am very interested that California is considering a bill for the registration of engineering geologist. Such a bill would be of great service to the general public, the State of California, the engineering profession, and the geology profession. It would serve as a model for the rest of the United States and would probably stimulate the passage of legislation in many states.

In Tennessee, I feel that we badly need registration of geologists, and, therefore, urge that you give favorable consideration to this legislation which will, in turn, help us to take similar action in the future in Tennessee.

Yours very truly,

DIVISION OF GEOLOGY

W. D. HARDEMAN, *State Geologist*

ELMO W. ADAMS, CONSULTING GEOLOGIST
747 Winchester Drive, Burlingame, California

March 31, 1964

SENATOR ALAN SHORT, *Chairman*

Senate Factfinding Committee on Business and Commerce
State Capitol
Sacramento, California 95814

Dear Senator Short:

Thank you for the notice of hearing on Senate Bill 1349 pertaining to registration of engineering geologists, said hearing to be held April 7th in Room 2040, State Capitol, commencing at 1:30 p.m.

The writer as president and representative of the Northern California Geological Society, wishes to testify on this bill. Please place me on the agenda and provide me with necessary instructions.

I am submitting herewith the statement I wish to make.

1. There are probably in excess of 2,000 geologists practicing in the State of California. Senate Bill 1349 is designed to register about 300 geologists practicing as engineering geologists.
2. Geology is a diverse and rapidly growing science. Professional geologists in California practice many specialties, each requiring a variety of disciplines. Each job requires different proportions of mineralogy, petrology, stratigraphy, structure, paleontology, geophysics, hydrology, and the many other branches of geology. Definition of the limits of a branch or specialty is almost impossible.
3. Senate Bill 1349, in attempting to define "engineering geology," in Section 7803,* correctly describes some of the ordinary activities of many petroleum geologists in exploring for and developing oil and natural gas resources.
4. S.B. 1349 would provide legal status for a restricted title in geology and would tend to infer that other geological titles are less worthy, would provoke dissention among those practicing geology due to overlapping and conflicting fields. Claimed infringement in working areas and titles would make administration difficult and would continuously require additional regulation to properly administer such a law.
5. Because of the nature of geologists' work in dealing with natural resources and their relationship to the public's evergrowing needs and requirements, it would be in the public interest and for the benefit of the safety, health, and welfare of the people of California to register geologists as a profession. Any bills to register geologists should provide for all geologists who wish to register or who may be required to register in the interest of public welfare, health, and safety.

* Section 7803. The application of geologic data, techniques, and principles to the study of naturally occurring rock, soils, materials, and groundwater for the purpose of assuring that geologic factors affecting the planning, design, construction, operations, and maintenance of civil engineering works, and the conservation of groundwater resources are recognized, adequately interpreted, and utilized.

6. Submittal of S.B. 1349 by the engineering geologists has prompted other geologists practicing in California to carefully review the effect of registration on their profession and relationships to the public. Many geologists from different specialties now agree that registration should provide for all geologists. Such a bill is in preparation. It is believed that such a bill can receive acceptance of a large segment of the profession, and be ready to submit to the Legislature prior to January 1, 1965.

I hope that you will include in your recommendations and findings that it would be in the interest of public welfare, safety, and health for your Committee to recommend that a bill registering all geologists would better serve the people of California than a bill to register a small segment of geologists.

Thank you for allowing me to present my comments and thoughts on this subject.

Sincerely,

ELMO W. ADAMS, *President*
Northern California Geological Society

CONSULTING ENGINEERS ASSOCIATION OF CALIFORNIA

800 West Colorado Boulevard, Los Angeles 41, California

HUGH C. CARTER, *President*

RALPH M. WESTCOTT, *Executive Director*

SENATOR ALAN SHORT

Chairman, Business and Professions Committee
2040 State Capitol
Sacramento, California

Dear Mr. Short:

SB 1349—*Registration of Engineering Geologists*

The Consulting Engineers Association of California has considered SB 1349 providing for registration of engineering geologists, and wishes to bring to your attention some aspects of the bill which need careful consideration.

The copy of the bill which we have had available for study is dated April 23, 1963. It may be that some changes of which we are not aware have been made which would improve the bill. In any event, it is our hope that our comments will be taken as being constructive.

We believe that enactment of SB 1349 would not be in the best interest of the safety, health, and welfare of the people of California if it is passed in such form as to permit geologists to engage in the practice of engineering. The educational and experience requirements for registration do not include qualifications in engineering. Briefly, the scope of practice as can be construed from "Scope of Regulation" is not compatible with the education and experience required under "registration."

We believe that the civil engineer exemption clause will lead to difficulties in interpretation and administration if it includes the phrase "insofar as he practices civil engineering in its various branches." We

believe that for the legislation to be satisfactory, a registered civil engineer should be exempt from registration under the provisions of an act providing for the registration of geologists.

If it can be shown that there is a real need for registration of geologists, the Consulting Engineers Association of California is not opposed to such registration. In the event that it should be decided that there is a real need for the registration of geologists, the Consulting Engineers Association of California is desirous of being of assistance in preparing legislation which will truly be in the best interest of the safety, health and welfare of the people of California.

Very truly yours,

HUGH CARTER, *President*

March 26, 1964

ALAN SHORT, *Chairman*
Senate Factfinding Committee on Business
and Commerce
State Capitol
Sacramento, California 95814

Gentlemen:

The forthcoming hearing on Senate Bill 1349 has been brought to my attention.

Here in South Dakota, we are not acutely aware of the grave problems that are present every day in your great State of California in the field of engineering geology. In every news media every day we hear about the failure of some structure that has served or would serve the public. The public of course, finances these structures, and are entitled to get the most out of their expenditure. To get the most, their interests should be protected by having qualified, competent, registered engineering geologists on the job in their behalf working hand in hand with the other qualified, competent, registered personnel e.g., civil, mechanical et al. engineers.

My work as an engineering geologist in South Dakota is concerned mainly with the management and administration of the Water Rights Law. I can readily see although, the myriad of problems that could come up in our state by not having qualified engineering geologists to assist in the planning and construction of water resource projects of any size, just to mention one particular field.

The records of the past centuries have shown a need for the registration of doctors, lawyers, and other fields that directly affect the safety and welfare of the public. Why shouldn't registration of engineering geologists follow the same thinking and course of action that these areas have taken?

California Senate Bill 1349 has my wholehearted support, and I sincerely urge your support.

Sincerely,

WILLIAM H. MILLER
Engineering Geologist
1001 E. Dakota
Pierre, South Dakota 57501

December 17, 1963

MR. ALAN SHORT, *Chairman*
Business and Commerce Committee
807 North San Joaquin Street
Stockton, California

Dear Sir:

I wish to express strong opposition to Senate Bill 1349 (Registration . . . of Engineering Geologists . . .). I am a graduate geologist (USC), presently employed as a supervisory geologist by Humble Oil and Refining Company and have been continuously employed as a geologist in California for 27 years.

I am a past president (1960) of the Pacific Section American Association of Petroleum Geologists (1,500 members and affiliates in California). I am presently a candidate for vice president of the National American Association of Petroleum Geologists (15,000 members, with worldwide coverage). In these capacities I have been responsible for various studies of the problems involved in registration or licensing of members of our profession.

In my opinion, our organization (75 percent of the professional geologists in the United States) would be unfairly discriminated against by Senate Bill 1349.

The Legislative Committee of the American Association of Petroleum Geologists is presently preparing a model law to serve the purposes of licensing in those states that desire such action. We feel the advantages of uniformity in professional standards will be best served by conforming as far as possible within our state to such a model law.

I, therefore, am opposed to the present Senate Bill 1349, which would cover only a very small splinter of my profession, and in effect would create a "Protective Guild" for members of that splinter group.

Yours sincerely,

T. A. BALDWIN

CHARLES E. PRICE, GEOLOGIST
6257 Fairwood Avenue, Las Vegas, Nevada 89107

March 24, 1964

ALAN SHORT, *Chairman*
Senate Factfinding Committee on Business
and Commerce
State Capitol, Sacramento,
California 95814

Sirs:

I am writing to urge approval of the California Senate Bill 1349, providing for the registration of engineering geologists.

As you may know, engineering geologists are registered here in Nevada. By means of this registration, we have been able to ensure

that the practitioners are well qualified technically, and that they perform their duties in an ethical manner.

Our rapidly expanding economy in southern Nevada requires the services of increasing numbers of engineering geologists, and while many California consulting engineering firms operate here, they cannot provide us with qualified registered geologists. Should registration be come available to consulting geologists in California, many of these men will undoubtedly become registered here also, under our reciprocity agreements.

Senate Bill 1349 will thus have the effect of not only safeguarding the public in California, but will also aid the State of Nevada by providing us with a "roster" of qualified engineering geologists on which we can draw to consult on our construction projects.

Sincerely,

CHARLES E. PRICE

COUNTY OF SONOMA

OFFICE OF SURVEYOR AND ROAD COMMISSIONER

DONALD B. HEAD, County Surveyor and Road Commissioner

132 Administration Bldg. · 2555 Mendocino Ave. · Santa Rosa, California

April 2, 1964

SENATOR ALAN SHORT

Chairman, Senate Factfinding Committee on
Business and Commerce
Sacramento, California 95814

Dear Sir:

I have reviewed SB 1349 concerning the licensing of engineering geologists. It appears to be a very good bill as it would require qualifications in this particular field of geology. With this requirement it appears that the selection of a qualified person would be assured. At the same time the licensed person would be responsible.

Yours very truly,

DONALD B. HEAD

County Surveyor and Road Commissioner

PRIVATE EMPLOYMENT AGENCIES

PRIVATE EMPLOYMENT AGENCIES

Two employment agency bills were referred to the Senate Factfinding Committee on Business and Commerce, AB 1885, introduced by Assemblyman Meyers, and SB 1037 sponsored by Senator Gibson. AB 1885 would amend the Labor Code to provide for minimum education and experience standards applicable to those qualifying for an employment agency license. The applicant would be required to have four years of college and six months experience in an employment agency, or three years of college and two years of experience, or any combination of college time and experience equivalent to five years, or a total of five years experience.

SB 1037 would remove the licensing and regulation of employment agencies from the jurisdiction of the Department of Industrial Relations, and establish a new agency for the purpose within the Department of Professional and Vocational Standards. Under this bill, regulation would be in the hands of an appointed board similar to those of other bureaus existing within the Department of Professional and Vocational Standards. In addition, the controversy provision relative to nonpayment of fees, embodied in present legislation, would be eliminated.

Background of the Subject

Employment agency licensing, as we know it in California, dates from the year 1913. With but minor exceptions, the present licensing provisions are the same as were originally enacted in that year. The 1913 law was amended in 1923 and again in 1957. The California licensing law does not differ substantially from the laws of the other 49 states.

Private employment agencies are an obvious outgrowth of the needs of industry to find qualified employees. The earliest agencies were utilized to supply domestics, workmen in the lumber and mining industries, and laborers for the construction of the great railroad systems. The private agencies are generally a product of and expand during the times of relative prosperity. Public employment agencies, on the other hand, develop as a result of adverse business conditions and in periods of recession or depression.

The U.S. Employment Service, which dates from 1907, was established to furnish job information to immigrants upon their arrival in our country. During World War I, federal funds were expended to establish 800 federal employment offices to help staff the wartime projects. The Employment Service in California, operated by the State, is subsidized by the federal government.

There are approximately 3,000 private employment agencies licensed by the State of California at the present time. These agencies fall into six different categories—general agencies and five specialties as follows: theatrical and motion picture agencies; labor contractors; nurses'

registries; artists managers; and farm labor contractors. At the present time there is a move on the part of the private employment agency associations to secure legislation which will remove the government from the employment agency business. There have been numerous articles in the business publications expounding the theory in support of this view. In addition, articles and speeches have been printed in the "Congressional Record," and legislative hearings in the Congress are contemplated. Needless to say, the private employment agencies face aggressive competition from the State Employment Service.

The bills submitted to the committee for further investigation deal with the subject of the general employment agency. There are approximately 1,200 of these general agencies licensed by the state today. These agencies commonly supply the clerical and technical help for our defense industries: engineers, computer operators, and the newer type of jobs in the space field. There are also some agencies specializing in domestic help and babysitters, but the vast majority are concentrated in the clerical, technical, and administrative areas.

The number of general agencies has grown with the population of the state. In 1940, 258 agencies were licensed and, as previously stated, there are almost 1,200 licensees today. In 1962, the general employment agencies made a total of 520,294 individual placements. For these services, they received a total of \$16,336,600.

The trend in private agencies over the years has been from the worker-type or manual worker-type of agency to the present clerical and service-type placement. Obviously, conditions that existed in 1913 do not exist today. The "shanghai" that was famous in San Francisco, where "crimps" doped individuals and placed them aboard the sailing ships, is of course a thing of the past. The unholy alliance between employment managers and agencies, which resulted in fee splitting and a constant turnover of jobs to fatten both their pockets, does not exist in the same degree or in the same fashion as it did in those years. Fee splitting, false advertising, and misrepresentation do still exist, to some extent. But it is primarily the changed emphasis in placement by the private employment agencies that calls forth the urgent request on our part for new regulation.

The stress in the field of commercial placements as opposed to manual labor type of placements can be traced in large measure to the growth of unions in the State of California. Many employer associations and labor groups in effect operate their own hiring halls and employment agencies. Moreover, the public employment agencies have dominated the general labor field since their growth during World War II. As for the special agencies, the legislation under consideration by the committee would exclude them and have no effect on their licensing.

The subject of employment agency licensing has been scrutinized by many committees of the State Legislature during the past years. On the one hand, the private agencies and their associations have been pressing for a change in regulations which they feel will meet their needs; and on the other hand, labor unions and some allied groups have also been active in behalf of proposals which would limit the fee an agency could charge for securing a job for a worker, and in some instances have sought their outright abolishment.

Testimony of Witnesses

The private agencies were ably represented by a spokesman from the California Employment Agencies Association, which claims a membership of 450 out of the approximately 1,200 licensees in the State of California.

With respect to AB 1885, only one industry spokesman appeared to support the bill: Mr. Mervin Kaney, partner in the K & M Personnel Agency of Sacramento. He urged its passage and recommended that the committee incorporate a recommendation favorable to its passage in this report. Mr. Kaney testified, in part:

“There is nothing that I have been able to find in the code that says that any Tom, Dick or Harry cannot go out and open an employment agency if he provides the proper bond and license. Educational background is not important. I personally believe that it should be. Experience is not important. Anybody, a dress clerk in a department store or anybody else can go out and open up and take the welfare of the applicants into their hands before they have been in business but a very short time. I do think that while I do not believe AB 1885 is the answer to all fields, employmentwise or any other business, I do believe that it is the first step forward into setting up a better practice throughout the industry.”

Mr. Terry Feil, of the Business and Commerce Agency of the State, speaking on behalf of Assemblyman Meyers, indicated that the bill had been patterned after the minimum qualifications which the Department of Employment sets up for its employment counselors. Mr. James Rubey, president of the California Employment Agencies Association, opposed this bill.

But Mr. Rubey spoke in support of SB 1307, urging the change in regulation from the Department of Industrial Relations to an independent agency in the Department of Professional and Vocational Standards:

“Public welfare demanded that employment agencies come under state regulation, which they did in effective terms, in 1913. In commenting upon the law, which was enacted in response to that situation, the Bureau of Labor Statistics, in its 16th biennial report for 1913-14, said, ‘Two years ago the bureau drafted and succeeded in having passed one of the most drastic laws for the regulation of private employment agencies.’ At that time both public and private agencies were regulated by the bureau and in the same report the bureau added, ‘In order to make free employment bureaus a real success, it will be necessary to further restrict’—and I hope the committee will listen—‘and eventually eliminate private employment agencies.’ Thus, on the record 50 years ago the state regulatory authority made no bones about its opposition and downright hostility to the industry to the ultimate extent of wanting us out of business.”

In continuation, Mr. Rubey indicated that while the official language has changed, the understanding between the Department of Industrial Relations and the employment agency industry is not what it should be:

"Now, while our present-day regulatory authority is the Labor Commissioner of California, he tempers official language a great deal with respect to this quotation. We regret that there still remains much hostility on the part of the regulatory authority towards our industry."

State Labor Commissioner Sigmund Arywitz replied to these assertions of the association as follows:

"We do not have a hostility to the agency. We do have a good working relationship, but we do seek to be firm; we seek to be effective; we seek to correct abuses where we find them. Now I might belabor the point of the need for regulation, but I would like to cite from a Supreme Court decision which states, 'The abuses which have grown up in this line of business have been long recognized and have been subject both to legislative acts and judicial decision. It has now become definitely settled that statutes regulating employment agencies fall within the police power of the state.'"

The association in its presentation commented on the changing economy of the State of California, and asserted that the counseling done by the employment agencies has led to better practices in the placement of technical and varied personnel, quite distinct from the type of operation envisioned when present legislation was enacted. They also strongly asserted that they have independently attempted to raise the standards in the industry, with little or no help from the licensing body.

Mr. Rubey: "Our association has adopted a strong code of ethics and I believe that you gentlemen have copies submitted with the brief, to which members subscribe as a condition of membership. This code is enforced among members and every attempt is made to gain compliance by nonmembers. Through this procedure, we have been successful in resolving many situations to the satisfaction of all concerned, without bringing them to the attention of the Labor Commissioner. In 1958, the association also founded the California Institute for Employment Counseling which administers accreditation examinations based on placement and personnel practices and on the Labor and Administrative Codes and other laws pertinent to employment agencies. The program is administered by the Institutes Board of Trustees composed of licensed and practicing agency owners."

The agencies feel strongly that they are not seeking an escape from regulations, but that they want to have a new bureau which will establish new standards and better service to the public. It was the consensus that new regulations should be in keeping with the needs of the modern employment agency, job seeker, and employer. It is their belief that the present regulation and licensing does not meet these goals. Mr. Rubey concluded his testimony as follows:

"We definitely do not believe that the licensing standards as proposed in Senate Bill 1037 would not deter any reasonably qualified individual from going into the employment agency business.

Our primary reason for speaking in qualified opposition to Assembly Bill 1885 is because we believe the standards it proposes are unnecessarily restrictive. The potential of this industry is great and the problem is not one of too many employment agencies, but one of competent employment agency management."

In urging the enactment of SB 1037, the association presented additional testimony by Jean Widdicombe, owner of an employment agency in Whittier; Mr. Robert Livingston, an employment agency operator in Sacramento; and Mr. James Pierce, who operates employment agencies in Los Angeles and Pasadena, California. They were all opposed to the present regulatory and licensing body under which they are controlled. The following testimony by Jean Widdicombe was typical:

"This is probably the one thing on which we all can agree, and that is that there should be a transfer of authority out from under the Division of Labor Law Enforcement. This is essential to the successful continuing operation of employment agencies in the service of the people of California. And now, with us it isn't a question of whether we are going to be licensed or not. We are merely requesting a transfer or requesting to be put under the Division of Professional Standards. We want to be licensed. We have been licensed for many years. With us, it is a question of would the public be better served if the agency were under the Division of Labor Law Enforcement? All you have to have today to secure a license is \$100, two friends down the street, a bond for a \$1,000 and evidence of good moral character. The Labor Commissioner may cause an investigation but he isn't required to. So far as we know, this is the only vocational or professional license issued by the state without any qualifying standards of competence. Really, we can only compare it with a license for fishing or hunting. You don't qualify for it, you just buy it. All the regulation is done after issuance. Now, every year 30 percent of the entire industry of some thousand agencies comes in for new licenses."

The chairman inquired as follows:

"Supposing they inaugurated a program of giving examinations to applicants to make sure that they knew at least the state's laws on the subject of employment agencies and other pertinent matters, pertinent to the business and operation, and running of the business. Would you be for that?"

Miss Widdicombe answered:

"This is definitely one of the conditions of the bill. This is why we are here. We have felt this way for years and this is the culmination of a lot of effort in this direction. We definitely want qualifying examinations."

Chairman Short asked:

"Have you asked the Labor Commissioner to do something like that?"

Miss Widdicombe answered :

“Yes, we have. We have got 30 percent of these licenses issued without any qualifications or examination from the commissioner’s office and he can’t do much about that because he is given no authority. In 1961, our association brought up AB 509, which was an examination bill, into the Assembly. At that time, and at all times, the commissioner vigorously and successfully opposed adoption of these things. He has said that ‘Anyone with a sixth-grade education can operate an employment agency.’ Now, over the period of years, the Labor Commissioner has neither advanced ideas of his own nor has he endorsed suggestions developed within the industry for writing competency standards into the law. We have been available for conferences right in San Francisco. We have made it clear to the division in which we operate that we are anxious to do something in this line, and yet there has, up to this point, been no cooperation. The commissioner’s disinterest and actual opposition to legislation intended to provide protection to the public from the practices and activities of incompetent agency licensees is the major reason why we are convinced that nothing short of transference to another authority will make it possible to carry out such a program. I would like to go aside and say that I mentioned before that there is a philosophical difference. The Division of Labor Law Enforcement has always been, and possibly should be, labor oriented. Historically, labor and employment agencies have not seen eye to eye, have not been philosophically close. It is almost an impossibility to be regulated by an authority, I refuse to use hostility, but by an authority which is uninformed and unrealistic about the practical aspects of running an employment agency.”

The agency owners in their testimony stressed their desire to have a board as opposed to a bureau chief, and the following testimony was recorded in this connection. Chairman Short questioned :

“Supposing you had a regulatory board within the Division of Labor Law Enforcement. You had two people from employment agencies, two people, well, someone having the job that Mr. Arywitz does and someone else from the division and a layman to make policy. How would that go?”

Mr. Robert Livingston, First Vice President of the California Employment Agencies Association and owner of an agency, answered :

“I think your answer at the moment, Senator, to that is as we have stated in the previous presentation. We feel we can do better and serve better under the Division of Vocational and Professional Standards. Our first preference is to be under a different department.”

In the course of the public hearing, Senator Backstrand inquired as follows :

“I am consumed with curiosity and the sixth grade education requirement and you, I believe, spoke to the effect that it was like getting a hunting license. I was wondering whether there were

any statistics concerning the turnover in this particular field. How many agencies continue on year after year? How many of them are in for six years? If somebody has some figures, I would be most interested."

Mr. Kenneth Buck, Executive Secretary, California Employment Agencies Association, replied:

"Out of approximately a thousand licenses outstanding, issued by the Division, we estimated at any given time only about 750 operate. The turnover rate in the industry is about 30 percent per year. Each year 30 percent either change hands, come into existence or leave the field."

Senator Backstrand then asked:

"To what do you attribute this turnover?"

Mr. Buck stated:

"Predominantly, Senator, not only to poor business but the employment industry has not been good over the last few years. But we attribute more to incompetency. Of course, we do have a low capitalization income for this industry. Frankly, we feel that anyone who wants to come into the industry, who has the merits to do so and so long as there is a measure of competency, they can come in. But many simply don't know the business, Senator. That's the problem."

Further testimony dealing with the question of competency was offered by Mr. James R. Pierce, Past President of the California Employment Agencies Association. He urged the enactment of S.B. 1037, and stated:

"This is the heart of the bill, to make sure competent people are operating employment agencies in California. Poor practices which now exist in the employment agency field, in an overwhelming majority of cases, can be traced to lack of knowledge. Almost always we find that agency owners do not intentionally violate either the law or accepted standards of practice. They simply are uninformed."

Hearings on Controversies

The association urged that another section be added to SB 1037 to eliminate the so-called "controversy procedure" included in Section 1647 of the Labor Code. Agency witnesses were of the opinion that this law is archaic and should be abolished. Labor Code Section 1647 states that "in all cases of controversy arising under this chapter the parties involved shall refer the matters in dispute to the Labor Commissioner, who shall hear and determine the same, subject to an appeal within 10 days after determination." This has been the subject of a great deal of discussion and necessary clarification. The crux of the problem arises from the fact that the simple failure to pay a fee has been ruled a controversy within the meaning of the statute by the Attorney General's office. As a result, although an applicant has secured a job through the efforts of an employment agency, and has

signed a contract in writing agreeing to pay a fee for same, and does not deny owing same, both the applicant and the agency must appear before the Labor Commissioner or one of his agents for a hearing to determine that the fee is actually due. Administratively, the Labor Commissioner's office has tried to take the position that where no dispute existed, and where the applicant either admitted owing the fee or did not answer a request for information or appear in hearing, no controversy did exist. In 1953, legislation was introduced giving the Labor Commissioner the authority to certify that no controversy exists. The courts subsequently ruled that the language of the statute was ambiguous and not clear and negated the intent in the passing of this legislation. Consequently, in order for an employment agency to reach the courts and reduce their fee to judgment, they must have filed an application for hearing with the Labor Commissioner, secured his ruling that the fee is due, and then appear in court to affirm same. They cannot sue or attach without going through this process. The agencies feel that the Labor Commissioner's office is most exacting and that the process is time consuming. The testimony of Kenneth Buck on this matter was most illuminating:

"Let's take a very hypothetical but often occurring situation. This is what must happen before an agency can do more than ask politely for its fee: Since the commissioner is adverse to awarding a determination for the full fee short of 90 days, which is defined as a permanent position, it is not practical to file a request for a hearing until the applicant has been on the job for at least 60 days. After you file the request for hearing, you then, of course, assemble the documents and the statements and then you wait an average of 30 days more for the scheduled hearing, during which time a great many debtors, as we say in the business, 'skip.' At the hearing the representatives of the agencies must appear and prove that all documents are valid. Now, this is crossing the 't's' and dotting the 'i's.' For those on whom service has been effected there is an average 30-day period for the proposed determination. That is, after the hearing has been scheduled, the determination is not until a full month thereafter. Then, after the determination another 10-day period must lapse to allow for appeal to the Commissioner and after that there is a second delay waiting for a possible appeal by the defendant in that particular action to the Superior Court, which is available to them through the Labor Code. So it is now 140 days since the debt was incurred and this is a period during which, in many cases, the employment agencies have not received a nickel. Only at this point does the agency pull up level with other creditors in the business community in his ability to collect contract fees."

His testimony was further enlightening in that he stated:

"California is the only state with a controversy procedure. In other states a contract between an employment agency and its clients is regarded in the same manner as are other contracts and the differences between principals are resolved by the judiciary."

Mr. Buch concluded his testimony by stating:

"We do believe that the transference of authority, as proposed by Senate Bill 1037, is sound. We think it is necessary and essential to the public interest. We believe that the examination for who come into the employment agency field is vital and we do not believe that the regulatory authority and the administration of those examinations is advisable under the current mode of relations between this industry and the Labor Commissioner. We do not believe that the controversy procedure is any longer needed and that it should be repealed. Now, we are in no sense inflexible and we are not suggesting, Senator, that we should be without regulation."

Response to Committee Survey

It is interesting to note in connection with this legislation and the testimony that, prior to the hearing, the committee staff selected 50 employment agencies throughout the state, at random, covering every geographical area, for the purpose of eliciting information. The seven following questions were asked: How long have you operated an agency?; how many controversies have you submitted to the Labor Commissioner?; would you consider his decision fair?; did you receive courteous treatment?; how often has your agency been inspected by the Labor Commissioner?; what, in your opinion, should be the minimum qualifications for securing an employment agency license?; and, do you feel that the public can better be served if you are regulated by a different department or board?

Of the agencies contacted, about 90 percent responded. One-third of those replying indicated a desire for a change of regulatory authority; one-third were satisfied with the present type of regulation; and one-third were noncommittal and indicated that they did not care whether they were regulated by the Labor Commissioner or a new agency. The comment on one of the responses was interesting:

"My son, who is a partner, and who manages the northern California offices, does not think the change suggested should be made. There is good reason for this stand on his part. He and some of the older agencies owners think, and probably with good cause, that most of the complaints against the employment agencies are caused by actions in the southern part of the state. There are many more of them and many of the licensees are from the eastern United States where things may be different and also the size of this market, plus the extreme competition."

Out of all the questionnaires returned, only one agent stated that he did not receive courteous treatment from the Labor Commissioner's office, and the overwhelming majority felt that his decisions were fair.

Many of the replies indicated that they felt the Labor Commissioner was biased in favor of the worker and, in effect, bent over backwards to see that every "t" was crossed and every "i" was dotted. It was evident in checking over the testimony that little emphasis was placed upon the role of the worker and the protection afforded to him by employment agency regulations. The unemployed worker is quite weak in sales resistance, and could easily be subjected to unfavorable and unfair treatment if stringent regulations were not enforced. A maga-

zine article stated that when an applicant pays an employment agency fee, he is not buying just a week's salary, but a career and certainly his self-respect if he has been hunting work for any length of time. Under these conditions, no fee looks too high and no contract appears too unfair in view of the growing prospects ahead. The records also indicate that fee splitting, false advertising, and misrepresentation still exist, but the chiseler of today is much more sophisticated than the culprit of 1913.

Testimony of State Labor Commissioner

A great deal of the ill feeling existing between the private agencies and the Labor Commissioner is a question of communication and also a question of semantics. At the conclusion of the association's testimony, Commissioner Arywitz commented upon their presentation and pointed out that the Labor Code is the basic law of the state for the protection of the working man. He testified:

"The placement goes to the welfare of the wage earner and his family and the welfare of the wage earner and his family is something that is the concern of the Labor Code. There are many other sections of the Labor Code which may not deal directly with the question of an employer-employee relationship, but at the time that a person is jobless and is looking for employment is a time when he is extremely vulnerable. This is the argument that I have used in the past and I know, from my own experience, that he is most vulnerable to the point where every promise is a plausible one and where he will sign things that are put before him because his mind is on the job. He is in danger of having some misrepresentation. Senator Backstrand asked the question before about what kinds of skills would be necessary and experience, and the answer was given to him that an agency might take a job out of the "help wanted" ad and send the applicant on. Well, this is one of the things we are concerned about, but this is a policing question. This is a question of honesty and integrity. This is not a question of experience, of knowledge of professional aptitude; it is a question of, is the agency operator giving the jobseeker a fair shake? I concede that a great many of the agencies, the overwhelming majority of them, operate ethically and honorably and we have no problems. The 'bad apples' referred to in previous testimony are the ones that we have problems with, but the 'bad apples' are guilty of misrepresentation and of fraud, of taking advantage of the applicant. They are not guilty of lack of knowledge, but they are guilty of misusing the knowledge that they have. The Division of Labor Law Enforcement is responsible for enforcing most of the law dealing with employer-employee relationship and it does have experts in the fields, and the courts have recognized these experts. It has a general knowledge and experience with the whole area of what goes on after the employee has a job and it brings this knowledge to bear in its activity and relationship with the employment agencies and I would imagine after 51 years of dealing with employment agencies, that there is a great body of experience that has been built up in the Division of Labor Law

Enforcement that cannot easily be transferred over to another agency, but it is because of these experts that the labor agency was designated as the administrative body in the regulation of employment agencies in 32 states out of the 46 that have laws dealing with the matter."

Commissioner Arywitz's testimony indicated that where the employment agencies are not regulated by the labor agency of a state, such regulation is mainly in the hands of local bodies and, as in the New England states, the town meeting tradition prevails. He indicated that only in the state of Michigan is there a separate bureau covering the licensing of private employment agencies.

When the question of emphasis was raised, Commissioner Arywitz's testimony was to the point:

"I note that the proponents of the bill do accept the need for regulation, but rather the question seems to be a difference as to who was to do the regulating and where should the emphasis be. Should it be for the protection of the public jobseeker or the employer to whom the jobseeker is sent or should that emphasis be on the benefit of the employment agency business. I think that we would agree that while we should not be unmindful of the interest of the business, our record is not one of hostility. The present law is designed primarily to protect the applicant and to protect the employer. In other words, to protect the employer and employee relationship. Much has been made of the fact that you have a hunting license given by the Division of Labor Law Enforcement. This is not the case."

The Labor Commissioner's testimony stated that his office does exercise control before a licensing and does make a thorough investigation. In discussing the composition of a regulatory board and the possible transference of regulation from the Division of Labor Law Enforcement to the Department of Professional and Vocational Standards, Commissioner Arywitz testified:

"It is my belief that where there is a regulatory body and the regulatory body is concerned with the public interest, the public interest ought not to be subordinated to the interest of the industry. I believe it to be essentially for these reasons basically that I have opposed AB 509 and, for this reason, I feel any such board should be a board who represents the interest of the public and should not have a built-in majority of the industry itself."

The commissioner laid particular stress on the question of the qualifying examination sought by the association and the standards being urged for the occupation. He agreed that there should be standards and professional training, and discussed the question of educational qualifications, experience, and skills. He was not opposed to qualifications, and indicated that there should be an understanding of the industry if an examination were necessary to qualify for a license. He felt that there should be basic training, an understanding of personnel management, and a demonstrated ability to test for aptitude and skills. In addition, there should be minimum educational requirements as well as professional training. He was of the opinion, however, that all of

this experience and education would not guarantee a successful operation. His testimony was very direct on this point:

"I talk to many people in the business and I know that many of them, who are outstandingly successful, who have the big agencies, and play a leading role in the communities have told me that they went into this business and without any special knowledge of the business. They had business ability, though, and I think again, Senator Backstrand, this answers your question. There are about 200 agencies a year that go out of business, but it is because of lack of financing and lack of normal skills of business, I would imagine, and our division handles bankruptcies and insolvencies that includes about the same average. There is in California a great turnover in all small businesses, restaurants, construction businesses; we have a tremendous lot of this and it is because of failing to understand business and just no business ability and you can't test for business ability and there is certainly nothing in the standards that would indicate that business ability would be screened out and so only somebody who is financially able to be successful would be able to get a license."

The question of the operating efficiency of a new agency which might regulate in this field was discussed. At the present time, the licensing and regulatory work, including controversies, is handled by three deputy labor commissioners, three investigators, and four clerks. In addition to this staff there are part-time functions discharged by the Labor Commissioner, attorneys, additional deputy labor commissioners, investigators, and clerks. The commissioner was of the opinion that the cost of operating a new agency would, by reason of its separate nature, be greater than that experienced under the Division of Labor Law Enforcement. The division is set up to serve the public in many ways, and discharges many responsibilities in the community in addition to its functions with reference to employment agencies. As a result, the general overhead of the department covers employment agency work. If a separate board were to be set up in another department, this additional expense would be allocated directly to the agency, and the coverage in the state would suffer because eight people could not possibly cover the work in the employment agency field. San Francisco, the bay area, and the Los Angeles area alone would take this many people, according to the opinion expressed.

Results of Labor Commissioner Hearings

There has been previous discussion about the alleged cumbersome controversy procedure, wherein agencies must submit collection matters to the commissioner for hearing before they have access to the courts. It was pointed out that the staff of the Division of Labor Law Enforcement has been handling these matters for over 60 years, and that in the hearing procedure many agency violations are uncovered and the enforcement of the law is enhanced. In some instances it is an educational procedure. The commissioner drew attention to the fact that the courts are overcrowded, and that in many instances the courts looked to the Division of Labor Law Enforcement for guidance in these matters.

With reference to the complaints of time lapse in the handling of controversies by his office, the Labor Commissioner indicated that his staff has endeavored to work out procedures to smooth the operation and to expedite matters. The figures concerning controversies submitted to the commissioner for adjudication are of interest; there were approximately 5,000 such controversies in 1963, and of this amount 2,041 resulted in the award of the full fee to the agency involved, while 753 resulted in the award of a partial fee. Thus in 60 percent of the cases the agency did receive a fee. Of the balance, 333 decisions denied the fee to the agency. One thousand cases were dismissed at the request of the agencies, subsequent to their notification of the division that the matter had been resolved to mutual satisfaction, and that dismissal was desired. The remainder of 1,278 were not handled because it was not possible to effect service of the notice to appear upon the applicant.

Of the total number of cases heard by the Division of Labor Law Enforcement, 414 decisions were appealed to the commissioner when one of the parties objected to the preliminary decision, 331 being appealed by the agency and 83 by the worker. In 164 cases the original determination was sustained; this involved 102 employment agency appeals and 62 worker appeals. In the remainder of the cases, the appeal was upheld and a new determination made. The commissioner pointed out that if the Labor Commissioner's office were bypassed there is good reason to believe that these matters would be resolved by default. The worker might be afraid to go to court, either because he had a fear of the courts or had never been there. A court hearing, by its very nature, is more formal. Under such circumstances the worker could feel ill at ease. He would be more likely to feel that he would receive consideration and fair treatment through the more informal procedures of the commissioner's office.

At the conclusion of his testimony, Commissioner Arywitz was questioned by the various members of the committee. Senator Backstrand asked:

"Mr. Arywitz, in part of your testimony you stated that this bill and other bills have been presented and this is sort of part of a program of them trying to get away from the Labor Commissioner and in some other agency for policing and/or standards. Now, if things have been working as well as your testimony seems to indicate, how do you account for the fact that over the years they have had this continuous program of trying to move in the other direction? Is that just an accident or how do you account for that?"

Commissioner Arywitz answered:

"No, Senator, I think that there have been, always been, a great many people in the business and this association has spearheaded this and they have been trying for a great many years to go into self-regulation."

Senator Backstrand then asked:

"And you are opposed to self-regulation?"

Mr. Arywitz replied :

“Well, in this field I am because I think the language of the Supreme Court clearly shows their impression that policing power by the state is very definitely needed in this field.”

Senator Backstrand asked :

“Would this apply to dentists and doctors and lawyers and others?”

Mr. Arywitz stated :

“No, because this is a professional matter. Remember that there are very high standards and they do very good jobs policing themselves and their activities as practitioners. In other words, in the field of the practice of medicine there isn't a question of misrepresentation of employment or dishonesty, but professional competency.”

Senator Luther Gibson said :

“Of course, there are other people in the professions, not professions necessarily, that are licensed by the state and other organizations are licensed not only just the medical profession, many other types of professions are being licensed at this time in the State of California. How many have you got altogether?”

Chairman Short answered :

“Thirty boards.”

Senator Gibson stated :

“It seems to be doing some good or we wouldn't be having those boards at the present time. I think it is a good thing to try to elevate these professions, whether you call it a profession whether you call it something else, but I think it is a good thing to have themselves disciplining their own industry.”

Mr. Arywitz answered :

“Well, I don't think we want to derogate them. I have no argument with the Department of Professional and Vocational Standards. I merely want to point out that I think the Division of Labor Law Enforcement is best suited to do this because of its experience in the field and because of its activities in the general area of employer-employee relationships. Because of this I feel that this agency is best qualified.”

Senator Gibson said :

“Your work has been very fine. You have been helpful to us on many a problem concerning this type of legislation. I have enjoyed what you have had to say. I think it is very helpful and I still have nothing but praise. You said something about the number of people on the board being laymen because people from the industry would not be interested in the public. That is the ethical part of it. You believe that the only thing they will be interested in is their own profession. Well, I would say that we have an at-

torney here, our chairman of this committee, who is a professional man and he has ethics which he lives up to and I think he is trying to develop in the people in these various professions the high standards of ethics within themselves, and I think the better way to do that is to put them out to pasture, let them see what has to be done to regulate themselves so that they don't have to rely entirely upon the government to do everything for them."

Mr. Arywitz said:

"There is a problem here of the protection of the applicants. It is because of the jobseeker, because of the relationship to the job, that we are concerned."

Chairman Short said:

"I might say, Mr. Arywitz, I didn't interrupt you while you were making your presentation for two reasons: one, it was an excellent presentation and; secondly, you weren't redundant, you really covered the field, and I think you did a very fine job sustaining the position that you have taken. Now, my only reason for asking for this information is that I think there should be some kind of examination for people going into the employment agency field. I think there is a possibility of setting up a board right in the Department of Industrial Relations. Two-two-and-one is what I would suggest, the one meaning the laymen, where they talk with such things as fees, for example. This might not be something you like but they would have the authority to do something along that line."

Numerous letters were received by the committee. The letters were pro and con with respect to employment agency operations and the matter of their remaining under the wing of the Labor Commissioner or being placed under a new agency.

Subsequent to the hearing, the committee staff met with representatives of the Employment Agency Association to further discuss the problems of the industry; it also met with the staff of the Division of Labor Law Enforcement to seek further views with respect to their position. In addition, the chairman of the committee addressed the annual meeting of the California State Employment Agencies Association in Long Beach. In his remarks he outlined the probable recommendations that would be made to the Legislature in 1965.

RECOMMENDATIONS OF THE COMMITTEE

It is the recommendation of the committee that regulation and licensing of private employment agencies remain within the Department of Industrial Relations, Division of Labor Law Enforcement.

It is further recommended that the controversy procedure contained in Section 1647 of the Labor Code be so amended as to provide that simple failure to pay a fee shall not be regarded as a controversy.

It is also recommended that an employment agency licensing and policymaking board be established, and that this board be granted broad powers to regulate private employment agencies. The board should consist of five members: two members from the employment agencies; two members from the general public; and as fifth member and chairman, the Labor Commissioner. This board would have powers to set minimum qualifications for licensing; to set minimum standards for agency operation; it should have disciplinary powers; it would act as the appeals board in controversy matters; it should have the authority to set the procedures for controversy hearings by the Labor Commissioner and/or his agents; it should have the authority to entertain disputes and set a fee where an applicant complains of an excessive charge, or asserts that the fee is not properly correspondent to the work performed by the agency; the board should have the authority to base its decision on services rendered and/or performed by the agency.

APPENDIX

AMENDED IN SENATE JUNE 15, 1963

AMENDED IN ASSEMBLY MAY 30, 1963

CALIFORNIA LEGISLATURE, 1963 REGULAR (GENERAL) SESSION

ASSEMBLY BILL

No. 1885

Introduced by Mr. Meyers

March 14, 1963

REFERRED TO COMMITTEE ON CIVIL SERVICE AND STATE PERSONNEL

An act to add ~~Section 1582.05~~ SECTIONS 1582.05 AND 1582.06 to the Labor Code, relating to employment agencies.

The people of the State of California do enact as follows:

SECTION 1. Section 1582.05 is added to the Labor Code, to read:

1582.05. An applicant for a license as an employment agency shall have one of the following qualifications:

- (a) Four years of college and six months of experience.
- (b) Three years of college and two years of experience.
- (c) Any other period of college time computed and compared with matching experience and one year of experience.
- (d) Five years of experience.

The experience required by this section may be obtained in any industry, state, or employment agency position wherein the primary function of the individual is the hiring and or placement of personnel.

Any person who is licensed on May 31, 1963, may continue to be granted a renewal of his license although he does not meet the requirements of this section so long as he meets the other requirements of this article, and does not fail to renew his license for any period in excess of six months.

SEC. 2. Section 1582.06 is added to said code, to read:

1582.06. *If the applicant applying for the license is other than an individual, the operating manager shall meet the requirements of Section 1582.05.*

If such individual ceases for any reason whatsoever, to be connected with the licensee to whom the license is issued, the licensee shall notify the Labor Commissioner in writing within 10 days from such cessation, association or employment. If a notice is given the license shall remain in force for a reasonable length of time to be determined by rules of the Labor Commissioner.

If the licensee fails to notify the Labor Commissioner within the 10-day period, at the end of the period his license shall be immediately suspended. The license shall be reinstated in the same manner as for the issuance of a new license.

SENATE BILL

No. 1037

Introduced by Senator Gibson**March 25, 1963**

REFERRED TO COMMITTEE ON BUSINESS AND PROFESSIONS

An act to add Chapter 20 (commencing with Section 9800) to Division 3 of the Business and Professions Code, and to amend Section 1710.37 of, and to add Sections 1699.1, 1699.2, 1699.3, 1699.4, 1699.5, 1699.6, 1699.7, 1699.8, and 1699.9 to, and to repeal Sections 1698, 1700.14 and 1710.18 of, and Chapter 1 (commencing with Section 1550) of Part 6 of Division 2 of, the Labor Code, relating to employment agencies, creating the Employment Agency Licensing Bureau, prescribing its organization, powers, and duties, and making an appropriation therefor.

The people of the State of California do enact as follows:

SECTION 1. Chapter 20 (commencing with Section 9800) is added to Division 3 of the Business and Professions Code, to read:

CHAPTER 20. EMPLOYMENT AGENCIES**Article 1. General Provisions**

9800. This chapter of the Business and Professions Code constitutes the chapter on employment agencies. It may be cited as the "Employment Agency Act."

9801. As used in this chapter, "person" means any individual, company, society, firm, partnership, association, corporation, manager, contractor, subcontractor, or their agents or employees.

LEGISLATIVE COUNSEL'S DIGEST

SB 1037, as introduced, Gibson (B. & P.). Employment agency.

Adds Ch. 20 (commencing with Sec. 9800), Div. 3, B. & P.C.; amends, adds and repeals various secs., Lab.C.

Creates within the Department of Professional and Vocational Standards an Employment Agency Licensing Bureau under the direction of the Director of Professional and Vocational Standards. Vests in the bureau the power to license and regulate employment agencies.

Creates an Employment Agency Advisory Board, consisting of five members appointed by the Governor for four-year terms, to assist the director in carrying out his functions under act.

9802. As used in this chapter, "employment agency" or "agency" means:

(a) The business of conducting, in any capacity, an intelligence office, employment agency, registry, or any agency, business or office which procures, offers, promises or attempts to procure employment or engagements for others or employees for employers, or for the registration of persons seeking to procure or retain employment or engagement, or for giving information as to where and of whom such help, employment or engagement may be procured, or for providing employment or engagements where a fee or other valuable consideration is exacted, or attempted to be collected, directly or indirectly, for such services, regardless of where such business is conducted.

(b) Any person, service, bureau, organization, club, or school, which by advertisement or otherwise offers, as one of its main objects or purposes, to procure employment for any person who will pay for its services, or that collects dues, tuition, or membership or registration fees of any sort, where the main object of the person paying the same is to secure employment.

(c) Any person who acts as a labor contractor.

(1) A labor contractor is any person, who, for a fee or other compensation, employs an individual to render personal services to, for or under the direction of a third person.

(2) "Bona fide employees" or "employees," when used with reference to the employees of a labor contractor, refers to the employees rendering services to the labor contractor and not to the individuals employed by the labor contractor to render personal services to, for or under the direction of a third person.

(3) "Employer," when used with reference to an applicant for employment through a labor contractor, refers to the person to or for whom or under whose direction the personal services are rendered.

(4) A central hiring establishment, intelligence office, registry, agency or place maintained without cost to applicants for employment by groups of employers or groups of employers and employees, or a person licensed under Chapter 9 (commencing with Section 7000) of Division 3 of this code, does not constitute a labor contractor within the meaning of this chapter.

(5) A person employing individuals to render personal services to, for or under the direction of a third person is not a labor contractor within the meaning of this chapter if every individual, whom such person employs, receives for his services a remuneration in excess of two hundred dollars (\$200) per month.

(6) A person employing individuals to render part-time or temporary personal services to, for or under the direction of a third person in business offices or in industrial establishments is not a labor contractor within the meaning of this chapter if the person employing the individuals, in addition to wages or salaries, pays federal social security taxes, state and federal unemployment insurance, carries workmen's compensation insurance as required by state law, and sustains responsibility for the acts of his employees while rendering services to, for or under the direction of a third person. The person employing individuals to render part-time or temporary personal services shall not send

the employees to any place where a strike, lockout or labor dispute exists.

(d) Any person who conducts for gain any trade school or classes of instruction for the teaching in whole or in part of any trade, art, science, or occupation requiring special skill, and who, for gain or hire, furnishes or agrees to furnish in connection therewith facilities or information to pupils and employers of labor whereby the labor or services of any such pupils are engaged to be employed in the trade, art, science or occupation thus taught to stipulated wages or other valuable consideration. But nothing contained in this section applies to trade schools or classes of instruction conducted by or in connection with any public schools, public institution, parochial school, charitable school or institution, private business schools teaching shorthand, typing, book-keeping, mechanical and other usual business subjects or trade schools connected therewith or any school employing teachers having certificates issued by the public school authorities to teach any particular trade, art, science or occupation.

9803. As used in this chapter, "fee" means:

(a) Any money or other valuable consideration paid or promised to be paid for services rendered or to be rendered by any person conducting an employment agency under this chapter.

(b) Any money received by any person in excess of that which has been paid out by him for transportation, transfer of baggage, or board and lodging for any applicant for employment.

(c) The difference between the amount received by a labor contractor and the amount paid out by him to the person employed to render personal services to, for or under the direction of a third person.

9804. As used in this chapter, "registration fee" means any charge made, or attempted to be made, for registering or listing an applicant for employment, or any charge for letter writing, résumé preparation, cost of photograph or filmstrip, costume, or any charge of a like nature made, or attempted to be made without having a bona fide order for the placement of the applicant in a position.

9805. As used in this chapter, "license" means a license issued by the director to carry on the business of an employment agency under this chapter, or an employment agency manager's license.

9806. As used in this chapter, "licensee" means a person who holds a valid, unrevoked, and unforfeited license under this chapter.

9807. As used in this chapter, "manager" means a person licensed as an employment agency manager and under whose direction, control, charge or supervision an office of a licensed employment agency is operated.

9808. As used in this chapter, "department" means the Department of Professional and Vocational Standards.

9809. As used in this chapter, "director" means the Director of Professional and Vocational Standards.

9810. As used in this chapter, "bureau" means the Employment Agency Licensing Bureau.

9811. As used in this chapter, "chief" means the Chief of the Employment Agency Licensing Bureau.

9812. As used in this chapter, "board" means the Employment Agency Advisory Board.

9813. Nothing in this chapter shall include a nonprofit organization or corporation, organized for the purpose of economic adjustment, civic betterment, and the giving of vocational guidance and placement to its members, when all of the following conditions exist:

(a) None of the directors, officers or employees thereof receive any profit other than a nominal salary for services performed for the organization or corporation.

(b) No fee is charged for employment services other than a membership fee or dues entitling the person paying the same to full participation and benefits of the organization or corporation.

(c) Membership dues or fees charged are used solely for maintenance of the organization or corporation.

9814. Nothing in this chapter shall include a nonprofit organization or corporation which has been formed in good faith for the promotion and advancement of the general professional interests of its members and which maintains a placement service principally engaged in securing employment for such members with the State or any county, city, district or other public agency under contracts providing employment for one year or longer, or any organization or corporation exempted by Section 9813.

9815. Any organization or corporation charging membership fees or dues and engaged in furnishing employment to its members shall, in order to be exempt under Sections 9813 and 9814, file on or before the first day of April of each year with the director, a copy of its bylaws and constitution, together with a sworn statement setting forth:

(a) The place of business.

(b) The names and addresses of officers, directors and employees and the salaries they receive.

(c) The various benefits furnished to members.

(d) The membership and placement fees and dues charged or collected by such organization or corporation from its members.

9816. Nothing in this chapter shall include a farm labor contractor, as defined or licensed under Chapter 3 (commencing with Section 1682) of Part 6 of Division 2 of the Labor Code.

9817. Nothing in this chapter shall include an artists' manager, as defined or licensed under Chapter 4 (commencing with Section 1700) of Part 6 of Division 2 of the Labor Code.

9818. Nothing in this chapter shall include a nurses' registry, as defined or licensed under Chapter 5 (commencing with Section 1710) of Part 6 of Division 2 of the Labor Code.

9819. All rules and regulations contained on the effective date of this act in Group 3 (commencing with Section 11875) of Chapter 6 of Title 8 of the California Administrative Code shall remain in effect until amended or repealed by the director.

Article 2. Administration

9830. There is in the Department of Professional and Vocational Standards an Employment Agency Licensing Bureau under the supervision and control of the director. The director shall administer and enforce the provisions of this chapter.

The Governor shall appoint, subject to confirmation by the Senate, a chief of the bureau at a salary to be fixed and determined by the director with the approval of the Director of Finance. The chief shall serve under the direction and supervision of the director.

Before a chief is appointed the Governor shall give due consideration to any person or persons recommended by the board.

Every power and duty granted to or imposed upon the director under this chapter may be exercised or performed in the name of the director by a deputy or assistant director and by the chief, subject to such conditions and limitations as the director may by rule or otherwise prescribe.

9831. The director, in accordance with the State Civil Service Act, may appoint and fix the compensation of such clerical, inspection, investigation, and auditing personnel, as well as an assistant chief, as may be necessary to carry out the provisions of this chapter. All such personnel shall perform their respective duties under the supervision and direction of the chief.

All personnel shall be paid for services rendered from the Employment Agency Licensing Bureau Fund.

9832. The chief shall gather evidence of violations of this chapter and of any rule or regulation established hereunder by persons engaged in business as employment agencies who fail to obtain licenses and shall gather evidence of violations and furnish the same to prosecuting officers of any county or city for the purpose of prosecuting all violations occurring within their jurisdiction.

The chief, for the purpose of gathering evidence of violations of law or of this chapter or of any rule or regulation established hereunder, shall investigate the business and examine the books, accounts, records and files used therein by the licensee and for such purpose the chief shall have free access to the offices and places of business, books, accounts, records, papers, files, safes and vaults of all licensees.

The chief, with the approval of the director, may require the attendance of witnesses and examine under oath all persons whose testimony he requires relative to the affairs of a licensee or to the subject matter of any examination, investigation, or hearing.

9833. The director may establish and enforce such rules and regulations as may be reasonable or necessary for the examination and licensing of applicants, for the conduct of licensees and for the general enforcement of the various provisions of this chapter in the protection of the public. The director shall distribute to each licensee and each applicant for a license copies of this chapter and of such rules and regulations. Such rules and regulations shall be adopted, amended, or repealed in accordance with the provisions of the Administrative Procedure Act.

The willful violation of any rules and regulations established for the conduct of licensees is sufficient ground for revocation of the license of a licensee, or other disciplinary action.

9834. The director shall keep in his office in a suitable record provided for the purpose all applications for licenses, accompanying certificates, statements and documents and all bonds required to be filed under this chapter. The record shall state whether or not a license has been issued under the application and bond, and if revoked the date of filing the order of revocation, and if reinstated the date of filing

the order of reinstatement. The director shall keep a list of all persons, whose licenses have been revoked. In the record all licenses issued shall be indicated by their serial numbers as well as by the name and address of the licensee. The record shall be open for inspection as a public record in the office of the director.

The director shall adopt a seal for his own use. The seal shall have the words "Employment Agency Licensing Bureau, State of California" thereon. The care and custody of the seal shall be in the office of the director.

9835. There is in the Employment Agency Licensing Bureau an Employment Agency Advisory Board, which consists of five members appointed by the Governor.

9836. Four members of the board shall be qualified examinees named in licenses of employment agencies licensed pursuant to this chapter, except that each of the four members first appointed shall have been named as a licensee on the license of an employment agency pursuant to Chapter 1 (commencing with Section 1550) of Part 6 of Division 2 of the Labor Code for a period of three consecutive years immediately prior to the effective date of this act. One member shall be a public member who is not licensed under the provisions of this chapter.

9837. Each member of the board shall be appointed for a term of four years and shall hold office until the appointment and qualification of his successor or until six months shall have elapsed since the expiration of the term for which he was appointed, whichever first occurs.

The terms of the members first appointed shall expire as follows: one member, September 1, 1964; two members, September 1, 1965; and two members, September 1, 1966.

Vacancies occurring in the membership of the board for any cause shall be filled by appointment for the balance of the unexpired term.

No member shall serve more than two terms of office.

9838. The Governor may remove any member of the board for misconduct, incompetency, or neglect of duty.

9839. The board shall meet at least four times each year. All meetings of the board shall be open and public.

Three members shall constitute a quorum for the transaction of business.

The board shall elect from its members, each for a term of one year, a chairman, a vice chairman, and a secretary and may appoint such committees as it deems necessary to carry out its duties.

9840. The bureau shall furnish to the board such secretarial, clerical, and other personnel as may be necessary to assist the board in carrying out its duties under this chapter. The chief shall attend all board meetings.

9841. Each member of the board shall serve without compensation except that he shall be reimbursed for his traveling expenses necessarily incurred in the performance of his duties.

9842. The board shall:

(a) Inquire into the needs of the employment agency business, the functions of the bureau and the matter of the policy thereof, and make such recommendations with respect thereto as, after consideration, may be deemed important and necessary for the welfare of the State, the

welfare of the public, and the welfare and progress of the employment agency business.

(b) Confer and advise with the director as to how the bureau may best serve the State, the public, and the employment agency business.

(c) Consider and make appropriate recommendations on its own initiative as to changes in, or additions to or deletions of rules and regulations which the director has adopted as, after consideration, may be deemed important and necessary.

(d) Consider and make appropriate recommendations in all matters submitted to it by the director or the chief.

(e) Confer and advise with the director and the chief in the preparation of any rules and regulations to be adopted, amended or repealed.

(f) Assist the director and the chief in the collection of such necessary information and data as the director or the chief may deem necessary to the proper administration of this chapter.

(g) Confer and advise with the director and chief in the preparation of examinations.

Article 3. Licensing and Examination

9850. No person shall open or operate any employment agency unless he has procured an employment agency license therefor from the director. Such license shall be posted in a conspicuous place in the agency.

9851. The director shall issue three types of licenses:

(a) An employment agency license.

(b) An employment agency manager's license.

(c) A temporary employment agency license.

9852. A written application for an employment agency license shall be made to the director in the form prescribed by the director and shall include:

(a) The name and address of the applicant. The names and addresses of each partner, from applicant partnerships, and each officer, from applicant corporations, shall be stated.

(b) The full address of the place where the business of the employment agency is to be conducted.

(c) The business or occupation engaged in by the applicant for at least two years immediately preceding the date of application.

(d) The proposed name of the agency. The director may reject any proposed name which is the same or similar to that of a licensed employment agency.

(e) Such questions and information as will assure the director of the applicant's eligibility to hold a license.

(f) The names and addresses of all persons, except bona fide employees on stated salaries, financially interested, either as partners, associates or profit sharers, in the operation of the agency in question, together with the amount of their respective interests.

(g) The name and address of the candidate, or candidates, for examination. The candidate for examination shall be one of the persons named in subdivision (a) above. In the event of partnerships or corporations, each partner, or officer, may be a candidate for examination.

(h) Such other information as the director may require.

The application shall be accompanied by affidavits of at least two reputable residents of the city or county in which the employment agency is to be conducted that the applicant is a person of good moral character.

9853. A written application for an employment agency manager's license shall be made to the director in the form prescribed by the director and shall include:

- (a) The name and address of the applicant.
- (b) The business or occupation engaged in by the applicant for at least two years immediately preceding the date of application.

- (c) Such questions and information as will assure the director of the applicant's eligibility to hold license.

- (d) Such other information as the director may require.

The application shall be accompanied by affidavits of at least two reputable residents of the city or county in which the applicant resides that the applicant is a person of good moral character.

9854. To be eligible for application for a license, the applicant shall be:

- (a) In the opinion of the director, of good moral character.

- (b) At least 21 years of age.

- (c) A citizen of the United States.

- (d) A person whose license has not been revoked within three years from the date of application.

- (e) A person with a minimum of one year's experience with an employment agency. The applicant may be required to prove to the satisfaction of the director that this experience requirement, whether gained in California or out of state, meets in general the definition of the functions of "manager" as outlined in Section 9807.

- (f) A graduate from a four-year high school, except that the director may establish proof satisfactory to them that the applicant is possessed of a four-year high school education in point of intellectual competency and achievement.

9855. Upon receipt of an application for a license, the director shall cause an investigation to be made as to the character and responsibility of the applicant and of the premises designated in such application as the place in which it is proposed to conduct an employment agency. The director shall have the authority to approve or reject any proposed premises, if, in its opinion, such premises would endanger the health, welfare, safety or morals of applicants for employment, or would tend to reflect unfavorably on the employment agency business. However, the director shall not grant a license to conduct an employment agency:

- (a) In rooms used for living purposes.

- (b) Where boarders or lodgers are kept.

- (c) Where meals are served.

- (d) Where persons sleep.

- (e) In connection with a building or premises where intoxicating liquors are sold or consumed.

- (f) In connection with poolhalls or soft drink parlors.

- (g) To a person whose license has been revoked within three years from the date of application.

9856. The director, upon proper notice and hearing, may refuse to grant a license. Such proceedings shall be conducted in accordance

with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code and the director shall have all the power granted therein.

9857. No license of any type shall be issued until an applicant named in subdivision (a) of Section 9852 or the applicant named in subdivision (a) of Section 9853 shall have successfully passed a qualifying examination.

9858. The director shall prepare, or cause to be prepared, administer, grade or review qualifying examinations for all candidates as stipulated in Section 9857 for any type of license. Such examinations shall be held at least twice each calendar year at such places throughout the state as may be designated by the director. Such examinations shall include subject matter selected by the director to demonstrate the applicant's ability, knowledge and proficiency to conduct or manage an employment agency. Examinations shall be practical in character, and of such length and scope as the director deems necessary. The examination shall be written: both questions and answers shall be in the English language. The examination procedure, method of grading, general average required to be obtained by successful applicants, and other details of the examinations not expressly covered by this chapter shall be determined by the director.

9859. The examination papers of any person shall be kept by the director for the period of one year and may then be destroyed. Such papers shall be open to inspection during the one-year period only by the director, the board, the chief, their clerical assistants, the applicant or his attorney, and by a court of competent jurisdiction in a proceeding where the contents of the papers are properly involved.

9860. Every type of license when issued shall designate:

- (a) The type of license.
- (b) The name of the licensee.
- (c) The number and date of issuance of the license.
- (d) The name of the qualified examinee or examinees.
- (e) In addition, the employment agency license shall designate:

(1) The city, street and number of the premises in which the employment agency is authorized to carry on its business.

9861. No license shall protect any other than the person to whom it is issued or any places other than those designated in the license. No license shall be transferred or assigned to any person unless written consent is obtained from the director.

9862. The director may grant permission to establish branch offices to any licensed agency. No branch office may be established without written permission from the director.

9863. The location of an employment agency or its branch offices shall not be changed without written consent from the director.

9864. Every license issued shall run to and including the _____ day of _____ next following the date thereof unless sooner revoked by the director, and may be renewed each year upon the filing of an application of renewal.

9865. All applications for renewal of an employment agency license shall state the name and address of all persons, except bona fide employees on stated salaries financially interested either as partners, associates or profit sharers, in the operation of the employment agency.

9866. All valid, unforfeited and unrevoked employment agency licenses, on the effective date of this chapter, may be renewed from year to year without the necessity for the licensee or licensees to qualify under subdivisions (e) and (f) of Section 9854 and Section 9857. Twenty-four months after the effective date of this chapter, this section shall apply only to the main office of any licensed agency and will exclude branch offices. No license may be renewed under this section if there is a change in the licensee or licensees, or in the amount of their respective interests.

9867. Twenty-four months after the effective date of this chapter every office of every employment agency shall be operated under the direct and personal supervision of a licensee as stipulated in Section 9857 or Section 9866. No such licensee shall direct or supervise more than one office of any employment agency unless written consent is obtained from the director. Such consent shall be valid only for the unexpired term of the license. The director may, upon request, consider renewal of such consent at the time of renewal of the employment agency license.

9868. In case of the death of an individual licensee who leaves a going employment agency business as part of his estate the director shall, upon proper application prescribed by it, issue a temporary license to the personal representative, or to the nominee of the personal representative, of the deceased licensee. In the case of the dissolution by death of a licensed copartnership, the director shall, upon proper application, issue to the surviving partner or partners, a temporary license.

The application shall be in writing and subscribed and sworn to by the person to whom the temporary license is to be issued. The application shall be accompanied by the bond provided for in Article 4 (commencing with Section 9880) and the temporary license fee specified in Article 7 (commencing with Section 9930).

This article shall not apply to any application for temporary license, except that 24 months after the effective date of this chapter, branch offices of an employment agency operated by a licensee prior to his death, shall, as required by Section 9867, be under the direct and personal supervision of a licensee in accordance with Section 9857.

A temporary license shall be effective for a period of one year and shall not thereafter be renewed or continued.

Article 4. Bonds

9880. An employment agency shall deposit with the director, prior to the issuance or renewal of a license, a surety bond in the penal sum of one thousand dollars (\$1,000).

9881. Such surety bonds shall be payable to the people of the State of California, and shall be conditioned that the person applying for the license will comply with this chapter and will pay all sums due any individual or group of individuals when such person or his representative or agent has received such sums, and will pay all damages occasioned to any person by reason of misstatement, misrepresentation, fraud, deceit, or any unlawful acts or omissions of the licensed employment agency, or its agents or employees, while acting within the scope of their employment.

9882. If any licensee fails to file a new bond with the director within 30 days after notice of cancellation by the surety of the bond required under Section 9880, the license issued to the principal under the bond is suspended until such time as a new surety bond is filed. A person whose license is suspended pursuant to this section shall not carry on the business of an employment agency during the period of such suspension.

Article 5. Rules and Regulations

9890. Every employment agency shall keep records approved by the director, in which shall be entered:

- (a) The date of each application for employment.
- (b) The name and address of the applicant to whom employment is promised or offered, or to whom information or assistance is given in respect to such employment.
- (c) The amount of the fee received.
- (d) Other information which the director requires.

Such employment agency shall also enter in the same or in separate records, approved by the director:

- (1) The name and address of each employer from whom an order is accepted for help.
- (2) The date of receipt of each order, kind of help requested, the names of the persons sent, with the designation of the one employed.
- (3) The amount of the fee received and the rate of wages agreed upon.
- (4) Other information which the director requires.

No employment agency, its agent or employees, shall make any false entry in such records.

9891. All books, records and other papers kept pursuant to this chapter in any employment agency shall be open at all reasonable hours to the inspection of the director or its agents. Every employment agency shall furnish to the director upon request a true copy of such books, records, and papers or any portion thereof, and shall make such reports as the director prescribes.

9892. No employment agency shall knowingly issue a contract for employment containing any term or condition which, if complied with, would be in violation of law, or attempt to fill an order for help to be employed in violation of law.

9893. Every person conducting an employment agency shall file with the director a schedule of fees to be charged and collected in the conduct of its business. In the schedule, the various employments or salary ranges by which the fee is to be computed or determined shall be classified, and in each class the maximum fee shall be fixed and shall include the charges of every kind rendered by the agency in each case or transaction on behalf of the prospective employer and a prospective employee. Changes in the schedule may be made, but no change shall become effective until seven days after the date of filing thereof with the director and until posted for not less than seven days in a conspicuous place in the agency.

9894. A copy of the schedule in effect with the changes noted thereon shall be kept posted in each room of the employment agency frequented by applicants for help or employment, and the posted schedule

and the changes therein shall be in lettering or printing of not less than standard pica capitals. The date of the taking effect of the schedule and of each change therein shall appear on the posted copies and a certificate thereof shall be procured from the director and kept posted in a conspicuous place in the agency. No fee charged or collected shall be in excess of the fee as scheduled and in force at the time of the issuing of the contract for employment.

9895. No employment agency shall accept a fee from any applicant for employment, or send any applicant for employment without having obtained orally or in writing, a bona fide order for employment, and in no case shall such employment agency accept, directly or indirectly, a registration fee of any kind. Should an employment agency send an applicant for employment and should the applicant secure employment other than that position specified in the bona fide order for employment to which the applicant was sent, but with the same employer, than the agency shall be entitled to a fee for the employment of the applicant, computed under the terms of the fee schedule in effect in the agency at the time of referral, providing that such employment occurs within a period of six calendar months from the date of referral.

9896. No employment agency shall divide fees with an employer, an agent or other employee of an employer or person to whom help is furnished.

9897. If the applicant paying a cash fee fails to obtain employment, the employment agency shall, upon demand therefor, repay the amount of the fee to the applicant. Unless the fee is returned within 48 hours after demand, the employment agency shall pay to the applicant an additional sum equal to the amount of the fee. A notice to this effect shall be inserted in all contracts between the agency and the applicant, and in all receipts given to the applicant for cash payment in advance of employment, and in the schedule of fees posted in the office of the agency.

9898. No employment agency shall publish or cause to be published any false, fraudulent, or misleading information, representation, notice, or advertisements. All advertisements of an employment agency by means of cards, circulars, or signs, and in newspapers and other publications, and all letterheads, receipts and blanks shall be printed and contain the licensed name and address of the employment agency. Every employment agency shall use the word "agency" or "agencies" as part of its licensed name. No employment agency shall give any false information or make any false promises or representations concerning an engagement or employment to any applicant who registers or applies for an engagement or employment or help.

9899. No employment agency shall send or cause to be sent any applicant as an employee to any house of ill fame, to any house or place of amusement for immoral purpose, to places resorted to for the purposes of prostitution, or to any place where the health, safety, welfare or morals of the applicant could be adversely affected, the character of which places the agency could have ascertained upon reasonable inquiry.

9900. No employment agency shall send any minor under the age of 18 years to any place where intoxicating liquors are sold to be consumed on the premises.

9901. No employment agency shall knowingly permit any persons of bad character, prostitutes, gamblers, intoxicated persons, or procurers to frequent such agency.

9902. No employment agency shall, when such employment would be in violation of Chapter 1 (commencing with Section 1171) of Part 4 of Division 2 of the Labor Code or Division 9 (commencing with Section 10501) of the Education Code, accept any application for employment made by, or on behalf of, any minor, or place or assist in placing any minor in any such employment.

9903. Every employment agency shall post in a conspicuous place in the applicant reception area of such agency a printed copy of this chapter and of such other statutes as may be specified by the director. The director shall furnish printed copies of any statute required to be posted by employment agencies.

9904. (a) Every employment agency shall give to every applicant for employment from whom a fee is to be received a contract or receipt, in which is stated:

(1) The name, address and telephone number of the employment agency.

(2) The name and address of the person giving the order for help, the date and consecutive number of the receipt of such order by the agency, and its manner of transmission.

(3) The date and consecutive number of issuing the contract.

(4) The name of the applicant, the name and address of the person to whom the applicant is sent for employment, and the address where the applicant is to report for employment.

(5) The amount of fee charged and collected from the applicant, the amount of fee, paid or advanced by the prospective employer and by whom paid or advanced.

(6) The kind of work or employment and the general conditions of employment with particular regard to sanitary conditions and compliance with labor laws affecting the employment as shown by the statement of the prospective employer.

(7) The daily hours of work; the wages or salary including any consideration of privilege; whether or not board or lodging or both is to be furnished.

(8) If any labor trouble exists at the placement of employment, that fact shall be stated in the contract.

(9) Any other term, condition, or understanding agreed upon between the agency and the applicant.

(b) There shall be printed on the face of the contract in prominent type the following: "This agency is licensed by the Employment Agency Licensing Bureau of the State of California." At the bottom of the contract there shall appear a notice to the effect that the contract is the property of the applicant and shall not be taken from him. A notice shall also appear in the contract directing the employer to state on the reverse side of the contract in the space provided therefor, that he discharged the applicant after employing him less than seven

days, and indicate thereon the amount of gross wages paid, when either is the fact, and the number of days of such employment.

(c) The employment agency shall in such contract undertake to repay the applicant the fee in the event of failure to procure employment.

(d) Every such contract or receipt shall be made and numbered consecutively in original and duplicate, both to be signed by the applicant and the person acting for the employment agency. The original shall be given to the applicant and the duplicate shall be kept on file at the agency.

9905. All contracts or agreements of types other than provided in Section 9904 between the employment agency and applicants for employment shall be approved by the director.

9906. Notwithstanding the provisions of Section 9904, the director may, by rule and regulation, prescribe alternative forms of contracts or receipts which may be used by employment agencies for specific occupations in which the nature and duration of the employment reasonably justifies the use of a contract or receipt different from that set forth in Section 9904.

9907. Each employer to whom an applicant is sent in response to a request for an employee shall, upon the applicant's request, state on the reverse side of the contract, in the space provided therefor, that he refused to employ the applicant or that he discharged him after employing him less than seven days, and indicating thereon the amount of gross wages paid, when either is the fact.

9908. Every employment agency shall notify each applicant before sending such applicant in response to a request for employment whether a labor contract is in existence at the establishment to which the applicant is being sent, and whether union membership is required.

9909. No employment agency shall send an applicant to any place where a strike, lockout, or other labor trouble exists without notifying the applicant of such fact and shall in addition thereto enter a statement of such conditions upon the receipt given to such applicant.

9910. All employment provided by any employment agency to any applicant from whom a fee is to be received shall be considered permanent only if lasting beyond 90 days.

Article 6. Disciplinary Proceedings and Offenses Against the Chapter

9920. The director may suspend or revoke licenses, after proper notice and hearing to the licensee, if the licensee has been found guilty by the director of any of the acts or omissions constituting grounds for disciplinary action. The proceedings under this article shall be conducted in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, and the director shall have all the powers granted therein.

9921. All accusations against licensees shall be filed with the director within one year after the performance of the act or omission alleged as the ground for disciplinary action; provided, however, that the foregoing provision shall not constitute a defense to an accusation alleg-

ing fraud or misrepresentation as a ground for disciplinary action. The cause for disciplinary action in such cases shall not be deemed to have accrued until discovery by the director, of the facts constituting the fraud or misrepresentation, and, in such case, the accusation shall be filed within two years after such discovery. The director may, upon its own motion, and shall upon verified complaint in writing of any person, investigate the actions of any person licensed under this chapter.

9922. Upon receipt of a complaint, or upon its own motion, the director shall ascertain whether or not the accused licensee has been guilty of an act or omission constituting a ground for disciplinary action and may make or cause to be made such investigation as it deems necessary in order to ascertain this fact.

9923. Acts or omissions constituting grounds for disciplinary action by the director shall include, but shall not be limited to:

- (a) Engaging in unprofessional conduct.
- (b) Procuring a license by fraud, misrepresentation or mistake.
- (c) Violations or attempts to violate, directly or indirectly, or assisting in or abetting the violation of, or conspiracy to violate, any provision or term of this chapter.

(d) Making or giving any false statement or information in connection with the application for issuance of a license.

(e) Conviction of a felony or any crime involving moral turpitude.

(f) Impersonating or acting as proxy for any applicant in any examination required under this chapter for the issuance of a license.

(g) Making false promises, misrepresentations in advertisements, or engaging in the practice of claiming or demanding fees, other compensation or commissions for services not rendered, within the contract agreed.

(h) Engaging in any other conduct, whether of the same or a different nature than specified in this section, which constitutes fraud or dishonest dealing.

9924. Any person, or agent or officer thereof, who violates any provisions of this chapter is guilty of a misdemeanor, punishable by a fine of not less than fifty dollars (\$50) nor more than five hundred dollars (\$500), or imprisonment for a period of not more than 60 days, or both.

Article 7. Revenue

9930. The director shall receive and account for all money derived from the operation of this chapter and, at the end of each month, shall report such money to the State Controller and shall pay it to the State Treasurer, who shall keep the money in a separate fund known as the Employment Agency Licensing Bureau Fund. This fund shall be expended in accordance with law for the payment of all actual and necessary expenses incurred in carrying out the provisions of this chapter.

9931. The unencumbered balance of all money available for expenditure by the Department of Industrial Relations in carrying out any functions transferred to the Department of Professional and Vocational Standards by this chapter shall be made available for the support and maintenance of the department, and all books, documents, records and property of the Department of Industrial Relations relating to such functions shall be transferred to the department.

9932. The director shall charge the following fees:

(a) A filing fee of twenty-five dollars (\$25) for each new application for license.

(b) A filing fee of twenty-five dollars (\$25) for each new application for branch office license or permit.

(c) A filing fee of twenty-five dollars (\$25) for application for examination or re-examination.

(d) A filing fee of twenty-five dollars (\$25) for application to transfer or assign a license.

(e) An annual license fee of fifty dollars (\$50) for an employment agency manager license.

(f) An annual license fee of one hundred dollars (\$100) for an employment agency license.

(g) An annual license fee of twenty-five dollars (\$25) for license of each branch office.

(h) A temporary license fee of thirty-five dollars (\$35).

(i) A reinstatement fee of one hundred dollars (\$100), in addition to other fees, to reinstate a license revoked or suspended.

No fees shall be prorated for the unexpired portion of the license year.

SEC. 2. Chapter 1 (commencing with Section 1550) of Part 6 of Division 2 of the Labor Code is repealed.

SEC. 3. Section 1698 of said code is repealed.

1698. No part of the provisions of Part 6, Chapter 1, of Division 2 of this code shall be applicable to a farm labor contractor, except that the following sections, in the terms thereof now in effect, shall be so applicable, to wit: Sections 1591, 1595, 1630, 1633, 1637, 1638, 1639, 1610, and 1612; and for such purpose, each of said sections, in the terms thereof now in effect, shall be read, applied, administered, and enforced as though expressly made applicable to a farm labor contractor.

SEC. 4. Section 1699.1 is added to said code, to read:

1699.1. All moneys collected for licenses and all fines collected for violations of the provisions of this chapter shall be paid into the State Treasury and credited to the General Fund.

SEC. 5. Section 1699.2 is added to said code, to read:

1699.2. No licensee shall sell, transfer or give away any interest in or the right to participate in the profits of the employment agency without the written consent of the Labor Commissioner. A violation of this section shall constitute a misdemeanor, and shall be punishable by a fine of not less than one hundred dollars (\$100) nor more than five hundred dollars (\$500), or imprisonment for not more than 60 days, or both.

SEC. 6. Section 1699.3 is added to said code, to read:

1699.3. No licensee shall knowingly issue a contract for employment containing any term or condition which, if complied with, would be in violation of law, or attempt to fill an order for help to be employed in violation of law.

SEC. 7. Section 1699.4 is added to said code, to read:

1699.4. No licensee shall accept a fee from any applicant for employment, or send any applicant for employment without having obtained orally or in writing, a bona fide order therefor, and in no case

shall such licensee accept, directly or indirectly, a registration fee of any kind.

SEC. 8. Section 1699.5 is added to said code, to read :

1699.5. No licensee shall send or cause to be sent, any woman or minor under the age of 21 years, as an employee to any house of ill fame, to any house or place of amusement for immoral purpose, to places resorted to for the purposes of prostitution, or to gambling houses, the character of which places the agency could have ascertained upon reasonable inquiry.

SEC. 9. Section 1699.6 is added to said code, to read :

1699.6. No licensee shall send any minor under the age of 18 years to any saloon or place where intoxicating liquors are sold to be consumed on the premises.

SEC. 10. Section 1699.7 is added to said code, to read :

1699.7. No licensee shall knowingly permit any persons of bad character, prostitutes, gamblers, intoxicated persons, or procurers to frequent his premises.

SEC. 11. Section 1699.8 is added to said code, to read :

1699.8. No licensee shall accept any application for employment made by or on behalf of any child, or shall place or assist in placing any such child in any employment whatever in violation of Part 4 (commencing with Section 1171) of this division.

SEC. 12. Section 1699.9 is added to said code, to read :

1699.9. No licensee shall divide fees with an employer, an agent or other employee of an employer or person to whom help is furnished.

SEC. 13. Section 1700.14 of said code is repealed.

~~1700.14. A person may apply for both an employment agency license and an artists' manager license, as provided for in this code, and in such event shall pay a single fee for filing an application for such licenses, for the transfer or assignment of such licenses, for such annual licenses or branch office licenses, or for annual renewals thereof, as prescribed in Article 2 (commencing at Section 1581) of Chapter 1, Part 6, Division 2 or as provided in this chapter, whichever is the higher.~~

SEC. 14. Section 1710.18 of said code is repealed.

~~1710.18. A person may apply for both an employment agency license and a nurses' registry license, as provided for in this code, and in such event shall pay a single fee for filing an application for such licenses, for the transfer or assignment of such licenses, for such annual licenses or branch office licenses, or for annual renewals thereof, as prescribed in Article 2 (commencing with Section 1581) of Chapter 1, Part 6, Division 2 or as provided in this chapter, whichever is the higher.~~

SEC. 15. Section 1710.37 of said code is amended to read :

1710.37. If any nurses' registry which assigns nurses to performing nursing services also engages in the business of conducting a general employment agency *as provided in Chapter 20 (commencing with Section 9800) of Division 3 of the Business and Professions Code*, then the records of the nurses' registry shall be kept separate from the records of the licensee pertaining to the general employment agency phase of the business.

STATEMENT
of the
CALIFORNIA EMPLOYMENT AGENCIES ASSOCIATION

In Consideration of

S.B. 1037 (SENATOR GIBSON) AND A.B. 1885 (ASSEMBLYMAN MEYERS)
both of the 1963 General Session

SUBMITTED

to the

SENATE FACTFINDING COMMITTEE ON BUSINESS AND COMMERCE

of the

CALIFORNIA LEGISLATURE

Sacramento, California, April 8, 1964

To the Honorable Alan Short, Chairman of the Senate Factfinding Committee on Business and Commerce, California Legislature, and to the honorable Members thereof:

The California Employment Agencies Association appreciates this opportunity to submit its views to the Senate Factfinding Committee on Business and Commerce with respect to Senate Bill 1037 and Assembly Bill 1885, introduced during the 1963 Regular Session of the California Legislature by Senator Gibson and Assemblyman Meyers, respectively.

Our association is a nonprofit California corporation, whose members are individuals licensed by the State of California to operate a private employment agency and/or nurses registry. It is governed by an elected board of directors and its corporate officers. The board of directors meets quarterly and the association's governing body, its house of delegates, has met annually for the last 10 years.

The major objectives of the association are:

1. To foster, to establish, and to maintain professional standards of education and experience among those persons engaged in the service of personnel placement in private employment agencies.
2. To promote and maintain high standards of service and of business integrity in the operation of private employment agencies through the enforcement of a code of ethics among members of the association.
3. To increase understanding and acceptance by the public of the role of the private employment agency in the economy of the State of California.
4. To undertake such other activities which may be recognized as a proper objective of a trade or professional association, in keeping with the public interest.

As the measures before the committee involve fundamental changes in the licensing and regulation of employment agencies from those in the present law, which has been little changed since 1913, we believe it would be helpful to compare briefly conditions prevailing in our industry in the early 1900's with those of today. We are also prepared, should the committee wish, to discuss the internal operations

of the modern employment agency and the variety of services which it renders to job seekers, employers and the general public.

While the state of our industry in the early 1900's is not too clear, a report prepared in 1890 by the United States Bureau of Labor Statistics indicates that employment agencies may have been operated in gambling casinos and saloons. There were charges at that time of collusion with keepers of immoral houses and the sending of women applicants to houses of prostitution. In the days of early California, lumber and railroad companies established and maintained employment agencies in populated areas. Later, a fee was deducted from wages or paid directly by the applicant. It is a fact that agency practices of 60 years ago are intertwined with California's colorful past, including the unconscionable practice of "shanghaiing" seamen. It is also true that at times applicants were sent from metropolitan centers to the mining, lumber or railroad camps or distant "sweat shops" and in some cases left stranded. Fee splitting between employers and agencies may have been practiced in those days.

The typical employment agency applicants at the turn of the century were agricultural or mining workers, industrial employees, men who worked in the woods and on the sea. They were also largely unskilled and poorly educated people.

It was against this background and climate that the public welfare demanded that employment agencies come under state regulation, which they did, in effective terms, in 1913 (a minimal law was first passed in 1903 which did not even require licensing). In commenting upon the law which was enacted in response to that situation, the Bureau of Labor Statistics in its 16th biennial report for 1913-15, said:

"Two years ago the bureau drafted and succeeded in having passed one of the most drastic laws for the regulation of private employment agencies."

At that time, both public and private agencies were regulated by the bureau, and in the same report, the bureau added:

"In order to make free employment bureaus a real success, it will be necessary to further restrict, and eventually eliminate, private employment agencies . . ."

The law of 1913, although amended in 1923, has remained practically unchanged in its operation for 51 years and today it simply is not adequate to the conditions of the modern employment industry nor is it properly responsive to the welfare of the public. It is now an archaic body of law which was designed to meet a situation that no longer exists. The effect of those sections of the Labor Code which take agencies out of the mainstream of law and business practices are so complex that they actually leave agencies in a sort of *Alice Through the Looking Glass World*!

The abuses which necessitated the "drastic laws" of 1913 are past and they have been gone for 25 years or more. To that end, the present law has served its purpose well. The modern employment agency industry is proud of its record—of 520,194 placements made in 1962, only 5,500 (1 percent) resulted in "controversy" cases, of which agencies probably brought some 4,000. This certainly is a record

of which any service industry can be eminently proud. In so stating, we do not deny the probable existence of isolated cases of poor practices by agencies and while we do all possible to eliminate them, there are, of course, those in all professions or vocations who simply are what we euphemistically term "bad apples". We hope that the day will soon arrive when such practitioners can be eliminated from the placement field. With the exception of these few, most such poor practices as do exist can be directly attributed to the complete lack of licensing standards.

Today California's employment agencies place men and women in positions ranging from babysitters to corporate executives, file clerks to space technicians. These applicant-clients mirror California's population—in the main, they are well educated, responsible citizens. In no sense can they be considered as out of the mainstream of American life as the Labor Code would imply nor are they in need of being considered as "wards of the Labor Commissioner" as he so frequently states.

As the state's economy has grown and matured, our clients, both employers and applicants, have rightfully insisted that we perform steadily improved counseling and screening service—not for work in mining camps as at the turn of the century—but for office, commercial and financial positions, engineering, technical and sales positions; journeyman industrial jobs and all levels of management.

To meet this need of applicants and employers for more exacting standards of services, the industry, through the initiative of this association, attempted to raise its standards of competence, although it has had absolutely no help or encouragement in doing so from its regulatory authority, the Labor Commissioner.

For example: Our association has adopted a strong code of ethics to which members subscribe as a condition of membership and which is hereto attached. This code is enforced among members and every attempt is made to gain compliance by nonmembers. Through this procedure, we have been successful in resolving many situations to the satisfaction of all concerned without bringing them to the attention of the Labor Commissioner. We recently, however, participated in a "controversy" hearing to seek recovery of a fee which was properly due an employer by a nonmember agency. We also brought to the commissioner's attention the case of an agency which habitually violates the Labor Code. As we requested some three years ago, the commissioner has finally brought license revocation proceedings.

In 1958, the association also founded the California Institute for Employment Counseling which administers accreditation examinations based on placement and personnel practices and on the Labor and Administrative Codes and other laws pertinent to employment agencies. The program is administered by the institute's board of trustees, composed of licensed and practicing agency owners. However, the drafting and grading of examinations is under the direction of a consultant of doctoral rank, without employment agency affiliation from the staff of an accredited college or university. The institute has produced the only comprehensive training manual for California agency counselors. The Labor Commissioner commended it as an "overall good job" and stated he felt that it would be "most helpful

as a daily guide." The institute also regularly sponsors training seminars for agency personnel.

While not all employment agencies are members of the association, our members have established a competitive level of service with which all in the industry must be concerned.

The foregoing are but a few of the many voluntary efforts which have been undertaken to raise the standards of service in our field. However, as some 300 agencies are either established or change ownership each year—about 30 percent of the entire industry—we believe that we have achieved as much as we are able through volunteer efforts and that we now need a modernization of regulation if this industry is to continue to play its vital part in integrating the great tide of newcomers into California with our rapidly expanding economy. These are the overwhelming reasons for our support of SB 1037.

SB 1037 would transfer the regulation of private employment agencies from the Department of Industrial Relations (Division of Labor Law Enforcement) to the Department of Professional and Vocational Standards, in which would be created an Employment Agency Licensing Bureau. The measure would also establish new standards for licensing of agencies. In the main, the bill carries over the operational portions of the present Labor Code, except the controversy procedure. Our support of this measure is motivated in no sense by a desire to escape regulation—in fact, we believe that public welfare can best be served by continued regulation of our industry, but it should be regulation in keeping with the needs of both the modern employment agency and the jobseeker and employer. The present code, in our view, falls far short of both goals.

We definitely do not believe that the licensing standards as proposed in SB 1037 would keep any reasonably qualified individual from going into the employment agency business. Our primary reason for speaking in qualified opposition to AB 1885 is because we believe the standards it proposed are unnecessarily restrictive. The potential of this industry is great and the problem is not one of too many employment agencies, but one of competent employment agency management.

Why Transference to the Department of Professional and Vocational Standards?

To license or not to license is not the question for employment agencies as it has been with some groups which have sought jurisdiction by the Department of Professional and Vocational Standards. Employment agencies have long been licensed. The question is: would the public be better served if agencies were licensed and regulated by that department rather than the Division of Labor Law Enforcement? We believe we can show that the transfer is not only *in* the public interest but *essential* to it.

Because the real question is: would the public be served better if licensing standards for employment agencies were raised in order to protect it from fraud and incompetence?

Today, under the Labor Code, an employment agency license is issued to almost anyone who applies, providing only that he file affidavits from two residents of the county in which he contemplates doing business, that he is of good moral character, that he furnish a \$1,000 surety bond and pay the filing and licensing fee. The Labor Commissioner "may",

but is not required to make an investigation as to character and responsibility.

So far as we know, this is the only vocational or professional license issued by the State without *any* qualifying standards of competence. We can compare it only with a license for hunting or fishing. You don't qualify for it. You just buy it. And the regulation is all done *after* issuance.

The 20 pages of the Labor Code specifically having to do with employment agencies and labor contractors is largely given over to specific "thou shalt's" and "thou shalt not's", many of them concerning problems of a distant past. And the Labor Commissioner is given the power and authority to revoke a license for failure to comply with any provision of the code, but in spite of his oft-pointed finger at our "bad apples" he has, in so far as we know, revoked less than a handful in as long as memory can serve.

The commissioner will no doubt present testimony to this committee citing the policing problems of agency operation with which he deals. He can be expected to point once again to our "bad apples". We acknowledge that we have them, but the wonder is that we don't have more, when you consider that fully 30 percent of the entire industry of some 1,000 agencies is newly licensed every year, with no qualifying standards and with absolutely no preorientation by the commissioner's office. The commissioner may well talk about "bad apples" but he won't at any time cite his actions to insure that agency licensees are qualified to do what the State has licensed them to do. We can be sure he won't do that because the code gives him no authority to do it. And in 1961 when the major licensing provisions of SB 1037 were proposed as amendments to the Labor Code (AB 509 introduced by Mr. Hegland and heard on February 21, 1961, before the Governmental Efficiency and Economy Committee of the Assembly), the commissioner vigorously and successfully opposed their adoption. He even opposed requiring that licensees have a high school education or its equivalent, saying that "Anyone with a sixth grade education can operate an employment agency". Over the years, labor commissioners have neither advanced ideas of their own nor endorsed suggestions developed within the industry for writing competency standards into the law. At no time has there been any display of interest on the commissioner's part to explore a common approach to what we consider to be essential legislation.

In fact, the commissioner's approach even to regulation comes close to being a sort of challenge or "dare" to licensees to operate within the legal provisions. For example, during the years commissioners have forwarded to agencies a considerable body of administrative interpretations and rulings, noncompliance with which leaves an agency liable for penalty or revocation. But these letters are not gathered together and made easily available for reference. Copies of previous letters *are not* furnished to new licensees who may, therefore, never even suspect their existence. And, if files are misplaced over the years, even the best intentioned licensee may put himself in jeopardy.

In enacting the Business and Professions Code, it is clear that the Legislature intended, as stated in this committee's report of 1957, to:

"... provide protection to the public from the practice and activities of incompetent persons where damage to the public health, safety, welfare or morals could occur and where the public has no relatively easy way of determining competency itself,"

by requiring that such private businesses or professions be licensed for competency.

The central question is whether employment agency licensees need to be competent—it is well established that they are concerned with the public welfare. The affirmative answer to this question would seem to be self-evident except that the commissioner has in the past, before committees of the Legislature, argued in the negative. Employment agencies deal with human beings at a time when they are extremely vulnerable, and in respect to what may be one of the two or three major decisions of a lifetime: that of choice of employment. It is doubtful that a man makes a more important decision except perhaps the taking of a wife. Employment agencies not only deal with man's human dignity, but they also have an enormous social and economic responsibility to job seeker and employer alike. The general employment agency needs comprehensive knowledge not only of professional and occupational requirements, but also of company growth potentials and personnel practices. If a licensee does not possess this competence, his decisions and referrals all too often result in the wasted time of "wild goose chases." In essence, he needs to know what he is doing!

Since nothing is more expensive than *not* having a job, any agency that is so incompetent that it prolongs the search, rather than shortening it, is committing a fraud, whether or not a fee is charged.

In equal measure, those agencies dealing with domestics and baby-sitters must know what they are doing in order to meet their highly personal responsibilities to their clients for knowledgeable, healthy and trustworthy applicants who will work with children and deal with prized personal possessions.

A general employment agency doing business in the fields of commercial, technical and industrial placements, deals with a far wider spectrum of job specifications than does the employment manager of even the largest of corporations. Attached, as illustration, is a list of the job orders for men received by one San Francisco agency in a recent single week. These job orders were, of course, only a small fraction of those still open or available from previous weeks. To deal with all the complexities of finding applicants to fill such orders from employers and of finding openings for such applicants, the commissioner has testified that, in his belief, a sixth grade education is sufficient!

For the state to license without requiring competence invites and encourages fraud. In fact, since the public assumes that the issuance of a license insures that essential standards *have* been met, it almost amounts to fraud!

The commissioner's disinterest and actual opposition to legislation intended to provide protection to the public from the practices and activities of incompetent agency licensees is the major reason why we are convinced that nothing short of transference to another authority will make it possible to carry out such a program.

The Department of Professional and Vocational Standards is the body designated by the Legislature to set and maintain standards of business and professional competence where the public safety, health, welfare or morals is concerned. The staff, knowledge, and experience for the implementation of those standards proposed in SB 1037 is in that department which now, through its 30 boards, bureaus and commissions, licenses in excess of 600,000 persons practicing more than 50 professions and vocations. That staff, knowledge and experience is not in the Division of Labor Law Enforcement.

In opposing transference, the commissioner has frequently stated that licensing and regulation of employment agencies must remain under the Division of Labor Law Enforcement because their commodity is labor.

But the courts have held:

“A contract between an artist and an employment agency is not a contract pertaining to labor within C.C.P. Sect. 1280 prohibiting arbitration agreement from applying to disputes arising out of contracts pertaining to labor.” *Robinson v. Superior Court* (1950) 35 C2d 379, 218 P2d 10.

Agencies must, of course, be cognizant of prevailing labor laws because they are correctly restrained from placing people on jobs where labor laws are violated, but they are not involved in those laws dealing with the relations between workers and employers.

Our commodity is not labor but placement service. We do indeed serve workers, but no less than we serve employers who have no special haven or protection in the Labor Code. We could not serve workers without serving employers and we can never forget our responsibilities to each.

While we have been talking about applicants for employment, it must be emphasized that we also serve employers and offer to both a service just as do insurance and real estate brokers, attorneys and engineers, accountants and doctors. If employment agencies must be regulated by the Labor Commissioner on the premise that they render a service to workers, then the same standard could be applied to similarly situated professions and business.

It is interesting to speculate that if the commissioner's premise were extended to its logical conclusion, the Department of Employment, which operates the largest placement service in the entire state, would be under his jurisdiction as would organized labor, which operates the third largest placement service, together with the myriad other groups, clubs, etc., which engage in varying amounts of placement activities.

Regulatory Board vs. Bureau

Article 2 of SB 1037 provides that the proposed Employment Agency Licensing Bureau shall be under the supervision and control of the director, who shall be assisted by a chief, appointed by the Governor, and who will exercise the responsibilities of the director, in his name. There will also be a five-member advisory board, four of which shall be practicing employment agency licensees, and the fifth to be a public member.

The mode of licensing an industry differs markedly from that more prevalent practice of vesting such responsibility in a board composed of practicing licentiates of the licensed group, plus a public member.

Of the 30 professions, businesses, or vocations presently licensed through the Department of Professional and Vocational Standards, only four are regulated by a bureau, which is controlled by a chief.

We think that there is sound reasoning behind this strong precedent of vesting such responsibility in a board, as its members would have vastly more intimate knowledge of the needs of the industry than would a chief who would probably serve for a term of only a few years. Too, the board members, from their day-to-day practice of the business are in a better position to learn the public's reaction to the industry and to determine what steps should be taken so that the public welfare can best be served.

We feel, however, that there should be an appeal from rulings of the board to the director and from his decision into the courts. We also feel that the tenure of the board members should be limited to two terms.

When SB 1037 was first drafted, we supported the concept of bureau and chief, although we actually would have preferred the board. However, after further careful consideration, we feel our original preference for the board would be in the best interests of all concerned. This conclusion was undoubtedly reached secondarily, because of some of the difficulty which we understand now exists between the advisory boards of the Collection Agency Licensing Bureau and the Bureau of Private Investigators and Adjusters and their chief, and primarily because the Labor Commissioner today serves as such a "chief" to our industry. In fact, his full title is Chief of Division (Labor Law Enforcement) and Labor Commissioner. To be sure, we have been able to get the commissioner to meet with us from time to time, meet with industry representatives as would a chief meet with his advisory board. Those conferences are always held in a very cordial atmosphere, but in fact very little has ever come out of them. For example, about three years ago we brought to the commissioner's attention that there was a steadily growing group of so-called executive search firms which were engaging in placement services, for a fee, but without benefit of being licensed as an employment agency as required by the Labor Code, Section 1551. (The Attorney General ruled in 1950 that such firms must be so licensed.) However, it was not until December 27, 1963, that the commissioner actually issued a directive requiring that these firms take out an agency license.

We would like to see a uniformity of regulation and we believe that a board, with its minute knowledge of occurrences within the industry, is not only better qualified to do this than would be a chief, but would have the substantial additional advantage of bringing a broad cross-section of views to bear upon such deliberations.

In a variety of ways, employment agencies make a substantial contribution to the economy of California and some 520,000 placements are made each year through their services. We do believe that the public welfare would be better served by regulation of this industry by

those who know it best and, in particular, by those who are in a position to assess the public's reaction to it.

Licensing and Examination

As we pointed out earlier, the only requirements for securing an employment agency license are :

1. Submission of affidavits from two character references who have known the applicant-licensee for at least two years.
2. Furnishing of a \$1,000 surety bond.
3. Payment of a filing fee of \$25 and license fee of \$100.

The commissioner "may" but is not required to make an investigation as to character and responsibility. Absolutely no demonstrable competency in the field is required.

The most significant changes made by SB 1037 over the present Labor Code are requirements for licensing. These requirements are set forth in Article III. To be licensed an applicant must:

- a Be of good moral character, in the opinion of the director
- b Be at least 21 years of age
- c Be a citizen of the United States
- d Provide affidavits from two character witnesses
- e Be a high school graduate or its equivalent
- f Not have had a license revoked within three years
- g Have had at least one year experience with an employment agency
- h And must pass a qualifying, practical-type examination to demonstrate his ability, knowledge and proficiency to conduct an employment agency.

Poor practices which now exist in the employment agency field, in an overwhelming majority of cases, can be traced directly to the absence of qualifying standards. Almost always, we find that agency owners do not intentionally violate either the law or accepted standards of practice — they simply are uninformed. It is no wonder since the law does not now require any proof that they be conversant with the law pertinent thereto, let alone standards of practice, before they are licensed to hang out a shingle as "employment specialist", presumably ready to counsel and place people at all levels. Day in and day out the association office receives inquiries from members and nonmembers on all points of law and standards of practice covering every phase of agency operation, including questions on assignment of fees, use of collection agencies, conformity with advertising rules, Fair Employment Practices Act, division of fees, etc.

Our association from time to time has sought to have the licensing standards of employment agencies raised to a level of those proposed in SB 1037. We last did so in the 1961 session of the Legislature when Assemblyman Hegland introduced Assembly Bill 509. When that measure was heard before the Governmental Efficiency and Economy Committee on February 21, 1961, the Labor Commissioner successfully opposed it and argued most forcefully that an examination would serve

no useful purpose and should not be required, that "anyone with a sixth grade education can operate an employment agency," and that the present requirements are completely adequate.

Apparently he changed his mind with respect to the educational and experience requirements, as he did support Assembly Bill 1885 when it was heard before the Senate Labor Committee on June 17, 1963, although he had opposed it 10 days earlier before the Assembly's Committee on Civil Service and State Personnel.

We did not support AB 1885 nor do we do so today because we believe that on one hand it is unnecessarily restrictive and on the other that it is not complete. Its combination of education and experience standards are unrealistic and would result in keeping well qualified people from entering the field. While many agency owners do meet its educational requirements many do not, yet are successful and competently managing agencies.

Our association has proved over the last few years that assembled reference material, management seminars, qualifying examinations, and codes of business practice, established and enforced by competent and knowledgeable members of the industry can raise standards of practice and levels of protection and service to the public in this industry just as they have in many others.

We believe that with such licensing requirements as those in SB 1037, this industry can quite rapidly be brought to the place where the public can be assured of competent service.

There are already many highly qualified people in employment agencies today. Following World War II many new people with college training and personnel experience saw opportunities of service and livelihood in job placement and counseling.

Recent surveys among association members have shown an average of $3\frac{1}{2}$ years of college education.

With the greater availability of accepted and proven aptitude tests, private employment agency management has brought a more scientific and thorough screening treatment to job placement. Modern data processing methods are being used for cross referencing of both applicants and employers' needs.

Under the grandfather clause in SB 1037, present licensees will of course be covered in. This clause, however, is considerably more restrictive than most such provisions. While those people who come in under the grandfathers clause may retain their licenses as long as there is simple renewal, in any case where there is any change in name, location, or financial participation, licensees must meet the requirements.

Combined with the industry's rapid attrition and turnover which we can probably expect will continue for at least a year, all these factors hold promise that a generally higher level of competence can be achieved very quickly.

The present operation regulations are carried over almost intact from the Labor Code, and will continue as the basis for policing agency actions.

We feel certain, however, that requiring higher standards of knowledge and experience on the part of agency management will serve to *prevent* many of the problems that today necessitate regulation. The "bad apples" can be dealt with *before*, not *after*, they happen.

The proponents of AB 1885 note correctly that the Department of Employment requires its employment security and personnel and management trainees to be graduates from college. It is important to note, however, that these trainees participate in an extensive training program for a full year.

We do recommend that part of the definition of experience in AB 1885 be added to those in SB 1037:

"The experience . . . may be obtained in any industry, state, or employment agency position wherein the primary function of the individual is the hiring or placement of personnel."

This will substantially broaden the experience requirement.

If that definition is allowed as an alternate to the one-year experience standard proposed in SB 1037, and a qualifying examination required, the new licensee should have a good chance of becoming successful in the business and rendering useful service to the public.

SB 1037 (Section 9853) makes provision for an employment agency manager's license and specified in Section 9867 that "No such licensee" (owner or manager) "shall direct or supervise more than one office of any employment agency . . ."

While we do believe that there should be provision for an employment agency manager's license, so that new licensees can qualify as to experience, we think it is somewhat premature to require that all offices be under the supervision of a manager. It also would be unnecessary in a city such as San Francisco where an owner-licensee can well supervise two or three offices located in that city.

The need and desire of the employment agency industry is not to set qualifying standards so high as to keep competition out, while "locking-in" the incompetents, but it is to establish realistic licensing criteria to insure that newcomers are competent.

Noninclusion of Controversy Procedure

The only substantial section of the Labor Code provisions which cover employment agencies which is not included or substituted for in SB 1037 is present Section 1647. This is the so-called controversy procedure. And here we get to the source of the removal of agency regulation from the mainstream of American law. Here we really get to "... Looking Glass" world:

Labor Code Section 1647 provides:

"In all cases of controversy arising under this chapter the parties involved shall refer the matters in dispute to the Labor Commissioner, who shall hear and determine the same, subject to an appeal within 10 days after determination, to the superior court where the same shall be heard de novo."

In 1953 the Legislature amended the section by adding:

"The Labor Commissioner may certify that there is no controversy within the meaning of this section, where the agency presents substantial evidence that the applicant acknowledges the fee to be due."

which amendment the courts declared invalid. (*Bess v. Park* (1955) 132 CA 2d 49, 281 P2d 556). In other words, the courts declared that

simply not paying an agency fee constitutes "controversy" within the meaning of Section 1647.

This is the section that so greatly limits an agency's access to the courts as almost to deny it. Under 1647, the agency contract, which must be approved as to form by the Labor Commissioner, cannot be enforced through normal legal processes until after his "determination" that the contract is valid.

According to the commissioner's ruling, collection of an overdue fee, duly contracted for, and not disputed by the debtor, may not be assigned to a collection agency, until after the employment agency has obtained a "determination" that the applicant does owe the fee. A byproduct, but very important effect, to the job seeker as well as agency, is that the procedure denies the use of normal credit channels for financing of placement service fees, which would be highly beneficial to both parties. We may not "threaten" a debtor with legal or collection procedure. We may not even imply in a collection attempt that the Labor Commissioner will rule the fee due.

Actually, the assumption under 1647 that the agency's contract is not valid until it has been determined so by the commissioner does, in effect, declare that agencies are guilty of fraud until they have proven themselves innocent.

Let's take a very real but hypothetical case. This is what must happen before an agency can do more than ask politely for its fee:

1. Since the commissioner is adverse to awarding a determination for the full fee short of 90 days (which is defined as a permanent position), it is not practical to file a request for hearing until the applicant has been on the job for at least 60 days. (See Addendum—Note 1).
2. File the required, properly assembled documents and statement.
3. Wait an average of 30 days more for the scheduled hearing (during this period a great many debtors skip, resulting in no service, no hearing and no determination).
4. A representative of the agency must attend the hearing and prove all documents valid.
5. For those on whom service has been effected, there is another average 30-day period for the proposed determination.
6. Another 10-day period must elapse to allow for appeal to the commissioner from the proposed determination.
7. Receipt of final determination. (Often delayed far beyond the required 10 days).
8. A second 10-day period must elapse to allow for appeal to superior court.

It is now 140 days since the debt was incurred, perhaps without any payment to the agency. Only at this point does the agency pull up level with every other creditor in the business community, in his ability to collect contracted fees.

The tables of collectibility of accounts as published by collection experts show that a debt that is 90 days old has only half the chance of

being collected as one 30 days old. Collectibility diminishes in rapid ratio thereafter.

Agencies might just as well write "skips" off to begin with. They can't be served for a hearing and they can't be assigned to a collection agency without a determination. Resistant debtors who refuse to accept delivery of the commissioner's registered letter must be tracked down with personal service or written off.

In many instances, the decisions of the several deputies who handle these cases at the local level, have been capricious and contradictory. Appeals to the Labor Commissioner have given us little relief—and further postpone collection.

The only appeal from the final determination of the Labor Commissioner is to the superior court where the matter is heard anew. Not only does it take a year or more to have a case heard in that court, but the cost is such in relation to the average fee as to make it simply too expensive to appeal, except as a matter of principle. In effect, the appeal process is so expensive and difficult as to be unavailable.

California is the only state with a "controversy" procedure. In other states, a contract between an employment agency and its clients is regarded in the same manner as are other contracts and the differences between the principals are resolved by the judiciary.

Attorneys and judges to whom we have talked are not inclined to accept the commissioner's frequent statement that the Division of Labor Law Enforcement has unique expertise in adjudicating employment agency contracts and is therefore more competent to determine such matters than are the courts.

They have pointed out also, that since the essence of a contract is its enforceability in the courts, we actually *have no contract*.

Section 1647 nullifies our contracts for an extended period of time, denies us access to the courts, compounds our collection problems, increases our cost of operations (which must be paid by those who do pay their fees) while offering no protection to the honest applicant-debtor which is not already available within our court system. To the unscrupulous applicant-debtor, however, it offers an almost impenetrable haven of escape from paying a duly contracted obligation. Each year, as knowledge of this opportunity is disseminated further, agencies lose increased thousands of dollars.

How did Section 1647 come to be?

While the controversy procedure was written into the law in 1923, in its present language, its origin is in the Employment Agencies Act of 1913, when the Commissioner of Labor, his deputies and agents were vested with the power and authority of sheriffs and other peace officers to make arrests for violations of that act.

This authority was first used by the commissioner to investigate complaints against employment agencies, most of which involved refunds of placement fees which the agencies had declined to make voluntarily. As noted in the 16th biennial report of the Bureau of Labor Statistics for 1913-14:

"During the fiscal years 1914 there were filed 923 complaints against employment agencies. Each of these complaints was investigated, and in 632 cases fees and expenses to the amount of \$2,328.30 was ordered returned."

However, the commissioner in those days apparently felt that his jurisdiction in such matters extended only to positions which lasted less than seven days, but where the applicant had paid the full fee, for as noted in the 20th biennial report of the Bureau of Labor Statistics for 1921-22, it states:

"The law further provides that when the employment lasts less than seven days by reason of the discharge of the applicant, the employment agency must return to the applicant his fee or such part of the fee as in the judgment of the Commissioner of Labor may be adequate."

In the early 1900s, most employment agencies, like almost all other businesses, did not extend credit. Placement fees were paid in advance or the applicant was not sent to the job. Under the conditions that prevailed in the agencies of those days, as well as the nature and competency of their applicants and because small claims courts were not established until 1933, it is clear that the commissioner needed powers to compel the return of fees.

How the law gradually evolved to its present application by the Labor Commissioner is a question on which research yields little in the way of plausible answer. It appears to be a classic case of administrative practice which achieved the effect of law. As a result, perhaps the language of Section 1647 seemed practical and reasonable when it was proposed in 1923. It was probably enacted without realization of its far reaching effects or its potential damage to those to whom it denies the basic right of hearing by an impartial body. In addition, it seems clear that the Legislature did not intend that the procedure should extend to simple collection cases, for in 1953 it adopted the aforementioned amendment which permitted the Labor Commissioner to certify that no controversy existed. Undoubtedly, the Legislature did intend to provide, through the controversy procedure, a readily available method of arbitration for complaints of applicants against agencies. We believe that such a forum should be available and is highly desirable.

But, as the controversy procedure operates today, it deals predominantly with collection cases. Mr. Kenneth Cameron, Southern Area Deputy for the Division of Labor Law Enforcement, when he appeared before the October 5, 1960 session of the Assembly Interim Committee on Governmental Efficiency and Economy, discussed three types of controversies:

"One is a case in which there is no real dispute as to the amount of the fee that is owed, but in which there has been no payment. And since the agency is required by law to bring the case and get a determination from the Labor Commissioner before they can sue in court, or use normal legal process, some agencies bring their unpaid accounts to us as controversies for determination very early after they become due.

"That is one type of controversy which, in a literal sense, is really not a controversy. It is just an unpaid account. But by law it must be considered a controversy until the Labor Commissioner has determined it. This type of controversy in Los

Angeles accounts for perhaps as much as 75 percent of all controversies filed. This is what we call a collection case.

"Incidentally, in many cases of this type, when we have a hearing, the applicant does not even appear at the hearing although he is notified of it. He feels that he owes it and so he doesn't appear."

The other two types of cases, as discussed by Mr. Cameron, involve substantive issues and require "real consideration of the equities on both sides."

Commissioner Arywitz told our Los Angeles Chapter on March 12, 1964, that the Division of Labor Law Enforcement last year received 5,500 controversy cases. Judging from Mr. Cameron's statement, apparently the division acted on 4,125 pure collection cases. In addition to our other objections to this procedure, we question the propriety of the expenditure of public funds to this end.

Without the present procedure, most cases would be heard in small claims court where the maximum suit is now \$200. In a 1962 report of the Division of Labor Statistics and Research, prepared for the Division of Labor Law Enforcement, it is stated that the average fee paid by applicants for services leading to a commercial position was only \$99.74. Some placement fees do go considerably higher, but such fees are correlated to the applicant's level of responsibility, beginning salary, and therefore to his education and experience. We would estimate that fully 90 percent of all agency collection cases now heard under the controversy procedure would come within the jurisdiction of the small claims court. The operation of a small claims court is, of course, simplicity itself. No technical or expensive pleading is necessary as the clerk fills out the required information on prescribed forms; service is by registered letter with a required return receipt card; and the hearing for local residents must be held within 30 days, but in not less than 10 days. The conduct of the hearing is informal, as prescribed in the Code of Civil Procedure, Section 117:

"No attorney at law or other person than the plaintiff and defendant shall take any part in the filing or the prosecution or defense of such litigation in the small claims court. The plaintiff and defendant shall have the right to offer evidence in their behalf by witnesses appearing at such hearing, or at any other time. The judge or justice may also informally make any investigation of the controversy between the parties either in or out of court and give judgment and make such orders as to time of payment or otherwise as may, by him, be deemed to be right and just."

In describing the operation of the presently controversy procedure before the Assembly Interim Committee on Industrial Relations on August 31, 1962, Commissioner Arywitz said his deputies, in agency collection hearing:

"... concern themselves with whether the job on which an applicant has been placed is as represented, whether the fee sought by the agency has been properly computed, whether the contract receipt required by law is in order, whether the order for the job on file with the agency properly describes the placement, and whether all the other laws governing the relationship have been observed."

Such questions come before courts day in and day out on a wide range of subjects. We cannot believe that the courts are not competent to handle employment agency matters. We cannot believe that in our case alone, an officer of the executive branch of government is better qualified to sit as prosecutor, judge and jury than would be an impartial judiciary.

An additional safeguard for defendants in small claims court action is that the judge is specifically directed to prescribe the terms and condition of payment. If he concludes that the applicant client cannot pay the judgment in full, the judge schedules payment over a period of time, consistent with his ability to pay.

To recapitulate we object to the controversy procedure, particularly as it applies to collection cases, both in practice and principle, for the following reasons:

In Practice

1. It is not necessary. The interests of our applicant and employer clients would be as jealously and expertly protected by courts of competent jurisdiction as by the Labor Commissioner.
2. It unduly protects resistant and unscrupulous debtors.
3. The time interval between filing or a hearing and final determination is such as to make collections through the procedure, in many cases difficult or impossible.
4. Appeal to the superior court is so expensive and difficult as to be unavailable.
5. It is degrading to our applicant-clients whom the Labor Commissioner terms "wards of the commissioner." Such paternalism implies that these clients both jobseekers and employers, are incompetent and somehow not in the mainstream of American life or law; that the agency-client relationship is both unique and uniquely fraught with peril.

In Principle

1. The present procedure is uniquely discriminatory in that employment agency contracts cannot be enforced at law until first passed upon administratively. To our knowledge, employment agencies alone have no direct access to the courts for contract adjudication.
2. It denies agencies the basic right to unbiased and impartial hearing in legal determinations. By the inherent demands of his major responsibilities, the Labor Commissioner is biased toward our applicant client.
3. It places too much power in one office, the present procedure vests the function of the judiciary, insofar as the collection of agency fees is concerned, in the Labor Commissioner, who not only licenses us, polices us according to his own administrative rulings, but also sits in judgment on us.
4. It denies "due process" perhaps not constitutionally, but certainly in practice both because it assumes guilt until proof of

innocence and because the only appeal is to the superior court. Since most agencies cannot appeal because of the expense and time involved, appeal is, for practical purposes — unavailable.

The Labor Commissioner has stated on many occasions that he does not want to decide purely collection cases through the controversy procedure. However, he has vigorously and successfully opposed modification of that procedure before committees of the Legislature in 1962 and 1963, and he has never proposed an alternative. A proposed amendment which was heard before the Assembly Interim Committee on Industrial Relations on August 31, 1962 (AB 1016—Mr. Cusanovich—of the 1961 Regular Session), was drafted in accordance with the 1957 recommendation of this committee, which noted

“It is a fundamental of our constitutional system that the people shall have access to the courts and the term ‘the people’ most certainly include both parties to any disagreement.”

and recommended:

“... that an amendment be drafted to Section 1647 of the Labor Code providing for direct access to the appropriate courts by disputants but permitting courts to re-refer the cases to the Labor Commissioner for arbitration when genuine controversies regarding the obligation of one of the parties under the law or an employment referral contract exists.”

Procedures for Bona Fide Complaint Against Agencies

Not for a moment would we argue against the necessity for an avenue by which bona fide complaints may be brought against employment agencies. That was the intended purpose of the controversy procedure and if it had been limited thereto, it might have served its purpose well.

In our support of transfer of jurisdiction over agencies to the Department of Professional and Vocational Standards we clearly recognize the necessity for providing a practical, just, and easy means for the resolution of bona fide complaints, not presently provided in SB 1037. Perhaps it could be done by a section which would require that the Employment Agency Board establish an arbitration forum through a third party, such as the American Arbitration Association, for consideration of such matters. We suggest that the notice of the availability of such arbitration be included in the agencies contract-receipt, as is the controversy procedure at present, and that its cost be paid from the Employment Agency Licensing Fund. Provision might also be made for notifying the Labor Commissioner of such proceedings so that he could, if he so wished, extend the services of his office to the applicant.

Similarly, we suggest that in cases which are filed by employment agencies in courts other than small claims court, the agency or court be required to notify an appropriate officer of the state (perhaps the Labor Commissioner) of such action so that he could enter such proceedings either on behalf of the applicant or as friend of the court.

ADDENDUM

Note 1:

The commissioner normally declines to render a decision in a case for the full amount of the fee where the employee is still on the job, but 90 days have not elapsed. He feels that he could not render such a decision without prejudicing the applicant's right to a refund should his employment terminate in less than 90 days.

In the aforementioned *Bess v. Park* case of 1956 (144 CA 2d 798, 301 P2d 978), the court said:

"... The arbitrary postponement by appellant labor commissioner of his determination or award in the event of a dispute between the agency and the applicant would seem to amount to a nullification of the terms of a binding contract around which the controversy revolves. This would seem especially true when, as ... pointed out, the provisional remedies of suit, attachment and garnishment are unavailable to the agency until it is authorized to institute an action at law following the labor commissioner's award.

"In the instant case the court (trial) found that although appellant labor commissioner refused to make a determination and award with respect to the controversy between the agency and the applicant until after 90 days from the time the latter commenced his employment, that after the applicant had remained in his employment for a period of 90 days the commissioner made an award in favor of the agency for the full fee for permanent employment.

"As a conclusion of law the court (trial) decided, and we think correctly, 'That the defendant Labor Commissioner is under a duty to hear and determine all said cases of controversy with administrative diligence and dispatch and does not have the right, arbitrarily, to refuse to hear and determine the controversy on the ground that ninety days must elapse from the commencement date of the work before employment procured by the agency can be deemed permanent.'"

The commissioner still frequently declines to act with "administrative diligence and dispatch" which, as we noted, has the effect of nullifying our contract for an extended period of time, compounding our collection problems, substantially increasing our costs of operation which must be paid by those who do pay their fees.

EMPLOYER ORDERS—MEN

One recent week in one San Francisco agency

Job description	Education (NS—not specified)	Salary	Fee paid by
Purchasing Manager, small molded plastic and screw machine parts. Expediting. Production control	NS-----	\$12,000 year	E
Glass Blower, journeyman preferred, for research laboratory	NS-----	\$700 up	A
Group Supervisor, flexible packaging manufacturer	PhD, organic chemistry PhD-----	\$12,000 year \$12-15,000	A E
Physical Chemist, intensive background in kinetics gas phenomena, minimum 2 years experience atomic gas reactions	PhD-----	\$12-15,000	E
Vision Research Scientist to do basic research in human vision, including flicker pattern, color vision, eye movement and other movement related to imagery processing in vision system	MA or PhD, engineering or engineering psychology	\$17,000 up	E
Engineering Trainee, sales—paper products-----	Degree-----	\$600	A
Engineering Trainee, sales—welding equipment-----	Degree-----	\$600	Discuss
Sales Engineer for signaling equipment, electrical and sales background, to call on contractors, electrical engineers, institutions. Will do estimating, takeoff, quotations	Degree not required	\$5,000 up	A
Electrical Engineer, 5 years experience power distribution and lighting with consulting engineers, to handle remodelling and new store plans, for large chain operation	BSEE-----	\$700-\$800	A
Laboratory Technician, 1-2 years experience in quality control	2 years college chemistry Degree-----	\$500 \$400-\$500	E E
Junior Accountant-----	Degree-----	\$600	A(reimb.)
Chief Accountant, S and L background-----	NS-----	\$400-\$500	A
Bookkeeper, not full charge-----	Degree-----	\$500	Discuss
Sales trainee with burning desire to sell-----	Degree, accounting major	\$500-\$550	A E
Accounting trainee, upper half of class, above average in personality, attitude and appearance, growth potential, experience in corporate accounting. To train in general accounting and factory costs	Degree in accounting	\$650-\$700	A
Payroll Supervisor, supervise 17, for very large operation, salary payrolls, group insurance, retirement deductions and remittances, request for alien tax rulings, personnel files, periodic statements and reports. Good organizer	Degree in accounting	\$600	Discuss
Office Manager, supervise warehouse office-----	NS-----	\$600-\$700	Discuss
Sales Representative, new surgical product. Chemical, biological, medical experience good, but must above all be successful salesman. Top brass type. Calls on hospitals, administrators and surgical teams, with product used by anaesthetists	NS-----	\$1.65 up for experience	A
Florist Trainee, some floral design experience-----	HS minimum-----	\$475-\$500	A
Dealer Representative, paint. Develop new business. General Clerk, good typist, figure apt. Stock records, type orders, intelligent	HS minimum-----	\$325-\$350	A
Office Manager, administrative experience. Supervise seven girls. Handle incoming calls and complaints, billing, sporadic pressure. Doesn't have to be accountant	NS-----	\$500-\$600	Discuss
Office Boy, some work experience. Assist at freight desk, no typing	High school-----	\$275	A
Driver, part time, 14 hours week, Ford truck, 5-speed box, nights. Above-average man, able to deal with nurses, etc. Clean record. Able to pass extensive physical	NS-----	\$2.50 hour	A
General Plant Worker, baby milk preparation. Must pass stiff physical. Some weekends, but 40-hour week. Sharp, clean, promotable	NS-----	\$2.10 hour	A

EMPLOYER ORDERS—MEN—Continued

One recent week in one San Francisco agency

Job description	Education (NS—not specified)	Salary	Fee paid by
Billor-typist. Shorthand also would increase salary	High school-----	\$375-\$400	A
Supervisor, Machine Section of Computer Operations Department. Train and supervise employees in section comprised of tapecard 1410 computer and peripheral punched-card machine. Establish and maintain up to date procedures and flow charts, distribute and assign duties in order to meet departmental schedules and train his personnel, regular, peak-time extra, and nightshift, in all phases of section's operation. Minimum 4 years experience in EDP, 1 year as supervisor	2 years college minimum	\$650-\$700	A
Sales, cosmetics, perfume. Good work record, sales aptitude (by test). Clean cut. Sharp. Travel	2 year college-----	\$450-\$500 and bonus	A
Industrial Relations Trainee, appearance and potential extremely important. Junior executive manner. Bright, alert. At least 6 feet tall. Forceful enough to go into Labor Relations	AB or MBA-----	\$625 for AB More for MBA	A
Assistant Manager Trainee, secured loans. Some business experience, flair for detail, figure apt. Will process incoming contracts, discount loans, some business development. Good appearance	Degree-----	\$425-\$450	A
Clerk, international department of bank. Letters of credit. Dead end job for career clerk	No degree-----	\$400-\$425	A
Buyer, furniture, for bank. Will promote into banking	HS minimum-----	\$450-\$500	
Accounts Receivable Supervisor, heavy accounting background, some credit-collection experience. Acquaintance with computer programming, IBM 6400	NS-----	\$500	A
Junior Accountant, finance department of large corporation. General ledger, etc.	Degree, accounting--	\$475-\$500	A
General Accounting Clerk, will work into inventory control, military over. 2 years experience or accounting courses	Degree-----	\$450	E
Semi-Senior Accountant, good experience-----	Degree, accounting--	\$500	E
Buyer, toys, or outdoor equipment, or sporting goods experience. Minimum 1 year experience. Must know what he's doing	NS-----	\$500-\$700 up	?
Installment Loan Manager, 3-5 years bank or installment loan experience	NS-----	\$500	E
Mail Clerk, help on multilith. Distribute mail through corporate offices. Clean cut kid	High school-----	\$300	A
Quality Control, knowledge of fabrics, trouble shooter for purchasing manager, must know manufacturing processes	2 years college-----	\$500-\$600	A
Credit Man, 1-2 years experience. Know bookkeeping accounts receivable, credit, collections	NS-----	\$425-\$450	Discuss
Branch Manager, retail paint stores, knowledge of paint	NS-----	\$475	A
Order Desk Supervisor, garment experience-----	NS-----	\$350	Discuss
Salesman, call on building trade, plate tab. experience pressure-vessels, iron, etc.	NS-----	\$700 and commissions	Discuss
Systems Analyst-Programmer: defines requirements for new computer programs; prepares logical block diagrams; codes, assembles and debugs programs. Expected to complete a program on own initiative including provisions for test data, accounting controls, sequence checks, edit checks, error routines, restart procedures, etc. Equipment: 1410 tape system with EAM peripheral equipment, Models 407, 88, 519, 602, 83, 26, 56. Two years experience computer programming, tape preferred. Potential to develop into senior systems analyst	Degree, Business Administration major or accounting	\$600-\$650	A
Sales, building materials and plastics-----	Degree Business Administration	\$8M range---	Discuss

EMPLOYER ORDERS—MEN—Continued

One recent week in one San Francisco agency

Job description	Education (NS—not specified)	Salary	Fee paid by
Typewriter Repair Serviceman. 1 year experience in typewriter or business machine repair, military over	High school.....	\$325 up	A
Mail room clerk, good figure aptitude, must work under pressure	High school.....	\$1.50 hour	A
Paint Sales, manufacturing to wholesale, experience desired. Travel	High school.....	\$400 and commissions	A
Inventory Records for production planning department, promotable	Degree.....	\$475-\$500	A
Tab Operators, 407, 1401. Can go into programming later. One night shift, 1 day shift. 6 months experience minimum. Sharp	Degree.....	\$450 night \$425 day	A
Stock Clerk, retail experience helpful. Handle fine china, glass, silver	High school.....	\$65-\$75 week	A
Polisher. Older man with no ambition. For fine china, glass, silver	NS.....	\$70	A
Journeyman ironworker-mechanic. Able to read blueprints	NS.....	\$3.32 hour	A
Leather sales, experience in shoe finding and leather. Sell rubber heels, soles, shoe polish to stores and shoe shops	NS.....	\$400	A
Order Desk Clerk, wholesale electrical materials. Experienced	NS.....	\$400-\$500	E
Sales, food line, for summer-vacation for student....	In college.....	\$325-\$350	A
Junior Documentation Clerk, steamship line. Figure aptitude. Someone who wants career in shipping	NS.....	\$300	E
Kardex Clerk, stock control. Clean cut.....	High school.....	\$375-\$390	A

Job orders listed came from the following firms among others:

Wells Fargo Bank
Crocker-Citizens Bank
Tiffany & Co.
Levi Strauss
U.S. Rubber
Koret of California
Bank of California
University of California
Stanford Research Institute
Air Reduction Pacific

Ingersoll Rand
General Steamship
Crown Zellerbach
Federated Metals
Sherwin Williams
Schlage Lock
Glidden
MJB Coffee
Western Waxide
Safeway

National Biscuit Co.
Link Belt
Kaiser Industries
Rose Exterminator
American Cyanamid
Lili Ann
Tracerlab
Itek
Lucky Lager

CODE OF ETHICS

CALIFORNIA EMPLOYMENT AGENCIES ASSOCIATION

With abiding belief in the dignity of man; dedicated to the preservation of free enterprise; with pride in the service of Employment Counseling; always conscious of an Employment Consultant's grave social responsibilities . . .

I PLEDGE MYSELF IN THE CONDUCT OF A PROFESSIONAL EMPLOYMENT COUNSELING SERVICE TO

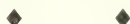
Be guided by the highest standards of integrity and morality.



Be truthful in all my representations.



Protect the public against fraud and misrepresentation.



Protect and promote the interests of my clients.



Deal fairly both with applicants and employers.



Preserve confidential information.



Increase my knowledge and improve my skills of employment counseling.



Charge for my service only such fees as are fair and reasonable in accordance with local practice.

Subscribed to by _____

[This is a summation. The full text of the Code of Ethics of the California Employment Agencies Association is available upon request.]

PRIVATE EMPLOYMENT AGENCIES IN CALIFORNIA

ANNUAL STATISTICAL REPORT, 1963

Summary

PLACEMENTS AND FEES OF PRIVATE EMPLOYMENT AGENCIES IN CALIFORNIA, 1963

General employment agencies	
Total placements ^a	586,241
Applicant-paid fee placements.....	502,296
Employer-paid fee placements.....	83,945
Total fees collected.....	\$18,020,300
Applicant-paid fees.....	10,739,900
Employer-paid fees.....	7,280,400
Theatrical and motion picture agencies and artists' managers	
Fees collected.....	\$16,741,200
Labor contractors^b	
Fees collected.....	\$587,600
Nurses' registries^a	
Total number of nurses placed.....	21,053
Male nurses.....	2,550
Female nurses.....	18,503
Total fees collected.....	\$821,000
Male nurses.....	113,700
Female nurses.....	707,300

^a Figures not comparable with years prior to 1962; 1961 legislation removed the nurses' registries from licensing under general employment agencies and separate nurses' registry licenses were issued.

^b Figures not comparable with years prior to 1962; pertain to 13 labor contractors as balance no longer required to be licensed.

TYPE OF AGENCY

General	—Places persons, for a fee, in all fields except those covered by artists' managers, labor contractors, nurses' registries, and farm labor contractors. A general agency also engaging in the theatrical and motion picture placements is issued one license as a general agency.
Theatrical and motion picture	—Books entertainers or groups of entertainers as artists, speakers, etc., for motion picture, radio, television, screen, stage, night club and other theatrical work.
Artists' manager	—Person who counsels artists in the development of their careers and obtains or attempts to obtain employment for them. Prior to August 1943, artists' managers were not covered. An artists' manager who acts as artists' manager and theatrical and motion picture employment agency, is also licensed as a theatrical and motion picture agency.
Labor contractor	—A person who, for a fee or other compensation, employs an individual to render personal services to, for, or under the direction of a third person.
Farm labor contractor	—A person who, for a fee, employs farm workers, for or under the direction of a third party, who supplies workers to a third party and in connection with obtaining workers may provide for a fee, services, such as board, lodging, or transportation for the workers, supervise the work and make payments to the workers.
Nurses' registry	—Places, for a fee, private duty nurses (registered nurses, licensed vocational nurses, or practical nurses) to render service to a patient under the supervision of a physician and surgeon registered to practice in this state. 1961 legislation added this category and removed them from licensing under general employment agencies.

TABLE 1—NUMBER OF LICENSED PRIVATE EMPLOYMENT AGENCIES, BY TYPE OF AGENCY—CALIFORNIA, LICENSE YEARS 1940-63 ^a

Year beginning	Total	General ^b	Theatrical and motion picture	Labor contractors ^c (other than farm labor)	Farm labor contractors ^d	Artists' managers ^e	Nurses' registries ^f
1940.....	721	258	264	—	199	—	—
1941.....	704	273	242	—	189	—	—
1942.....	566	219	207	—	140	—	—
1943.....	501	160	174	—	152	15	—
1944.....	648	174	139	—	225	110	—
1945.....	961	246	147	—	309	259	—
1946.....	1,383	379	182	—	502	320	—
1947.....	1,760	481	189	—	758	332	—
1948.....	2,003	555	168	—	961	319	—
1949.....	2,264	553	179	—	1,213	319	—
1950.....	2,294	549	174	—	1,264	307	—
1951.....	2,510	567	166	—	1,484	293	—
1952.....	2,499	596	157	3	1,445	298	—
1953.....	2,482	664	152	9	1,355	302	—
1954.....	2,489	701	146	18	1,332	292	—
1955.....	2,572	701	150	23	1,392	306	—
1956.....	2,616	753	137	43	1,384	299	—
1957.....	2,682	806	143	67	1,341	325	—
1958.....	2,662	823	155	78	1,273	333	—
1959.....	2,705	874	151	91	1,259	330	—
1960 ^g	2,631	963	128	51	1,194	295	—
1961.....	2,620	976	159	43	1,160	282	—
1962.....	2,794	^h 1,105	142	17	1,116	313	101
1963.....	2,724	1,032	148	13	1,128	298	105

^a Licenses are issued for the license year April 1 to March 31 of the succeeding year.

^b General agencies are all agencies other than theatrical and motion picture, artists' managers, labor contractors, and nurses' registries.

^c 1961 legislation removed certain categories of labor contractors from licensing requirements.

^d Effective January 1, 1954, license year for farm labor contractors changed to calendar year basis.

^e Effective August 4, 1943, the Labor Code was amended to establish a separate category for artists' managers. Prior to 1943 some persons who acted as artists' managers were licensed under statutes regulating theatrical and motion picture employment agencies. Others acting solely as artists' managers were not covered until August 1943. Artists' managers to whom both artists' manager and theatrical motion picture employment agency licenses have been issued are included with theatrical and motion picture employment agencies.

^f 1961 legislation removed nurses' registries from licensing under general employment agencies and provided for separate licensing as nurses' registries.

^g Beginning in 1960, figures not strictly comparable with prior years. Effective April 1, 1960, general employment agencies also operating in theatrical or labor contractor categories were issued only one license classified under general, instead of separate licenses for each category as in previous years.

All tables beginning with table 2 relate to general employment agencies only. The types of placements made by general employment agencies are grouped in the following fields of employment:

Commercial	—Includes office, sales, advertising employees, and kindred workers.
Baby sitting	—Includes and is limited to care of children in private homes, without accompanying domestic duties.
Domestic	—Includes domestic and personal servants and day workers in homes, except babysitters.
Hotel and restaurant	—Includes workers in hotels, bars, restaurants, bakeries, and lunch counters, and kindred workers, not including office employees.
Nursing and medical	—Includes practical, vocational and graduate nurses, office nurses, doctors, and other medically-trained persons including laboratory technicians.
Teaching	—Includes public and private school teachers in all grades.
Technical	—Includes laboratory technicians (other than medically-trained), lawyers, engineers, architects, and professional workers generally other than medical.
Miscellaneous	—Includes factory workers, laundry workers, garage and service station workers, beauty operators, models, and all others not included in any of the above classifications.

TABLE 2—PLACEMENTS MADE AND FEES COLLECTED ^a BY PRIVATE EMPLOYMENT AGENCIES—CALIFORNIA, 1926-63

Year	Placements	Fees (in thousands)	Year	Placements	Fees (in thousands)
1926 -----	384,740	\$1,293.1	1945 -----	118,982	\$1,187.9
1927 -----	330,381	1,339.4	1946 -----	184,566	2,968.0
1928 -----	318,706	1,259.3	1947 -----	234,067	3,849.2
1929 -----	335,357	1,465.2	1948 -----	256,913	4,287.3
			1949 -----	263,791	3,869.0
1930 -----	255,476	1,139.6			
1931 -----	154,754	674.6	1950 -----	288,781	4,485.9
1932 -----	80,308	302.4	1951 -----	339,899	5,173.3
1933 -----	92,407	335.5	1952 -----	361,729	5,713.4
1934 -----	119,909	463.6	1953 -----	396,300	6,234.8
			1954 -----	400,803	6,799.8
1935 -----	146,603	575.5			
1936 -----	207,636	911.4	1955 -----	449,423	7,857.5
1937 -----	202,864	1,039.3	1956 ^b -----	489,506	8,604.5
1938 -----	150,507	662.4	1957 ^b -----	526,551	10,864.1
1939 -----	174,637	830.7	1958 -----	506,963	10,408.2
			1959 -----	568,240	13,405.6
1940 -----	211,416	1,001.8			
1941 -----	251,019	1,439.5	1960 -----	550,529	13,573.9
1942 -----	198,763	1,637.4	1961 -----	544,825	13,651.8
1943 -----	109,257	1,187.9	1962 -----	520,294	16,336.6
1944 -----	98,366	1,203.9	1963 -----	586,241	18,020.3

^a Based on annual reports received from general employment agencies; does not include transactions of theatrical and motion picture agencies, artists' managers, labor contractors, and nurses' registries. Includes both permanent and temporary placements; therefore no meaningful figure for "average fee per placement" can be derived from these data.

^b Beginning in 1957, figures include employer paid fees and placements, and are not comparable with prior years. Separate figures for employer and applicant paid fees and placements were requested beginning with the third quarter of 1957.

TABLE 3—PLACEMENTS MADE BY PRIVATE EMPLOYMENT AGENCIES,^a BY FIELD OF EMPLOYMENT
CALIFORNIA, LOS ANGELES-LONG BEACH, SAN FRANCISCO-OAKLAND AND SAN DIEGO METROPOLITAN AREAS, 1963

Area and field of employment	Total placements			Placements for which fees paid by applicant			Placements for which fees paid by employer		
	Total	Permanent ^b	Temporary ^b	Total	Permanent ^b	Temporary ^b	Total	Permanent ^b	Temporary ^b
California									
Commercial.....	586,241	198,613	387,628	502,296	155,311	346,985	83,945	43,302	40,643
Babysitting.....	120,652	110,424	10,228	80,109	72,714	7,395	40,543	37,710	2,833
Domestic.....	318,549	358	318,191	283,270	229	283,041	35,279	129	35,150
Hotel and restaurant.....	39,237	10,645	28,592	34,648	7,065	27,583	4,589	3,580	1,009
Nursing and medical.....	18,149	14,571	3,578	18,091	14,526	3,565	58	45	13
Technical and teaching.....	11,086	5,392	5,694	10,920	5,239	5,681	166	133	13
Miscellaneous.....	4,479	4,256	223	3,263	3,063	200	1,216	1,193	23
	74,089	52,967	21,122	71,995	52,475	19,520	2,094	492	1,602
Los Angeles-Long Beach Metropolitan Area^c									
Commercial.....	345,248	134,440	210,808	300,602	105,272	195,330	44,646	29,168	15,478
Babysitting.....	68,783	63,104	5,679	42,135	38,226	3,909	26,648	24,878	1,770
Domestic.....	162,197	150	162,047	149,082	32	149,050	13,115	118	12,997
Hotel and restaurant.....	26,226	5,606	20,620	22,989	2,718	20,271	3,237	2,888	349
Nursing and medical.....	13,243	10,330	2,913	13,219	10,318	2,901	24	12	12
Technical and teaching.....	7,899	3,176	4,723	7,777	3,060	4,717	122	116	6
Miscellaneous.....	2,832	2,700	132	2,004	1,887	117	828	813	15
	64,068	49,374	14,694	63,396	49,031	14,365	672	343	329
San Francisco-Oakland Metropolitan Area^c									
Commercial.....	140,739	39,558	101,181	126,741	27,250	99,491	13,998	12,308	1,690
Babysitting.....	32,353	29,735	2,618	19,558	17,940	1,618	12,795	11,795	1,000
Domestic.....	90,800	159	90,641	90,800	159	90,641	—	—	—
Hotel and restaurant.....	9,427	3,777	5,650	3,472	3,472	5,630	325	305	20
Nursing and medical.....	2,454	2,267	187	2,453	2,266	187	1	1	—
Technical and teaching.....	1,240	1,096	144	1,215	1,072	143	25	24	1
Miscellaneous.....	841	788	53	679	631	48	162	157	5
	3,624	1,736	1,888	2,934	1,710	1,224	690	26	664
San Diego Metropolitan Area^c									
Commercial.....	19,074	3,789	15,285	16,121	3,591	12,530	2,953	198	2,755
Babysitting.....	2,938	2,563	375	2,895	2,523	372	43	40	3
Domestic.....	13,362	2	13,360	11,234	1	11,233	2,128	139	2,127
Hotel and restaurant.....	1,349	442	907	585	303	282	764	139	625
Nursing and medical.....	311	206	105	411	206	105	—	—	—
Technical and teaching.....	615	216	399	613	216	399	2	2	—
Miscellaneous.....	68	62	6	56	50	6	12	12	—
	431	298	133	427	294	133	4	4	—

TABLE 3A—PLACEMENTS MADE BY PRIVATE EMPLOYMENT AGENCIES,^a BY FIELD OF EMPLOYMENT
CALIFORNIA, LOS ANGELES-LONG BEACH, SAN FRANCISCO-OAKLAND, AND SAN DIEGO METROPOLITAN AREAS, 1960-63
(Applicant paid fees)

Area and field of employment	Total				Permanent ^b				Temporary ^b			
	1960	1961	1962	1963	1960	1961	1962	1963	1960	1961	1962	1963
California												
Commercial	485,319	467,666	438,985	502,206	112,097	107,515	112,980	155,311	372,322	360,151	326,005	346,985
Domestic	67,801	67,073	68,967	80,109	57,201	56,361	58,352	72,714	10,600	11,612	10,615	7,395
Babysitting	270,521	257,514	264,854	283,270	160	375	398	229	270,361	257,139	264,456	283,041
Hotel and restaurant	20,854	20,098	27,758	34,648	10,699	8,712	9,041	7,065	10,155	11,386	18,717	27,583
Nursing and medical	17,654	15,431	15,506	18,091	13,344	11,708	12,318	14,526	4,310	3,723	3,278	3,565
Technical and teaching	63,614	63,113	13,809	10,920	4,760	4,902	6,072	5,239	58,854	58,211	7,737	5,681
Miscellaneous	3,057	3,490	2,831	3,263	2,776	3,617	2,608	3,063	281	323	223	200
	41,818	39,597	45,170	71,995	24,057	21,840	24,191	52,475	17,761	17,757	20,979	19,520
Los Angeles-Long Beach Metropolitan Area^c												
Commercial	259,345	253,673	241,548	300,602	62,945	60,372	66,049	105,272	196,400	193,301	178,499	195,330
Domestic	32,717	34,191	35,029	42,135	26,165	26,189	27,835	38,226	6,552	8,002	7,194	3,909
Babysitting	136,364	133,744	138,854	149,082	32	168	113	32	136,332	133,576	138,741	149,050
Hotel and restaurant	8,463	7,710	16,966	22,989	4,727	4,166	4,262	2,718	3,736	3,544	12,704	20,271
Nursing and medical	11,493	9,755	11,691	13,219	8,441	7,178	9,093	10,318	3,052	2,577	2,598	2,901
Technical and teaching	38,994	37,613	7,712	7,777	2,237	2,353	2,536	3,060	36,757	35,260	5,176	4,717
Miscellaneous	1,715	2,516	1,604	2,004	1,572	2,357	1,468	1,887	143	159	136	117
	29,599	28,144	32,692	63,396	19,771	17,991	20,742	49,031	9,828	10,183	11,950	14,365
San Francisco-Oakland Metropolitan Area^c												
Commercial	125,895	137,944	116,390	126,741	26,481	25,197	25,129	27,250	99,414	112,747	91,261	99,401
Domestic	16,495	16,328	16,505	19,558	15,082	15,075	15,159	17,940	1,413	1,253	1,346	1,618
Babysitting	77,350	89,314	80,725	90,800	83	135	196	159	77,267	80,179	80,529	90,641
Hotel and restaurant	8,169	8,559	7,351	9,102	4,539	3,481	3,821	3,472	3,630	5,378	3,560	5,680
Nursing and medical	3,164	2,075	2,781	2,453	2,947	2,775	2,562	2,266	217	300	219	187
Technical and teaching	14,562	14,590	1,940	1,215	1,198	1,253	1,095	1,072	13,364	13,337	845	143
Miscellaneous	847	790	655	679	739	662	605	531	108	128	50	48
	5,308	4,988	6,403	2,934	1,893	1,816	1,691	1,710	3,415	3,172	4,712	1,224
San Diego Metropolitan Area^c												
Commercial	14,035	14,035	20,393	16,121	3,726	3,474	3,302	3,591	10,329	10,561	17,091	12,530
Domestic	3,040	2,986	2,865	2,895	2,588	2,541	2,432	2,523	452	445	437	372
Babysitting	8,181	8,263	16,030	11,234	5	1	1	1	8,176	8,262	16,029	11,233
Hotel and restaurant	482	495	425	585	331	286	263	303	151	209	162	282
Nursing and medical	290	301	233	311	164	150	150	206	86	151	83	105
Technical and teaching	1,551	1,581	506	613	197	244	245	214	1,354	1,337	261	399
Miscellaneous	27	65	37	56	25	55	30	50	2	10	7	6
	524	344	297	427	416	197	181	294	108	147	116	133

TABLE 3A—PLACEMENTS MADE BY PRIVATE EMPLOYMENT AGENCIES,^a BY FIELD OF EMPLOYMENT—Continued
CALIFORNIA, LOS ANGELES-LONG BEACH, SAN FRANCISCO-OAKLAND, AND SAN DIEGO METROPOLITAN AREAS, 1960-63
(Applicant paid fees)

Area and field of employment	Total				Permanent ^b				Temporary ^b			
	1960	1961	1962	1963	1960	1961	1962	1963	1960	1961	1962	1963
Remainder of State.....	86,024	62,014	57,654	58,832	19,845	18,472	18,500	19,198	66,179	43,542	39,154	39,634
Commercial.....	15,549	14,468	11,568	15,521	13,366	12,556	12,926	11,025	2,183	1,912	1,642	1,496
Babysitting.....	48,626	26,193	29,245	32,154	40	71	88	37	48,586	26,122	29,157	32,117
Domestic.....	3,740	3,034	2,986	1,972	1,102	779	695	572	2,638	2,255	2,291	1,400
Hotel and restaurant.....	2,717	2,300	891	2,108	1,792	1,605	513	1,736	955	695	378	372
Nursing and medical.....	8,507	9,329	3,651	1,315	1,128	1,052	2,196	893	7,379	8,277	1,455	422
Technical and teaching.....	468	569	535	524	440	543	505	495	28	26	30	29
Miscellaneous.....	6,387	6,121	5,778	5,238	1,977	1,866	1,577	1,440	4,410	4,255	4,201	3,798

^a Based on annual reports received from general employment agencies; does not include transactions of theatrical and motion picture agencies, artists' managers, and labor contractors. Also excluded for 1962 and 1963 were transactions of nurses' registries; prior to 1962, nurses' registries were included with general employment agencies.

^b Permanent placements are those lasting more than 90 days; temporary placements are those lasting 90 days or less.

^c Metropolitan area definitions:

Los Angeles-Long Beach—Los Angeles and Orange Counties.
San Francisco-Oakland—Alameda, Contra Costa, Marin, San Francisco, San Mateo, and Solano Counties.
San Diego—San Diego County.

TABLE 4—PLACEMENTS MADE BY PRIVATE EMPLOYMENT AGENCIES,^a BY FIELD OF EMPLOYMENT AND SEX—CALIFORNIA, 1963

Field of employment	Sex	Total placements			Placements for which fees paid by applicant			Placements for which fees paid by employer		
		Total	Permanent	Temporary ^b	Total	Permanent ^b	Temporary ^b	Total	Permanent ^b	Temporary ^b
Total	Both sexes	586,241	198,613	387,628	592,296	155,311	346,985	83,945	43,202	40,643
	Men	108,908	89,847	17,061	97,312	81,857	15,455	9,506	7,096	2,406
	Women	477,333	108,766	370,567	404,984	73,454	331,530	74,439	36,106	38,037
Commercial	Both sexes	120,652	110,424	10,228	80,109	72,714	7,395	40,543	37,710	2,833
	Men	31,051	28,905	2,046	24,563	22,857	1,706	6,488	6,138	350
	Women	89,601	81,429	8,172	55,546	49,857	5,689	34,055	31,572	2,483
Babysitting	Both sexes	318,549	358	318,191	283,270	229	283,041	35,279	129	35,150
	Men	38	24	15	22	7	15	17	17	—
	Women	318,510	334	318,176	283,248	222	283,026	35,262	112	35,150
Domestic	Both sexes	39,227	10,645	28,582	34,648	7,065	27,583	4,580	3,580	1,009
	Men	4,722	652	1,070	1,343	319	1,026	177	133	44
	Women	37,515	9,993	27,522	33,305	6,746	26,557	4,412	3,447	965
Hotel and restaurant	Both sexes	18,149	14,571	3,578	18,091	14,526	3,565	58	45	13
	Men	13,584	10,873	2,711	13,533	10,854	2,679	49	39	10
	Women	4,765	3,698	1,067	4,756	3,672	1,084	9	6	3
Nursing and medical	Both sexes	11,086	5,392	5,694	10,920	5,239	5,681	166	153	13
	Men	1,960	735	825	1,539	716	823	21	19	2
	Women	9,526	4,657	4,869	9,381	4,523	4,858	145	134	11
Technical and teaching	Both sexes	4,479	4,256	223	3,263	3,063	200	1,216	1,193	23
	Men	4,040	3,854	182	2,588	2,588	170	1,188	1,166	22
	Women	433	402	31	405	375	30	28	27	1
Miscellaneous	Both sexes	71,089	52,967	21,122	71,095	52,475	19,520	2,094	492	1,602
	Men	55,106	44,714	10,392	53,540	44,236	9,304	1,656	478	1,178
	Women	18,983	8,253	10,730	18,545	8,239	10,306	438	14	424

^a Based on annual reports received from general employment agencies; does not include transactions of theatrical and motion picture agencies, artists' managers, labor contractors, and nurses' registries.

^b Permanent placements are those lasting more than 90 days; temporary placements are those lasting 90 days or less.

TABLE 5—FEES COLLECTED BY PRIVATE EMPLOYMENT AGENCIES,^a BY FIELD OF EMPLOYMENT
CALIFORNIA, LOS ANGELES-LONG BEACH, SAN FRANCISCO-OAKLAND, AND SAN DIEGO METROPOLITAN AREAS, 1963
(In thousands)

Area and field of employment	Total fees collected ^b			Fees paid by applicant			Fees paid by employer		
	Total	Permanent ^c	Temporary ^c	Total	Permanent ^c	Temporary ^c	Total	Permanent ^c	Temporary ^c
California.....	\$18,020.3	\$16,906.1	\$1,114.1	\$10,739.9	\$9,832.8	\$907.0	\$7,280.4	\$7,073.3	\$207.1
Commercial.....	12,690.1	12,354.2	335.9	6,749.9	6,556.7	193.2	5,940.2	5,797.5	142.7
Babysitting.....	352.1	20.5	311.7	285.1	4.4	280.8	47.0	16.1	30.9
Domestic.....	613.0	506.3	106.7	280.1	183.1	97.0	332.9	323.2	9.7
Hotel and restaurant.....	346.7	341.0	42.7	345.1	302.7	42.5	1.6	1.6	1.2
Nursing and medical.....	558.8	498.1	60.7	530.9	471.4	59.6	27.9	26.7	1.1
Technical and teaching.....	1,448.5	1,436.2	12.3	593.5	585.0	8.6	855.0	851.2	3.7
Miscellaneous.....	2,030.8	1,786.7	244.1	1,955.0	1,729.6	225.4	75.8	57.1	18.7
Los Angeles-Long Beach Metropolitan Area ^d	11,461.2	10,733.2	727.9	6,185.5	5,590.9	594.5	5,275.7	5,142.3	133.4
Commercial.....	7,612.5	7,399.4	213.1	3,322.3	3,215.5	106.8	4,290.2	4,183.9	106.3
Babysitting.....	193.0	17.4	175.6	163.6	1.6	162.0	20.4	15.8	13.6
Domestic.....	420.6	344.3	76.4	136.8	68.2	68.6	283.8	276.1	7.7
Hotel and restaurant.....	224.2	191.0	33.1	223.0	190.0	32.9	1.2	1.0	0.2
Nursing and medical.....	360.5	312.9	47.6	339.1	292.2	47.0	21.4	20.7	0.6
Technical and teaching.....	961.6	954.6	7.1	351.5	346.4	5.2	610.1	608.2	1.9
Miscellaneous.....	1,688.6	1,513.6	175.1	1,649.1	1,477.0	172.1	39.5	36.6	3.0
San Francisco-Oakland Metropolitan Area ^d	4,051.0	3,837.5	213.5	2,405.1	2,239.9	165.2	1,645.9	1,597.6	48.3
Commercial.....	3,262.1	3,191.9	70.2	1,743.5	1,707.0	36.5	1,518.6	1,484.9	33.7
Babysitting.....	84.0	2.2	81.8	84.0	2.2	81.8	—	—	—
Domestic.....	126.8	107.3	19.5	103.6	84.4	19.2	23.2	22.9	0.3
Hotel and restaurant.....	76.7	72.0	4.7	76.6	71.9	4.7	1.1	1.1	—
Nursing and medical.....	115.4	112.1	3.2	110.2	107.1	3.0	5.2	5.0	0.2
Technical and teaching.....	223.8	219.7	4.0	147.0	144.2	2.7	22.0	21.3	0.7
Miscellaneous.....	162.4	132.2	30.0	140.4	123.0	17.3	22.0	9.2	12.7
San Diego Metropolitan Area ^d	431.3	395.6	35.7	391.2	359.0	32.2	40.1	36.6	3.5
Commercial.....	311.0	298.9	12.1	301.3	289.5	11.8	9.7	9.4	0.3
Babysitting.....	11.0	1.1	10.8	8.8	—	8.8	2.2	2.2	—
Domestic.....	34.4	30.4	4.0	16.9	14.1	2.8	17.5	16.3	1.2
Hotel and restaurant.....	14.0	12.0	2.0	14.0	12.0	2.0	—	—	—
Nursing and medical.....	19.2	14.7	4.5	18.9	14.4	4.5	3.3	3.3	—
Technical and teaching.....	19.9	19.8	—	10.3	10.2	0.1	9.6	9.6	—
Miscellaneous.....	21.9	19.6	2.3	21.1	18.8	2.3	9.8	9.8	—

Remainder of State.....	2,076.8	1,939.7	137.1	1,758.1	1,643.0	115.1	318.7	296.7	22.0
Commercial.....	1,504.4	1,463.9	40.5	1,382.7	1,344.6	38.1	121.7	119.3	2.4
Babysitting.....	44.4	43.6	43.6	28.9	6	28.3	15.5	7.9	15.3
Domestic.....	31.2	24.3	6.9	22.8	16.4	6.4	8.4	3	.5
Hotel and restaurant.....	31.9	29.0	2.8	31.6	28.7	2.8	3	3	.5
Nursing and medical.....	63.9	58.5	5.4	62.8	57.7	5.1	1.1	8	.3
Technical and teaching.....	243.3	242.1	1.2	84.9	84.2	5.7	158.4	157.9	.5
Miscellaneous.....	157.9	121.2	36.7	144.5	110.8	33.7	13.4	10.4	3.0

a Based on annual reports received from general employment agencies; does not include transactions of theatrical and motion picture agencies, artists' managers, labor contractors, and nurses' registries.

b Figures may not add to totals due to rounding.

c Permanent placements are those lasting more than 90 days; temporary placements are those lasting 90 days or less.

d Metropolitan area definitions:

Los Angeles-Long Beach—Los Angeles and Orange Counties.
 San Francisco-Oakland—Alameda, Contra Costa, Marin, San Francisco, San Mateo, and Solano Counties.
 San Diego—San Diego County.

e Less than \$100.

Remainder of State-----	1,468.7	1,536.6	1,576.2	1,758.1	1,274.7	1,346.0	1,436.6	1,643.0	104.0	100.7	139.6	115.1
Commercial-----	1,053.3	1,121.6	1,192.3	1,382.7	1,016.3	1,082.7	1,150.0	1,344.6	37.0	38.9	32.3	38.1
Babysitting-----	38.3	22.7	26.5	28.9	0.7	1.1	1.6	6	27.6	23.2	24.9	28.3
Domestic-----	33.3	25.2	25.4	22.8	22.3	17.0	17.2	16.4	11.6	8.2	8.2	6.4
Hotel and restaurant-----	31.4	28.0	19.2	31.6	25.1	22.0	16.6	28.7	16.2	6.0	2.1	2.8
Nursing and medical-----	125.3	140.9	82.9	62.8	66.3	66.1	62.2	57.7	59.0	74.8	19.8	5.1
Technical and teaching-----	51.5	72.7	83.1	84.9	50.2	70.9	82.0	84.2	4.3	1.8	1.1	7.7
Miscellaneous-----	135.7	125.5	146.8	144.5	93.7	86.2	106.1	110.3	42.0	40.0	40.7	33.7

a Based on annual reports received from general employment agencies; does not include transactions of theatrical and motion picture agencies, artists' managers, and labor contractors. Also excluded for 1962 and 1963 were transactions of nurses' registries; prior to 1962, nurses' registries were included with general employment agencies.

b Figures may not add to totals due to rounding.

c Permanent placements are those lasting more than 90 days; temporary placements are those lasting 90 days or less.

d Metropolitan and definitions:

Los Angeles—Long Beach—Los Angeles and Orange Counties.

San Francisco—Oakland—Alameda, Contra Costa, Marin, San Francisco, San Mateo, and Solano Counties.

San Diego—San Diego County.

e Less than \$100.

TABLE 6—FEES COLLECTED BY PRIVATE EMPLOYMENT AGENCIES,^a BY FIELD OF EMPLOYMENT AND SEX
CALIFORNIA, 1963
(In thousands)

Field of employment	Sex	Total fees collected			Fees paid by applicant			Fees paid by employer		
		Total ^b	Permanent ^c	Temporary ^c	Total ^b	Permanent ^c	Temporary ^c	Total ^b	Permanent ^c	Temporary ^c
Total	Both sexes	\$18,020.3	\$16,906.1	\$1,114.1	\$10,739.9	\$9,832.8	\$907.0	\$7,280.4	\$7,073.3	\$207.1
	Men	7,655.9	7,340.8	275.1	5,233.1	4,905.2	237.9	2,432.8	2,385.6	37.2
	Women	10,364.3	9,525.3	839.0	5,506.7	4,837.6	669.1	4,847.6	4,687.7	169.9
Commercial	Both sexes	12,600.1	12,354.2	335.9	6,749.9	6,556.7	193.2	5,940.2	5,797.5	142.7
	Men	4,216.3	4,138.1	78.2	2,721.8	2,668.2	53.6	1,494.5	1,469.9	24.6
	Women	8,473.7	8,216.0	257.7	4,028.0	3,888.4	139.6	4,445.7	4,327.6	118.1
Babysitting	Both sexes	332.1	20.5	311.7	285.1	4.4	280.8	47.0	16.1	30.9
	Men	5.8	1.7	4.2	5.0	.9	4.2	.8	.8	—
	Women	326.4	18.8	307.5	280.1	3.5	276.6	46.3	15.3	30.9
Domestic	Both sexes	613.0	506.3	106.7	280.1	183.1	97.0	332.9	323.2	9.7
	Men	37.2	31.0	6.3	21.7	16.4	5.4	15.5	14.6	.9
	Women	575.8	475.5	100.4	258.4	166.8	91.6	317.4	308.7	8.8
Hotel and restaurant	Both sexes	346.7	304.0	42.7	345.1	302.7	42.5	1.6	1.3	.2
	Men	260.0	230.0	30.1	259.0	229.1	29.9	1.0	.9	.2
	Women	86.6	74.0	12.7	86.1	73.5	12.6	.5	.5	.1
Nursing and medical	Both sexes	558.8	498.1	60.7	530.9	471.4	59.6	27.9	26.7	1.1
	Men	125.3	120.5	4.8	120.6	116.0	4.6	4.3	4.5	.4
	Women	433.4	377.7	55.6	410.4	355.4	54.9	23.0	22.3	.7
Technical and teaching	Both sexes	1,448.5	1,436.2	12.3	593.5	585.0	8.6	855.0	851.2	3.7
	Men	1,356.8	1,345.7	11.0	514.3	506.9	7.4	842.5	838.8	3.6
	Women	91.7	90.3	1.4	79.2	78.0	1.2	12.5	12.3	.2
Miscellaneous	Both sexes	2,030.8	1,786.7	244.1	1,055.0	1,729.6	225.4	75.8	57.1	18.7
	Men	1,554.2	1,513.8	140.4	1,457.7	1,437.7	132.8	63.7	56.1	7.6
	Women	376.6	272.9	103.7	364.5	271.9	92.6	12.1	1.0	11.1

^a Based on annual reports received from general employment agencies; does not include transactions of theatrical and motion picture agencies, artists' managers, labor contractors, and nurses' registries.

^b Figures may not add to totals due to rounding.

^c Permanent placements are those lasting more than 90 days; temporary placements are those lasting 90 days or less.

TABLE 7 — AVERAGE FEE COLLECTED BY PRIVATE EMPLOYMENT AGENCIES,^a BY FIELD OF EMPLOYMENT AND SEX, CALIFORNIA, LOS ANGELES-LONG BEACH, SAN FRANCISCO-OAKLAND, AND SAN DIEGO METROPOLITAN AREAS, 1963

Area and field of employment	Applicant paid fees			Employer paid fees		
	Both sexes	Men	Women	Both sexes	Men	Women
California						
Commercial	\$63.31	\$61.02	\$65.86	\$163.35	\$298.57	\$132.75
Babysitting	90.17	116.74	77.99	151.74	239.48	137.07
Domestic	19.26	°	15.89	121.99	45.71	137.03
Hotel and restaurant	23.92	31.51	25.48	90.29	109.48	89.55
Nursing and medical	20.84	21.15	19.92	29.16	21.87	76.50
Teaching	89.98	161.94	78.58	174.63	234.32	166.17
Technical	304.34	322.25	287.22	°	°	°
Miscellaneous	173.80	178.02	111.69	714.54	719.97	471.31
	32.96	32.95	33.00	116.09	117.43	70.29
Los Angeles-Long Beach Metropolitan Area^b						
Commercial	53.11	50.11	57.64	176.30	318.33	143.87
Babysitting	84.12	114.63	70.14	165.18	253.44	150.20
Domestic	49.69	°	28.48	131.27	45.71	139.18
Hotel and restaurant	25.11	34.22	24.06	95.60	111.15	94.94
Nursing and medical	18.42	19.45	15.59	80.58	°	°
Teaching	95.48	167.66	82.04	173.77	162.10	180.34
Technical	156.26	200.13	127.43	°	°	°
Miscellaneous	184.43	188.46	116.93	749.10	752.18	278.86
	30.12	29.81	31.78	106.60	107.51	76.30
San Francisco-Oakland Metropolitan Area^b						
Commercial	82.20	97.61	72.34	129.81	221.73	111.85
Babysitting	95.15	111.22	85.79	125.89	198.67	112.54
Domestic	13.65	°	13.53	°	°	°
Hotel and restaurant	24.32	21.28	24.49	75.15	°	75.39
Nursing and medical	31.73	33.16	27.63	°	°	°
Teaching	99.93	169.83	85.92	206.79	°	146.00
Technical	420.12	439.06	404.44	°	°	°
Miscellaneous	157.82	160.50	127.08	480.96	483.75	443.82
	71.95	74.92	52.92	357.12	381.75	381.75
San Diego Metropolitan Area^b						
Commercial	99.98	117.06	94.08	184.62	507.35	124.71
Babysitting	114.76	134.18	109.43	235.13	446.31	133.44
Domestic	°	°	°	°	°	°
Hotel and restaurant	46.39	84.53	44.13	117.35	°	117.64
Nursing and medical	58.27	69.75	50.20	°	°	°
Teaching	67.36	74.00	67.03	°	°	°
Technical	°	°	°	°	°	°
Miscellaneous	203.78	203.78	°	867.36	780.09	°
	63.91	77.12	27.33	°	°	°

TABLE 7—AVERAGE FEE COLLECTED BY PRIVATE EMPLOYMENT AGENCIES,^a BY FIELD OF EMPLOYMENT AND SEX,
CALIFORNIA, LOS ANGELES-LONG BEACH, SAN FRANCISCO-OAKLAND, AND SAN DIEGO
METROPOLITAN AREAS, 1963 — Continued

Area and field of employment	Applicant paid fees			Employer paid fees		
	Both sexes	Men	Women	Both sexes	Men	Women
Remainder of State.....	85.58	97.19	79.01	182.28	376.41	89.61
Commercial.....	95.87	130.91	83.34	119.67	200.21	103.70
Babysitting.....	16.76	^c	16.39	14.00	—	14.00
Domestic.....	28.69	37.49	28.08	31.90	°	28.84
Hotel and restaurant.....	16.54	13.56	36.27	8.50	4.84	°
Nursing and medical.....	64.61	92.21	63.07	69.55	—	69.55
Teaching.....	240.95	258.48	219.15	°	—	°
Technical.....	131.38	137.16	73.45	751.22	758.90	°
Miscellaneous.....	76.92	78.82	63.27	87.72	87.64	°

^a Based on annual reports received from general employment agencies; does not include transactions of theatrical and motion picture agencies, artists' managers, labor contractors, and nurses' registries.

^b Metropolitan area definitions:

Los Angeles-Long Beach—Los Angeles and Orange Counties.
San Francisco-Oakland—Alameda, Contra Costa, Marin, San Francisco, San Mateo, and Solano Counties.
San Diego—San Diego County.

^c Insufficient placements on which to base an average.

TABLE 7A—AVERAGE FEE COLLECTED BY PRIVATE EMPLOYMENT AGENCIES FOR PERMANENT PLACEMENTS,^a BY FIELD OF EMPLOYMENT AND SEX, CALIFORNIA, LOS ANGELES-LONG BEACH, SAN FRANCISCO-OAKLAND, AND SAN DIEGO METROPOLITAN AREAS, 1960-63

(Applicant paid fees)

Area and field of employment	Both sexes						Men				Women			
	1960			1962			1963			1960	1961			1963
	1960	1961	1962	1962	1963	1963	1960	1961	1962	1962	1960	1961	1962	1963
California														
Commercial	\$69.15	\$74.45	\$77.76	\$77.76	\$63.31	\$75.40	\$80.34	\$82.83	\$82.83	\$63.82	\$69.67	\$73.33	\$73.33	\$65.86
Babysitting	90.22	94.77	99.74	99.74	90.17	108.15	114.66	117.83	117.83	80.84	85.50	90.59	90.59	77.99
Domestic	17.43	14.70	17.93	17.93	19.26	25.35	33.03	33.03	33.03	17.87	12.26	16.87	16.87	15.89
Hotel and restaurant	21.28	24.03	22.74	22.74	25.92	25.35	33.03	25.70	25.70	20.82	22.38	22.41	22.41	25.48
Nursing and medical	23.43	25.02	26.28	26.28	20.84	80.98	164.98	61.50	61.50	22.99	23.50	23.87	23.87	19.92
Teaching	85.88	87.16	72.38	72.38	304.34	202.61	235.10	153.48	153.48	73.21	75.67	77.63	77.63	78.58
Technical	276.23	244.35	264.15	264.15	304.34	146.72	137.91	165.24	165.24	257.14	255.59	257.94	257.94	287.22
Miscellaneous	142.98	124.41	160.38	160.38	173.80	57.33	60.64	66.35	66.35	81.99	35.49	89.65	89.65	111.69
	52.58	56.38	63.17	63.17	32.96	76.17	80.43	81.14	81.14	38.01	42.87	51.34	51.34	33.00
Los Angeles-Long Beach Metropolitan Area^b														
Commercial	71.69	76.41	78.50	78.50	53.11	120.78	126.54	128.32	128.32	66.45	72.16	75.44	75.44	57.64
Babysitting	102.60	106.37	110.47	110.47	84.12	20.01	24.01	25.30	25.30	90.82	95.64	100.19	100.19	70.14
Domestic	21.19	11.24	16.87	16.87	49.69	20.01	24.01	25.30	25.30	23.31	11.24	16.45	16.45	28.48
Hotel and restaurant	19.11	22.94	21.85	21.85	25.11	20.01	24.01	25.30	25.30	18.97	22.74	21.36	21.36	24.06
Nursing and medical	23.67	25.97	24.25	24.25	18.42	24.58	150.13	169.02	169.02	20.91	21.91	21.66	21.66	15.59
Teaching	102.06	95.58	98.81	98.81	95.48	167.20	194.54	203.91	203.91	86.20	82.28	83.99	83.99	82.04
Technical	183.27	133.96	195.87	195.87	156.26	194.54	129.64	142.27	142.27	172.85	139.53	183.27	183.27	127.43
Miscellaneous	160.02	127.36	170.60	170.60	184.43	162.40	142.27	165.67	165.67	98.71	20.04	84.21	84.21	116.93
	53.38	56.68	62.23	62.23	30.12	58.22	61.68	65.67	65.67	39.08	42.25	50.53	50.53	31.78
San Francisco-Oakland Metropolitan Area^b														
Commercial	64.40	69.15	73.86	73.86	82.20	76.42	83.24	86.81	86.81	56.67	59.89	65.03	65.03	72.34
Babysitting	78.47	80.70	87.98	87.98	95.15	90.26	98.17	100.12	100.12	71.72	71.17	80.53	80.53	85.79
Domestic	16.30	18.41	18.49	18.49	13.65	32.84	69.38	64.14	64.14	16.30	12.02	16.48	16.48	13.53
Hotel and restaurant	23.47	25.41	22.58	22.58	24.32	32.84	30.23	33.02	33.02	22.63	22.84	22.35	22.35	24.49
Nursing and medical	28.15	28.96	31.73	31.73	28.50	99.83	178.44	197.37	197.37	26.98	25.05	28.94	28.94	27.63
Teaching	85.62	94.29	98.88	98.88	99.93	191.66	372.18	401.24	401.24	68.56	77.26	80.53	80.53	85.92
Technical	370.98	373.47	337.33	337.33	420.12	383.28	332.18	401.24	401.24	354.52	374.81	401.44	401.44	404.44
Miscellaneous	127.60	126.33	150.63	150.63	157.82	133.78	139.40	154.12	154.12	75.51	66.86	102.03	102.03	127.08
	52.27	64.24	70.98	70.98	71.95	58.94	67.20	72.01	72.01	30.88	45.22	62.20	62.20	52.92

TABLE 7A—AVERAGE FEE COLLECTED BY PRIVATE EMPLOYMENT AGENCIES FOR PERMANENT PLACEMENTS,^a BY FIELD OF EMPLOYMENT AND SEX, CALIFORNIA, LOS ANGELES-LONG BEACH, SAN FRANCISCO-OAKLAND, AND SAN DIEGO METROPOLITAN AREAS, 1960-63—Continued

Area and field of employment	Both sexes				Men				Women			
	1960	1961	1962	1963	1960	1961	1962	1963	1960	1961	1962	1963
San Diego Metropolitan Area ^b	86.35	87.35	93.30	99.98	95.06	95.58	102.91	117.06	83.08	85.02	90.60	94.08
Commercial.....	106.67 ^c	100.86	107.48	114.76	131.74	108.93	127.32	134.18	100.25	95.78	102.83	109.43
Babysitting.....	25.73	29.11	34.07	46.39	44.64	36.76	40.14	84.53	24.90	28.63	33.52	44.13
Domestic.....	28.87	28.13	31.57	38.27	33.42	28.11	31.39	69.75	26.70	28.14	31.70	50.20
Hotel and restaurant.....	59.05	74.17	71.32	67.36	68.20	122.42	40.44	74.00	58.71	71.67	73.77	67.03
Nursing and medical.....	137.04	100.16	144.00	203.78	170.04	130.06	154.19	203.78	55.32 ^c	55.32 ^c	67.25	—
Technical.....	40.46	55.83	61.64	63.91	44.31	64.70	59.66	77.12	35.58	35.58	67.25	27.33
Miscellaneous.....	64.23	72.86	77.66	85.58	67.30	73.58	83.52	97.19	62.68	72.49	74.43	79.01
Remainder of State.....	76.04	86.23	88.97	95.87	94.36	108.85	115.01	130.91	69.80	79.18	80.38	83.34
Commercial.....	17.95	14.89	18.07	16.76	29.00	27.81	30.60	37.49	18.41	14.89	18.28	16.39
Babysitting.....	20.24	21.83	24.78	28.69	29.00	27.81	30.60	37.49	19.64	21.58	24.57	25.08
Domestic.....	14.02	13.68	32.33	16.54	10.34	10.46	37.46	13.56	26.13	27.48	28.71	36.27
Hotel and restaurant.....	58.76	62.85	28.76	64.61	62.30	69.75	9.07	92.21	58.61	62.58	59.88	63.07
Nursing and medical.....	192.92	192.04	220.04	240.95	199.83	186.95	220.90	258.48	185.08	196.58	218.66	219.15
Technical.....	96.79	108.68	133.06	131.38	98.87	113.25	139.76	137.16	64.77	61.06	90.93	73.45
Miscellaneous.....	47.39	46.18	67.28	76.92	50.27	45.03	68.75	78.82	34.85	52.70	56.88	79.01

^a Based on annual reports received from general employment agencies; does not include transactions of theatrical and motion picture agencies, artists' managers, and labor contractors. Also excluded for 1962 and 1963 were transactions of nurses' registries; prior to 1962, nurses' registries were included with general employment agencies.

^b Metropolitan area definitions:
Los Angeles-Long Beach—Los Angeles and Orange Counties.
San Francisco-Oakland—Alameda, Contra Costa, Marin, San Francisco, San Mateo, and Solano Counties.

San Diego—San Diego County.

^c Insufficient placements on which to base an average.

Prepared by the Division of Labor Statistics and Research
For
Division of Labor Law Enforcement

Per Diems Paid to Members of Licensing Boards, Commissions, and/or Committees Within the Department of Professional and Vocational Standards

Senate Bill 807, as introduced in the 1963 session of the Legislature by Senator Alan Short, originally proposed to increase per diems for the members of the various boards and commissions of the Department of Professional and Vocational Standards from \$25 per day to \$50 per day. The bill was subsequently amended in the policymaking committee, and the per diem allotment then proposed was \$35 per day—with the extra restriction that no member should receive more than 6 per diems in any one month, nor more than 60 per diems in any one year.

The payments would be made subject to the availability of moneys in that fund for which the particular member of the board or commission was serving. The proposed increase in per diem was intended to cover the increased cost of living which has occurred since the present \$25 per diem was instituted.

In the Department of Professional and Vocational Standards there are 32 boards and commissions, established by the Legislature, and the department acts as the administrative body and policymaking group for the various boards and commissions. The boards meet not less than four times per year, and most of them meet much more frequently.

A public hearing was held in Sacramento on October 29, 1963; the deputy director of the department, and representatives from the Board of Pharmacy, the Board of Dental Examiners, the Bureau of Furniture and Bedding, and the Board of Veterinary Medicine were present and testified.

At the time of the hearings, the Board of Medical Examiners had recorded the highest number of per diems, a total of 1,139, and a low figure of eight had been established by two boards (Guide Dogs for the Blind and the Licensed Physical Therapists) during the last period for which figures were available to the committee. During the year 1964, the low in per diems received by any one appointee serving on the 29 boards and commissions was \$25 for one day. The high was \$4,150 for 167 per diems.

As a result of questions raised concerning the number of meetings by some of the boards, and also because of the locale of some of these meetings, the bill amended, was referred to this committee for interim study. Investigation by the staff revealed that boards were meeting a great many times away from the large metropolitan areas where most of the licensees themselves are situated. The favorite place of these meetings appeared to be Santa Barbara, Monterey, Palm Springs, Tahoe Valley and Yosemite.

The Board of Architectural Examiners during the period from August 1, 1962, to June 8, 1963, met 11 times. Three of these were special meetings of one day's duration. These were held either in Los Angeles or San Francisco. Oral interviews were held on four separate occasions also in San Francisco and Los Angeles. These oral interviews of applicants for licensing took up a total of seven days. For its regular business meetings, the board met once in Santa Barbara for four days; once in Monterey for a period of five days and once in Palm Springs for four days. In addition the board met in Seattle for two days attending the Western Conference of Architectural Examiners.

Listed among its meetings is a committee meeting of the Board of Dental Examiners in Miami, Florida. This turned out to be the annual meeting of the American Dental Association. The Board of Accountancy held meetings in Yosemite and Coronado during the 1962-63 fiscal year. The Landscape Architect Board met a total of six times during the fiscal year. Four of these meetings were held in such places as Lake Tahoe, Yosemite, Palm Springs, and Santa Barbara. Lake Tahoe was a favorite meeting place for the Board of Veterinary Medicine and the Board of Shorthand Reporters. The concern of the committee is best set forth in questioning one of the witnesses:

Senator Stiern: "What is the point of going to Bijou with the Veterinary Board?—Why at Bijou? There is nothing central about the Lake Tahoe area."

Mr. Barbeau: There is nothing in the law—

Chairman Short: Mr. Barbeau aren't there other places that have more veterinarians than Bijou, California?

Mr. Barbeau: Yes.

Chairman Short: And it is not nearly as close to Stateline as Bijou is.

Mr. Barbeau: Actually—

Senator Stiern: The point I am getting at is this. It would seem that you would meet where it was an open meeting and people in the profession might like to attend. I don't know how many veterinarians there are in the Bijou area but I don't think there are as many as there are in the Los Angeles area or even in the Fresno area as far as that goes—

Some question was raised as to whether or not the giving of examinations and the grading of papers might not be handled by an independent agency. While it was extremely difficult to pin down the actual number of days spent, a good deal of time is occupied by most of the boards in the preparation, supervision, and correction of examinations. The chairman demonstrated great interest in this function of the boards, as indicated by the following question:

Chairman Short: "Let me ask you this, it is possible to get from the department a study of whether it would be feasible to have knowledgeable people, the same as we have in the members of the board, prepare the examinations and correct them, for example, professors in the dental school to prepare a written examination and appropriate members of academic staffs to correct them and to make a survey to determine what they would charge to prepare these examinations and to correct them so that you wouldn't take busy people away from busy jobs. So that these people that are on the boards can best spend their time in policy matters rather than grading papers. Is it possible to make such a survey? May I ask, on behalf of the committee, since the director of the department is here, we would appreciate such a survey being made of some kind or a determination given us as to whether it is feasible or what it would cost. I don't think you are going to have any trouble with the Athletic Commission. Check the dental examiners, the medical examiners and see what they come up with. I think

that we would very much like to have this information and I think that we could use it in our general reports.”

The information requested in the report has not yet been received. The department has not completed its study on examinations. This is a complex matter; the per diems are misleading with respect to the examinations of the so-called healing arts: the Chiropractic Examiners, the Dental Examiners, the Funeral Directors, Medical Examiners, Board of Pharmacy, etc. These boards prepare the examinations, give them, and correct the papers. The other boards, in many cases, handle this matter by a combination of arrangements. For instance, the Board of Civil and Professional Engineers employ outside experts to prepare tests and examine applicants. If the costs were reflected in the per diems, the average per diems would be in keeping with those of such others as the Board of Pharmacy and the Board of Dental Examiners. The Contractors' License Board has a permanent staff that handles this function. The Board of Cosmetology uses civil service examiners for this purpose, and has done so for the last three years. The Board of Barber Examiners has this work done by full-time board members, employing two part-time board members as well.

With respect to the relationship of costs and per diems, the following interesting testimony was offered by Leon Happell, a member of the Board of Pharmacy:

Leon Happell: “One reason why they didn't blush when we asked for this increase was the fact that in 1950 the average wage of a pharmacist was about \$350 a month and now, a young man out of school, who has just received his graduation and is licensed by the commission of the board, will receive a wage of not less than \$850 a month, and I have one pharmacist that I pay \$1,100 a month to. I have several that I pay \$950 a month to, or about that, but the average run of the mill is about \$45 a day for a pharmacist. The law provides that you must have a registered pharmacist in charge of a pharmacy at all times and this is where we vary from all of the other boards. It is mandatory that as long as the door is open, there must be a registered man in charge. A man leaves to attend a board meeting, he has to place a man in his place, if he is operating at full capacity. It will cost him \$50 a day to put a fellow in there to take his place and these facts can be borne out by any kind of an interrogation.”

In connection with this increased cost, it might be well to review the present status of per diems for appointees to the board and commissions in the Department of Professional and Vocational Standards. Prior to 1959, the members of the various boards and commissions received their per diems with figures set forth in each individual bill. There was a discrepancy from board to board and an effort was made to achieve uniformity for all appointees during this period.

Legislation was subsequently introduced and passed, setting forth the \$25 per diem presently existing. This achievement obviously required some compromise. As previously stated, the desire to increase the per diems is predicated upon the existence of increased costs. Almost without exception, the appointee suffers a financial loss in deal-

ing with board business and attending board meetings. It is doubtful that any of the board members receive less than \$25 a day in their regular occupations. Where the proprietor of a business is concerned, it is necessary in almost every case that he have someone to replace him and take care of business in his absence. The purpose of the per diems is to compensate for this personal sacrifice.

The committee staff contacted the States of Florida, Texas, Pennsylvania, New York, Massachusetts, Illinois, and Ohio, with a view to ascertaining what these particular states paid in the way of per diems to various appointees to similar boards and commissions in the respective states. In requesting information from the various states, an effort was made to pick those states that were relatively similar to California in economy, and had sufficient population to be properly indicative. The States of New York, Illinois, Florida, Ohio, and Pennsylvania responded. Attached, as an addendum or appendix to the report, is the information received from those states cooperating with the committee.

In none of these states was there a uniformity of payment. In New York, the per diems ranged from \$30 to \$60. In the State of Illinois, interestingly enough, most of the appointees to boards and commissions receive no per diems, but only their actual expenses. The few who do obtain per diems receive from \$10 per day to \$25 per day. While the information from the State of Florida was not clear and covered many of the judicial offices, etc., there appears to be a pattern of payment of \$35 per diem to members of boards. That of the Board of Pharmacy is specifically spelled out in one section of the Florida statutes. In the State of Ohio, the per diems ranged from a low of \$15 per day to a high of \$100 per day. Certain appointees in the State of Ohio receive yearly allocations. For example, the State Racing Commission receives \$2,500 a year and the Ohio Turnpike Commission receives \$5,000 per year. The Board of Building Appeals, which receives the maximum of \$100 per diem, may not exceed \$3,000 per year in per diems. In the State of Pennsylvania, the per diems ranged to a maximum of \$50 per day.

The financial provision factor was discussed at the hearings, and information received from the department indicates that with slight exception there are sufficient funds in each agency or bureau to match increased costs. The comparison of per diems for 1963 and 1964 is attached hereto, and made an appendix. The estimate of increased cost is also attached hereto and made an exhibit and part of this report.

RECOMMENDATIONS

The committee feels that the per diems of the boards should be increased to \$50 per day. From an equity standpoint, there is a sufficient justification on the basis of increased costs to the members of the boards. Moreover, a comparison of figures from other states indicates that the \$50 figure would not be remiss, and would in fact be in keeping with a logical provision; the \$50 figure would then be in order.

The committee feels that substantial savings could be made and the number of per diems decreased and/or made more meaningful if the examination preliminaries and procedures were investigated. In this connection, the committee feels that there should be a repeal of any statute that provides for the payment of per diems for correcting a given number of examination papers. It is felt that in some cases the time spent in giving and correcting examinations, and the number of people passing upon same, may be open to question. This topic should be the subject of further investigation, and the committee recommends that this matter be referred to an appropriate interim committee for further study and recommendations to the 1967 Legislature.



APPENDIX

AMENDED IN SENATE JUNE 6, 1963

AMENDED IN SENATE MAY 6, 1963

SENATE BILL

No. 807

Introduced by **Senator Short**

February 27, 1963

REFERRED TO COMMITTEE ON BUSINESS AND PROFESSIONS

An act to amend Section 103 of the Business and Professions Code, relating to payments to members of licensing boards, commissions, or committees.

The people of the State of California do enact as follows:

SECTION 1. Section 103 of the Business and Professions Code is amended to read:

103. Each member of a board, commission, or committee created in the various chapters of Division 2 (commencing at Section 500) and Division 3 (commencing at Section 5000), and in Chapter 2 (commencing at Section 18600) and Chapter 3 (commencing at Section 19000) of Division 8, shall receive the moneys specified in this section when authorized by the respective chapters.

Each such member shall receive a per diem of thirty-five dollars (\$35) for each day actually spent in the discharge of official duties, and he shall be reimbursed for his traveling and other expenses necessarily incurred in the performance of his duties ; *provided, that no member shall receive per diem for more than 6 days in any one month, nor for more than 60 days in any one year .*

Such payments in each instance shall be made only from the fund from which the expenses of the agency are paid and shall be subject to the availability of money in that fund.



RECAP OF PER DIEMS
BOARDS AND COMMISSIONS OF THE
DEPARTMENT OF PROFESSIONAL AND VOCATIONAL STANDARDS

Board or commission	Number of licensees	Num- ber of mem- bers	Average number per diems per member per year 1962-1963	Total amount expended per diems 1962-1963	Total amount expended per diems 1964
Accountancy.....	26,283	7	17	3,075	3,100
Architectural Examiners.....	4,459	6	38	5,837	5,931
Athletic Commission.....	253	5	13	1,725	*5,550
Barber Examiners.....	43,223	2	81	4,050	925
Cemetery Board.....	791	6	3	525	4,250
Chiropractic Examiners.....	4,825	5	48	6,050	525
Civil and Professional Engineers.....	45,260	9	49	11,200	6,700
Collection Agency Licensing Bureau	663	6	—	—	10,431
Contractors' State License.....	97,952	8	7	1,475	275
Cosmetology.....	112,829	7	48	8,425	1,425
Dental Examiners.....	14,281	8	122	24,400	5,550
Dry Cleaners.....	20,466	7	61	10,700	24,075
Funeral Directors and Embalmers.....	4,495	6	25	3,775	7,000
Furniture and Bedding Inspection.....	18,409	7	5	825	4,450
Guide Dogs for the Blind.....	13	—	—	—	975
Landscape Architects.....	772	6	16	2,475	550
Licensed Physical Therapists.....	—	—	—	—	3,175
Medical Examiners.....	56,499	25	40	25,100	—
Registered Physical Therapists.....	—	—	—	—	23,900
Nursing Education and Nurse Reg- istration.....	116,601	6	42	6,325	—
Optometry.....	2,762	6	24	3,525	6,637
Pharmacy.....	20,276	8	74	14,850	3,000
Private Investigators and Adjusters.....	1,652	—	—	—	16,850
Shorthand Reporters.....	1,138	5	19	2,375	—
Social Work Examiners.....	3,192	7	3	600	3,125
Structural Pest Control.....	3,528	6	23	3,437	550
Veterinary Medicine.....	2,369	6	24	3,650	4,675
Vocational Nurse Examiners.....	18,569	9	16	3,625	2,975
Psychiatric Technician.....	—	—	—	—	1,575
Yacht and Ship Brokers.....	609	5	8	975	—
Electronic Repair.....	6,645	—	—	—	350
Osteopath.....	409	—	—	—	925
					180

* Designers Qualification Advisory Committee.

Senate Bill No. 807

SCHEDULE OF INCREASED COST IF PER DIEMS ARE INCREASED TO \$50

Board of Accountancy.....	\$7,250
Board of Architectural Examiners.....	8,300
Athletic Commission.....	1,400
Board of Barber Examiners.....	3,000
Cemetery Board.....	*1,500
Board of Chiropractic Examiners.....	8,450
Board of Registration for Civil and Professional Engineers.....	9,000
Contractors' State License Board.....	2,505
Board of Cosmetology.....	11,575
Board of Dental Examiners.....	*26,760
Board of Dry Cleaners.....	13,000
Board of Funeral Directors and Embalmers.....	*2,800
Bureau of Furniture and Bedding Inspection.....	900
Board of Guide Dogs for the Blind.....	500
Board of Landscape Architects.....	*2,225
Licensed Physical Therapy.....	*1,400
Board of Medical Examiners.....	27,825
Registered Physical Therapy.....	—
Board of Nursing Education and Nurse Registration.....	7,600
Board of Optometry.....	4,400
Board of Pharmacy.....	18,255
Bureau of Private Investigators and Adjusters.....	—
Board of Certified Shorthand Reporters.....	*2,600
Board of Social Work Examiners.....	950
Board of Structural Pest Control.....	3,100
Board of Examiners in Veterinary Medicine.....	2,600
Board of Vocational Nurse Examiners.....	2,925
Yacht and Ship Brokers Commission.....	1,250
Total.....	\$172,070

* Fee increases will be required.

State of Florida
OFFICE OF THE ATTORNEY GENERAL

TALLAHASSEE

JAMES W. KYNES
Attorney General

FRED M. BURNS
Assistant Attorney General

September 25, 1964

HONORABLE RAY E. GREEN
State Comptroller
Tallahassee, Florida

Attention: Honorable Charles D. McClure
General Counsel

Re: Construction of Section 465.051, Florida Statutes, in the
Light of Chapter 63-400, Acts of 1963

Dear Mr. Green:

This is in reply to your recent request for an opinion of this office
upon substantially the following question:

Is the Comptroller of Florida authorized to make payments of \$35
per diem compensation to each member of the Board of Pharmacy
while they are on official business, as was set forth in Section
465.051, Florida Statutes, 1961, in addition to travel expenses
as provided in Section 112.061?

Section 465.051, Florida Statutes, 1961, contained the following lan-
guage not included in the said section in the Florida Statutes, 1963,
to wit, "Each member of the board shall be paid a per diem allowance
not to exceed thirty-five dollars for time actually expended incident
to attendance at board meetings or to the performance of other duties
as a member of the board and shall also be reimbursed for expenses
incident to attendance at board meetings or to the performance of
other duties as a member of the board," which language was replaced
in said Section 465.051 of the Florida Statutes, 1963, by the following
language, to wit: "Each member of the board shall be reimbursed for
traveling expenses as provided in section 112.061." The language in
both the Florida Statutes, 1961, and the Florida Statutes, 1963,
down to the first above quoted language is the same and is verbatim.
The history note to said Section 465.05, Florida Statutes, 1963, indi-
cates an amendment by Section 19, Chapter 63-400, Acts of 1963.

Chapter 63-400, Acts of 1963, is primarily an act amending Section
112.061, Florida Statutes, which section is in fact amended by Section
1 of said Chapter 63-400; subsequent Sections 2 through 18 of said
chapter make specific amendments to portions of Sections 11.13, 13.01,
13.24, 102.021, 103.071, 103.102, 158.03, 230.201, 272.18, 298.14, 340.05,
388.141, 489.03, 550.03, 601.06, 625.121 and 64.07, each of which clearly
relates to the per diem and travel expenses incurred by state officers
and employees when traveling in connection with state business and
their duties, and do not seem to relate to their salaries or other official
compensation. It is clear from a reading of said Section 112.061, as
amended by said Section 1 of Chapter 63-400, that said Section 112.061

was designed and intended to pay the authorized traveling expenses of the traveler and to reimburse him for his authorized lodging and meal expenses while traveling on state business. It does not cover, and was not intended to cover, the compensation, whether paid by the day, week or month, of the traveling officer or employee as compensation for services performed.

We are confronted with the construction of the portion of said Section 465.051, Florida Statutes, 1961, which was deleted from said section in the Florida Statutes, 1963, that is, "each member of the board shall be paid a per diem allowance not to exceed thirty-five dollars for time actually expended incident to attendance at board meetings or to the performance of other duties as a member of the board *and also* be reimbursed for expenses incident to attendance at board meetings or to the performance of other duties as a member of the board." (Emphasis supplied.) The use of the words "and also" indicates something in addition to, something besides, or as well as, the matter or thing previously mentioned (Webster's Dictionary; 3 Words and Phrases, Permanent Edition, 632 and 633). The phrase "and also" may be reimbursed for expenses incident to attendance at board meetings or to the performance of other duties as a member of the board" contained in the Florida Statutes, 1961, but omitted from the Florida Statutes, 1963, appears to relate to the expenses incurred by a traveler, and not to his compensation as an officer or employee, and seems to be substantially the same as is expressed in the Florida Statutes, 1963, by the following language, "each member of the board shall be reimbursed for traveling expenses as provided in section 112.061." The language "each member of the board shall be paid a per diem allowance not to exceed thirty-five dollars for time actually expended incident to attendance at board meetings or to the performance of other duties as a member of the board," contained in Florida Statutes, 1961, but omitted from the Florida Statutes, 1963, appears to have been intended as official compensation of the board members, and not as reimbursement of their travel expenses embraced within Section 112.061, Florida Statutes, as amended by Chapter 60-400, Acts of 1963. There appears to have been no conflict between the portion of Section 465.051, Florida Statutes, 1961, above discussed, and said Section 112.061, Florida Statutes, as amended by Chapter 63-400.

The Florida Statutes, 1961, were codified by Chapter 63-2, Acts of 1963, with the amendments of Sections 16.19, 16.20, 16.22, 16.23 and 16.24, therein made, as and constituting the Florida Statutes, 1963, which act of codification became and was effective from and after April 10, 1963. Under existing statutes (Sections 16.19, 16.20, 16.21, 16.22, 16.23, 16.24 and 16.44, Florida Statutes, the Statutory Revision Department of the Attorney General's Office, prepared the "Florida Statutes, 1963," containing the provisions of the said Florida Statutes, 1961, and the compilation therein of the amendments, changes, extensions and additions made by the 1963 Florida legislature. In *Foley v. State, Fla.*, 50 So. 2d. 179, it was stated that the adoption of the Cumulative Supplements of 1943 and 1945, made by Chapter 24,337,

Acts of 1947, as the Florida Statutes, 1947, did not include as statute law the amendments, extensions, additions, etc., made by the 1947 legislature, which were compiled by the Statutory Revision Department and included in the publication known as the Cumulative Supplement, 1947. In *Lipscomb v. Gialourakis*, 101 Fla. 1130, 133 So. 104, and *Lipscomb v. Kaloroukas*, 101 Fla. 1137, 133 So. 107, it was held that the additions made in the Compiled General Laws, 1927, to the statutes contained in the Revised General Statutes of Florida, 1927, were not statutory law, but as to such additions were merely a compilation and therefore not statutory law as were the Revised General Statutes, 1920. These cases and observations lead to the view that the portions of the Florida Statutes, 1963, derived from the Florida Statutes, 1961, without change by the 1963 legislature, is the evidence of the statutory law of Florida, and will control over the session laws from which derived, while the portion of the said Florida Statutes, 1963, derived from 1963 session laws, including amendments thereof made by the 1963 legislature, are merely compilations of the said 1963 laws, and merely presumptive evidence thereof, and will be controlled by the said 1963 enactments in case of conflict between the 1963 session laws and the said publication known and designated as the Florida Statutes, 1963.

In the light of the above and foregoing we hold that the omission of the following language, to wit, "each member of the board shall be paid a per diem allowance not to exceed thirty-five dollars for time actually expended incident to attendance at board meetings or to the performance of other duties as members of the board," was not repealed by reason of its omission from the publication known as the Florida Statutes, 1963, and has remained in force and effect. However, unless this error is corrected by an act of the 1965 legislature, or by the 1965 act adopting the 1963, Florida Statutes, as the Florida Statutes, 1965, the same will be repealed by reason of 16.20, Florida Statutes, if included in the 1965 act adopting the 1965 statutes.

Your above stated question is answered in the affirmative up to the time of the adoption of the Florida Statutes, 1965, after which the question must be determined from the actions of the 1965 legislature.

Sincerely,

JAMES W. KYNES
Attorney General

Prepared by :
FRED M. BURNS
Assistant Attorney General

OHIO LEGISLATIVE SERVICE COMMISSION

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Ross Pepple

January 19, 1965

THE HONORABLE ALAN SHORT, *Chairman*

Senate Factfinding Committee on Business and Commerce

California Legislature

State Capitol

Sacramento, California

Dear Mr. Short:

Attached is a copy of the information requested by you from the Governor and routed to us for reply. Somehow during the hectic days of a special session of the Ohio General Assembly we overlooked the request and must apologize for this delay in answering. We hope your need for it still exists.

We had no prepared information on the per diem paid to the members of the various state boards, so it was necessary to prepare it ourselves. We have not included the full-time boards and commissions such as the Public Utility Commission, Civil Rights Commission, Board of Personnel Review, Industrial Commission, Liquor Control Board and others, which are full-time positions paid on an annual salary. Also excluded are numerous unpaid bodies such as university trustees and advisory boards of all kinds which receive only expense money in connection with their attending meetings.

If the figures in the second column confuse you, the number to the left is the total membership, the second is the number appointed by the governor, the difference being ex officio members.

Sincerely,

CHARLES H. WESTON
Research Librarian

STATE OF ILLINOIS
LEGISLATIVE REFERENCE BUREAU
SPRINGFIELD

Governor Otto Kerner, *Chairman*
Senator T. MacDowning, *Macomb*
Senator Everett R. Peters, *St. Joseph*

Representative Robert L. Burhans, *Peoria*
Representative Peter C. Granata, *Chicago*
Loren M. Bobbit, *Executive Secretary*

December 31, 1964

HONORABLE ALAN SHORT, *Chairman*
Senate Factfinding Committee on Business and Commerce
State Capitol
Sacramento, California 95814

Dear Senator Short:

Governor Kerner has requested this office to reply to your inquiry concerning the compensation of various boards and commissions in the State of Illinois.

The enclosed brochure, together with the addenda to page 26, shows the present compensation, if any, paid to the various state officers and boards. You will note that the particular type of board about which you inquire, that is, the various occupational, examining and licensing boards, are for the most part paid no compensation and for those that are paid the compensation is nominal. The members of these boards are entitled to reimbursement for expenses incurred in the performance of their duties.

Sincerely yours,

LOREN M. BOBBITT

COMPENSATION AUTHORIZED FOR MEMBERS OF PART-TIME BOARDS AND COMMISSIONS IN OHIO

Agency	Number of members	Compensation	Expenses
ACCOUNTANCY Board.....	5	\$15 p.d.*	Expense
State Board of Examiners of ARCHITECTS.....	5	\$15 p.d.	Expense
Ohio AVIATION Board.....	5	\$20 p.d. (Not to exceed 25 days per year)	Expense
Board of BARBER Examiners.....	3	\$15 p.d.	Expense
State BRIDGE Commission of Ohio.....	3	\$2,000 per year	Expense
Board of BUILDING APPEALS.....	3	\$100 p.d. (Not to exceed \$3,000 per year)	—
Board of BUILDING STANDARDS.....	9-6 by Governor	\$75 p.d. (Not to exceed \$6,000 per year)	Expense
State Board of COSMETOLOGY.....	3	\$14 p.d.	Expense
State DENTAL Board.....	5	\$15 p.d.	Expense
State Board of EDUCATION.....	23	\$20 p.d. (Not to exceed 12 days per year)	Expense
Board of EMBALMERS and FUNERAL DIRECTORS.....	5	\$15 p.d. (Not to exceed 60 days per year)	Expense
State Board of Registration for Professional ENGINEERS and SURVEYORS.....	5	\$25 p.d.	Expense
Ohio Interim EDUCATIONAL TELEVI- SION STUDY Commission.....	9	—	Expense
Ohio EXPOSITIONS Commission.....	11-9 by Governor	\$25 p.d. (Not to exceed \$750 per year)	Expense
State MEDICAL Board.....	8	\$15 p.d.	Expense
MINE EXAMINING Board.....	3	\$30 p.d. (Not to exceed \$4,500 per year)	Expense
MOTOR VEHICLE DEALERS' and SALESMEN'S LICENSING Board.....	3-2 by Governor	\$15 p.d. for Governor appointments	Expense
Board of NURSING EDUCATION and NURSE REGISTRATION.....	8	\$15 p.d. (Not to exceed 75 days per year)	Expense
State Board of OPTOMETRY.....	5	\$15 p.d.	Expense
State Board of PHARMACY.....	5	\$15 p.d.	Expense
PUBLIC HEALTH Council.....	7	\$15 p.d.	Expense
PUBLIC ACCOUNTANTS ADMINIS- TRATIVE Committee.....	5	\$15 p.d.	Expense
State RACING Commission.....	5	\$2,500 year for association members. \$3,600 year for chairman named by Governor from members	Expense
Ohio REAL ESTATE Commission.....	3	\$25 p.d. (Not to exceed \$2,500 per year)	Expense

COMPENSATION AUTHORIZED FOR MEMBERS OF PART-TIME BOARDS AND COMMISSIONS IN OHIO—Concluded

Agency	Number of members	Compensation	Expenses
RECLAMATION Board of Review-----	5	\$20 p.d.	Expense
Ohio TURNPIKE Commission-----	5-4 by Governor	\$5,000 year for Governor appointments	Expense Expense all mem- bers
UNDERGROUND GAS STORAGE Board of Review-----	3	\$30 p.d.	Expense
UNEMPLOYMENT COMPENSATION ADVISORY Council-----	7	\$20 p.d. (Not to exceed \$2,000 per year)	Expense
State VETERINARY Medical Board-----	5	\$25 p.d.	Expense
Ohio WAR ORPHANS' SCHOLARSHIP Board-----	7-4 by Governor	—	Expense (Not to exceed \$10 and 10 days per year)
Ohio WATER Commission-----	7-4 by Governor	\$50 p.d. (Not to exceed \$4,000 year for 4 appointments of Governor	Expense Expense all mem- bers
WORKMEN'S COMPENSATION ADVI- SORY Council-----	7	\$20 p.d. (Not to exceed \$2,000 per year)	Expense

* p.d.—per day.

GOVERNOR'S STATUTORY APPOINTMENTS 1964

Under the statutes, the Governor of Illinois makes appointments to more than 140 different agencies, boards, or classes of offices, ranging from department directors to notaries public. Appointments where the statute creates particular offices (rather than a class with an indefinite number of appointments, such as notaries public) now total more than 1,000, as shown below.

	<i>Agencies, boards, or classes of positions involved</i>	<i>Number of individual appointments</i>
Code departments:		
Officers_____	17	47
Paid boards_____	4	17
Unpaid boards_____	43(a)	311 *
Other state agencies:		
Paid positions_____	14	47
Unpaid positions, executive agencies_____	28	198
Unpaid positions, mixed agencies_____	19	101
Interstate compact agencies_____	5	20
Local authorities_____	15(b)	262 *
	145	1,003

In about a third of the appointments, terms are indefinite or are staggered to expire in future years rather than in 1965. Some boards or commissions include ex officio members or members appointed by another public official, e.g., by a mayor. Note also that not all the positions mentioned here are salaried positions; for some, compensation is on a per diem basis, while others are allowed only expenses, as for travel and subsistence while performing official duties away from place of residence.

SCOPE OF MEMORANDUM

This memorandum seeks to list all appointments made by the Governor of Illinois pursuant to statutes and to describe the pay and other incidents of these appointments. Citations are to *Illinois Revised Statutes* (1963).

Most of the appointments described are listed in the *Directory of State Officers*, a publication originated by the Legislative Council but now compiled and published by the Secretary of State. The outline of presentation used in that directory is also followed in the presentation herein, (e.g., Code Departments, Other Departments, Higher Education, Boards and Commission, etc.). By using this method of presentation, it is possible to use the two publications as complementary to each other.

The schema of presentation follows the same pattern throughout the memorandum: (1) the name of the major agency involved, along with the statutory citation; (2) the nature of the position or positions (and in some instances there are separate citations given for these).

* Includes a category where the number of appointments is not clearly indicated in statute as follows: (a) members of advisory boards to local free employment offices (Department of Labor); and (b) notaries public of which there are approximately 250,000 (October 1964).

Following this information are a series of entries concerning (3) salary, (4) term of office, (5) qualifications, (6) Senate confirmation required or not required, and (7) miscellaneous.

The information on salaries indicates the compensation paid on an annual basis, but in some cases per diem rates are shown. Where there is an entry of "none," no salary is paid but usually official expenses incurred are defrayed.

Under the entries for term of office, there is also an indication as to when terms expire. There are a number of boards where terms of some or all members do not expire until a later year than 1965. Most of the positions under the code departments are two-year appointments expiring ordinarily on the third Monday of January of odd-numbered years.

Under the heading of "Qualifications," entries made here refer to qualifications specified in the statutes. For some positions, the technical nature of the position has required statutory guidelines on appointments. In other instances, requirements relate to political, geographical, or economic interest representation.

Under the heading of "Senate Confirmation," it is to be noted that appointments to positions created by the Civil Administrative Code are subject to confirmation by the Senate. Where appointments are made under acts other than the Civil Administrative Code, these separate acts sometimes omit a reference to Senate confirmation, although the Constitution generally requires Senate confirmation of "officers" appointed by the Governor (Art. V, Sec. 10).

Miscellaneous information is presented under the heading of "Other." In some cases, the composition of a board was too extensive to list in full; in other instances, exceptional bonding requirements are noted.

—PAUL W. REEDER

CODE DEPARTMENTS

Department of Aeronautics

a. Director (ch. 127, pars. 4ff.)

1. Salary—\$15,000
2. Term—2 years and until successor qualifies
3. Qualifications—comprehensive aeronautical knowledge and experience with a minimum of 3 years of such experience prior to appointment
4. Senate confirmation—required

b. Assistant Director (ch. 127, pars. 5.13ff.)

1. Salary—\$12,000
2. Term—2 years and until successor qualifies
3. Qualifications—comprehensive aeronautical knowledge and experience with a minimum of 3 years of such experience prior to appointment
4. Senate confirmation—required

CODE DEPARTMENTS—Continued

Department of Aeronautics—Continued

- c. Board of Aeronautical Advisors (ch. 127, pars. 6.10ff.)
7 members appointed by Governor; Director and Assistant Director are ex officio members
 - 1. Salary—none
 - 2. Term—indefinite
 - 3. Qualifications—1 person interested in air commerce; 1 in noncommercial private flying; 1 in operation or management of airports; 1 in conducting of flying schools or repair and maintenance of aircraft. Director serves as chairman and assistant director serves as vice chairman
 - 4. Senate confirmation—required

Department of Agriculture

- a. Director (ch. 127, pars. 4ff.)
 - 1. Salary—\$15,000
 - 2. Term—2 years and until successor qualifies
 - 3. Qualifications—none
 - 4. Senate confirmation—required
- b. Assistant Director (ch. 127, pars. 5.02ff.)
 - 1. Salary—\$12,000
 - 2. Term—2 years and until successor qualifies
 - 3. Qualifications—none
 - 4. Senate confirmation—required
- c. Superintendent of Livestock Industry (ch. 127, pars. 5.02ff.)
 - 1. Salary—\$12,000
 - 2. Term—2 years and until successor qualifies
 - 3. Qualifications—none
 - 4. Senate confirmation—required
- d. Superintendent of Foods and Dairies (ch. 127, pars. 5.02ff.)
 - 1. Salary—\$10,000
 - 2. Term—2 years and until successor qualifies
 - 3. Qualifications—none
 - 4. Senate confirmation—required
- e. Superintendent of Meat and Poultry Inspection (ch. 127, pars. 5.02ff.)
 - 1. Salary—\$12,000
 - 2. Term—2 years and until successor qualifies
 - 3. Qualifications—none
 - 4. Senate confirmation—required
- f. Agricultural Export Advisory Committee (ch. 127, par. 6.01a)
2 from Senate appointed by President pro Tempore, 2 from House appointed by Speaker, 26 appointed by Governor
 - 1. Salary—none
 - 2. Term—indefinite
 - 3. Qualifications—of Governor's appointees: 1 each from major farm organizations; 1 each from faculties of agricultural colleges of Southern Illinois University, University of Illinois, and Western Illinois University; and remaining mem-

CODE DEPARTMENTS—Continued

Department of Agriculture—Continued

bers from those persons in business, agriculture, or industry engaged in export of farm products, commodities, and implements

4. Senate confirmation—not required

g. Board of Agricultural Advisors (ch. 127, pars. 6.01ff.)

Governor appoints 15 members

1. Salary—none
2. Term—2 years
3. Qualifications—persons engaged in agricultural industries, not excluding representatives of the agricultural press and of the State agricultural experiment stations
4. Senate confirmation—required

h. Advisory Board of Livestock Commissioners (ch. 127, pars. 6.01ff.)
15-member board plus Director of Agriculture: Governor appoints 10 of the members

1. Salary—none
2. Term—2 years and until successor qualifies
3. Qualifications—of the Governor's appointees, 1 from each of the following groups: beef cattle breeders, dairy cattle breeders, dual purpose cattle breeders, swine breeders, poultry breeders, sheep breeders, diversified farming, community sales, cattle feeders, and 1 licensed veterinarian
4. Senate confirmation—required

i. State Soil and Water Conservation Districts Advisory Board (ch. 5, pars. 109ff.)

7 members: 5 appointed by Governor; 2 ex officio

1. Salary—none
2. Term—4 years ending on 3rd Monday in January of odd-numbered years 4 years from date of appointment
3. Qualifications—persons who are owners and active operators of farm lands in state and who have been engaged in such farming for at least 5 years next preceding their appointment, consideration to be given to geographical location and to soil conservation district experience. No member to be employed by department as a salaried or paid employee. Board may invite U.S. Secretary of Agriculture to appoint 1 person to serve in advisory capacity. Director of Agriculture and Director of Agricultural Extension of University of Illinois are ex officio members.
4. Senate confirmation—required.

j. Board of State Fair Advisors (ch. 127, pars. 6.01ff.)

9 members

1. Salary—none
2. Term—2 years and until successor qualifies
3. Qualifications—not more than 3 of the members to be appointed from any one county
4. Senate confirmation—required

CODE DEPARTMENTS—Continued

Department of Children and Family Services

- a. Director (ch. 127, pars. 4ff.)
 - 1. Salary—\$18,000
 - 2. Term—2 years and until successor qualifies
 - 3. Qualifications—qualified by professional education and experience to administer the department
 - 4. Senate confirmation—required
- b. Children and Family Services Advisory Council (ch. 127, par. 6.15) 16 members appointed by Governor
 - 1. Salary—none
 - 2. Terms—4 years staggered with 8 having terms expiring in December, 1965, and 8 expiring in December, 1967.
 - 3. Qualifications—none
 - 4. Senate confirmation—not required

Department of Conservation

- a. Director (ch. 127, pars. 4ff.)
 - 1. Salary—\$15,000
 - 2. Term—2 years and until successor qualifies
 - 3. Qualifications—none
 - 4. Senate confirmation—required
- b. Assistant Director (ch. 127, pars. 5.09ff.)
 - 1. Salary—\$12,000
 - 2. Term—2 years and until successor qualifies
 - 3. Qualifications—none
 - 4. Senate confirmation—required
- c. Board of Fish and Game Advisors (ch. 127, pars. 6.08ff.) 5 members
 - 1. Salary—none
 - 2. Term—2 years and until successor qualifies
 - 3. Qualifications—none
 - 4. Senate confirmation—required
- d. Board of Park Advisors (ch. 127, pars. 6.08ff) 5 members
 - 1. Salary—none
 - 2. Term—2 years and until successor qualifies
 - 3. Qualifications—none
 - 4. Senate confirmation—required
- e. Advisory Board to Department of Conservation (ch. 127, pars. 6.08ff.) 9 members
 - 1. Salary—none
 - 2. Term—6 years, staggered, with 3 expiring biennially on the 3rd Monday of January in odd-numbered years
 - 3. Qualifications—none
 - 4. Senate confirmation—required

CODE DEPARTMENTS—Continued

Department of Finance

- a. Director (ch. 127, pars. 4ff.)
 - 1. Salary—\$15,000
 - 2. Term—2 years and until successor qualifies
 - 3. Qualifications—none
 - 4. Senate confirmation—required
- b. Assistant Director (ch. 127, pars. 5.01ff.)
 - 1. Salary—\$12,000
 - 2. Term—2 years and until successor qualifies
 - 3. Qualifications—none
 - 4. Senate confirmation—required
- c. Superintendent of Accounting (ch. 127, pars. 5.01ff.)
 - 1. Salary—\$13,000
 - 2. Term—2 years and until successor qualifies
 - 3. Qualifications—none
 - 4. Senate confirmation—required
- d. Superintendent of Administrative Services (ch. 127, pars. 5.01ff.)
 - 1. Salary—\$13,000
 - 2. Term—2 years and until successor qualifies
 - 3. Qualifications—none
 - 4. Senate confirmation—required
- e. Superintendent of Budgets (ch. 127, pars. 5.01ff.)
 - 1. Salary—\$14,500
 - 2. Term—2 years and until successor qualifies
 - 3. Qualifications—none
 - 4. Senate confirmation—required
- f. Advisory Board to Department of Finance (ch. 127, pars. 6.09ff.)
 - 5 members
 - 1. Salary—none
 - 2. Term—2 years and until successor qualifies
 - 3. Qualifications—none
 - 4. Senate confirmation—required

Department of Financial Institutions

- a. Director (ch. 127, pars. 4ff.)
 - 1. Salary—\$15,000
 - 2. Term—4 years and until successor qualifies (expires 1966)
 - 3. Qualifications—conversant with theory and practice of the business and purposes of financial institutions
 - 4. Senate confirmation—required
- b. Assistant Director (ch. 127, pars. 5.13b ff.)
 - 1. Salary—\$12,000
 - 2. Term—4 years and until successor qualifies (expires 1966)
 - 3. Qualifications—conversant with theory and practice of the business and purposes of financial institutions
 - 4. Senate confirmation—required

CODE DEPARTMENTS—Continued

Department of Financial Institutions—Continued

- c. Savings and Loan Advisory Board (ch. 32, par. 857) 5 members
 - 1. Salary—none
 - 2. Term—4 years expiring on 3rd Monday of January in odd numbered years; 2 expire in 1967 and 3 expire in 1965
 - 3. Qualifications—each person shall be actively engaged in savings and loan management in this State for at least 5 years immediately prior to appointment; 3 members shall be appointed from a list of 8 nominees submitted by the Illinois Savings and Loan Association.
 - 4. Senate confirmation—not required
- d. Credit Union Advisory Board (ch. 32, pars. 496.24a ff.) 5 members
 - 1. Salary—none
 - 2. Term—4 years expiring on 3rd Monday in January at the end of the 4 years: 2 expire in 1967; 2 expire in 1968; and 1 expires in 1965
 - 3. Qualifications—persons familiar with and associated in the field of credit unions
 - 4. Senate confirmation—not required
- e. Board of Currency Exchange Advisors (ch. 16½, par. 52.3) 5 members
 - 1. Salary—none
 - 2. Term—4 years expiring on 3rd Monday in January of odd-numbered years: 2 expire in 1967, 1971, etc.; 3 expire in 1965, 1969, 1973, etc.
 - 3. Qualifications—persons familiar with and associated in the field of currency exchanges, 3 of whom shall be actively engaged in the management of currency exchanges for at least 5 years immediately prior to appointment
 - 4. Senate confirmation—not required

Department of Insurance

- a. Director (ch. 127, pars. 4ff.)
 - 1. Salary—\$15,000
 - 2. Term—2 years and until successor qualifies
 - 3. Qualifications—none
 - 4. Senate confirmation—required
- b. Assistant Director (ch. 127, pars. 5.10ff.)
 - 1. Salary—\$12,000
 - 2. Term—2 years and until successor qualifies
 - 3. Qualifications—none
 - 4. Senate confirmation—required
- c. Advisory Board to Department of Insurance (ch. 127, pars. 6.12ff.) 5 members
 - 1. Salary—none
 - 2. Term—2 years and until successor qualifies
 - 3. Qualifications—none
 - 4. Senate confirmation—required

CODE DEPARTMENTS—Continued

Department of Labor

- a. Director (ch. 127, pars. 4ff.)
 - 1. Salary—\$15,000
 - 2. Term—2 years and until successor qualifies
 - 3. Qualifications—none
 - 4. Senate confirmation—required
- b. Assistant Director (ch. 127, pars. 5.03ff.)
 - 1. Salary—\$12,000
 - 2. Term—2 years and until successor qualifies
 - 3. Qualifications—none
 - 4. Senate confirmation—required
- c. Chief Factory Inspector (ch. 127, pars. 5.03ff.)
 - 1. Salary—\$8,500
 - 2. Term—2 years and until successor qualifies
 - 3. Qualifications—none
 - 4. Senate confirmation—required
- d. Superintendent of Safety Inspection and Education (ch. 127, pars. 5.03ff.)
 - 1. Salary—\$10,000
 - 2. Term—2 years and until successor qualifies
 - 3. Qualifications—none
 - 4. Senate confirmation—required
- e. Superintendent of Women's and Children's Employment (ch. 127, pars. 5.03ff.)
 - 1. Salary—\$8,500
 - 2. Term—2 years and until successor qualifies
 - 3. Qualifications—none
 - 4. Senate confirmation—required
- f. Board of Review for Unemployment Compensation (ch. 127, pars. 5.03ff.) 3 members
 - 1. Salary—\$5,000
 - 2. Term—2 years and until successor qualifies
 - 3. Qualifications—1 from employee class, 1 from employer class, and 1 not identified with either class
 - 4. Senate confirmation—required
- g. Advisory Board to Department of Labor (ch. 127, pars. 6.02ff.) 5 members
 - 1. Salary—none
 - 2. Term—2 years and until successor qualifies
 - 3. Qualifications—none
 - 4. Senate confirmation—required
- h. Board of Local Illinois Free Employment Office Advisors (ch. 127, pars. 6.02ff.)

(Note: 1 board for each free employment office with 5 members for each board; and there are 51 offices in the state)

CODE DEPARTMENTS—Continued

Department of Labor—Continued

1. Salary—none
 2. Term—2 years and until successor qualifies
 3. Qualifications—2 representatives of employee class, 2 representatives of the employer class, and 1 not identified with either class
 4. Senate confirmation—required
- i. Board of Unemployment Compensation and Free Employment Office Advisors (ch. 127, pars. 6.02ff.)
9 members
1. Salary—none
 2. Term—2 years and until successor qualifies
 3. Qualifications—3 from employee class, 3 from employer class, and 3 not identified with either class
 4. Senate confirmation—required

Department of Mental Health

- a. Director (ch. 127, pars. 4 ff.)
1. Salary—\$27,500
 2. Term—4 years expiring on 3rd Monday in January of odd numbered years: 1967, 1971, etc., and until successor qualifies
 3. Qualifications—person must be a qualified psychiatrist, and Governor must consult with Board of Mental Health Commissioners in choosing director
 4. Senate confirmation—required
- b. Assistant Director (ch. 127, pars. 5.06 ff.)
1. Salary—\$17,500
 2. Term—2 years and until successor qualifies
 3. Qualifications—must be Doctor of Medicine or Doctor of Philosophy with experience in psychiatric field
 4. Senate confirmation—required
- c. Board of Mental Health Commissioners (ch. 127, pars. 6.04 ff.)
7 members
1. Salary—none
 2. Term—6 years expiring on 3rd Monday in January: 1 in 1965, 1 in 1966, 1 in 1967, 2 in 1968, 1 in 1969, and 1 in 1970
 3. Qualifications—none
 4. Senate confirmation—required
- d. Psychiatric Training and Research Authority (ch. 127, pars. 6.04 ff.) 11 members with 7 appointed by Governor and 4 ex officio
1. Salary—none
 2. Term—6 years and until successor qualifies: 3 expire in January, 1965; 2 expire in January, 1967; and 2 expire in January, 1969
 3. Qualifications—persons from the faculties of the medical schools, state and private colleges and universities and psychiatric institutions within the state
 4. Senate confirmation—required

CODE DEPARTMENTS—Continued

Department of Mines and Minerals

- a. Director (ch. 127, pars. 4 ff.)
 - 1. Salary—\$15,000
 - 2. Term—2 years and until successor qualifies
 - 3. Qualifications—person thoroughly conversant with theory and practice of coal mining but not identified with either coal operators or miners
 - 4. Senate confirmation—required
- b. Assistant Director (ch. 127, pars. 5.04 ff.)
 - 1. Salary—\$12,000
 - 2. Term—2 years and until successor qualifies
 - 3. Qualifications—none
 - 4. Senate confirmation—required
- c. Mining Board (ch. 127, pars. 5.04 ff.) 5 members: 4 appointed by Governor; director is other member
 - 1. Salary—\$2,400
 - 2. Term—2 years and until successor qualifies
 - 3. Qualifications—2 coal operators and 2 practical coal miners
 - 4. Senate confirmation—required
- d. Oil and Gas Board (ch. 127, pars. 6.11 ff.)
 - 5 members: 4 appointed by Governor; director, ex officio
 - 1. Salary—none
 - 2. Term—2 years and until successor qualifies
 - 3. Qualifications—none
 - 4. Senate confirmation—required

Department of Personnel

- a. Director (ch. 127, pars. 4 ff.)
 - 1. Salary—\$15,000
 - 2. Term—2 years and until successor qualifies
 - 3. Qualifications—practical working experience in field of personnel administration; and not a member of local, state or national political party committee nor officer or member of partisan political standing committee
 - 4. Senate confirmation—required
- b. Assistant Director (ch. 127, pars. 5.13a ff.)
 - 1. Salary—\$12,000
 - 2. Term—2 years and until successor qualifies
 - 3. Qualifications—none
 - 4. Senate confirmation—required
- c. Personnel Advisory Board (ch. 127, pars. 6.14 ff.)
 - 9 members.
 - 1. Salary—none
 - 2. Term—4 years: 5 members' terms expire 3rd Monday in January, 1965; and 4 members' terms expire 3rd Monday in 1967
 - 3. Qualifications—none
 - 4. Senate confirmation—required

CODE DEPARTMENTS—Continued

Department of Public Aid

- a. Director (ch. 127, pars. 4 ff.)
 1. Salary—\$27,500
 2. Term—2 years and until successor qualifies
 3. Qualifications—10 years experience in responsible administrative capacities in the field of public assistance, and not politically active in the 5 years preceding appointment
 4. Senate confirmation—required
- b. Assistant Director (ch. 127, par. 5.13c)
 1. Salary—\$22,500
 2. Term—2 years and until successor qualifies
 3. Qualifications—5 years experience in responsible administrative capacities in the field of public assistance, and not politically active in the 5 years preceding appointment
 4. Senate confirmation—required
- c. Board of Public Aid Commissioners (ch. 127, par. 6.15)

7 members

Governor appoints chairman

 1. Salary—none
 2. Term—4 years: 2 expire 3rd Monday in January, 1965; 2 expire 3rd Monday in January, 1966; and 3 expire 3rd Monday in January, 1967
 3. Qualifications—no more than 4 from same political party; members to have knowledge and be actively interested in the various factors involved in the field of public assistance; members may not hold public office of the state or at the local level, or hold political party posts. In selecting members, representation should be given to various geographical areas of the state. (See statute for details)
 4. Senate confirmation—required
- d. Advisory Council on the Improvement of the Economic and Social Status of Older People (ch. 23, par. 554)

14 members: 10 appointed by Governor; Directors of the Departments of Labor, Mental Health, Public Health, and Public Aid

 1. Salary—none
 2. Term—2 years: expire 3rd Monday of January of odd-numbered years
 3. Qualifications—prominent citizens actively interested in the problems of older people. Consideration to be given to representation of different sections of the state and for groups and agencies concerned with health and welfare of older people. Governor designates chairman and vice chairman; Director of Public Aid serves as secretary.
 4. Senate confirmation—required

CODE DEPARTMENTS—Continued

Department of Public Health

- a. Director (ch. 127, pars. 4ff.)
 - 1. Salary—\$22,500
 - 2. Term—2 years and until successor qualifies
 - 3. Qualifications—licensed to practice medicine and surgery in state, 5 years practical experience, master's degree in public health, certified by American Board of Preventive Medicine in Public Health, and 5 years administrative experience in public health work
 - 4. Senate confirmation—required
- b. Assistant Director (ch. 127, pars. 5.07ff.)
 - 1. Salary—\$12,000
 - 2. Term—2 years and until successor qualifies
 - 3. Qualifications—same as director, see above
 - 4. Senate confirmation—required
- c. Board of Public Health Advisors (ch. 127, pars. 6.06ff.)
 - 9 members
 - 1. Salary—none
 - 2. Term—2 years and until successor qualifies
 - 3. Qualifications—none
 - 4. Senate confirmation—required
- d. Advisory Hospital Council (ch. 127, pars. 6.06ff.)
 - 18 members: 15 appointed by Governor;
3 ex officio (Director of Public Health, chairman, and Directors of Public Aid and Mental Health)
 - 1. Salary—none
 - 2. Term—4 years: Expire July 1; 4 in 1965; 4 in 1966; 4 in 1967; and 3 in 1968
 - 3. Qualifications—of Governor's appointees: 5 from field of hospital administration; 5 from fields of medicine, surgery, and dentistry; 5 with a public interest
 - 4. Senate confirmation—required
- e. Radiation Protection Advisory Council (ch. 111½, par. 217)
 - 9 members: 7 appointed by Governor; 2 ex officio (Director of Labor, and Chairman of Illinois Commerce Commission)
 - 1. Salary—none
 - 2. Term—4 years: 2 expire in August, 1965; 2 in August, 1966; and 3 in August, 1967
 - 3. Qualifications—persons with demonstrated interest in and capacity to further the purposes of the law, and who broadly reflect the varied interests in and aspects of atomic energy and ionizing radiation within the state
 - 4. Senate confirmation—not required
- f. Sanitary Water Board (ch. 19, par. 145.3)
 - 6 members: 2 appointed by Governor; 4 ex officio (Directors of

CODE DEPARTMENTS—Continued

Department of Public Health—Continued

Public Health, Agriculture, Conservation, and Public Works and Buildings)

1. Salary—none
 2. Term—4 years: 2 expire on March 15, 1965
 3. Qualifications—1 representative of industry and 1 representative of municipal government
 4. Senate confirmation—not required
- g. Advisory Board of Cancer Control (ch. 127, pars. 6.06ff.)
7 members
1. Salary—none
 2. Term—3 years staggered: expire September 1: 2 in 1965; 3 in 1966; and 2 in 1967
 3. Qualifications—no less than 4 who are recognized authorities in the field of cancer control, and at least 4 physicians
 4. Senate confirmation—required
- h. Necropsy Service to Coroners Advisory Board (ch. 127, pars. 6.06ff.)
9 members
1. Salary—none
 2. Term—3 years: with 3 expiring annually
 3. Qualifications—citizens of state; 3 to be licensed doctors of medicine of which 2 must have postgraduate training in pathology; 3 elected coroners; and 3 with interests and abilities in forensic medicine but not licensed physicians nor elected coroners
 4. Senate confirmation—required
- i. Water Pollution Control Advisory Council (ch. 19, par. 145.3(e))
9 members: 6 appointed by Governor; 1 representative appointed by Speaker of House; 1 Senator appointed by President pro Tempore; and Chairman of Sanitary Water Board
1. Salary—none
 2. Term—indefinite
 3. Qualifications—1 each from industry, agriculture, public health, wildlife conservation, municipal government, and the general public
 4. Senate confirmation—not required
- j. Public Water Supply Operators' Advisory Board (ch. 111½, pars. 509ff.)
5 members: 4 appointed by Governor; Director of Public Health serves ex officio
1. Salary—none
 2. Term—4 years: expire September 1, as follows: 1 in 1965; 1 in 1966; 1 in 1967; and 1 in 1968
 3. Qualifications—persons with an active interest and wide background in public water supply management and operation from a practical and technical standpoint
 4. Senate confirmation—not required

CODE DEPARTMENTS—Continued

Department of Public Safety

- a. Director (ch. 127, pars. 4ff.)
 - 1. Salary—\$15,000
 - 2. Term—2 years and until successor qualifies
 - 3. Qualifications—none
 - 4. Senate confirmation—required
- b. Assistant Director (ch. 127, pars. 5.11ff.)
 - 1. Salary—\$12,000
 - 2. Term—2 years and until successor qualifies
 - 3. Qualifications—none
 - 4. Senate confirmation—required
- c. Superintendent of Narcotic Control (ch. 127, pars. 5.11ff.)
 - 1. Salary—\$12,000
 - 2. Term—2 years and until successor qualifies
 - 3. Qualifications—none
 - 4. Senate confirmation—required
- d. Superintendent of Highway Police (ch. 127, pars. 5.11ff.)
 - 1. Salary—\$13,500
 - 2. Term—2 years and until successor qualifies
 - 3. Qualifications—none
 - 4. Senate confirmation—required
- e. Fire Marshal (ch. 127, pars. 5.11ff.)
 - 1. Salary—\$9,000
 - 2. Term—2 years and until successor qualifies
 - 3. Qualifications—none
 - 4. Senate confirmation—required
- f. Parole and Pardon Board (ch. 127, pars. 5.11ff.)
 - 7 members
 - 1. Salary—Chairman: \$14,000; members: \$9,000
 - 2. Term—4 years: 4 expire 3rd Monday in January, 1965; 3 expire 3rd Monday in January, 1967
 - 3. Qualifications—none
 - 4. Senate confirmation—required
- g. State Police Merit Board (ch. 121, pars. 307.3ff.)
 - 3 members
 - 1. Salary—\$50 per day for not more than 100 days in any fiscal year
 - 2. Term—6 years: 1 term expires 3rd Monday in March, 1965; 1 expires 3rd Monday in March, 1967; and 1 expires 3rd Monday in March, 1969
 - 3. Qualifications—no more than 2 from same political party; no member shall have held or have been a candidate for an elective office within one year preceding his appointment
 - 4. Senate confirmation—required

CODE DEPARTMENTS—Continued

Department of Public Safety—Continued

- h. Advisory Board to Department of Public Safety (ch. 127, pars. 6.05ff.)
 - 5 members
 - 1. Salary—none.
 - 2. Term—2 years and until successor qualifies
 - 3. Qualifications—none
 - 4. Senate confirmation—required
- i. Industrial Advisory Board for Prisons (ch. 127, pars. 6.05ff.)
 - 7 members: 6 appointed by Governor and the Governor, ex officio
 - 1. Salary—none
 - 2. Term—2 years and until successor qualifies
 - 3. Qualifications—3 representing organized labor and 3 representing manufacturing interests
 - 4. Senate confirmation—required
- j. Board of State Reformatory for Women Advisors (ch. 127, pars. 6.05ff.)
 - 5 members
 - 1. Salary—none
 - 2. Term—2 years and until successor qualifies
 - 3. Qualifications—board to consist of 3 women and 2 men
 - 4. Senate confirmation—required
- k. Board of Boiler Rules (ch. 24, par. 1226)
 - 7 members
 - 1. Salary—none
 - 2. Term—4 years: 2 expire in 1965; 2 expire in 1966; 2 expire in 1967; and 1 expires in 1968
 - 3. Qualifications—2 representatives of owners and users of boilers (1 high-pressure boiler user and 1 low-pressure boiler user); 1 representing boiler manufacturers; 1 representing boiler insurance companies; 1 mechanical engineer on faculty of recognized engineering college or a graduate mechanical engineer having equivalent experience and registered under the Illinois Professional Engineering Act; 1 representative of boilermakers; and 1 representative of practical steam operating engineers
 - 4. Senate confirmation—not required
- l. Traffic Study Commission (ch. 95½, par. 239.57)
 - 15 members: 5 appointed by Governor
 - 1. Salary—none
 - 2. Term—2 years
 - 3. Qualifications—none
 - 4. Senate confirmation—not required
 - 5. Other—ex officio members include: Directors of the Departments of Public Works and Buildings, Mental Health, Public Health, Labor, Conservation; Superintendent of Highway Police, Secretary of Legislative Reference Bureau, Secretary of State, Superintendent of Public Instruction, and Attorney General

CODE DEPARTMENTS—Continued

Department of Public Works and Buildings

- a. Director (ch. 127, pars. 4ff.)
 - 1. Salary—\$15,000
 - 2. Term—2 years and until successor qualifies
 - 3. Qualifications—none
 - 4. Senate confirmation—required
- b. Assistant Director (ch. 127, pars. 5.05ff.)
 - 1. Salary—\$12,000
 - 2. Term—2 years and until successor qualifies
 - 3. Qualifications—none
 - 4. Senate confirmation—required
- c. Division of Traffic Safety (Note, formerly in the Department of Public Safety but transferred to Division of Highways by executive order effective January 1, 1964; Statutory citation—ch. 95½, par. 239.53). Statute provides that the Governor is to appoint assistants, clerical staff, and other employees needed to carry out provisions of this act; the law further provided that such employees were to receive salaries subject to the standard pay plan provided in “An act to standardize state position titles and salary rates”, which latter act has been repealed. A coordinator to head the division is to be “employed by the department”.
- d. Board of Highway Advisors (ch. 127, pars. 6.03ff.)
 - 9 members
 - 1. Salary—none
 - 2. Term—2 years and until successor qualifies
 - 3. Qualifications—none
 - 4. Senate confirmation—required
- e. Board of Building Advisors (ch. 127, pars. 6.03ff.)
 - 5 members
 - 1. Salary—none
 - 2. Term—2 years and until successor qualifies
 - 3. Qualifications—none
 - 4. Senate confirmation—required

OTHER DEPARTMENTS

Department of Registration and Education

- a. Director (ch. 127, pars. 4ff.)
 - 1. Salary—\$15,000
 - 2. Term—2 years and until successor qualifies
 - 3. Qualifications—not affiliated with any college or school regulated, either as a teacher, officer, or stockholder, nor hold a license or certificate to exercise any of the professions, trades, or occupations regulated by the department
 - 4. Senate confirmation—required

OTHER DEPARTMENTS—Continued

Department of Registration and Education—Continued

- b. Assistant Director (ch. 127, pars. 5.08ff.)
 - 1. Salary—\$12,000
 - 2. Term—2 years and until successor qualifies
 - 3. Qualifications—same as director, noted above
 - 4. Senate confirmation—required
- c. Superintendent of Registration (ch. 127, pars. 5.08ff.)
 - 1. Salary—\$10,000
 - 2. Term—2 years and until successor qualifies
 - 3. Qualifications—same as director, noted above
 - 4. Senate confirmation—required
- d. Advisory Board to Department (ch. 127, pars. 6.07ff.)
 - 5 members
 - 1. Salary—none
 - 2. Term—2 years and until successor qualifies
 - 3. Qualifications—none
 - 4. Senate confirmation—required
- e. Board of Natural Resources and Conservation (ch. 127, pars. 6.07ff.)
 - 8 members: 5 appointed by Governor; 3 ex officio (Director of Registration and Education, President of University of Illinois, and President of Southern Illinois University)
 - 1. Salary—none
 - 2. Term—2 years and until successor qualifies
 - 3. Qualifications—1 expert each in biology, geology, engineering, chemistry, and forestry; qualified by 10 years experience in practicing or teaching their several professions
 - 4. Senate confirmation—required
- f. Board of State Museum Advisors (ch. 127, pars. 6.07ff.)
 - 5 members
 - 1. Salary—none
 - 2. Term—2 years and until successor qualifies
 - 3. Qualifications—1 expert each in botany, ethnology, zoology, manufacture, and museum administration
 - 4. Senate confirmation—required

The following members receive no salary :

Advisory Board to the Department of Registration and Education
 Board of Natural Resources and Conservation Advisers
 Board of State Museum Advisors
 Architect Examining Committee
 Barber Examining Committee
 Beauty Culture Examining Committee
 Chiropody Examining Committee
 Detection of Deception Examining Committee
 Detective Examining Committee
 Funeral Directing and Embalming Committee

OTHER DEPARTMENTS—Continued

Department of Registration and Education—Continued

Horseshoer Examining Committee
Land Surveyor Examining Committee
Medical Examining Committee
Nurses Examining Committee
Optometry Examining Committee
Psychologist Examining Committee
Physical Therapy Committee
Professional Engineer Examining Committee
Real Estate Examining Committee
Structural Engineer Examining Committee
Tree Expert Examining Committee
Veterinary Examining Committee
Vocational School Examining Committee

The following members receive a salary :

Dental Examining Committee—\$10 per day
Pharmacy Examining Committee—\$10 per day
Plumber Examining Committee—\$10 per day
Public Accountancy Committee—reasonable compensation while performing their duties
Water Well Examining Committee—\$10 per day

Department of Revenue

- a. Director (ch. 127, pars. 4ff.)
 1. Salary—\$15,000
 2. Term—2 years and until successor qualifies
 3. Qualifications—none
 4. Senate confirmation—required
- b. Assistant Director (ch. 127, pars. 5.12ff.)
 1. Salary—\$12,000
 2. Term—2 years and until successor qualifies
 3. Qualifications—none
 4. Senate confirmation—required
- c. Advisory Board to Department (ch. 127, pars. 6.13ff.)
 1. Salary—none
 2. Term—2 years and until successor qualifies
 3. Qualifications—none
 4. Senate confirmation—required

Department of Audits

- a. Auditor General (ch. 15, pars. 64ff.)
 1. Salary—\$15,000
 2. Term—6 years (apparently expires 1970)
 3. Qualifications—certified public accountant; hold certificate from Department of Registration and Education to practice public accounting; 7 years experience in practice of public, industrial or governmental accounting with a portion of such experience in a responsible managerial capacity

OTHER DEPARTMENTS—Continued**Department of Audits—Continued**

4. Senate confirmation—required
 5. Other qualifications—auditor general may have no personal interest in any audit services or activities performed by any accounting firm whose services are contracted for under the Illinois Auditing Act
- b. Advisory Board to Department (ch. 15, pars. 67ff.)
5 members
1. Salary—none
 2. Term—6 years: 2 expire 3rd Monday in January, 1965; 2 expire 3rd Monday in January, 1967; and 1 expires 3rd Monday in January, 1969
 3. Qualifications—no less than 3 members must be professional accountants and no more than 3 may be of the same political party
 4. Senate confirmation—not required

Civil Defense Agency

- a. Director (ch. 127, par. 272a)
1. Salary—\$12,000
 2. Term—2 years
 3. Qualifications—none
 4. Senate confirmation—required
- b. Civil Defense Advisory Council (ch. 127, par. 273)
28 members: 15 appointed by Governor, and 13 ex officio state officers
1. Salary—none
 2. Term—indefinite
 3. Qualifications—none
 4. Senate confirmation—required

Military and Naval Department

- a. Adjutant General (ch. 129, pars. 220.14ff.)
1. Salary—\$12,000
 2. Term—indefinite
 3. Qualifications—10 years or more experience in the active Illinois Army National Guard and/or the Illinois Air National Guard; rank of colonel or better. Must reside at state capital and devote full time to duties of office
 4. Senate confirmation—not specified
 5. Other—appointment carries with it rank of major general
- b. Assistant Adjutant General (ch. 129, pars. 220.14ff.)
1. Salary—\$9,000
 2. Term—indefinite
 3. Qualifications—10 years or more experience in the active Illinois Army National Guard and/or the Illinois Air National Guard; rank of lieutenant colonel or better. Must reside at state capital and devote full time to duties of office

OTHER DEPARTMENTS—Continued

Military and Naval Department—Continued

4. Senate confirmation—not specified
5. Other—appointment carries with it the rank of brigadier general

HIGHER EDUCATION

Board of Higher Education (ch. 144, pars. 182 ff.)

- a. 8 of 15 members appointed by Governor; chairman designated by Governor
 1. Salary—none
 2. Term—6 year term expiring January 31 of odd numbered years: 3 expire in 1965; 3 in 1967; and 2 in 1969
 3. Qualifications—U.S. citizens and Illinois residents
 4. Senate confirmation—required

Southern Illinois University Board of Trustees (ch. 122, pars. 435.2 435.4)

- a. Governor appoints 7 of the 8 members; the Superintendent of Public Instruction is an ex officio and nonvoting member
 1. Salary—none
 2. Term—6 years, staggered: expire 3rd Monday in January: 3 expire in 1965; 2 in 1967; and 2 in 1969
 3. Qualifications—no more than 4 members from same political party
 4. Senate confirmation—required

Teachers' College Board (ch. 122, pars. 577.2 and 577.5)

- a. Governor appoints 9 of 11 members of the board; Superintendent of Public Instruction and Director of Finance serve ex officio
 1. Salary—none
 2. Term—6 years, staggered: expire 3rd Monday in January: 3 expire in 1965; 3 in 1967; and 3 in 1969
 3. Qualifications—no more than 2 may be residents of same congressional district
 4. Senate confirmation—required

State Scholarship Commission (ch. 122, par. 37-4)

- a. Governor appoints the 7 members and designates the chairman
 1. Salary—none
 2. Term—6 years, staggered: expire June 30: 2 expire in 1965; 2 in 1967; and 3 in 1969
 3. Qualifications—1 from private institution of higher education; 1 from state-supported university; 1 from public high schools; and 4 citizens chosen for knowledge and interest in higher education, but not employed by or professionally affiliated with governing boards of colleges or universities
 4. Senate confirmation—not specified

HIGHER EDUCATION—Continued**Advisory Council on Degree Granting Institutions** (ch. 144, par. 242)

a. 7 members appointed by Governor

1. Salary—none
2. Term—7 years with 1 expiring annually
3. Qualifications—1 not connected at any time with a degree granting institution; 2 from private universities who were connected with such institutions for at least 5 years (1 of these from institutions with over 1,500 student enrollment); 1 from junior colleges; 1 from state universities; 1 from private professional colleges; and 1 from correspondence schools
4. Senate confirmation—not required

NONDEPARTMENTAL BOARDS AND COMMISSIONS**State Air Pollution Control Board** (ch. 111 $\frac{1}{2}$, par. 240.4)

a. Director of Public Health and 8 members appointed by Governor

1. Salary—none
2. Term—4 years; 2 expire in each odd-numbered year
3. Qualifications—1 professional engineer with 5 years' experience in air pollution control; 1 doctor of medicine with experience in industrial medicine; 1 from field of agriculture or conservation; 1 from private manufacturers; 1 from labor; 1 from city government; and 2 others selected from the state at large
4. Senate confirmation—required

American Heritage Commission (ch. 127, par. 214.6)

a. 9 members: 3 appointed by Governor; 3 by President of Senate; and 3 by Speaker of House

1. Salary—none
2. Term—2 years: expire in January of odd-numbered years
3. Qualifications—none
4. Senate confirmation—not required; but appointments made by President of Senate are made with the advice of the Senate Executive Committee

Illinois Armory Board (ch. 129, pars. 223 ff.)

a. 5 members

1. Salary—none
2. Term—6 years: 2 expire September 1, 1965; 1 expires September 1, 1967; and 2 expire September 1, 1969
3. Qualifications—majority of members from among the active or inactive members of the Illinois National Guard
4. Senate confirmation—not required

NONDEPARTMENTAL BOARDS AND COMMISSIONS—Continued

Beekeepers' Commission (ch. 8, pars. 126a ff.)

- a. 5 members: President of Illinois State Beekeepers' Association as chairman, and 4 members appointed by Governor
 - 1. Salary—none
 - 2. Term—indefinite
 - 3. Qualifications—2 from among members of the Illinois State Beekeepers' Association; 2 members from among citizens of state
 - 4. Senate confirmation—not required

Bi-state Development Agency (ch. 127, pars. 63s-1 ff.)

- a. 5 members representing Illinois appointed by Governor
 - 1. Salary—none
 - 2. Term—5 years: 1 expires annually on 3rd Monday in January
 - 3. Qualifications—must be qualified voters of Illinois and reside within the district established by the compact. Governor designates chairman of Illinois delegation
 - 4. Senate confirmation—required

Illinois Building Authority (ch. 127, par. 213.1)

- a. 7 members
 - 1. Salary—none
 - 2. Term—7 years: 1 expires annually on 3rd Monday in January
 - 3. Qualifications—elected officials of state or local subdivisions not eligible. Governor designates chairman
 - 4. Senate confirmation—required

Chicago Regional Port District Board (ch. 19, pars. 163 ff.)

- a. 9 members: 5 appointed by Governor; 4 by Mayor of Chicago
 - 1. Salary—none
 - 2. Term—5 years, expire as follows: Governor's appointees—June 1, 1965 (2); 1967 (1); 1968 (1); 1969 (1). Mayor's appointees—June 1, 1965 (2); 1968 (1); 1969 (1)
 - 3. Qualifications—one of two appointments by Governor on June 1, 1965, must be resident of Du Page County. At least one of the other Governor's appointees must be resident of district outside Chicago. All must be men of recognized business ability. The Governor's appointees must be approved by the mayor, and mayor's appointees must be approved by the Governor
 - 4. Senate confirmation—required, and mayor's appointees must be approved by city council

NONDEPARTMENTAL BOARDS AND COMMISSIONS—Continued

Chicago Transit Authority Board (ch. 111½, pars. 319 ff.)

- a. 7 members: 3 appointed by Governor; 4 by Mayor of Chicago
 1. Salary—\$15,000 for initial members, subsequent salaries set by the board
 2. Term—7 years, expire as follows: Governor's appointees—September 1, 1968; 1969; 1970. Mayor's appointees—September 1, 1965; 1966; 1967; and 1971
 3. Qualifications—must be residents of metropolitan area and men of recognized business ability. Cannot hold federal, state, or local office except an honorary post without compensation, or an office in National Guard. Appointments by Governor and mayor must be approved by each of the other
 4. Senate confirmation—required, and mayor's appointments must be approved by city council

Chicago World's Fair of 1976 Commission (ch. 127, par. 167g)

- a. 9 members: 3 appointed by Governor; 3 from Senate by President pro Tempore; 3 from House by Speaker
 1. Salary—none
 2. Term—2 years: terms expire July 1, 1965, and every odd-numbered year thereafter
 3. Qualifications—of the members appointed from each House of the General Assembly, no more than 2 may be of the same political party
 4. Senate confirmation—not required

Commission on Children (ch. 23, pars. 2192 ff.)

- a. 30 members: 15 appointed by Governor; 3 from Senate by President pro Tempore; 3 from House by Speaker; and 9 state officers, ex officio
 1. Salary—none
 2. Term—Governor's appointees serve 3-year terms: 5 expire in 1965; 5 in 1966; and 5 in 1967
 3. Qualifications—Legislative members must have a particular interest in the care and training of children and no more than 2 from either House may be of same political party. Of Governor's appointees, 4 shall have knowledge and experience in the field of mentally and physically handicapped
 4. Senate confirmation—not required
 5. Other—ex officio members include the Directors of the Departments of Family and Children Services, Mental Health, Public Aid, Public Health, Labor, Superintendent of Public Instruction, Chairman of Youth Commission, Supervisor of Vocational Rehabilitation, and Director of Services for Crippled Children, University of Illinois

NONDEPARTMENTAL BOARDS AND COMMISSIONS—Continued

Cities and Villages Municipal Problems Commission (ch. 24, pars. 1251 ff.)

- a. 12 members: 6 appointed by Governor; 3 from Senate by President pro Tempore; and 3 from House appointed by Speaker
 1. Salary—none
 2. Term—2 years, expire July 1 in odd-numbered years
 3. Qualifications—no more than 2 from same political party of those appointed from each House of General Assembly; must be 3 elected municipal officials, and 3 public members among those appointed by Governor
 4. Senate confirmation—not required

Civil Service Commission (ch. 127, pars. 63b107a ff.)

- a. 3 members appointed by Governor who also designates chairman
 1. Salary—chairman, \$5,000; members, \$3,600
 2. Term—6 years: expire March 1: 1 in 1965; 1 in 1967; and 1 in 1969
 3. Qualifications—persons in sympathy with application of merit principles to public employment; not more than 2 from same political party
 4. Senate confirmation—required

Commerce Commission (ch. 111 $\frac{2}{3}$, pars. 1 ff.)

- a. 5 commissioners appointed by Governor who also designates chairman
 1. Salary—\$15,000
 2. Term—5 years: expire 3rd Monday in January: 1 in 1965; 2 in 1966; and 2 in 1968
 3. Qualifications—no more than 3 from same political party
 4. Senate confirmation—required
- b. Governor may appoint up to 5 assistant commissioners
 1. Salary—\$9,000
 2. Term—indefinite
 3. Qualifications—none
 4. Senate confirmation—not specified

County Problems Commission (ch. 34, par. 1201)

- a. 15 members: 5 appointed by Governor; 5 from Senate by President pro Tempore; and 5 from House by Speaker
 1. Salary—none
 2. Term—2 years, expire July 1 in odd-numbered years
 3. Qualifications—no more than 3 of the House and 3 of the Senate members shall be of the same political party
 4. Senate confirmation—not required

NONDEPARTMENTAL BOARDS AND COMMISSIONS—Continued

Court of Claims (ch. 37, pars. 439.1 ff.)

- a. 3 judges appointed by Governor who also designates chief justice; Secretary of State or his deputy serves as clerk of the court
 - 1. Salary—\$6,500
 - 2. Term—6 years: expire 3rd Monday in January: 1 in 1965; 1 in 1967; and 1 in 1969
 - 3. Qualifications—none
 - 4. Senate confirmation—required

Crime Investigating Commission (ch. 38, par. 843)

- a. 12 members: 4 appointed by Governor; 4 from Senate by Committee on Committees or Chairman thereof; and 4 from House by Speaker
 - 1. Salary—none
 - 2. Term—2 years: terms expire July 1 of odd-numbered years
 - 3. Qualifications—no more than 2 appointees of each appointing officer shall be of the same political party; appointments to be in writing and filed with Secretary of State
 - 4. Senate confirmation—not required

Board of Economic Development (ch. 127, par. 200-1 ff.)

- a. Board is composed of 9 ex officio members, including: Governor; and Directors of Departments of Aeronautics, Agriculture, Conservation, Insurance, Labor, Mines and Minerals, Public Works and Buildings, Revenue
- b. Executive Director (ch. 127, par. 200-2)
 - 1. Salary—fixed by Governor, not to exceed \$15,000
 - 2. Term—2 years: expires on 3rd Monday in January
 - 3. Qualifications—none
 - 4. Senate confirmation—required
- c. Council of Economic Advisors (ch. 127, par. 200-7)
 - 15 members
 - 1. Salary—none
 - 2. Term—indefinite
 - 3. Qualifications—no more than 8 from same political party
 - 4. Senate confirmation—required
- d. Advisory Board on Tourism (ch. 127, par. 200-32)
 - 9 members: 5 appointed by Governor; 2 from Senate appointed by President Pro Tempore; and 2 from House appointed by Speaker
 - 1. Salary—none
 - 2. Term—2 years
 - 3. Qualifications—Governor's appointees may include representatives from motels, hotels, restaurants, airlines, railroads, bus lines, travel agencies, oil companies, and communications industries
 - 4. Senate confirmation—not required

NONDEPARTMENTAL BOARDS AND COMMISSIONS—Continued**Election Laws Commission** (ch. 46, par. 601)

- a. 15 members: Governor appoints 5; 5 from Senate appointed by President Pro Tempore; 5 from House appointed by Speaker
 - 1. Salary—none
 - 2. Term—2 years, expiring July 1 of odd-numbered years
 - 3. Qualifications—none
 - 4. Senate confirmation—not required

Fair Employment Practices Commission (ch. 48, par. 855)

- a. 5 members
 - 1. Salary—none
 - 2. Term—4 years: expire 3rd Monday in January: 3 in 1965; and 2 in 1967
 - 3. Qualifications—5 years residence in Illinois; no more than 3 from same political party
 - 4. Senate confirmation—required; temporary appointments during interim when legislature is not in session subject to confirmation by Interim Legislative Committee on Governor's Temporary Appointments to Commission

Great Lakes Basin Compact Commission (ch. 127, pars. 192.1 ff.)

- a. Governor appoints 5 members
 - 1. Salary—none
 - 2. Term—indefinite
 - 3. Qualifications—2 members must be residents of the city of Chicago; 1 must be a resident of Cook County outside the City of Chicago
 - 4. Senate confirmation—not required

Illinois Harness Racing Commission (ch. 8, par. 37s. 1)

- a. 3 members appointed by Governor who also designates chairman
 - 1. Salary—none
 - 2. Term—6 years: expire July 1 of odd-numbered years: 1 in 1965; 1 in 1967; and 1 in 1969
 - 3. Qualifications—none
 - 4. Senate confirmation—required
- b. 2 investigators for Illinois Colts (ch. 8, par. 37s. 19b)
 - 1. Salary—\$7,200
 - 2. Term—indefinite
 - 3. Qualifications—no more than 1 from same political party
 - 4. Senate confirmation—not required

Higher Education Assistance Corporation (ch. 144, par. 204)

- a. Board of Directors consisting of 20 members: 6 appointed by Governor; 6 from Senate appointed by President Pro Tempore; 6 from House appointed by Speaker; and 2 ex officio—Superintendent of Public Instruction and Auditor General. At request

NONDEPARTMENTAL BOARDS AND COMMISSIONS—Continued**Higher Education Assistance Corporation—Continued**

of board, Governor may appoint 2 additional members for terms of 3 years each

1. Salary—none
2. Term—6 years: expiring December 31 of even numbered years: Of Governor's appointees, 2 expire 1966; 2 expire in 1968; and 2 expire in 1970
3. Qualifications—U.S. citizens and Illinois residents
4. Senate confirmation—not required

Illinois State Historical Library Trustees**a. Governor appoints 3 members**

1. Salary—none
2. Term—2 years
3. Qualifications—members must be well versed in history of the state, and qualified by habit and disposition to discharge the duties of office
4. Senate confirmation—required

State Housing Board (ch. 67½, par. 167)**a. Governor appoints 7 members of the board**

1. Salary—none
2. Term—6 years: expire second Monday in January: 2 expire in 1965; 2 in 1967; and 3 in 1969
3. Qualifications—at least 3 members must have experience in design, construction or management of buildings, or in purchase and sale of real estate. Members may not be an employee of or hold any official relation to any housing corporation. No more than 3 from same county
4. Senate confirmation—required

Commission on Human Relations (ch. 127, par. 214.1 ff.)**a. Governor appoints 20 members and designates chairman**

1. Salary—none except chairman, who receives \$50 per diem to a maximum of 100 days
2. Term—2 years, expire July 1 of each odd-numbered year
3. Qualifications—none
4. Senate confirmation—not specified

Industrial Commission (ch. 48, par. 138.13)**a. 5 members appointed by Governor**

1. Salary—Chairman, \$15,000; members, \$12,000
2. Term—4 years: expire 3rd Monday in January: 3 expire in 1965; 2 in 1967
3. Qualifications—2 members from employing class; 2 from employee class; and 1 not identified with either class
4. Senate confirmation—required

NONDEPARTMENTAL BOARDS AND COMMISSIONS—Continued**Intergovernmental Cooperation Commission** (ch. 127, pars. 186 ff.)

- a. 22 members: Governor appoints 2
 - 1. Salary—none
 - 2. Term—2 years: expire July 1 of odd numbered years
 - 3. Qualifications—Governor's appointees (2) must be administrative officers of the State
 - 4. Senate confirmation—not required
 - 5. Other—7 from Senate appointed by President of Senate; 7 from House appointed by Speaker; ex-officio—Governor, Director of Finance, Chairman of State Planning Commission, Attorney General; President of Senate and the Speaker are honorary, nonvoting, ex-officio members

Interstate Oil Compact Commission (ch. 104, par. 23)

- a. 1 member appointed by Governor to represent Illinois
 - 1. Salary—none
 - 2. Term—indefinite
 - 3. Qualifications—none
 - 4. Senate—confirmation—not required

Joliet Regional Port District Board (ch. 19, pars. 264 ff.)

- a. 7 members: Governor appoints 3; Will County Board appoints 1; and the mayor of Joliet appoints 3
 - 1. Salary—none
 - 2. Term—6 years, expire as follows: Governor's appointees, one each June 1 of 1965, 1967, 1969; mayor's appointees, June 1 of 1966, 1968, and 1970; county board's appointee, June 1, 1969
 - 3. Qualifications—residents of Will County. No more than 2 of Governor's appointees and 2 of mayor's appointees may be of the same political party. Governor's appointees must reside outside of Joliet
 - 4. Senate confirmation—required

Judicial Advisory Council (ch. 37, pars. 601 ff.)

- a. 15 members: 5 appointed by Governor; 5 from Senate by President pro Tempore; and 5 from House by Speaker
 - 1. Salary—none
 - 2. Term—2 years: expire July 1 of each odd numbered year
 - 3. Qualifications—appointees from each house of legislature must be members of the bar; Governor's appointees must be members of the bar but not serving in the General Assembly nor who are members of the judiciary
 - 4. Senate confirmation—not required

NONDEPARTMENTAL BOARDS AND COMMISSIONS—Continued

Lawrenceville-Vincennes Airport Authority Board (ch. 15½, pars. 252b ff.)

- a. 8 members: Governor appoints 1 member contingent on local ordinance authorizing such appointment
 1. Salary—none
 2. Term—at pleasure of Governor
 3. Qualifications—none
 4. Senate confirmation—not required
 5. Other—3 members appointed by mayor of Lawrenceville; 3 members appointed by mayor of Vincennes; 1 member by Governor of Indiana

Liquor Control Commission (ch. 43, pars. 97 ff.)

- a. 3 members appointed by Governor
 1. Salary—chairman, \$8,000; members, \$7,000
 2. Terms—6 years: 1 each expires February, 1966, 1968, 1970
 3. Qualifications—members must be citizens and residents of Illinois for 10 years; must not have been convicted of any violation of federal or state law concerning the manufacture or sale of alcoholic liquor; and must not have a pecuniary interest in manufacture or sale of alcoholic liquor. No more than 2 from same political party
 4. Senate confirmation—required

Medical Center Commission (ch. 91, par. 126)

- a. 7 members: Governor appoints 4. Others include 1 appointed by mayor of Chicago; 1 by president of Cook County Board; and 1 by president of Chicago Park District
 1. Salary—none
 2. Term—5 years: Governor's appointees' terms expire on June 30—1 in 1965; 1 in 1967; 1 in 1968; and 1 in 1969
 3. Qualifications—none
 4. Senate confirmation—not required

Mental Health Commission (ch. 91½, par. 111)

- a. 10 members: 3 appointed by Governor; 3 from Senate appointed by President Pro Tempore; 3 from House appointed by Speaker; and Director of Mental Health, ex officio
 1. Salary—none
 2. Term—2 years: expire July 1 in odd numbered years
 3. Qualifications—none
 4. Senate confirmation—not required

Metropolitan Fair and Exposition Authority (ch. 34, pars. 6014 ff.)

- a. 14 members: 6 appointed by Governor; 6 by mayor of Chicago; 2 ex officio—Governor and mayor of Chicago
 1. Salary—none

NONDEPARTMENTAL BOARDS AND COMMISSIONS—Continued

Metropolitan Fair and Exposition Authority—Continued

2. Term—5 years: expire on June 1, as follows: Governor's and mayor's appointees—2 in 1966; 1 in 1967; 1 in 1968; 1 in 1969; 1 in 1970
3. Qualifications—persons of generally recognized ability and integrity
4. Senate confirmation—required

Nature Preserves Commission (ch. 105, par. 501)

- a. 10 members: Governor appoints 9; Director of State Museum, ex officio
 1. Salary—none
 2. Term—3 years: 3 each expire on June 30, 1965; 1966; and 1967
 3. Qualifications—persons with an interest in the preservation of natural lands; any member who has served 2 consecutive terms is ineligible for reappointment for 1 year following the expiration of his second term
 4. Senate confirmation—not specified

Northeastern Illinois Metropolitan Area Planning Commission (ch. 34, pars. 3055 ff.)

- a. 19 members: Governor appoints 8; mayor of Chicago, 5; and the presiding officers of the county boards of Cook, DuPage, Kane, Lake, McHenry, and Will Counties, 1 each
 1. Salary—none
 2. Term—4 years: of Governor's appointees, 2 expire annually on October 1
 3. Qualifications—of Governor's appointees, 3 who are residents of rural Cook County, 3 residents of counties other than Cook in the area, and all of whom must be residents of incorporated areas
 4. Senate confirmation—not specified
 5. Other—Mayor's appointees' terms expire as follows: 2 on October 1, 1965; and 1 each 1966, 1967, and 1968. County appointments, all on October 1, 1965

Ohio River Valley Water Sanitation Commission (ch. 111½ par. 119)

- a. 3 members: Governor appoints 2; Director of Public Health, ex officio
 1. Salary—none
 2. Term—6 years: 1 expires June, 1966; 1 expires June, 1969
 3. Qualifications—must be resident and citizen of Illinois
 4. Senate confirmation—required

Pension Laws Commission (ch. 108½, par. 22-801)

- a. 15 members: 5 appointed by Governor; 5 from Senate by President Pro Tempore; and 5 from House appointed by Speaker
 1. Salary—none
 2. Term—2 years: expire July 1 of odd-numbered years
 3. Qualifications—none
 4. Senate confirmation—not required

NONDEPARTMENTAL BOARDS AND COMMISSIONS—Continued

Police Training Institute Joint Committee (ch. 144, par. 63b)

- a. 6 members: 3 appointed by Governor; 3 appointed by board of trustees of University of Illinois
 1. Salary—none
 2. Term—serve during pleasure of appointing authority
 3. Qualifications—Governor's appointees must be 3 chiefs of police
 4. Senate confirmation—not required

Private Business Schools State Board (ch. 144, par. 137)

- a. 7 members: 6 appointed by Governor; Superintendent of Public Instruction serves ex officio and as chief executive officer
 1. Salary—none
 2. Term—6 years: 2 expire January 1, 1966; 2 in 1968; and 2 in 1970
 3. Qualifications—4 members must have for 5 years preceding appointment been occupied in executive or managerial positions in private business schools in the state, and 2 members shall be persons occupied in commerce and industry
 4. Senate confirmation—not required

Illinois Racing Board (ch. 8, pars. 37a ff.)

- a. 3 members appointed by Governor; chairman designated by Governor
 1. Salary—none
 2. Term—6 years: 1 expires each July 1 in odd-numbered years
 3. Qualifications—no more than 2 from same political party; members may not have any pecuniary interest in racing; members must have a reasonable knowledge of racing practices and procedures and of principles of thoroughbred racing and breeding; members must be resident of state for 5 years; a qualified voter; and not less than 25 years of age
 4. Senate confirmation—required
 5. Other—bond in the amount of \$25,000

Sanitary Water Board (ch. 19, pars. 145.1 ff.) [see under Department of Public Health]**State Employees' Retirement System Trustees** (ch. 108½, par. 14-172)

- a. 5 members: 3 appointed by Governor; Director of Finance and Auditor of Public Accounts are ex officio members
 1. Salary—none
 2. Term—5 years: 1 expires July 23, 1965; 1 on July 23, 1968; and 1 on July 23, 1969
 3. Qualifications—1 appointee must be a person who is not a State employee, and the one so appointed is chairman. Other 2 appointees must be members of system and have had at least 10 years creditable service
 4. Senate confirmation—not specified

NONDEPARTMENTAL BOARDS AND COMMISSIONS—Continued

School Building Commission (ch. 122, par. 35-2)

- a. 5 members: 3 members appointed by Governor; Superintendent of Public Instruction and Director of Finance, ex officio members
 - 1. Salary—none
 - 2. Term—6 years: 1 each expires on March 31, 1965; 1967; and 1969
 - 3. Qualifications—none
 - 4. Senate confirmation—not required

School Problems Commission (ch. 122, par. 755)

- a. 17 members: 5 appointed by Governor; 5 from Senate appointed by President pro Tempore; 5 from House appointed by Speaker; and Superintendent of Public Instruction and Director of Finance, ex officio members
 - 1. Salary—none
 - 2. Term—2 years: expire July 1 of each odd-numbered year
 - 3. Qualifications—none
 - 4. Senate confirmation—not required

Seneca Regional Port District (ch. 19, pars. 365 ff.)

- a. 7 members: 3 appointed by Governor; 3 appointed by President of Village of Seneca; and 1 by chairman of La Salle County Board
 - 1. Salary—none; but member appointed secretary or treasurer may receive compensation
 - 2. Term—3 years: of Governor's appointments—1 expires June 1, 1965; 1 in 1966; and 1 in 1967
 - 3. Qualifications—no private interest in contracts, work, etc., of port district; must be residents of district
 - 4. Senate confirmation—not required

Shawneetown Regional Port District (ch. 19, pars. 415 ff.)

- a. 7 members: 4 appointed by Governor; 1 each by the mayors of Shawneetown, Equality, and New Haven
 - 1. Salary—none; but member appointed secretary or treasurer may receive compensation
 - 2. Term—3 years: of Governor's appointees—2 expire on June 1, 1965; 1 on June 1, 1966; and 1 on June 1, 1967
 - 3. Qualifications—no private interest in contracts, work, etc., of port district
 - 4. Senate confirmation—not required

Southwest Regional Port District (ch. 19, pars. 468 ff.)

- a. 7 members appointed by Governor
 - 1. Salary—none; but member appointed secretary or treasurer may receive compensation
 - 2. Term—3 years, expiring July 1: 3 expire in 1965; 2 in 1966; and 2 in 1967
 - 3. Qualifications—residents of district; not more than 2 from same township; no more than 4 from same political party
 - 4. Senate confirmation—required

NONDEPARTMENTAL BOARDS AND COMMISSIONS—Continued

Southwestern Illinois Metropolitan Area Planning Commission (ch. 34, par. 3091.5)

a. 33 members: 8 appointed by Governor

1. Salary—none
2. Term—6 years, expiring October 1: 2 expire in 1965; 3 expire in 1967; and 3 expire in 1969
3. Qualifications—Governor's appointees divided equally between political parties
4. Senate confirmation—not required
5. Other—1 members appointed by Illinois commissioners of Bi-State Development Agency;
 - 1 by Tri-City Regional Port District Board;
 - 1 by Southwest Regional Port District Board;
 - 1 by Board of East Side Levee and Sanitary District;
 - 2 from each of the county boards of Madison and St. Clair counties;
 - 2 members from among the mayors of cities and villages in Madison and St. Clair counties to be selected by a vote among such mayors with 1 appointee to represent a city of less than 30,000 population and 1 to represent a city of over 30,000 population;
 - Chairman of each planning and zoning commission within Madison and St. Clair counties;
 - County Superintendents of Schools of Madison and St. Clair Counties;
 - President of Southern Illinois University or his representative;
 - Board of Economic Development representative;
 - District Highway Engineer in the area;
 - County Superintendents of Highways of Madison and St. Clair Counties

Spanish-American War Veterans' Commission (ch. 126 $\frac{1}{2}$, pars. 44a.1 ff.)

a. 5 members appointed by Governor

1. Salary—none
2. Term—4 years: expire July 2, 1965; or when their successors are appointed
3. Qualifications—2 members from active membership of Illinois department of United Spanish War Veterans and who are recommended by council of such organization; and 3 members from citizens of state
4. Senate confirmation—not required

State Parks Revenue Bond Commission (ch. 105, par. 490.3)

a. 6 members: 3 appointed by Governor; Governor, Treasurer, and Director of Conservation are ex officio members

1. Salary—none
2. Term—4 years: terms expire in December: 1 in 1965; 1 in 1966; and 1 in 1967
3. Qualifications—none
4. Senate confirmation—not required

NONDEPARTMENTAL BOARDS AND COMMISSIONS—Continued**Teachers' Retirement System Trustees** (ch. 108 $\frac{1}{2}$, pars. 16-163 ff.)

- a. 5 members: 2 appointed by Governor; 2 elected from membership of retirement system; and Superintendent of Public Instruction serves as president of board
 1. Salary—none
 2. Term—4 years, expire July 15: 1 in 1966; 1 in 1968
 3. Qualifications—must reside in and be taxpayer in territory covered by retirement system; appointed members must be interested in public school welfare, experienced and competent in financial and business management and shall not be members of the retirement system
 4. Senate confirmation—not required

Toll Highway Commission (ch. 121, pars. 314a28 ff.)

- a. 5 members: 3 appointed by Governor; Governor and Director of Public Works and Buildings serve ex officio
 1. Salary—chairman, \$12,000; members, \$10,000
 2. Term—6 years: 1 expires in 1965; 1 in 1969; and 1 in 1970
 3. Qualifications—none
 4. Senate confirmation—not required
 5. Other—bond in the amount of \$25,000

Toll Highway Advisory Committee (ch. 121, pars. 314a28 ff.)

- a. 25 members: 15 appointed by Governor; 5 from Senate appointed by Committee on Committees; and 5 from House appointed by Speaker
 1. Salary—none
 2. Term—2 years, expiring July 1 of odd-numbered years
 3. Qualifications—none
 4. Senate confirmation—not required

Tri-City Regional Port District Board (ch. 19, pars. 298 ff.)

- a. 7 members: 4 appointed by Governor; 1 each by mayors of Venice, Madison, and Granite City
 1. Salary—none
 2. Term—3 years, expiring June 1: 2 in 1966; 1 in 1967; and 1 in 1968
 3. Qualifications—must be residents of the district
 4. Senate confirmation—not required

Commission for Uniformity of Legislation in U. S. (ch. 131, par. 12)

- a. 6 members: 5 appointed by Governor; Secretary of Legislative Reference Bureau serves ex officio
 1. Salary—none
 2. Term—4 years: expire in 1965
 3. Qualifications—none
 4. Senate confirmation—not required

NONDEPARTMENTAL BOARDS AND COMMISSIONS—Continued

Illinois Veterans' Commission (ch. 126½, par. 36)

- a. 3 members appointed by Governor
 1. Salary—\$25 per day while attending meetings of the commission
 2. Term—6 years: expire July 1, 1965; 1967; and 1969
 3. Qualifications—must have served honorably in one of the following: Spanish-American War; World War I; World War II; and Korean Conflict. No more than 2 from same political party
 4. Senate confirmation—required
- b. Administrator (ch. 126½, par. 39)
 1. Salary—\$10,000
 2. Term—indefinite
 3. Qualifications—none
 4. Senate confirmation—required
- c. Assistant Administrator (ch. 126½, par. 39)
 1. Salary—\$7,000
 2. Term—indefinite
 3. Qualifications—none
 4. Senate confirmation—required

Vocational Education and Rehabilitation Board (ch. 122, pars. 695 ff.)

- a. 12 members: Governor appoints 6; Director of Registration and Education, Superintendent of Public Instruction, Director of Agriculture, Director of Labor, Director of Mental Health, and Director of Public Health are ex officio members
 1. Salary—none
 2. Term—indefinite
 3. Qualifications—none
 4. Senate confirmation—not required

Wabash Valley Interstate Commission (ch. 127, pars. 63t-1 ff.)

- a. 7 commissioners appointed by Governor to represent Illinois
 1. Salary—none
 2. Terms—6 years; 3 expire April 1, 1965; 2 expire April 1, 1967; and 2 expire April 1, 1969
 3. Qualifications—none
 4. Senate confirmation—not required

Waukegan Port District (ch. 19, pars. 193 ff.)

- a. 5 members: 3 appointed by Governor; 2 by mayor of Waukegan
 1. Salary—none
 2. Terms—6 years: Of Governor's appointees, terms expire June 1: 1 in 1965; 1 in 1967; and 1 in 1969. Of mayor's 2 appointees—June 1, 1968; and June 1, 1970

NONDEPARTMENTAL BOARDS AND COMMISSIONS—Continued

Waukegan Port District—Continued

3. Qualifications—residents of a county within the district and not less than 3 members shall be residents of the district. Of Governor's appointees, no more than 2 from same political party. Mayor's appointments subject to advice and consent of city council
4. Senate confirmation—required

Illinois Youth Commission (ch. 23, pars. 2503 ff.)

a. 5 members appointed by Governor

1. Salary—chairman, \$15,000; members, \$10,000
2. Term—5 years, expire 3rd Monday in January, as follows: 1 in 1965; 1 in 1966; 1 in 1967; 1 in 1968; and 1 in 1969
3. Qualifications—experience in the study of juvenile and youthful offenders or in planning and conducting programs of prevention of juvenile and youth delinquency and crime; Governor designates chairman
4. Senate confirmation—required

b. *Community Services Advisory Board* (ch. 23, pars. 2504 ff.)

Board consists of 12 members appointed by Governor and 2 ex officio members from the Youth Commission

1. Salary—none
2. Term—3 years: 4 members' terms expire 3rd Monday of January annually
3. Qualifications—Governor to consider recommendations made by the Big Brothers and Sisters Association of Illinois and the Illinois Federation of Community Committees and similar organizations
4. Senate confirmation—required

c. *Correctional Services Advisory Board* (ch. 23, pars. 2528 ff.)

Board consists of 12 members appointed by Governor and 2 members of Youth Commission serving ex officio

1. Salary—none
2. Term—3 years: 4 members' terms expire 3rd Monday in January annually
3. Qualifications—none
4. Senate confirmation—required

MISCELLANEOUS POSITIONS

Notaries Public (ch. 99, pars. 1 ff.)

- a. Notaries public receive appointment of office from Governor; there is no statutory limit on the number that may be so appointed
 1. Salary—fee office
 2. Term—4 years
 3. Qualifications—21 years of age for males and 18 for females; U.S. citizen and resident of Illinois for one year preceding appointment
 4. Senate confirmation—not required

NONDEPARTMENTAL BOARDS AND COMMISSIONS—Continued

Public Guardian and Conservator (ch. 3, pars. 167 ff.)

- a. 102 appointed by Governor: 1 for each county
 - 1. Salary—reasonable compensation
 - 2. Term—4 years: expire 1st Monday in December, 1965
 - 3. Qualifications—none
 - 4. Senate confirmation—required
 - 5. Other—\$5,000 bond

Public Administrator (ch. 3, par. 163)

- a. 102 appointed by Governor: 1 for each county
 - 1. Salary—in Cook County, \$20,000; in all other counties, fee basis
 - 2. Term—4 years: expire 1st Monday in December, 1965
 - 3. Qualifications—none
 - 4. Senate confirmation—required
 - 5. Other—\$5,000 bond

STATE OF NEW YORK EXECUTIVE DEPARTMENT

Division of the Budget

STATE CAPITOL

T. N. Hurd, Director of the Budget

December 18, 1964

MR. ALAN SHORT, *Chairman*Senate Factfinding Committee on Business
and Commerce

State Capitol

Sacramento, California 95814

Dear Mr. Short:

Governor Rockefeller has asked me to reply to your letter of December 3 requesting information on per diem fees paid to members of boards and commissions in New York State.

Members of commissions, boards and councils who meet on a part-time basis are most often paid per diem rates. There is no standard per diem; however, the amounts shown in the attached table represent the range of per diems paid to members of New York State commissions, boards and councils as of October 1, 1964.

Many state boards and commissions have a full-time, continuing function and their members are paid an annual salary, comparable to other state employees. In such cases, the chairman is almost always the head of the state department or agency associated with the board.

I hope this information will be helpful.

Sincerely yours,

T. N. HURD

**Per Diem Rates Paid to Members of Certain New York State
Commissions, Boards and Councils as of October 1, 1964**

<i>Commission, Board or Council</i>	<i>Compensation per Diem</i>
Labor and Management Practices Advisory Council -----	\$60
Minimum wage boards -----	60
Unemployment Insurance Advisory Council -----	55
Medical Appeals Board -----	50
Public Works Advisory Board -----	35
Veterans Affairs Commission -----	30

COMMONWEALTH OF PENNSYLVANIA—GOVERNOR'S OFFICE

GOVERNOR'S OFFICE, HARRISBURG

December 9, 1964

HON. ALAN SHORT, *Chairman*
Senate Factfinding Committee on Business
and Commerce
California Legislature
State Capitol
Sacramento, California 95814

Dear Mr. Short:

In reply to your letter of December 3, 1964, Governor Scranton has directed me to compile the necessary information to answer your question.

Please find enclosed a list of the different boards and commissions in Pennsylvania which I feel parallel the boards and commissions mentioned in your letter. Some of these boards are on salary and, therefore, we have listed the chairman's salary and the member's salary. The balance of the listings cover those boards and commissions which operate on a per diem and they have been divided into classifications according to their dollar value.

I sincerely hope this information can be put to effective use in your investigation.

Sincerely yours,

WILLIAM D. JOHNSON
Assistant Secretary to the Governor

Board of Arbitration of Claims

Chairman \$13,500, members \$11,000

Armory Board of the State of Pennsylvania

Members \$1,200

State Athletic Commission

Chairman \$7,500, members \$7,000

State Civil Service Commission

Members \$50 per diem, but no more than \$5,000 per diem compensation in any one year

Pennsylvania Labor Relations Board

Chairman \$12,000, members \$11,000

Pennsylvania Liquor Control Board

Chairman \$18,000, members \$17,000

Milk Control Commission

Chairman \$13,000, members \$12,500

Pennsylvania Board of Parole

Chairman \$15,500, members \$14,500

Pennsylvania Public Utility Commission

Chairman \$20,000, members \$19,000

Pennsylvania Securities Commission

Chairman \$13,000, members \$12,000

State Tax Equalization Board

Chairman \$14,000, members \$13,000

Pennsylvania Turnpike Commission

Chairman \$17,000, members \$15,000

Unemployment Compensation Board of Review

Chairman \$14,000, members \$13,000

Workmen's Compensation Board

Chairman \$14,000, members \$13,000

State Highway Commission

\$50 per diem, and expenses

Medical Advisory Board to the State Athletic Commission

\$35 per diem, and expenses

Advisory Board on Problems of Older Workers

\$35 per diem, but such compensation shall not exceed in any calendar year the sum of \$5,000 per member.

Air Pollution Commission

\$25 per diem, and expenses

State Apprenticeship and Training Council

\$25 per diem, and expenses

FOLLOWING BOARDS RECEIVE \$30 PER DIEM, AND EXPENSES

State Board of Examiners of Architects
State Board of Barber Examiners
State Board of Chiropractic Examiners
State Board of Cosmetology
State Dental Council and Examining Board
State Registration Board for Professional Engineers
State Board of Funeral Directors
State Board of Medical Education and Licensure
State Board of Nurse Examiners
State Board of Optometrical Examiners
State Board of Osteopathic Examiners
State Board of Pharmacy
State Board of Podiatry Examiners
State Board for the Examination of Public Accountants
State Real Estate Commission
State Board of Veterinary Medical Examiners
Anthracite Mine Inspectors Examining Board
Bituminous Mine Inspectors' and Electrical Inspectors' Examining Board
Oil and Gas Inspectors Examining Board
Pennsylvania Drug, Device and Cosmetic Board
Pennsylvania Human Relations Commission
Industrial Board
Sanitary Water Board
Advisory Board (under the Pennsylvania Prevailing Wage Act)
Appeals Board (under the Pennsylvania Prevailing Wage Act)
Advisory Health Board

TRAVEL AGENCY BUSINESS

THE TRAVEL AGENCY BUSINESS

At its organizational meeting at the conclusion of the 1963 Budget Session of the State Legislature, the Senate Factfinding Committee on Business and Commerce, on its own motion, proposed an interim study on the operation of travel agencies within the State of California. The committee has received many letters from California travelers requesting legislative action with respect to travel agents and their operations. This public response stems from the stranding of many California travelers in New York and Europe during the summer of 1963, and from other complaints by the traveling public.

The interim committee held a public hearing in San Francisco on December 4, 1963. Present and testifying at that hearing was Mr. Stanley Mosk, Attorney General of the State of California, whose office had made a complete investigation of the operation of one of the travel agencies because of the appendant publicity and complaints he had received from California travelers.

Seven California travelers appeared as witnesses, some of them traveling great distances, at their own expense, to be present and testify. In addition, there were present representatives from the Better Business Bureaus of San Francisco and the San Jose area, numerous owners of travel agencies in the State of California, and the General Counsel for the American Society of Travel Agents, who presented the picture of the travel agent and his problems.

Those witnesses appearing who had been travelers with problems sought redress and relief from the Legislature for their frustrations; they endeavored to secure relief and a solution to the problems entailed as a result of their travels. Some travel agents themselves had problems and were urging state licensing and regulation. The Attorney General in his testimony urged legislation to regulate and license travel agents operating within the state. The principal opposition to licensing obviously came from certain of the travel agents who appeared before the committee and testified.

The dominant organization within this field is the American Society of Travel Agents, commonly known as ASTA. This represents approximately one-third of the travel agencies operating in the United States. In addition to the testimony of the twenty some odd witnesses, statements were received from the Attorney General's Office of New York (which itself had made an independent investigation of this problem), and from some of the common carriers, the Air Transport Association, and the Civil Aeronautics Board. Congressman Emanuel Celler, Chairman of the House Committee on the Judiciary, was invited to testify but was unable to do so. However, he did send a copy of the report that the Antitrust Subcommittee of the House Judiciary Committee, of which he is the chairman, compiled with reference to travel agents as a part of their report on the airline industry.

Travel Agencies and Their Operations

The travel agency business is the focal point for travelers seeking information, particularly those contemplating vacation trips and tours, and is certainly the chief point of inquiry for those travelers endeavoring to save monies.

In this day of greater leisure time, more and more people are traveling, and as the standard of living increases, more and more people will travel greater distances. With the coming of the jet plane, it is now possible to take a world tour in less than 21 days.

Travel agents are as old as travel itself. The first brokers, undoubtedly, were those arranging space for travelers within the Phoenician Empire. As the Empire's trade expanded, travel expanded with it. The agent who was securing cargo for the boats and ships of that early day probably booked passage for the merchant who was endeavoring to sell his wares and expand his influence.

The advent of the railroad and its expansion, particularly in the United States, made the role of the ticket broker or the travel agent more important; the advent of air transportation made his job all the more glamorous. The term "Cook's Tour", which has become a part of the English language, was an outgrowth of the tours arranged by the largest travel agency in the world: Thomas N. Cook and Sons.

There are approximately 5 thousand travel agencies operating in the United States and Canada. It is estimated that the typical travel agency books 300 thousand dollars of gross business a year, of which 20 thousand dollars gross profit.

Perhaps the operations of a typical travel agent can best be described with an excerpt from the examiner's decision in the North Atlantic Tours Commission case for the Civil Aeronautics Board:

"He spends a substantial part of his time, labor, and advertising in promoting travel. This may be done by one or more of the customary means of publicity such as newspapers, radio, or television; speaking and exhibiting travel pictures, both still and moving, to local groups; distributing hand bills or direct mailing of travel folders.

"Once a client is attracted to an agent's office, he must be given personal attention and his needs for information and advice satisfied and, if possible, a trip sold. The nature of this work, of course, varies with the individual client, but a person who does comparatively little traveling might want information about the following matters:

- "1. The cost by the various modes and classes of transportation.
2. Distances and times involved.
3. Types of accommodations available.
4. Schedules available.
5. Methods of obtaining passports.
6. Comparative methods of surface and air transportation.
7. The availability of living accommodations at the point or points of destination."

A person dealing with a travel agency expects the agent to plan his entire trip and tour. This would include the motor transportation, itineraries, hotels or other types of accommodation en route, sight-seeing, etc. He is expected to quote a firm price for this trip or tour and issue the ticket and documents for the completion of the tour. He provides a service to the public that the transportation companies are unable to do. By the very nature of their business, the carriers do not have offices in all cities, and in the smaller ones have an office only at the airport or depot.

Many travel agencies specialize in planning and operating tours; some deal with ethnic groups. Many specialize in commercial operation and the larger ones issue travelers checks, extend credits, and maintain a worldwide network of offices. The travel agent derives his income from a commission on ticket sales, hotel accommodations, sight-seeing trips, etc. In almost all cases no charge is made to the traveler.

Not only has the jet aircraft made the world shrink in size, but world travel itself is no longer a luxury confined to the very rich. The average citizen, with the average bank account, now can afford his own grand tour. Trips to Europe are now being advertised in the mail order catalogs and in the catalogs of the trading stamp companies.

The travel growth in the United States in the past 15 years has been astounding. Figures from the *Immigration and Naturalization Reporter* of October, 1962 show that passenger departure from the United States rose from 1.2 million in 1952 to 3.3 million in 1962, and it is still increasing. This remarkable rise is attributed to the population growth of our country and the high level of our national income, as well as to the shorter work week and the increased leisure time enjoyed by the working class. A report of the Celler Committee indicated that the travel market will continue to grow at an accelerated pace and that the role of the travel agent in this growth will be substantial.

Complaining Travelers

Seven individuals appeared before the committee at its hearing in San Francisco and six of them testified. In addition, a representative of the Attorney General's Office testified as to the activities of two prospective travelers in Northern California. Two of the witnesses came great distances, on their own time and at their own expense, in order to appear.

The operation of Jerry Nyles Davis, doing business as the World Travel Center, was the focal point of the hearings and investigations conducted by the committee and its staff. Mr. Davis operated his agency in Palo Alto, California, and specialized in packaged tours. He advertised extensively in trade journals, and tried to deal with either ethnic groups or educational groups. Since under Civil Aeronautics Board regulations and carrier regulations advantageous rates can be obtained for specialized groups, Mr. Davis endeavored to hit these groups. The World Travel Center operation was predicated on the regulations which gave specialized groups these advantageous charter rates. Such organizations as ATA, YMCA, the Bar Association, associations of government employees, etc., which are not organized specifically for travel purposes and whose members have held membership for a period

in excess of six months, are eligible for these specialized group charters.

The World Travel Center was operating illegally and improperly in two respects: (1) the passenger in the charter was not a bona fide member of the group and had not been for the six-month period and, (2) organizing and soliciting such charters is illegal under the same regulations. These activities had created the problem of those who had purchased trips and tours from Mr. Davis and his World Travel Center.

A group of these California travelers, upon their return to the state after their experience, formed what they called the "Stranded Californians Club." Mrs. Joyce King, an instructor in education at the University of Southern California, who paid her own expenses from southern California to San Francisco for the hearings, was a classic example. She had arranged with Mr. Davis to take a tour known as the "Stanford Tour" to Europe. A friend had shown her a copy of the Davis ad in the *Stanford Daily News*. This advertising held forth the inducement and gave details of the trip.

She purchased the tour from Mr. Davis and left Los Angeles on June 28th. When she arrived at the Los Angeles Airport no one was there to meet her and no one that she contacted had any knowledge of the tour. She then paid her own transportation to San Francisco, and upon arrival there was advised that the tour plane had been canceled. After a great deal of difficulty, she received word that she was to proceed to the Oakland airport and await instructions. She did so and met a group of people leaving on the same tour.

After a lengthy delay they embarked on the plane. When they were seated and aloft they were given a paper to sign, which stated that they were members of the United Educational and Professional Association. It had a second paragraph stating that they would not be picked up in Paris or that they might have to go to another airport. Some refused to sign this paper, and when the plane landed in Chicago all left the plane and were told that the aircraft would be locked and that they would not be able to resume their trip until all of the passengers had signed the statement. Only the pressure of the other passengers and that of the agent's representative persuaded Mrs. King to sign this document, which was patently erroneous.

When they arrived in New York they were met by a representative from the New York Attorney General's Office, and they were taken to a hotel which was paid for by one of Mr. Davis' representatives. Arrangements were made for them to fly to Europe by Air France, but the CAB had issued a ruling that they were not a legitimate group and could not travel as planned. They subsequently left on another flight and Mrs. King arrived in Paris six days late. Her testimony dramatically portrayed her feelings:

Mrs. King: "Our tour had fallen apart in New York. It reminded me of a ship going down because one by one people left and went on their own. Some stuck with us and still tried to go on as a group. Finally, when it became apparent we couldn't, reactions varied. One little girl sat and cried in a corner in one of the rooms. She had eight dollars to her name and she was supposed to pick up money that had been wired to London for her and she didn't

know what to do. Several girls rounded up the 'Travelers' Aid and I never did hear what happened."

In order to continue her trip Mrs. King had to pay her full fare on the airline to Europe and, of course, the full fare to return home. Instead of being cheaper, her trip wound up being a great deal more expensive and considerably more inconvenient.

Miss Rosa Hann was another of the "Stranded Californians." She paid her own expenses from Ogden, Utah, to San Francisco and return in order to appear and testify before our committee. She had purchased a prepaid tour of Europe from Mr. Davis, having contacted him through previous employment in a printing plant which had prepared some travel folders for his agency. Upon her inquiry, he informed her that he was scheduling a student tour that would include hotels and sightseeing, and cover just what she wanted.

She purchased the 15-hundred-dollar tour that was planned to start in England and go through the Scandinavian countries, Germany, and Switzerland. The 11-week itinerary was to cover all transportation, hotel accommodations, and sightseeing trips. Instructions and itinerary announcement received from Mr. Davis read as follows:

"Our hotels are especially selected for the high standards of comfort and cuisine. All our meals, sightseeing, an experienced courier, transfers from airport, rail terminals, steamer piers, tips, taxes, entrance fees, all baggage will be taken care of, and, of course, everything of a personal nature will not be included in this price."

Miss Hann left the Oakland Airport on the so-called "Stanford Charter Flight" in June of 1963, with the understanding that she would be met at the airport when she arrived in London. The "Student Tour" which was to have been a large charter had diminished to a small group of 14 or 15 people. When she arrived in New York she was informed that she would have to pay an additional 40 dollars before she could proceed any further. While she was opposed to this payment, she felt that she did not want to be delayed in New York, and as she had already invested 15 hundred dollars, she paid and went on.

When she arrived in London, no one was there to meet her, and when she called the hotel that was mentioned in the itinerary they advised her that they had never heard of Mr. Davis or World Travel Center. Her testimony portrayed the impact of this experience:

Miss Hann: "There I was in the middle of Victoria Station in London and I had never been in Europe before in my life. Fortunately, I was in England and they spoke English. So a nice man from British United Airways got my luggage for me, which was more than I could pack, and got me a hotel, and the next morning I went investigating."

Miss Hann spent five days in London trying to get her trip on its way. She had to pay her own hotel expenses and meals during this period. She finally reached the Scandinavian countries, but instead of this being an all-expense tour, she was compelled to pay for all her meals and hotel stops, with the exception of her stay in Oslo. Most of

her time was spent at the American embassy, in attempts to contact Mr. Davis or one of his European representatives.

When she left the Scandinavian countries, her next destination was Germany. Upon arrival in Hamburg, she was taken to a rather expensive hotel and then told that she was on her own. She went to the travel agency which was supposed to be making arrangements for Mr. Davis there, and was shown a telegram which stated that the tour had been canceled because of insufficient funds. When she inquired at the American embassy she was advised that they were unable to contact Mr. Davis, as he had closed his office and gone out of business. It was up to Miss Hann to plan and provide for the balance of her trip, which was to last from July 10th, the date upon which she was informed of the cancellation, until September 10th, when she was due to return. Her feelings are best conveyed by her testimony:

Miss Hann: "I went from Hamburg on into Amsterdam and then I couldn't get hold of my parents because they were out of town. I couldn't get hold of anyone in the States. I had less than 50 dollars in my pocket. I do not speak German and I sat in that hotel wondering just how much longer I could go on."

Another member of the Stranded Californians Club was Mrs. Nicholas Petris, wife of Assemblyman Petris of Oakland, California. Mrs. Petris purchased a trip to Athens and back for herself and her father-in-law. She went on the same flight as Mrs. Joyce King. It was her understanding that this charter flight was for members of the Greek-American Progressive Association and the American Hellenic Progressive Association. She learned of the tour through an ad in the Greek-American newspaper in San Francisco. When the flight was stranded in New York, according to her testimony, she and 10 others were

"... whisked, literally whisked off our feet and put on a Pan American flight to London. Before we left they told us to wait at the London Airport and they would contact us and a group would eventually join us and we would all go on to Athens together."

Her testimony indicated that they waited at the London airport for 12 hours and had no place to go. They were afraid to leave because they hoped that they would hear from the World Travel Center. They subsequently became tired of waiting and paid their own fare from London. Mrs. Petris had to pay \$1,440 for the return flight from Athens it was necessary for Mrs. Petris and her father-in-law to pay their own fare. The packaged tour that was purchased from the Davis agency came to approximately \$540. In addition to the \$158 paid in London to Athens, which came to \$158. In order to get back from Athens to California.

The final witness who had been victimized by Jerry Davis and the World Travel Center was a Mr. Jan Smekens, who had purchased a tour to Europe for himself and his family in the summer of 1963.

Mr. Smekens' testimony was of special interest in that he had previously traveled rather extensively and was aware of the various regulations. He had earlier endeavored to put together a 25-person group, but had failed in the effort. When asked by the chairman why he had done this, he replied that it was done to secure a lower rate. He was subsequently advised that there was a group affiliated with the Cali-

fornia Teachers Association which he might be able to join, but he and his family were ineligible for this, as a California teaching credential was required and his wife did not hold such a credential. Their application to join this charter was consequently rejected. They later joined a group known as the Berkeley Books Unlimited Cooperative, which was planning a charter flight to Europe that met their needs. They paid the fare for this charter, but because of the fact that the departure date was moved up 15 days lost their eligibility and had their fares refunded.

Mr. Smekens was subsequently referred to the World Travel Center and was advised that the agency had a flight from Oakland to London and Paris and back to Oakland for \$399 per person. When he asked about eligibility, he was told that he would be traveling with the Greek-American Professional Association. When he inquired further about the membership requirements, he was informed that the charter would be allowed a certain percentage of nonmembers.

Mr. Smekens' troubles began on the departure date, June 8th, when he was advised that the plane would land in Luxembourg instead of London. When he and his family boarded the plane and took off they were approached by the group leader, a Mr. Richards, who was a professor of Greek languages at one of the northern California colleges. He spoke to Mr. Smekens and the other passengers, informing them that he was losing money on the trip, and requesting \$25 from each passenger. Mr. Smekens refused to pay the sum of \$100 for the four persons of his party, and Mr. Richards finally accepted \$50.

Instead of landing in Luxembourg, as they had been advised it would, the plane landed at Shannon Airport in Ireland, and they had to proceed from there on their own. When Mr. Smekens attempted to make arrangements for his return flight home he discovered, to his dismay, that he was unable to complete the trip bargained for. He spent considerable time in Paris trying to make arrangements and ended by borrowing \$1,900 to get home.

When asked to relate any other incidents or experiences with travel agents which had been unfavorable or misleading, he testified of one other such occurrence. He had at one time requested rates for a hotel in France where he and his wife had spent some time approximately 15 years ago. They asked a travel agent in northern California to make reservations for them and advise them as to the rates. They also contacted the hotel directly and received an answer from the travel agency and from the hotel directly within a couple of days. Questioned as to the nature of the replies, Mr. Smekens stated:

"The answer from the travel agent was \$12 a day; the answer from the hotel was \$4 a day."

All of the victims of the World Travel Center endeavored to recover damages and moneys expended, but were unable to do so. Mr. Davis had gone out of business and had no conceivable or visible assets. The stranded Californians engaged the services of an attorney to no avail. The Attorney General's Office made an investigation of Mr. Davis' operations, and the testimony of Attorney General Mosk will be taken up later in the report.

While the Californians who dealt with the World Travel Center constituted the largest group of victims, Mr. Davis was apparently not the only travel agent who had done disservice to the public. Mrs. Nan Walsh of Berkeley, California, an experienced traveler, gave testimony which contained as its high point of dramatic impact the story of a trip into Africa that has been booked for her by a travel agent who is a member of ASTA.

Mrs. Walsh: "On the second trip I had we were to go to Aswan, that was made with reservations in our contract, and when we got up there into Ethiopia we were supposed to take a plane from Addis Ababa to Haifa. Instead the man said, 'there hasn't been a plane leave here for four years.' "

Mrs. Walsh testified as to her experiences after having booked a world tour in 1961 through a northern California travel agent. When she made the arrangements for this tour with the agent, she inquired as to whether or not she would be able to secure a rebate if she completed her trip by boat instead of making the complete tour by air. When she went to pick up her tickets, he advised her that she would be unable to secure a refund, so she had to purchase an around-the-world plane ticket on Pan American Airways in addition to the boat fare from France to the United States. Mrs. Walsh held the unused portion of her plane ticket from Paris to San Francisco. She was unable to secure a refund, and when she made a later trip to Europe and endeavored to use the ticket, it was not honored for passage.

Another witness who had problems with a travel agent was Mrs. Jesse Booth. Mrs. Booth was a traveler from San Jose, California who had purchased a tour of the Caribbean from Martin and Associates, in Oakland, California. Her testimony was in the nature of a complaint that refunds were promised to her which were never granted.

Mrs. Booth: "We were given an itinerary, which I did not approve, and I called Mr. Martin about it. He said, 'Mrs. Booth, anything that you do not use in this little packet of green—' you know, the things they give you— 'you bring it back to the office and you will get your money refunded.'

"Well, when we were on the ship we did not want to take this itinerary which we didn't approve of at the time, so we did not and went on our own. We got to Kingston, and got the lady to clip all the coupons together and she said, 'Just take these to Martin when you get back and everything will be refunded.' "

Mrs. Booth concluded her testimony by saying:

"We have not got our money refunded from those trips and we feel that it is very stupid to take this kind of thing and let them get by with it."

The final testimony dealing with complaints of travelers was given by Mr. Theodore McHugh, a special representative of the Attorney General's Office. Mr. McHugh gave details of the operations of travel agents in Oakland, California, as investigated by his office. There was one particularly touching situation which involved the embezzlement of over \$1,500 from a party in Oakland, who had paid the sum to an agent for an Hawaiian tour.

The party in question was a skilled worker who wished to celebrate his 25th wedding anniversary in the Hawaiian Islands. His wife was a victim of paralysis, which was rapidly leading to her demise. This party had saved his money, saved his vacation time, and in addition had borrowed \$1,200 from a credit union. The money was deposited with this Oakland travel agent to pay for the tour of the Hawaiian Islands which the worker and his wife had selected. They were given a receipt and told to contact the agent prior to departure time. When he called at the agent's office three days before his trip was to start, he found the door locked and the travel agent out of business. Mr. McHugh concluded as follows:

"To my knowledge the man has not at this moment received his money back and the same agent, when this travel agent closed his doors and left the scene, decamped."

Position of the Travel Agents

The testimony of those speaking for the travel agencies themselves was presented by the General Counsel for the American Society of Travel Agents and the officers of the California chapter of ASTA.

Mr. Rocco Siciliano, general counsel, expressed his feeling that the activities of Jerry Davis and World Travel Center had hurt the entire travel agency business because of the unfavorable publicity generated. The travel agents feel that something should be done to prevent a recurrence of such activity, and the solution that they proposed was the passage of federal legislation, which was drafted by their organization and introduced in Congress by Senator Magnuson of Washington.

This act would make it unlawful for any party, other than an airline or its employees, to sell air transportation or represent oneself as a seller of such transportation, except when said person was authorized in writing by a carrier or operator.

Mr. Siciliano pointed out the similarity between the proposed bill authored by Senator Magnuson and the present California regulations, which require registration and bonding of ticket brokers in the State of California. ASTA expressed the feeling that the charter system which was set up under the rules of the CAB itself brought on the fraudulent practice that led to the strandings of the California travelers in New York and Europe. Mr. Siciliano asserted that these rules were discriminatory with reference to travel agents, and created a very serious enforcement problem as well. The ASTA has requested the CAB to change these rules, and the Counsel felt that if CAB does not take appropriate action, the ASTA will probably go to court to force the change. He explained that the CAB regulations prohibit the travel agent from engaging in this type of business.

Mr. Siciliano: "A travel agent cannot legally solicit the public to gather a charter group. He cannot even solicit among the members of a bona fide organization in order to try to gather a sufficient group. He cannot solicit the members of an already gathered group for a special land tour. He loses his commission if he, or any of his employees, happen to be a member of this sponsoring group. The amount of assistance he can give in the ad-

ministration of the charter or group fare is severely limited. This situation has attracted a number of travel promoters who are not afraid to operate in violation of present regulations. These promoters are actually in the business of marketing illegal charters."

Mr. Siciliano expressed the view that even if California did license travel agents, the regulations could not prevent a shady operator from opening up shop in the State of Nevada or any other neighboring state and conducting his operation by mail. He concluded his statement as follows:

"ASTA is opposed to general across the board state licensing and bonding because (1) as noted above, it would increase the already intolerable burdens of regulations and bonding which now are imposed on the travel agency industry, and (2) imposition of state licensing would not be an effective way of preventing the recurrence of the strandings which occurred last summer.

"We are convinced that existing federal policy of pro rate of charters and affinity groups and tariffs is the basic cause of the countless hardships imposed upon members of the traveling public who had been stranded or otherwise inconvenienced. Therefore the most effective solution to this problem which is of such great concern to the travel industry is the elimination of the present system of pro rate of charters and affinity group fares. Certainly the travel agency industry should not be made the whipping boy for this problem by the imposition of state licensing merely, because out of the feeling that something—anything—must be done. The American Society of Travel Agencies and Agents are strongly in favor of curing whatever ills exist in the travel agency industry. We stand ready to cooperate in any way we can in supporting any specific proposals which deal with the specific evils that do exist."

Additional testimony was given by Mr. Don Everingham, President of the Northern California Chapter of ASTA, and owner of the Don Em Travel Agency. His testimony was to the effect that travel agents sell more than \$500,000,000 worth of air travel each year and that 75 percent of all international air travel is handled through travel agents. He pointed out that in order for an agent to be eligible for membership in ASTA the applicant must have three years of experience in the business and have at least two appointments by air and steamship conferences.

Mr. Harold Martin, owner of the Berkeley Travel Service and National Chairman for Aviation of the ASTA organization, testified opposing any state controls over travel agencies. Mr. Martin further declared that a great deal of harm had been done to the industry by a report and subsequent regulation changes brought about by the house judiciary subcommittee chaired by Emanuel Celler.

Testimony was received from representatives of the Better Business Bureaus of Santa Clara Valley and San Francisco. Both spokesmen indicated that they did not feel licensing of travel agents was necessary.

The Better Business Bureau of Santa Clara Valley directed a letter to Governor Brown expressing this opinion. Their testimony stated, in part:

"It is our feeling that the vast majority of travel agents as well as the several trade association groups interested in air travel have done an admirable job in serving the public and we would hate to see them made a subject of further restrictive legislation because of the Palo Alto fiasco."

The representative of the San Francisco Better Business Bureau concluded his testimony with the following statement:

"I think as far as activity is concerned, and I was on the desk during all the Jerry Davis affair, we find that there doesn't appear to be any evidence, as far as our files are concerned, that the entire field of travel agents should be subject to a massive push on the part of government to regulate the entire industry."

Testimony by three travel agents advocated licensing and strict regulation by some governmental agency. Gunner Norberg, who operates the Norberg Travel Agency in Carmel, California, testified quite strongly urging state licensing and regulation of travel agents. He stated that he had been the owner and operator of the Norberg Travel Service for a number of years and that he had extensive experience in the transportation business. He asserted that the airlines had a stranglehold on the travel agencies and could use the "club" of withholding approval to the extent of actually putting an agent out of business. He indicated that he had been an established agent for Pan American Airways for a number of years and had just recently received a questionnaire from them relative to the other sales and operations of his agency. Mr. Norberg said that he was being importuned by Pan American Airways to spend money for advertising, and threatened with withdrawal of their recognition as a branch travel office. He stated that when something of this nature had occurred some years before, he had not thought it very critical, but after Pan Am withdrew recognition of his branch office in another area all the other airlines followed suit, and while this was a mistake on their part it had never been rectified, and he had been forced to close down his branch office.

The testimony of Thaddeus Wolkowski, President of Viking World Travel Service of San Francisco, touched another point. Mr. Wolkowski is known as a "wholesale" travel agent, because he arranges and plans tours for other agents. He concluded his testimony as follows:

"The American Society of Travel Agents has utterly failed in its mission . . . it is 32 years since ASTA was organized and it still represents a small fraction of American travel agents. It is of vital importance to the American public, as well as to the travel trade, that all travel agents be licensed and bonded."

Mrs. Ralene Olson, as associate of the Curtis Travel Agency in Sunnysvale, stressed the need for licensing. She pointed out that the public has no guarantee that the money paid to a person holding himself forth as a travel agent will purchase the service for which payment has been

made. Nobody exists which can guarantee proper service or punish those who do not provide it. Mrs. Olson believed that in the absence of federal controls the only logical course for California would be the enactment of a licensing law.

The final testimony in behalf of the travel agents was offered by a representative of Thomas N. Cook and Sons, one of the world leaders in the business. He stressed the unfairness of the charter business and strongly suggested that lower air fares were the answer to this problem. He concluded his testimony by declaring that the travel agents, themselves were trying to initiate a program for the certification of travel agents, with three years experience to be necessary for the securing of such a certificate.

Report of the Attorney General's Office

Attorney General Stanley Mosk testified that his office had conducted an extensive investigation of the travel agents in California as a result of complaints that were triggered by the Jerry Davis fiasco. He stated that most travel agents are reputable businessmen who serve the public. They save the client time by providing him with the type of service that best suits his needs. But he pointed out that the only genuine requirement for the setting up of a travel agency is the printing of a business card with the words "travel agent" appearing thereon, together with either your own name or the trade name of your agency. He suggested that while it might be convenient to rent an office and secure a telephone, these actions were not absolutely necessary.

He discussed the state law which requires the travel agent to register with the Secretary of State and post a \$5,000 bond. This requirement is apparently not an absolute necessity, as less than half of the state's travel agents have seen fit to comply with the regulation.

The Attorney General referred to the need for the travel agent to secure appointments from transportation companies so that he can sell ticket stock, which is vital to the operation of a travel agency. This involves securing certification and sponsorship by one carrier of the Air Traffic Conference, as well as by the International Air Travel Association. Once this is secured, the agent is able to obtain ticket stock and is in business. The Attorney General stated that the Air Traffic Conference, before granting approval, requires a substantial bond to be posted by the agency. It is of interest to note that this bond is not for the protection of the public, but is designed to protect the airlines from any fraud or dishonesty on the part of the travel agent.

The Attorney General discussed the Magnuson bill, and pointed out that this bill provided for a thousand-dollar fine for any person representing himself as a seller of transportation unless he has been specifically authorized by the carrier. He indicated that the bill as explained by ASTA has a two-fold object: (1) to protect the public from a small group of unscrupulous travel promoters who have been selling dubious charters and, (2) to head off state licensing in California and New York. Attorney General Mosk stated:

"I question whether it will accomplish the first purpose, and I hope it won't accomplish the second."

He referred to the weaknesses in CAB regulations which grant the airlines almost sole control over travel agencies. His testimony was highlighted in discussing the World Travel Center debacle:

Attorney General Mosk: "Jerry Davis handled more than \$500,000 in air fares in 1963 without any kind of bonding requirements, and had Senator Magnuson's bill been law, Mr. Davis would still have handled \$500,000 in fares, would still have messed up the vacations of over 700 California citizens, would still have operated precisely as he operated, and the federal government would not have had one jot more authority to deal with him than they do now—without Senator Magnuson's bill.

"These bills are based on the same fundamental misconception that ASTA has cherished and reiterated since these problems became public knowledge. Specifically, that the ills of the travel industry are due to unscrupulous promoters, not travel agents. That their wrongdoing is abetted by non-CAB certified air carriers.

"There is only one problem about the neat analysis. Jerry Davis was a bona fide travel agent. He was a conference-appointed, carrier-approved, ticket-holding travel agent. Not a member of ASTA, to be sure, but then only slightly more than half of all travel agents have obtained that distinction."

Attorney General Mosk stated further that the federal government does not now have effective control, . . . that the proposed legislation would give adequate control, and that he felt the citizens of California were entitled to some protection from their state government.

Attorney General Mosk related the fact that at a recent convention of the World Travel Congress ASTA had adopted a resolution to "take all reasonable efforts to oppose state licensing of travel agents." Thus, without having seen any proposal, they closed the door to any possible suggestions of attaining better protection for the public. Their action was taken in spite of an offer by his office to allow them to participate in the development of any legislation that might be drafted.

Mr. Mosk contended further that it was ludicrous to look to the CAB for protection. His staff had worked with 25 percent of the CAB staff on their investigation of travel agency operations, and this 25 percent consisted of two (2) investigators. So the CAB has a total of only eight (8) investigators to handle routine complaints for the entire United States, without even thinking of preventive checking or major investigation.

The Attorney General concluded his statement with excerpts from the magazine "Travel Weekly":

"Reviewing last summer's events stirs up new indignation. The abuses were so flagrant that they rendered meaningless all the CAB and conference regulations supposedly in force, not to mention the futility of repeated 'we must protect the public' pronouncements by the state and federal authorities . . . Without a doubt, the charter promoters—as soon as they have finished the monotonous job of adding up the season's profits—will be mapping new plans for another banner season in 1964. If the past is any

criterion, they will suffer little inconvenience at the hands of the law enforcement agencies . . . But the state and federal officials will continue to make speeches and issue press releases about their deep concern for the 'public welfare.' . . ."

The Role of the CAB and the Air Traffic Conferences

Under the Civil Aeronautics Act, Congress conferred on the Civil Aeronautics Board, commonly referred to as the CAB, extensive powers to regulate all persons engaged in "air transportation". The sale of tickets per se is not in itself regarded as air transportation, and in consequence the CAB does not have the authority to regulate travel agencies. However, under Section 412 of the Civil Aeronautics Act approval has been given to the agreements worked out by the air traffic conferences in their control over travel agencies. The federal courts have held these agreements to be immune from the antitrust laws.

The advent of highspeed aircraft, the rise in the national income, and the general occurrence of more leisure time have accelerated the growth of the travel agency business and contributed to its problems. Before the travel agent can sell passenger space on the major airlines and receive commission on these sales, he must be accredited by the ATA (Air Transport Association) air traffic conference. The Celler Committee report defines the conference system as:

" . . . joint action by carriers to standardize relations with agents and to establish a list of qualified agents from which the individual carriers can pick their representatives."

ATA handles this for domestic air travel. The International Air Transport Association handles it for foreign air travel.

ATA and IATA have absolute control over the destiny of any travel agent. He must make written application to the conference for accreditation, and be sponsored by a certified airline. The application must be approved by a two-thirds vote of the members. After approval, the conference retains absolute control over the agent's business. It can review his eligibility at any time and remove his accreditation without any explanation. Testimony before the CAB indicated that as soon as one airline withdrew its appointment of a travel agent, all other airlines invariably withdrew theirs. The travel agent cannot even sell his business, as his rights under the conference agreement are not transferable or assignable. The new owner must qualify all over again. Under these agreements which have the blessing of the CAB, the travel agent has all the disadvantages of proprietorship and none of the advantages.

The very rules established by both the CAB and the air traffic conferences were the prime cause of the plight of the stranded Californians. The conference sets the commission rates and dictates on which flights these will be paid. The CAB in its rate structure makes the provisions for the special group charters. The ASTA representative in his testimony specifically indicated that a travel agent could not organize a charter, or assist one, and that if one of his employees was a member of such a group, he would not be eligible for any commissions. Obviously, this situation restricts the agent's business. If he

didn't go by the rules, he would lose his conference appointments. Yet as long as these low charter fares are available, people will seek them out.

Domestic fares are under the control of the CAB, with the exception of the airlines operating solely within a state. In California, such control rests with the Public Utilities Commission. Foreign fares are set by treaty and intergovernment agreement. In practice, IATA sets all foreign fares, as a result of the fact that practically all foreign carriers are either government owned or heavily subsidized by the respective governments.

The unilateral reduction of foreign fares is impossible, by virtue of the probability that each country would withdraw its permission to land and use its facilities if a competing carrier reduced fares below that agreed upon by the conference. These procedures have resulted in a system of fares that are a hodgepodge, both domestically and internationally. While it is the duty of the CAB to foster air travel, it has systematically reduced competition, first by gradually eliminating the nonscheduled airlines, and secondly by granting route privileges to a limited number of carriers. Both practices have acted to prevent competition.

California contains a classic example of what competition has done for the air traveler. The air route between San Francisco and Los Angeles is probably the most heavily traveled in the United States. The largest carrier of passengers along this route is an intrastate airline, regulated by the California Public Utilities Commission, rather than the CAB. This line pioneered a rate structure using the latest type of aircraft that resulted in comfortable air travel, without frills, for a fare of less than \$15. The average fare on this route by the major airlines under CAB control was \$22. The consequent competition has resulted in these major carriers securing permission from the CAB to meet the competitive rate.

If a person were planning a trip between New York and Miami Beach, he would find that there are 200 different fares available. Should he wish to fly from Los Angeles to Chicago, the coach fare, including a meal (as of 1963), was \$110.72. However, had he wanted to fly on the same plane and skip the meal by going economy class, the fare was \$89.25. Had he wanted to continue to New York, the economy class, strangely enough, was not available; he would have had to fly coach or first class.

The trade journal *American Aviation* commented on the price picture in a recent issue:

"The CAB has not been pushing the carriers to reduce prices . . . stung by criticism during the hard years of jet transition, the Board (CAB) is determined to let the carriers chart their course during the profit surge. The result is that management has the ball and the CAB is blowing a slow whistle."

It would appear that the CAB has become an extension of the industry which they were set up to regulate. They have failed to foster lower air fares and have abdicated any control over travel agencies by

approving the method of operation of the Air Traffic Conference with respect to travel agencies. On this score the Celler Report was blunt and to the point:

“The overall effect of the board’s course of conduct with respect to travel agents has been to confer on the certified air carriers far reaching regulatory powers over the travel agency industry which the board does not have the statutory authority to regulate in the first instance . . . a travel agent cannot engage in the effective and profitable sale of air travel accommodations unless he has first secured conference recognition . . . the committee cannot accept the board’s claim that the present procedures equitably serve the public interest . . . If the CAB believes that licensing of travel agents based upon a review of their qualifications is necessary to encourage and develop our air transportation system, this travel function must be exercised by an agency of the government . . . once licensed by the government, travel agents would then be eligible for appointment by any ATA or IATA carrier desiring their service. Such clearance would give the carriers the protection and assurance they desire.”

CONCLUSIONS AND RECOMMENDATIONS OF THE COMMITTEE

All travel agents or agencies operating in California should be licensed and bonded. This should be effected either through a new bureau in the Department of Professional and Vocational Standards or the Public Utilities Commission.

It is evident that the federal government is not interested in such a licensing program. We must conclude that the present ATA and IATA conference arrangements offer no protection to the public and are patently unfair to the travel agency business. The federal legislation introduced by Senator Magnuson and supported by ASTA would not prevent a recurrence of the recent California travel fiasco. It does not differ greatly from the present California regulations covering the so-called ticket brokers, which provide for registration with the Secretary of State and the posting of a bond. Investigation by the committee staff indicated that less than one-third of the travel agencies operating in California were complying even with this innocuous law.

The bonding requirement of any new legislation should be for the protection of the public and in an amount reflecting the average monthly sales of the agency. The bond should be for a minimum of not less than \$10,000 and a maximum of \$100,000.

The losses incurred by the California travelers in 1963 would have been covered by such a bonding requirement. The present bond posted with air conferences by the travel agents is solely for the protection of the carriers.

The Senate, by resolution, should call upon the CAB to use its authority to lower air fares and foster more competition within the industry. The resolution should urge a change in regulations so that travel agents could assist groups in arranging charters. It should urge a change in any regulation prohibiting groups from forming for travel purposes, so as to avail themselves of the lower charter fares.

These very rules and regulations of both the CAB and the ATA, as well as IATA, are an open invitation to promoters to prey upon the unsuspecting public. Legitimate agencies which are experienced in the business should be permitted to avail themselves of this attractive field of revenue. The public should be permitted the opportunity of grouping together to travel and receive the benefits of lower fares, which in many instances are less than one-half of the normal fare.

Meaningful standards established by legislation would protect the public and would also benefit the travel agencies. IATA and ATA would have no reason to withhold appointment from a licensed California agent, as the carriers would be adequately protected by the experience and bonding requirements. The CAB would be in a position to force changes in the conference rules and agreements because of such legislation.

APPENDIX
TO
TRAVEL AGENCY BUSINESS



STATE OF CALIFORNIA
OFFICE OF THE ATTORNEY GENERAL, DEPARTMENT OF JUSTICE
State Building, San Francisco 2
Stanley Mosk, Attorney General

August 30, 1963

HONORABLE EDMUND G. BROWN
Governor of California
State Capitol
Sacramento, California

Dear Governor Brown:

On July 23, 1963, I wrote to you concerning an investigation of the circumstances which led to the stranding of California tourists in New York several weeks earlier. It has become apparent that, as additional information was developed, further amplification of our findings should be made available to you and to the California Legislature.

My office has been making an intensive investigation into the affairs of the travel promoter who acted as agent for the stranded tourists. In the course of this investigation, we have learned a great deal about several related problems of the air travel industry.

One element of this problem is the operation of pro rata charters by air carriers. Another is the dual relationship of travel agents to carriers and to the general public.

Pro Rata Charters

Certain rules of the Civil Aeronautics Board and of the International Air Transport Association provide that an air carrier may charter an aircraft and crew to a bona fide organization which may then allocate the cost among its members. Other rules allow portions of aircraft to be allotted to groups.

A careful reading of these rules reveals that travel agents are sharply curbed in their relationship with chartered groups. For example, six paragraphs of Part 295 of the CAB regulations are devoted to this relationship, including a rather detailed description of the conditions under which a travel agent may book *land* tours with members of a group. On the other hand, only one paragraph deals with the solicitation of charter groups by air carriers. In general, air carriers are forbidden from soliciting individuals within a bona fide organization for the purpose of forming a charter group. But nothing in the regulation bars air carriers from placing advertisements before the public designed to encourage members of groups to contact them concerning information on such charters.

In short, it appears that CAB approved regulations are designed to curtail and discourage the chartering of groups by legitimate travel agents and to promote direct solicitation by air carriers. In my opinion, there is a serious question as to whether such regulations are in the

public interest. It should be recognized that the virtual elimination of the legitimate travel agent from this field will inevitably result in enterprising travel promoters creating artificial groups, specifically to take advantage of the tempting reductions in air fares which may be obtained thereby.

These regulations invite the public to participate in collusion with such tour promoters. The incentive for collusion is substantial. For example, a single traveler will pay \$778.40 or more to fly from San Francisco to London. Air charters have been successfully operated on this route for as little as \$398. Since there is no clearly defined moral obligation on the part of the air traveler to abide by CAB regulations, the public has availed itself of this legal loophole and has traveled to Europe this summer at considerable savings.

I should make it clear that I have no objection to saving money on air transportation. On the contrary, minimum cost that enables students and families of modest income to travel is a highly laudable objective. However, inadequate enforcement of illogical regulations has resulted in an influx of marginal operators into this lucrative field. Attorney General Louis Lefkowitz of New York has put several of them out of business this year, and we are experiencing similar problems here in California.

To the term "illogical," to describe these regulations, we could add that the very premise of these regulations is undemocratic and discriminatory. There is no rational basis for excluding persons from the economic benefits of charter travel simply because they do not belong to the "proper" organization.

The results of the application of these rules have been predictable. In the first six months of 1963, the American Society of Travel Agents reported 69 charter or group violations to the International Air Transport Association, the CAB, and Canada's Air Transport Board. No one doubts that other violations remain undetected. Current estimates place the number of travelers across the Atlantic during the 1963 tourist season at approximately a quarter of a million.

I believe that the public would be best served if the CAB and the IATA would discard the so-called affinity rule (requiring charter groups to be composed of members of bona fide organizations) and to permit reasonable discounts to *any* charter or group fare groups. I further believe that travel agents should be encouraged to participate in the creation of such groups, *provided, however, that travel agents are suitably licensed and bonded by the state or federal government.*

Regulation of Travel Agents

I have found that the vast majority of people involved in the travel industry are reputable businessmen working hard to serve the public. Many of these well-meaning individuals have expressed their opinion that the licensing of travel agents will have little deterrent effect on the perpetration of frauds upon the public by travel promoters. They have expressed concern that the licensing of agents might be regarded as a punitive measure—publicly making the travel agent the scapegoat for all the ills of the travel industry. They believe that the blame for the stranding of California tourists should be placed upon

the existing system of pro rata charters, rather than on travel agents.

While I agree that the problem extends beyond the power of State remedy through the simple device of licensing, I believe that the licensing and bonding of agents is an essential first step toward protecting the public. We cannot overlook the fact that the well-publicized stranding of these tourists was caused by a travel agent who was certified by the International Air Transport Association—not caused by an air carrier or by the CAB. And I must emphasize that this is not the only case involving a travel agent which has come to my attention.

It has been argued that travel agents are now effectively regulated by a system of private control, exercised by the air carrier conferences, whose regulations have been approved by the CAB. It is true that these groups of air carriers, together with their individual members, have established regulations to protect themselves from impecunious or dishonest agents. But it is also regrettably true that these measures have not been wholly successful. Even the institution of a bond, recently required by the Air Travel Conference (domestic air carriers) has not been effective. An Oakland travel agent was recently indicted on three counts of grand theft, involving members of the general public, which were perpetrated in spite of the fact that she had an ATC required bond in effect.

It should also be pointed out that these bonds—now required by the ATC and the steamship conferences, and soon to be required by IATA—are to protect only the carriers. They are not designed to protect the general public.

With respect to pro rata charters, the major problem does not appear to be the legitimate travel agent. There is no specific prohibition in law to prevent a person, not certified by any carriers or conferences, from holding himself out to be a travel agent so far as the general public is concerned. Such an individual can promote charter or group travel, and with the acquiescence of one or more disreputable, marginal or careless air carriers, collect and disburse vast sums of money without supervision. Over \$400,000 was handled by the Palo Alto promoter who booked the stranded Californians—without a bond of any kind.

Further, I am not at all sure that industry regulation of travel agents would be an appropriate delegation of the state's responsibility, if it were carried to the extent necessary to be effective. This is particularly evident since some carriers in the IATA are clearly instrumentalities of foreign governments.

In this connection, it has been contended that the action of the CAB in approving the travel agent regulations which are promulgated by the air conferences, constitutes, in effect, federal regulatory action. Then the further argument is made that the federal government has pre-empted this field through such action, or that the Commerce Clause of the Federal Constitution precludes state action. I doubt that this view could be seriously maintained. In *California v. Thompson*, 313 U.S. 109, Mr. Justice Stone speaking for a unanimous court made the following statement:

“Fraudulent or unconscionable conduct of those so engaged [transportation brokers] which is injurious to their patrons, is peculiarly a subject of local concern and the appropriate subject

of local regulation. In every practical sense regulation of such conduct is beyond the effective reach of congressional action. Unless some measure of local control is permissible, it must go largely unregulated. In any case, until Congress undertakes its regulation, we can find no adequate basis for saying that the Constitution, interpreted as a working instrument of government, has foreclosed regulation, such as the present, by local authority."

The only bill before the federal congress which has been brought to my attention, seeks to prohibit the sale of air transportation by a ticket agent who is not under contract to air carriers. It is by no means a bill to require federal licensing, and it does not appear that such a move is contemplated by the federal government in the foreseeable future.

I therefore believe it desirable for California to create a system of licensing and bonding travel agents, designed to develop reasonable and workable professional standards for travel agents and to provide the public with the assurance that such agents are financially responsible.

Since another summer of heavy travel will pass before the next general session of the Legislature, the prevention of further imposition on the public justifies placing this subject on special call for the 1964 session of the Legislature. I hope you will agree that this matter is of sufficient weight to warrant its being brought before the Legislature next year. If so, my office will work with appropriate governmental and interested private agencies to make certain that specific proposals are as comprehensive and carefully conceived as possible.

Copies of this report will be directed to appropriate legislators, federal authorities and other interested persons in the hope that these views may contribute to the solution of this complex problem.

Sincerely yours,

STANLEY MOSK
Attorney General

Statement of Attorney General Stanley Mosk Before the
SENATE FACTFINDING COMMITTEE ON BUSINESS AND COMMERCE

San Francisco, California
December 4, 1963

I have been asked to present to you my views concerning the desirability of licensing and bonding California travel agents, and I am honored by your invitation.

I would like to preface my observations with a disclaimer: I am not now, nor have I ever been, nor do I ever intend to become, a travel agent. I do not have any of the specialized knowledge that should be the greatest asset of a professional travel agent. For example, knowledge of the rapidly changing regulations, fare structures and schedules of various transportation media.

I have a great deal of respect for the working travel agent. He can and does save his client money and time by providing the kind of package best suited to his needs, tastes, and finances. Most travel agents are reputable businessmen, working to serve the public interest. So the fact that I do not wish to become a travel agent should not be regarded as indicating disapproval, merely a question of personal taste. I chose, a long time ago, to be a lawyer.

But if any of you would like to become a travel agent, I can give you expert legal advice on how to go about it, in satisfaction of every existing law—state and federal.

First, you have a business card printed on which the words "travel agent" appear, together with your name. You may find it convenient to rent an office and secure a telephone, so that your card can include this information as well. Then you might wish to register with the Secretary of State, which implies filling out a form and posting a \$5,000 bond. This is in compliance with a 1953 law passed by the California Legislature. But you really don't have to bother with this if you don't want to—less than half of California's 400 travel agents have, in fact, registered.

After you have done these things you go shopping for appointments. Tell a few airlines that you are starting out and you need some help. These airlines have bright and capable young men on their staffs who are paid to do just that. They want to help you if they think you can sell space on their airplanes. Naturally, they won't send you ticket stock immediately. They will put you on a cash basis at first, then see how you work out. If you produce, they will sponsor your certification by their conference—the Air Traffic Conference, if it is a domestic air carrier, or the International Air Travel Association, if it is an international carrier.

The conferences will subject you to a little more careful scrutiny. The ATC will require a substantial bond—not to protect the public, but to protect their member airlines from any impecunious dealings or fraud on your part.

There are, incidentally, three other conferences concerned with travel agents: the Trans-Atlantic Passenger Steamship Conference, the Trans-Pacific Passenger Steamship Conference, and the Rail Travel Promotion Association. While important, the extraordinary development in air travel in the past decade has elevated the air conferences to primary importance so far as the travel agent is concerned.

Having been certified by a conference, you can now receive appointments from any carrier who is a member of the conference. And, on the strength of this certification, other conferences will be strongly inclined to certify you so that their members will be able to cash in on your sales ability.

Now gentlemen, having taken these steps, you are truly a travel agent. You have earned industry approval and public trust. In short, you are in a fine position to rob your clients. Because nowhere in the procedures described has any attempt been made to screen out the obvious misfits. For example, in a recent travel agent fiasco about which you will shortly hear, three of the men involved as "travel agents" were convicted criminals. One of them was actually still on probation for fraud.

As a lawyer, much less as Attorney General, I would not dare give you advice on how to defraud the public. But I assure you that it has been done, and will be done again unless some action is taken to protect the public—and the travel industry—from a few “fast buck operators” who are moving into the field. The door is wide open.

It would be redundant for me to discuss the activities of Jerry Davis and the World Travel Center of Palo Alto. You have assembled other witnesses who have more intimate—and painful—knowledge of these people. I feel I should tell you, however, that an investigation undertaken by my office was turned over to Santa Clara County District Attorney Louis Bergna. He will take further action in due course.

The State of California has seen fit to exercise public control over any business activity involving the health, safety or financial security of its people.

We license chiropractors, termite inspectors, and we charter banks. A cosmetologist, a physician, a real estate or insurance broker—none of these can practice their trade without demonstrating to a public agent, their competence, their knowledge and the soundness of their moral character. If a person were to hold out that he is a private investigator or a mortician or an architect and he did not hold an appropriate state license, he could go to jail or be fined, or both.

You already know all these things. I mention them only to put the problem in context. Why are travel agents exempt from this kind of control?

Some argue that the nature of the travel industry precludes state licensing. Their business is essentially interstate, even international, in nature, thus subject only to the control of the federal government.

Without conceding the validity of the argument, let me go on record here and now as welcoming federal intervention. But only if such control is effective and comprehensive. To suggest that the bill presented by U.S. Senator Warren Magnuson to the United States Congress last month is either effective or comprehensive is folly. Let me give you the text of the bill and you can judge for yourselves.

“Fraudulent Sale of Transportation—Interstate, Overseas, Foreign Air Commerce.

“Sec. 1112. No person, other than a carrier or aircraft operator engaged in providing transportation by aircraft in interstate, overseas, or foreign air commerce, or a *bona fide* employee of such carrier or aircraft operator, shall sell or offer for sale any such transportation, or hold himself out by solicitation, advertisement, or otherwise as one who sells, provides, furnishes, or contracts for such transportation, except to the extent that such person is specifically authorized in writing by a carrier or aircraft operator to do so.”

The bill carries as a penalty, in addition to the opprobrium of the federal government, a fine totaling \$1,000 American dollars.

The purpose of the measure, as explained by the American Society of Travel Agents (ASTA), is twofold: “To protect the public from a small group of unscrupulous travel promoters who have been selling dubious charters; and to head off state legislation in New York and California designed to license travel agents.”

I question that it will accomplish the first purpose and I am sure it will not accomplish the second purpose.

ASTA has a proprietary interest in this bill, since it was drafted by ASTA's staff. Apparently ASTA has despaired of the chances of a similar bill submitted July 15, 1963, by California Congressman Charles S. Gubser. Mr. Gubser's proposal apparently sought to accomplish the same purpose, but carried higher penalties. The relevant portion of his text reads as follows:

"(2) Any ticket agent, or any officer, agent, employee, or representative thereof, who, knowingly and willfully, sells or offers for sale any transportation subject to this Act, without first entering into a lawful contract or other enforceable agreement with such air carriers, foreign air carriers, and supplemental air carriers as may be necessary to furnish such transportation, shall, for the first offense, be fined not more than \$2,000, or imprisoned not more than one year, or both, and for any subsequent offense, shall be fined not more than \$5,000, or imprisoned not more than five years, or both."

I have now placed into the record, with this reading, the entire scope of proposed federal legislation on the subject of travel agents. Existing regulations are even more tenuous. The Civil Aeronautics Board has assumed the authority to approve or disapprove air conference rules which are designed to govern travel agents. The CAB does not create rules, it merely approves them. The development of such rules is solely the concern of these private organizations. The CAB was challenged in the federal courts, and its authority was upheld on February 6, 1961, by the United States Court of Appeals. No appeal was taken to the Supreme Court.

The adequacy of existing federal regulations may be judged by the following statement that I now make: Jerry Davis handled more than \$500,000 in air fares during 1963 without any kind of bonding requirements. Had Senator Magnuson's bill been law, Mr. Davis would still have handled \$500,000 in fares, would still have messed up the vacations of over 700 California citizens, would still have operated precisely as he operated, and the federal government would not have had one jot more authority to deal with him as they do now—without Senator Magnuson's bill, and without Congressman Gubser's bill.

These bills are based on the same fundamental misconception that ASTA has cherished and reiterated since these problems became public knowledge. Specifically, that the ills of the travel industry are due to "unscrupulous promoters"—not travel agents—and that their wrongdoing is abetted by non-CAB certified air carriers engaged in developing phony charter flights.

There is only one problem about this neat analysis. Jerry Davis was a bona fide travel agent. He was a conference-appointed, carrier-approved, ticket-holding travel agent. Not a member of ASTA, to be sure but then only slightly more than half of all travel agents have attained that distinction.

If you conclude from the foregoing that I believe that the federal government does not have effective control over travel agents, you are

correct, and I will restate an earlier remark: I welcome effective and comprehensive federal control. But since there is none, I believe we owe it to the citizens of California to act now.

Licensing and bonding will, at the very least, prevent known criminals from becoming travel agents. A sensible program will keep those previously adjudged bankrupt from handling clients' funds in what may be regarded as a trust capacity. Such a program would insure that innocent persons would be compensated for losses suffered by the fraudulent or careless acts of a travel agent.

These appear to be modest goals. Yet there is no move by the federal government, by any conference or by ASTA, to attain them.

So far as ASTA is concerned, their position was made clear at a recent convention, with the passage of the following resolution:

"WHEREAS the 33rd World Travel Congress of the American Society of Travel Agents, Inc., has convened from October 20th through October 26th, 1963, in Mexico City, and

"WHEREAS the travel agency industry is by its very nature interstate and international and

"WHEREAS the travel agency industry is responsible and ethical and can best accomplish its task on behalf of the travel industry and the general public without burdensome regulations, and

"WHEREAS state licensing of travel agents is neither necessary, desirable, nor in the best interests of the travel industry and the traveling public, and

"WHEREAS the Chairman of the United States Civil Aeronautics Board, the Honorable Alan S. Boyd, expressed the policy of the Civil Aeronautics Board as opposing state licensing of travel agents, now

"THEREFORE BE IT RESOLVED that the delegates of this World Travel Congress enthusiastically endorse the unanimous decision of the Board of Directors of the Society to take all reasonable efforts to oppose state licensing of travel agents."

By this resolution ASTA has rejected any licensing program without even having seen one. I have met with representatives of ASTA and members of my staff have worked with the board of directors trying to explore reasonable means of attaining public protection. I offered to allow them to participate in the development of draft legislation, but they have responded with a resolution that characterizes any state legislation as "burdensome."

Incidentally, mention of Alan Boyd in the context of opposing state legislation is rather amusing. At the height of our investigation last summer, we were pleased to work with 25 percent of the investigators of Mr. Boyd's enforcement division. Both of these men were helpful and intelligent. Presumably the other 75 percent — the other six investigators — were occupied elsewhere.

I hope you have found my views to be enlightening. I know you understand that they are presented from the point of view of the chief law enforcement officer of our state. But you will find others who agree with me, many of them members of the travel industry. The respected editor and publisher of *Travel Weekly*, Irwin Robinson, editorialized concerning industry woes in the November 26, 1963 issue

While his words do not specifically relate to the question of licensing travel agents, they are worthy of repetition, so I will read part of his column to you. It is entitled, "Futility Unlimited":

"Looking back is supposed to provide a better perspective for judging events than at the moment they occur. There is likely to be less distortion.

"We've been applying this yardstick to some of the headaches which have plagued the trade this year, notably the charter and group problems that reached scandalous proportions last summer.

"This is one case where retrospect serves only to confirm the original judgment — doubled in spades. Reviewing last summer's events stirs up new indignation. The abuses were so flagrant that they rendered meaningless all the CAB and conference regulations supposedly in force, not to mention the futility of repeated 'we must protect the public' pronouncements by state and federal authorities . . .

"Without a doubt, the charter promoters — as soon as they have finished the monotonous job of adding up the season's profits — will be mapping new plans for another banner charter season in 1964. If the past is any criterion, they will suffer little inconvenience at the hands of the law enforcement agencies.

"But the state and federal officials will continue to make speeches and issue press releases about their deep concern for the 'public welfare.' . . . "

In response to the words of Irwin Robinson, I have no intention of making any pious declarations. Members of my staff are now working on a draft of a comprehensive licensing and bonding program. I have already asked the Governor to add the subject to the 1964 legislative session, and when the time comes, I sincerely hope our work will meet with your approval.

Thank you.

(s) STANLEY MOSK
Stanley Mosk
Attorney General
State of California

PROPOSED NEW YORK LAW

REGULATING AND LICENSING TRAVEL AGENCIES

AN ACT to repeal article ten of the general business law, relating to and providing for licenses to sell transportation tickets or orders for transportation to or from foreign countries, and to amend the general business law, in relation to providing for the licensing and regulation of persons engaged in the travel agency business, and making an appropriation therefor.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

SECTION 1. The general business law is hereby amended by inserting therein a new article, to be article twenty-nine-d, to read as follows:

Article 29-D

TRAVEL AGENCIES

Sec.

- 560. *Repeal.*
- 561. *Purpose of article.*
- 562. *Definitions.*
- 563. *License required.*
- 564. *Powers of the secretary of state.*
- 565. *Advisory committee.*
- 566. *Application for licenses.*
- 567. *Licenses; display; renewal; duplicates.*
- 568. *Issuance of licenses; fees; bonds.*
- 569. *Refund of fees.*
- 570. *Suspension and revocation of licenses.*
- 571. *Hearing on charges; decision.*
- 572. *Judicial review.*
- 573. *Violations and penalties; criminal prosecution.*
- 574. *Official acts used as evidence.*
- 575. *Disposition of moneys derived from operation of article.*
- 576. *Application of article.*
- 577. *Separability clause.*

§ 560. *Repeal. Article ten of the general business law is hereby REPEALED.*

§ 561. *Purpose of article. The need for technical skill, training and experience, good moral character and other fundamental qualities and qualifications in persons engaged in the travel agency business, as herein defined, having been established and demonstrated by reason of the ever-increasing number of people availing themselves of the facilities thereof, the complexity and scope of travel today and the inadequacy of local regulation, it is the purpose of the legislature, in enacting this article, to protect the comfort, safety and well-being of those persons who patronize the travel agencies of our state by*

making adequate provision for the licensing and regulation of travel agencies.

§ 562. *Definitions. As used in this article, unless the context requires otherwise:*

1. "Department" means the department of state.

2. "Person" means an individual, firm, company, partnership, corporation, association, joint stock association, or other group, however organized.

3. "Licensee" means a person, as herein defined, engaged in the business of conducting a travel agency.

4. "To engage in the business of conducting a travel agency" means and refers to holding out, directly or indirectly, as being able, or offering or undertaking by any means or method, to acquire for a fee, commission or other valuable consideration from any source, travel reservations or accommodations; tickets for travel by air, rail, ship, bus or other medium of transportation; hotel or other lodging reservations or accommodations; airplane reservations or accommodations and any other type of reservations or accommodations for lodging or transportation.

5. "Licensee" means any person to whom a license has been issued pursuant to this chapter.

§ 563. *License required. On and after January 1, 1965 no person shall engage in the business of conducting a travel agency, as herein defined, without having first received from the department of state a license so to do, as hereinafter provided.*

§ 564. *Powers of the secretary of state. In addition to the powers and duties elsewhere prescribed in this article, the secretary of state shall have the power:*

1. *To appoint an adequate number of assistants, inspectors and other employees as may be necessary to carry out the provisions of this article, to prescribe their duties, and to fix their compensation within the amount appropriated therefor;*

2. *To keep records of all licenses issued, suspended or revoked;*

3. *To adopt such rules and regulations not inconsistent with the provisions of this article, as may be necessary with respect to the form and content of applications for licenses, the reception thereof, the investigation of applicants, and the other matters incidental or appropriate to his powers and duties as prescribed by this article and for the proper administration and enforcement of the provisions of this article, and to amend or repeal any of such rules and regulations.*

§ 565. *Advisory committee. To advise the secretary of state, there shall be an advisory committee which shall consist of five members to be appointed by the secretary of state. Three members thereof shall be actively engaged in the travel agency business in this state; two members shall not, at the time of appointment, be directly or indirectly interested in or identified with the travel agency business. The secretary of state or his duly authorized representative shall be an additional member of the advisory committee and act as chairman thereof. The advisory committee shall meet at least once a year, at an appropriate time to be fixed by the secretary of state and at any other time on call of the secretary of state. It shall be the duty of*

the advisory committee to advise the secretary of state on all matters relating to this article, and on such other matters as the secretary of state shall request. The secretary of state shall designate an employee of the department to act as secretary of the advisory committee, and shall detail to such advisory committee such stenographic or other assistance as may be necessary.

The members of the advisory committee, except the secretary of state, shall be entitled to compensation at the rate of not exceeding twenty dollars per day for each meeting attended by them or each day actually spent in the work of the advisory committee, not to exceed the sum of two thousand dollars per annum. They shall also be paid their reasonable and necessary traveling and other expenses while engaged in the performance of their duties.

§ 566. Application for license. 1. Any individual over the age of twenty-one years, desiring a license to engage in the business of conducting a travel agency under this article, may make application to the secretary of state therefor. The application shall be duly signed and shall be in such form and shall contain such information relative to the applicant and his qualifications as may be prescribed by the secretary of state. If the applicant is a natural person, the application shall be signed by such person. If the applicant is a partnership, the application shall be signed by each individual composing or intending to compose such partnership. The application shall state the full name, age, residence, present and previous occupations of each person or individual so signing the same, and shall specify and indicate the location of the principal place of business and each bureau, agency, sub-agency, office or branch office for which a license is desired, and such further facts as may be required by the department of state to show the good character, competency and integrity of each person or individual so signing such application.

2. If the applicant is a corporation, the application shall be signed by an officer thereof, and shall specify the name of the corporation, the date and place of its incorporation, the location of its principal place of business, and the name of the city, town or village, stating the street number, if the premises have a street and number, and indicate the location thereof, where is to be located the bureau, agency, sub-agency, office or branch office for which a license is desired. Each and every requirement of subdivision one of this section as to a person or individual member of a partnership shall apply to such officer, his successor and successors who shall, prior to entering upon the discharge of his duties, sign a like statement, approved in like manner, as is by said subdivision one prescribed in the case of a person or individual member of a partnership; and in the event of the death, resignation or removal of such officer, due notice of that fact shall forthwith be given in writing to the department of state, together with a copy of the resolution adopted at any meeting of the board of directors of said corporation, certified by the secretary, indicating the death, resignation or removal of such officer and the election or designation of the successor of such deceased, resigned or removed officer.

3. Any person engaged in the business of conducting a travel agency business for a continuous period of one year prior to January 1, 1965,

shall, upon compliance with the provisions of section five hundred sixty-six and section five hundred sixty-eight of this article, be licensed by the secretary of state to conduct such business, pursuant to the provisions of this article.

4. No license shall be issued to an individual applicant who, at the time of filing such application, is less than twenty-one years of age, nor to a partnership comprised of individuals all of whom are less than twenty-one years of age at the time of filing such application.

§ 567. Licenses; display; renewal; duplicate. 1. All licenses shall be for a period of two years or a fraction of such two-year period and shall expire on the thirty-first day of December of each even-numbered year.

2. No license shall be assignable or transferable.

3. A bona fide purchaser of a travel agency business from the holder of a license thereof may continue to use the license of the seller for a period of not more than forty-five days from the date of the sale, provided there is endorsed on the face thereof the name of the purchaser, the date of the sale, and the signature of the seller and the purchaser; and provided further that within fifteen days from the date of the sale, an application, in accordance with the provisions of this article, shall be presented by the purchaser to the secretary of state for a license to conduct a travel agency business.

4. Each license issued pursuant to this article shall be posted and kept posted in some conspicuous place in which the licensee is engaged in business. Every license shall contain the name of the licensee, a designation of the city, street, and number of the premises in which the licensee is authorized to carry on business, and the number and date of such license.

5. Any license which has not been suspended or revoked may, upon the payment of the renewal fee prescribed by this article, be renewed for additional periods of two years from its expiration, upon the filing of an application for such renewal, on a form to be prescribed by the secretary of state.

6. Any person failing to file application and fee for renewal of a license hereunder, within one year immediately following the expiration of his last license, shall pay an additional fee of twenty-five dollars, and if he fails to file application and fee for renewal within one year immediately following the expiration of his last license, he shall be ineligible to apply for the renewal of such license and shall file an application for a new license.

7. A duplicate license may be issued for one lost, destroyed or mutilated upon the application therefor on a form prescribed by the secretary of state and the payment of the fee prescribed therefor by this article. Each such duplicate license shall have the word "Duplicate" stamped across the face thereof and shall bear the same number as the one it replaces.

8. Notice in writing shall be given the secretary of state at his office in Albany by the holder of a license issued pursuant to this article of any change of address set forth therein, together with return of license, whereupon a properly signed endorsement will be made on the face thereof of such change and the license then returned to the li-

censee. A change of address by a licensee without such notice and endorsement of license shall operate to cancel the license.

§ 568. *Issuance of licenses; fees; bonds. 1. When the application shall have been examined and such further inquiry and investigation made as the secretary of state shall deem proper, and when the secretary of state shall be satisfied therefrom of the good character, competency and integrity of such applicant, or, of the applicant be a firm, partnership or corporation, of the individual members or officers thereof, the department of state shall issue and deliver to such applicant a license to conduct such business and to own, conduct, or maintain a bureau, agency, sub-agency, office or branch office for the conduct of such business upon the applicant's paying to the department of state for each such license so issued, for the use of the state, the fees hereinafter described, and upon the applicant's executing, delivering and filing in the office of such department the bond hereinafter described; provided, however, that a license shall not be granted to any person who has been convicted in this state or any other state or territory of a felony, or of a misdemeanor concerning activities prohibited by this article.*

2. The fee for a license to engage in the business of conducting a travel agency pursuant to this article shall be fifty dollars if the applicant be an individual, or one hundred dollars if a firm, partnership, or corporation, and for each renewal thereof the fee shall be fifty dollars if the applicant be an individual, and one hundred dollars if a firm, partnership, or corporation.

3. The fee for issuing a duplicate license in substitution for lost, destroyed or mutilated license, shall be five dollars.

4. Every applicant for a license pursuant to the provisions of this article shall execute, deliver and file with the secretary of state, before a license shall be issued, a surety company bond, written by a company recognized and approved by the superintendent of insurance and approved by the secretary of state with respect to its form, manner of execution and sufficiency, in due form to the people of the state of New York, in the principal sum of seven thousand dollars for the first such license and five thousand dollars for each additional license, provided, however, that in no event shall the aggregate sum of any such bond exceed thirty-five thousand dollars. Such bond shall be conditioned that the obligor will not be guilty of any fraud or misrepresentation to any patron, and will conduct such business faithfully and honestly. A suit to recover on the bond required to be filed under the provisions of this article may be brought by or on the relation of any party aggrieved in a court of competent jurisdiction, and in the event that the obligor on said bond has been guilty of fraud or misrepresentation, may be enforced by the department of state in the name of the people of the state of New York to recover the loss occasioned by such fraud or misrepresentation.

§ 569. *Refund of fees. Moneys heretofore or hereafter received by the department of state pursuant to this article may, within one year from the receipt hereof, be refunded to the person entitled thereto, on satisfactory proof that:*

1. Such moneys were in excess of the amount required by this article, to the extent of such excess;

2. The license for which application was made has been denied;
 3. The applicant for the license has predeceased its issuance;
 4. The licensee has enlisted in or been otherwise inducted into active federal military, naval or marine service or in any branch or division thereof, in which event the refund shall be such proportion of the license fee paid as the number of full months remaining unexpired of the license period bears to the total number of months in such period.
- Such refunds shall, upon approval by the secretary of state and after audit by the comptroller, be paid from any moneys received from the operation of this article.

§ 570. *Suspension and revocation of licenses.* A license issued pursuant to this article may be suspended or revoked by the secretary of state for any one or more of the following causes:

1. Fraud or bribery in securing a license issued pursuant to this article;
2. The making of any false statement as to a material matter in any application or other statement or certificate required by or pursuant to this article;
3. Failure to display the license as provided in this article;
4. Violation of any provision of this article, or of any rule or regulation adopted hereunder;
5. Any fraud or fraudulent practice in the operation and conduct of such business, including, but not limited to dishonest or misleading advertising or demonstrated untrustworthiness or incompetency;
6. Conviction of a felony, or of a misdemeanor concerning activities prohibited by this article;
7. Whenever the license issued pursuant to this article is revoked, the applicant may not apply for a new license until after the expiration of a period of one year from the date of such revocation.

§ 571. *Hearing on charges; decision.* No license shall be suspended or revoked until after a hearing had before an officer or employee of the department designated for such purpose by the secretary of state, upon notice to the licensee of at least ten days. The notice shall be served either personally or by registered mail and shall state the date and place of hearing and set forth the ground or grounds constituting the charges against the licensee. The licensee shall be heard in his defense either in person or by counsel and may produce witnesses and testify in his behalf. A stenographic record of the hearing shall be taken and preserved. The hearing may be adjourned from time to time. The person conducting the hearing shall make a written report of his findings and a recommendation to the secretary of state for decision. The secretary of state shall review such findings and the recommendation and, after due deliberation, shall issue an order accepting, modifying or rejecting such recommendation and dismissing the charges or suspending or revoking the license. For the purpose of this article, the secretary of state or any officer or employee of the department designated by him, may administer oaths, take testimony, subpoena witnesses and compel the production of books, papers, records and documents deemed pertinent to the subject of the investigation. The department of state is hereby authorized to employ such agent or agents as the secretary of state may deem necessary to enable the department of state

to carry out the provisions of this article, to investigate violations hereof and to enforce compliance herewith.

§ 572. *Judicial review.* The action of the secretary of state in suspending, revoking or refusing to issue or renew a license may be reviewed by a proceeding brought under and pursuant to article seventy-eight of the civil practice law and rules.

§ 573. *Violations and penalties; criminal prosecution.* Any person who shall directly or indirectly engage in the business of conducting a travel agency or hold himself out to the public as being able so to do, or conduct such business without a license therefor, or who shall violate any of the provisions of this article, or who shall have made a false statement as to a material matter in any application or other statement required by or pursuant to this article, or having had his license suspended or revoked, shall continue to engage in such business, shall be guilty of a misdemeanor, and, upon conviction, shall be punishable by imprisonment for not more than six months, or by a fine of not more than five hundred dollars, or by both such fine and imprisonment.

The attorney general may prosecute every person charged with the commission of a criminal offense in violation of this article. In all such proceedings, the attorney general may appear in person or by his deputy before any court of record or any grand jury and exercise all the powers and perform all the duties in respect of such actions or proceedings which the district attorney would otherwise be authorized or required to exercise or perform; or the attorney general may in his discretion transmit evidence, proof and information as to such offense to the district attorney of the county or counties in which the alleged violation has occurred, and every district attorney to whom such evidence, proof and information is so transmitted may proceed to prosecute any person charged with such violation. In any such proceeding, wherein the attorney general has appeared either in person or by deputy, the district attorney shall only exercise such powers and perform such duties as are required of him by the attorney general or the deputy attorney general so appearing.

§ 574. *Official acts used as evidence.* The official acts of the secretary of state and department shall be prima facie evidence of the facts therein and shall be entitled to be received in evidence in all actions at law and other legal proceedings in any court or before any board, body or officer.

§ 575. *Disposition of moneys derived from operation of article.* All moneys derived from the operation of this article shall on or before the tenth day of each month be paid into the general fund of the state treasury, to the credit of state purposes fund therein.

§ 576. *Application of article.* This article shall not apply to railroad, steamship, airline or bus companies, hotels, motels or other places of public accommodation, or their employees engaged solely in the business of such employers, nor to any person employed by any firm as a transportation officer or employee whose principal duty is to obtain transportation and/or accommodations for such firm or other officers or employees thereof.

§ 577. *Separability clause.* If any part or provision of this article or the application thereof to any person or circumstances be adjudged invalid by any court of competent jurisdiction, such judgment shall be confined in its operation to the part, provision or application directly involved in the controversy in which such judgment shall have been rendered and shall not affect or impair the validity of the remainder of this article or the application thereof to other persons or circumstances and the legislature hereby declares that it would have enacted this article or the remainder thereof had the invalidity of such provision or application thereof been apparent.

§ 2. The sum of sixty thousand dollars (\$60,000), or so much thereof as may be necessary, is hereby appropriated to the department of state from any moneys in the state treasury not otherwise appropriated, to pay expenses, including personal service, maintenance and operation, in carrying out the provisions of article twenty-nine-d of the general business law, as added by this act. Such moneys shall be payable out of the state treasury from any moneys in the general fund to the credit of the state purposes fund therein, on the audit and warrant of the comptroller, on vouchers certified or approved in the manner prescribed by law.

§ 3. This act shall take effect January first, nineteen hundred sixty-five.

STATE OF CALIFORNIA, OFFICE OF LEGISLATIVE COUNSEL

ANGUS C. MORRISON, Legislative Counsel

3021 State Capitol, Sacramento 14

110 State Building, Los Angeles 12

Sacramento, California

February 11, 1964

HONORABLE STAN PITTMAN
Senate Chamber

Air Transportation Brokers—No. 2674

Dear Senator Pittman:

QUESTION

Would a verified affidavit of an air transportation broker in which he states that he has been appointed to act for certain contracting air carriers comply with the provision of Section 24023 of the Public Utilities Code which requires documentary evidence of an appointment by an air carrier to act as a broker for it?

OPINION

In our opinion such a verified affidavit would not comply with the provision of Section 24023.

ANALYSIS

Section 24023 reads as follows:

“24023. Any aircraft transportation broker shall be deemed to have complied with this part by filing with the Secretary

NOTE: The present Article 10 of the General Business Law being repealed by this bill relates to the licensing of certain persons engaged in the sale of steamship tickets or orders for transportation to or from foreign countries.

of State a written statement under oath that all air transportation as respects which the broker acts or purports to act as an aircraft transportation broker is issued over the line of a contracting air carrier or carriers which has authorized the broker to act on his behalf and has agreed to furnish transportation according to its published tariffs on any tickets sold by said broker or to refund on demand according to its published tariffs any unused tickets sold by the broker. Attached to the written statement shall be documentary evidence of the appointment of the broker to act for such contracting air carrier or carriers. The aircraft transportation broker shall notify the Secretary of State within 10 days of any change in the agreement or agreements between him and the contracting air carrier or carriers which he is authorized by agreement to represent."

There have been no decisions reported which interpret this section. However, we do not believe that the term "documentary evidence" as used in Section 24023 includes a verified statement of the broker that he is authorized to act for a certain contracting air carrier. The first sentence of the section relates to matters which must be contained in a written statement under oath. The "documentary evidence" is to be attached to such statement. This particular placing of the term "documentary evidence" suggests that the Legislature intended that something other than another written statement prepared under oath be attached to the written statement required by the first sentence of the section. Without attempting to specify the limits as to what might be considered documentary evidence for the purposes of Section 24023, we believe that some more concrete evidence than the broker's own statement is required as proof that he has been appointed to act for a particular contracting air carrier.

Very truly yours,

A. C. MORRISON
Legislative Counsel

By DON VICKERS
Deputy Legislative Counsel

STATEMENT OF AIRCRAFT TRANSPORTATION BROKER

(California Public Utilities Code, Section 24023)

-----, an aircraft transportation broker, as that term is defined in Part 3, Division 9 of the Public Utilities Code, hereby certifies:

1. That all air transportation as respects which the undersigned acts or purports to act as an aircraft transportation broker is issued over the line of a contracting air carrier or carriers which has authorized the undersigned broker to act on its behalf and has agreed to furnish transportation according to its published tariffs on any tickets sold by the undersigned or to refund on demand, according to its published tariffs, any unused tickets sold by the undersigned broker.

2. Attached hereto is documentary evidence of the appointment of the undersigned as broker to act for each of the listed contracting air

carriers; and each appointment is unrevoked and still in full force and effect.

3. The undersigned will notify the Secretary of State in writing within 10 days of any change in any agreement between the undersigned and any of the contracting air carriers listed which undersigned is authorized by agreement to represent; and will notify the Secretary of State in writing within 10 days of any change in the name under which undersigned carries on said air transportation brokerage business and of any change of address at which said business is conducted and of discontinuance of said business.

4. The complete address of each place of business at which undersigned conducts said air transportation brokerage business is as follows:

5. The true name of each contracting air carrier for which undersigned is authorized to act as aircraft transportation broker, as evidenced by attached documentary authority, is:

By -----
(Title)
STATE OF CALIFORNIA }
COUNTY OF ----- } ss.

-----, being first duly sworn, deposes and says that -----he is the (broker) or (-----of the above
Title
named broker); that -----he has read the foregoing statement and knows the contents thereof to be true of ----- own knowledge.

(Title)
Subscribed and sworn to before me
this-----day of-----, 19-----

Notary Public

NOTE: A \$5 fee is payable to the Secretary of State at time of filing of this statement.
(Sec. 24023 Public Utilities Code)

TRAVEL CENTER INC.

A DIVISION OF TRAVEL MANAGEMENT CORPORATION

649 South Olive Street, Suite 724

Los Angeles 14, California

September 3, 1963

MR. STANLEY MOSK, *Attorney General*
State of California
Sacramento, California

Dear Mr. Mosk:

Re: Licensing of travel agents

I have noted with interest your recommendations that the State of California consider the subject of licensing and bonding of travel agents.

I feel that it would be to the best interests of the state and the travel industry that the travel agents be given an opportunity to regulate themselves first. In 1956 I proposed state licensing and am enclosing a

paper which I sent out to all the travel agents in the state. As President of the American Society of Travel Agents, Southern California Chapter, 1958-1959, and also during my two-year term (1961-1962) as International Director of ASTA, I worked on licensing but found the members of the society afraid of the effects of "licensing". My plan was to have them "certificated" similar to certified public accountants. I believe the Structural Pest Control Act of California did a good job for that industry.

My purpose in writing you is to suggest that a committee of travel industry people (steamship, airlines, railroads and travel agents), not necessarily ASTA members, be invited to proceed to come up with a practical solution. In other words the industry should be given notice to act NOW or else. . . .

I would very much like to be invited to suggest or participate in such a committee. I have been in the travel business since 1930 and expect to continue actively.

Yours very sincerely,

JOHN B. SOUSA
President

ACROSS AMERICA TOURS

WHOLESALE DIVISION OF TRAVEL CENTER INC.

649 South Olive Street, Los Angeles 14, California

SOMETHING TO THINK ABOUT NOW

November 20, 1956

To All Travel Agents:

I just returned from the 26th Annual Convention and World Travel Congress in Chicago. It was an excellent convention and much was accomplished. However, the future status of the travel agent remains uncertain. There may be federal regulation—the Celler case and its possible disastrous effects—the unfair competition of nontravel agents in operating tours. The future as to these major problems of ours is cloudy and some may be loaded with dynamite.

During my 26 years in the travel business I have given a great deal of thought to our industry problems. I feel sure that what we need badly is an official status on a professional level, the same as certified public accountants and other professional people enjoy today. Such recognition by the public would give us certain rights in our field which would protect the public and us from the ills which plague us today as much as they did 20 years ago. Now is the time to act. If there is the remotest possibility of the travel agent being regulated in the future (and it never looked closer), we should take immediate steps to ask for such regulations ourselves along the lines of our own thinking. Let's have a part in designing our own standards; let's tell the public that we are going to elevate the travel agent to a professional status to protect them; let's make it impossible for anyone to enter the travel business or organize a tour without meeting certain requirements which we have a part in outlining. That is what we want, I believe. And we can do all this an easy way.

Here's how to do it: Let's start with our own state. The others will follow. There are two ways:

1. We can draw up a bill collaborating with the carriers and working closely with certain members of the State Legislature. The bill will be offered and we can muster enough help throughout the state to get it through. From our past experience we know that the public is interested in the protection that we are planning.
2. We can draw up a bill collaborating with the carriers—float petitions through all travel agencies asking our customers to sign it, thereby securing sufficient names to get the bill on the ballot. In securing signatures we will be winning new customers, and there is no doubt but that the press would support us. This would familiarize the public with the travel agency business more than ever and muster the support necessary to put the bill through.

I believe the second plan would do more for the agents in public relations and probably assure the passage of a bill more to our liking. Under the first plan there might be considerable lobbying and more possibility of changes in the proposed bill.

About the proposed bill: The bill would require all travel agents to be certificated and to display credentials in places of business; let's call it a Certified Travel Agent's certificate. There would be three classifications of CTA certificates:

CTA Class A—An agent holding air and steamship conferences.

CTA Class B—An agent holding air and other conferences but not holding both air and steamship.

CTA Class C—An agent holding RTPA or bus and RTPA (not holding air or steamship conferences).

We have to start somewhere—so all agencies in business for four years or more would be automatically licensed in their proper classifications. We may have to allow the airlines and other carriers to hold CTA certificates in order to get this bill through, but that is no more than they now have. I feel sure the carriers are interested in accomplishing much which the bill would do relative to their current problems and would go along with us.

How the CTA would be appointed: There would be a state-appointed official in Sacramento to enforce and issue all licenses as directed by a committee operating under the bill. The committee would consist of members representing each branch of transportation and one representing ASTA. Under this plan there would be only one salaried state official and the annual license fee would be modest and, in my opinion, not more than \$50 per year. The committee would hold examinations annually in both Los Angeles and San Francisco for the purpose of making appointments. One of the requirements to take the examination would be at least two years' employment in a travel agency. Written and oral examinations would be formulated jointly by carriers and an ASTA committee. In the case of accountants, the examination is submitted by the Certified Public Accountants Society, as we propose.

Anyone could take the examination if qualified, whether employed or in business. This would be advantageous to both employers and em-

ployees. The employers would be assured of qualified assistants and added prestige, and the possession of a certificate naturally would be a great aid in securing employment and better pay.

What would be accomplished: No one could organize a tour or open a travel agency unless holding a CTA certificate in the proper classification. This would:

Eliminate the organization of tours by unqualified persons.

Prevent organization of tours by professors, clubs, etc., etc.

Eliminate the opening of travel agencies by unqualified persons or those financially irresponsible.

Protect the public.

Prevent unfair competition.

Give travel agents a professional status.

How new appointments would be made: airlines and other carriers desiring new representation would necessarily appoint an existing certified travel agent in the proper classification, presently employed or already in business.

This is merely an outline of what the travel agents need more than anything else, in my opinion. This has been in my mind for years and I cannot resist writing you in the hope that the seed will germinate. I am doing it now because I believe the timing is right. If we take matters in our own hands now, we will come up with something that we need and have had a hand in creating. If we don't act now, we will be facing something designed by others outside of our line, and we will have to work harder to get our own ideas into it. We should decide our course now.

I will appreciate hearing from you.

Very cordially yours,

JOHN SOUSA

DO WE HAVE TO LIVE WITH CHARTERS?

Comments by Harold Martin, National Aviation Chairman, preliminary to the open discussion from the floor at the Western Regional ASTA Meeting in Santa Barbara, May, 1963

Ladies and Gentlemen:

This part of the "Voice of the Industry" discussion which has to do with air charters has been deliberately placed at the end of the discussion so that if it runs into overtime, it can do so without disrupting other parts of the program. As this subject has consumed so much time in many earlier meetings throughout the country, and as so many of the problems have been thoroughly discussed before, it was decided that a preliminary discussion and summary by your aviation chairman might help to bring the problems into focus and eliminate time-consuming rhetorical discussions. At each seat is a copy of this summary, and it is suggested that you make notes on the margins so that when discussion from the floor is requested we all may be brief and concise.

Nothing in the history of travel agents has been so damaging to the economic well-being of the travel agent; nothing (not even the "Chan-

dler Affair") has been so disrupting to the normal business routine; nothing has been so destructive to the morale of the travel agents as the charter.

In the history of the travel business there has never been a regulation which has so encouraged devious and dishonest practices by the traveling public (a failing which has spread to the carriers and to the travel agent as well) as has Part 295 of the CAB Economic Regulations, the IATA Resolution 045 on charters, and the 088 Series of IATA Resolutions on partial charters known as "group fares."

Although there is hardly a travel agent who is not against charters (a view which is shared by a few carrier executives and by most carrier personnel in the sales category), it will not be possible for us to rid ourselves of them by shouting "unfair" and "discriminatory." We must recognize the fact that a fantastic oversupply of seats has been created by the advent of the jets which have been purchased in excess of real need by many carriers who represent the civil aviation arm of prestige-conscious nations. These are carriers who cannot go out of business, regardless of how unwise their management has been. With equally poor judgment are the many competition-conscious private carriers of our own country whose routes are so important that the CAB cannot afford to let them disappear from the scene. To further aggravate the situation, there is the tremendous number of piston-equipped planes which have been dumped on the market at fantastically low prices. Many of these now are in the hands of supplemental carriers who are competing for the charter business as well.

Further, a policy statement from the White House, issued April 24, 1963 (just a month ago), specifically indicated that our government is in favor of lowering air fares and named charters as a "practical means which help to achieve reasonable rates."

Although the above seems discouraging, it by no means is the end of the matter. You and I have a task ahead of us to protect our livelihood, and it can be done, but we must be realistic about the problems before us.

It is also important to note that in this same policy statement, the White House declares: "Our acceptance of the IATA mechanism is predicated upon *strict adherence* by carriers to their IATA agreements. If the agreements are violated, we will have to reconsider our relationship to IATA and our *authority over violations*."

You are all aware of the tremendous number of violations of the charter regulations and of the complaint after complaint filed with the CAB and IATA, seemingly to no avail. Finally, through CAB order E19492 dated April 11, 1963, we have received the welcome news that "an investigation will be instituted based upon the various complaints filed with the board, and information ascertained by investigation of board staff to look into the abuses, most of which amount to illegal rate cutting." The CAB is preparing to turn such material over to the Attorney General for the institution of appropriate civil and *criminal actions* to enforce the provisions of the Federal Aviation Act. A person illegally traveling on a charter, or with a group, or a charter illegally organized are considered rate-cutting acts and are *now liable to criminal prosecution!*

ASTA has been requested by the CAB to assist them with this investigation—a task we eagerly accept.

Simultaneous with this action by CAB, and prior to any knowledge of what the CAB had planned, ASTA had investigated the practicality of bringing the matter of the discriminatory charters to a court hearing in an effort to have them declared illegal. In order to do this we must exhaust all appeals through CAB, then probably be prepared to go through lower federal courts on up to the Supreme Court. This action had to be very carefully discussed as it could take considerable time and the cost would undoubtedly run into six figures. Nevertheless, this resolution was presented to the ASTA board and was approved at the last meeting. Our action will benefit all travel agents, and for this very important reason (in addition to all the other benefits of ASTA membership) eligible agents who are not yet members should be encouraged to join and actively support us.

A second court action has been discussed in which ASTA could cooperate with an agent who can substantiate actual damages to his business by an illegal charter, and who would be willing to sue the charterer and the accepting airline jointly.

However, the wheels of justice grind very slowly indeed, and we cannot wait for these legal actions to cancel the charters immediately. Some agents might be out of business before the problems are solved, if they ever are to be. So, although taking up the battle cry that “pro rata” charters are discriminatory, unfair and dishonest, we must recognize that they are with us today and methods must be found to modify them as best we can so we can temporarily live with them.

Executive Ray Hering in his letter of May 6 to Tom McKibbons, southern California aviation chairman, succinctly pointed out that the problem is changing: While illegal charters and groups have been the major problem heretofore, now, as the traveling public is becoming wiser, legal charters are becoming the dominating problem. More and more groups are being formed, ostensibly for other purposes, but actually for the purpose of travel—and more and more organizations are making it very easy for new members to join. For example, one young lady, who is traveling on the University of California charter, told me that she had planned to go to Europe in 1962 but found she was not eligible for a charter. Therefore, she set about locating and joining various groups, including a book club whose only requirement was a fee of \$2. She became eligible for five different charters this year, one of which was through her enrollment in the graduate school of the University of California, requiring only a visit with a professor once every three weeks.

To solve our problems, many suggestions have been made—some in the form of resolutions to the board. Others, although discussed many times informally, have not been resolved and it is your chairman's recommendation that a formal resolution be drafted to present these to the next Board meeting.

Respectfully submitted,

HAROLD MARTIN, *Chairman*
National Air Committee, ASTA

**Problems of Pro Rata Charter Operations and Recommendations for Controlling
Such Problems Until Such a Time as Charters and Groups
Are Declared Illegal and Are Eliminated**

(Note: Nothing in these suggestions should imply that travel agents wish to see the discriminatory charters and group fares continue.)

Items marked * indicate that a recommendation to the CAB has been made on this particular matter by our attorney. ** Indicates the CAB has agreed to take action.

Policing and enforcing of charter regulations.

** Action now started by CAB.

Definitions:

Present IATA Resolution 045 and CAB Order 295 do not spell out clearly enough the eligibility of groups and charters. The result is that many fringe groups are being organized which violate the spirit of the regulations (as well as being an outright violation).

Membership in groups:

Six-months' membership rule is ineffective. Too easy to join existing legitimate organizations strictly for the purpose of traveling. Many require little or no dues, and no obligations.

Publication of intention:

Groups planning to charter should have their name, date of organization, membership number and other pertinent information published in an acceptable journal at time of filing.

Public inspection of list of members:

* Manifest of participants in group and charter to be made available for public inspection at least 30 days prior to flight time (our attorney's request did not specify number of days). This should deter some prospective illegal participants. (Modest number of published changes to be permitted in last 30 days.)

Sworn statements:

* Charterers and members should make sworn statements as to their eligibility.

Penalties:

(A)

* CAB is reluctant to cancel charter unless violations are flagrant. Specific penalties should be defined including forfeiture of monies paid by illegal participants.

(B)

* Charterers found attempting illegal charters should be prevented from going to another carrier for at least 120 days. (This suggestion was turned down by CAB.)

Fixed prices on charters:

* As long as there is such wide discrepancy in prices between charters, groups and regular fares, there will be a tendency for people to cheat and to join groups improperly. Charters should be based on a reasonable relationship to current tariffs.

Fixed dates of charters:

Recommend that charters' eligibility dates should be comparable to the dates for excursion fares.

Schedule cancellation for charters:

This practice causes great inconvenience to the traveling public. Schedule integrity should be demanded by CAB.

Identification of airlines flying charters:

* An effort should be made to clearly establish and publish a list of charters flying, including the total number of passengers, the airline chartering, and dates of the flights.

Publicity:

(A)

The southern California chapter recommends consideration be given to a publicity campaign regarding the discriminatory fare structure, pointing out that it is against the public good and that the great disparity in prices between normal fares and group and charter fares encourages dishonesty and damages the morale of the traveling public.

(B)

It is further recommended that travel agents solicit their clients who are paying regular fares to sign petitions protesting these discriminatory fares.

Local level action:

Many potential illegal charters have been stopped at a local level by a complaining agent's going direct to the district office of the particular airline involved. Some carriers who might close their eyes to a possible violation will, when confronted with facts, take action to eliminate questionable charters.

December 3, 1964

I am Donald L. Everingham of Don-Em Travel Center. On behalf of the American Society of Travel Agents—ASTA—I appreciate the opportunity of appearing before this committee. I have been President of the Northern California Chapter of ASTA for the past two years and am now becoming a national area director. With me are Branwell Fanning, Vice President of Cartan Travel Bureau, Inc., San Francisco and the new President of the Northern California Chapter, Mr. Harold Martin of Travel Service, Inc., National Air Chairman, Mr. Henry Chase of Chase Travel Service, Glendale, California, Area Director for Southern California, and Mr. Dale Johnson of Dale Johnson Travel Service, San Jose, California, National Area Director for northern California.

ASTA has approximately 1,700 members throughout the country operating at more than 2,400 locations.

For your general information, the travel agents of United States sell more than \$500,000,000 worth of air travel every year. In fact, it is estimated that more than 75 percent of all international air travel is handled by agents; more than 25 percent of all domestic air travel is sold by agents. ASTA represents the great majority of this volume of

sales. The ASTA travel agent considers himself a responsible professional and member of the business community. He is concerned that there be a complete understanding by the public of his responsibilities toward them. For your information, an applicant for membership in ASTA must have at least three years in business and must have at least two appointments by the air and steamship conferences. This is ASTA's assurance of the financial and business stability of the applicants.

This hearing comes about, as we understand it, because of the recent unfortunate strandings of Californians in New York while on their way to and from Europe by charter flights. The State of New York is also now interested in the same matter. Needless to say, every ASTA member is equally anxious that such a situation not recur.

With us today is ASTA's general counsel. We have asked him to come from Washington to attend this hearing because of his general knowledge of the problems and regulations affecting the operation of the travel agent, as well as his specific legal knowledge on the subject of licensing. He is prepared in this technical field and, for this reason, I ask that he be permitted to present a statement which has been prepared for your careful analysis.

We will, of course, be happy to answer any questions.

**Statement of Rocco C. Siciliano on Behalf of
AMERICAN SOCIETY OF TRAVEL AGENTS, INC.**

My name is Rocco C. Siciliano and I am a partner in the law firm of Wilkinson, Cragun & Barker, located in Washington, D.C. We are general counsel to the American Society of Travel Agents, Inc. (ASTA)—an organization which has approximately 1,700 travel agency members throughout the country operating at more than 2,400 agency locations. ASTA is the only industry-wide spokesman for the travel agency industry. Seated with me are Mr. Dale Johnson of the Johnson Travel Service, San Jose; Mr. Donald Everingham of the Don-Em Travel Center, San Francisco; and Mr. Henry Chase of Chase Travel Service, Glendale; who are members of ASTA's board of directors. I propose to briefly outline ASTA's position on the question of state licensing of travel agents and then answer any questions you may have with respect to ASTA's position on the licensing question, as well as on the travel agency business in general.

I must state, at the outset, that ASTA is flatly opposed to the imposition of across-the-board state licensing on travel agents. We are opposed because (1) we do not believe that there is any need for such drastic action, and (2) we are firmly convinced that licensing of legitimate travel agents would not prevent a recurrence of the unfortunate charter strandings that took place last summer—the strandings which are the genesis of this morning's inquiry. This opposition to licensing, of course, does not mean that ASTA does not share this committee's deep concern about the strandings. Indeed, the entire travel agency industry has received much unfavorable publicity because of them, even though they resulted from the operations of a single travel promoter. There is no need to repeat the details of the scandal. It is

enough to state that the promoter victimized hundreds of California citizens by purporting to have authority to sell charters on a carrier, which later repudiated him and refused to provide the transportation.

ASTA recognizes that situations such as occurred here last summer should not be permitted to recur. For this reason, ASTA has assisted in drafting federal legislation which would make it unlawful for any person other than an airline or its employees to sell air transportation or to hold himself out as one who sells, provides, furnishes or contracts for such transportation, "except to the extent that such person is specifically authorized *in writing* by a carrier or aircraft operator to do so." (Emphasis supplied.) This bill, S. 2321, was introduced by Senator Warren G. Magnuson of the State of Washington, Chairman of the Senate Committee on Commerce, on November 20, 1963. We understand that the bill has an excellent chance of passage. Senator Magnuson made a strong statement in support of it and it is supported by the Air Traffic Conference of America, as well as appropriate federal authorities. We have attached copies of S. 2321 and Senator Magnuson's statement as an appendix to this statement.

When he introduced the bill, Senator Magnuson made it absolutely clear that its purpose was to prevent a recurrence of the unfortunate incidents that transpired last summer. Referring to the California strandings, he specifically states:

"Such incidents can be attributed almost invariably to unscrupulous promoters who claim that they have authority to sell air transportation when in fact they do not. They claim that they can secure transportation on airline X for a certain price on a certain day. Yet the airline has no knowledge of the commitment and gave the promoter no authority to contractually obligate it. Consequently the transportation is not provided. A tourist looking forward eagerly to his journey finds himself victimized and stranded."

Senator Magnuson concludes that:

"The bill through the imposition of civil penalties will, in my view, do much to minimize, if not eliminate, the fraudulent sale of air transportation and will afford the public the necessary protection against strandings and similar incidents alluded to previously."

Coincidentally, it should be noted that there is now a California State law in existence that is somewhat similar to the Magnuson bill.¹

¹ It is provided in the California Aircraft Transportation Brokers Act (Added Stats. 1953, c. 1448, p. 3046 et seq.) that any travel agent handling air transportation, or holding himself out to be an agent or broker for any air passenger transportation, is required to make a filing with the Secretary of State of California. He must either (a) deposit a surety bond in the amount of \$5,000 with the Secretary of State, or—and here is where the similarity with S. 2321 exists—(b) file with the Secretary of State a sworn statement that each of the airlines which he represents, over which he sells transportation, has authorized him to act in its behalf and has agreed to furnish transportation according to its published tariffs or, on demand of the passenger, refund, according to its tariffs, any unused tickets sold by the broker. The travel agent making this filing must attach documentary evidence of his appointment to act for each carrier. The act became effective September 9, 1953, and filings were due at that time. Failure to file is a misdemeanor to be punished by a fine on not more than \$500 or jail for six months.

It should be noted that proposal of legislation is not the only action that ASTA has taken to prevent the happening of incidents like the California charter strandings. On July 12, 1963, ASTA filed a complaint with the Civil Aeronautics Board asking it to rule that its present rules with respect to pro rata charters and group fares are in violation of the Federal Aviation Act of 1958. As specified in the complaint, pro rata charters and group fares are offered at such a huge discount from regular fares, a discount unwarranted by service distinctions, cost, or other factors, that passengers who travel singly and not in groups, are unjustly discriminated against. Also, restricting such huge discounts to an arbitrarily defined class of the public known as "affinity" groups, discriminates against nonaffinity groups as well as single passengers.

Not only are the affinity rules discriminatory, but they present a serious enforcement problem. The rules are disregarded because the economic inducement is so great, because the particular rules are inherently difficult to enforce, and because the traveling public sees no particular reason (certainly no ethical reason) why it should adhere to the rules. We have received so many documented or otherwise credible reports of irregularities that we believe it probable that violations are the rule, not the exception. It should be noted that ASTA, in its effort to focus attention upon illegal charters, informed the Civil Aeronautics Board about the particular flight which led to the stranding of 100 persons at Idlewild in July, several weeks before it actually left California. However, due apparently to the limitations of the enforcement machinery and jurisdiction of the CAB, action was not taken to prevent what clearly appeared to be an illegal charter.

What is more significant, for the purposes of this inquiry, is that the present rules encourage the operations of unscrupulous travel promoters. This is so because they make it almost impossible for legitimate travel agents to participate in the sale of charters. Thus, a travel agent cannot legally solicit the public to gather a charter or group fare group. He cannot even solicit among the members of a bona fide affinity organization in order to try to gather a sufficient group. He cannot solicit the members of an already-gathered group for special land tours. He loses his commission if he or any of his employees happens to be a member of the sponsoring organization. The amount of assistance he can give in the administration of the charter or group fare trip is severely limited. This situation has attracted a number of travel promoters who are not afraid to operate in violation of present regulations. These promoters are actually in the business of marketing illegal charters.

ASTA, in its filing with the CAB, has requested the CAB to abolish the present affinity test system which has proved so unworkable and institute a new four-point program to make available safe, efficient, and economical air transportation to all members of the traveling public.

Although on September 25, 1963, the Civil Aeronautics Board dismissed ASTA's complaint, ASTA filed a petition for reconsideration which is now pending before the board. If this petition is denied, ASTA plans to appeal the board's decision to the courts. We are

willing to pursue this matter so far because, out of enlightened self-interest, we realize that protection of the public from such incidents as occurred last summer is the only way to continue public confidence in the travel agent—confidence which is essential to the success of the travel agency industry. We firmly believe that elimination of the present rules, which provide inducement for marginal operators, would be an effective way to prevent future strandings.

The American Society of Travel Agents, then, has proposed specific remedies for the specific problem that exists, i.e., the charter mess which has led to the strandings of California citizens. Attorney General Mosk, in his letter to Governor Brown of Tuesday, September 3, 1963, has proposed far broader measures to deal with this specific problem. It appears from the Attorney General's letter to Governor Brown that he wants a bill which would require all travel agents operating in the State of California to be bonded and which, in order to "develop reasonable and workable professional standards for travel agents,"² would require agents to take some sort of examination and be approved by some sort of Board before they could secure a license.

The American Society of Travel Agents is firmly opposed to this type of legislation. We are opposed, first of all, because we sincerely doubt that the imposition of state licensing—with all the concomitant burdens that would be placed upon the legitimate travel agent—would be at all effective in curtailing the operations of the unscrupulous few travel promoters who are operating unethically. I should like to add that Alan S. Boyd, Chairman of the Civil Aeronautics Board, in addressing the ASTA 33rd World Travel Congress, in Mexico City on October 21, 1963, voiced similar sentiments in making a statement opposing state licensing of travel agents.

ASTA would strongly emphasize that the charter problem is one which transcends state boundaries and that the travel agency industry is merely one element involved in this transportation industry. Therefore, any effort to use licensing as a means of resolving this problem must take into account that the basic responsibility for the conduct of charter transportation lies with interstate air carriers subject to federal regulation. Even if we assume that state licensing would prevent unscrupulous travel promoters from actually conducting a business within the borders of the state—and this assumption presupposes an enforcement program of gigantic proportions—California state licensing could not effectively prevent promoters from operating outside of the state, in Nevada or Washington, for example—and conducting their shady operations by mail.

But the fact that state licensing would be ineffective to meet the problem that exists is not the only reason we oppose it. For not only would state licensing fail to cure existing problems, it would actually create new problems.

It can hardly be disputed that the licensing of an occupation is not something that should be lightly done. Whatever the motive for the imposition of licensing—and here we recognize that Attorney General Mosk's motives are clearly to protect the traveling public—the imposition of licensing has the inevitable effect of restricting free-

² Letter to Governor Brown, dated Sept. 3, 1963, p. 6.

dom of economic mobility and limiting competition. As stated by Professor Walter Gellhorn of Columbia University Law School, who has long opposed the expansion of occupational licensing:

"In this land of the free, over 200 occupations are subject to federal, state or municipal licensing registration or certification requirements. The American used to be regarded as captain of his fate, master of his destiny. Perhaps he has now been demoted to the position of first mate or even boatswain. He can no longer confidently set his own course to attain the ambitions of his heart. Instead, he must listen to the commands of others who tell him the direction in which he may sail. . .

"In the past this nation has derived great strength from fostering an economy capable of expansion; in truth, our economy has been forced to expand in order to remain healthy. Semimonopolistic licensing practices march in the opposite direction."³

It cannot be too strongly stated that Professor Gellhorn's arguments apply with added force in the case of the travel agency industry. This is so because the travel agency industry is already highly regulated through both direct and indirect means.

I. Regulation of Travel Agents by Air Carriers

A considerable amount of indirect regulation by the CAB and direct regulation by the various domestic air carriers is accomplished because of the provisions of Section 412 of the Federal Aviation Act of 1958. Under these provisions, carriers are allowed to enter into agreements which become exempt from the antitrust laws provided they file the agreements with the CAB and the agreements meet CAB approval. Accordingly, the carriers have promulgated detailed sets of rules which regulate travel agents. Thus, for example, in order to become an agent for a regular domestic carrier, which is a member of the Air Traffic Conference of America (ATC), an agent must satisfy, among others, each of the following requirements imposed under the Conference's Resolution No. 80.10:

1. Experience Requirements—The owner or one or more of the officers or managerial employees must have had a specified amount of experience in the sale of air transportation or be able to demonstrate promotional willingness, ability and activity in lieu of the experience requirements.

2. Ethical Business Practices—An applicant for approval must demonstrate that it is ethical in its business operations and, specifically, must furnish references from three former employers, business associates, customers, or business or professional men in the community attesting to the applicant's reputation for ethical business practices.

3. Financial Stability.—An applicant must furnish a financial statement and list all persons having a financial interest in it.

4. Bond.—An applicant for approval must furnish a bond in a minimum amount of \$10,000.

³ Occupational Licensing—A Nationwide Dilemma, 109 *Ja* 39, 40-41.

5. Restrictions as to Location—No agency can be located where its place of business is an airline terminal or hotel, or in a private residence (with certain exceptions), and an agent cannot operate at another location without obtaining approval of the traffic conference.

6. Change of Ownership—The ownership of a travel agency business cannot be transferred without the transferee obtaining approval of the traffic conference in his own right.

Similar requirements are made by the International Air Transport Association (IATA) under its Sales Agency Resolution No. 810(a), which has been approved by the Civil Aeronautics Board. These are as follows:

1. Financial Stability—No applicant will be approved unless his financial and credit standing is satisfactory. The applicant must submit a financial statement which is checked against a credit report obtained by the traffic conference.

2. Ethical Standards—The applicant's reputation for adherence to ethical practices must be satisfactory.

3. Change of Ownership—Approval by the traffic conference is required when there is a change in the legal or beneficial ownership of the applicant or in its corporate status.

4. Interest of Customer—An applicant will not be approved if any customer of the applicant has any substantial interest in the ownership, management or profits of the applicant.

5. Restriction as to Name—No applicant will be approved if the applicant uses a name identical or similar to that of an IATA member.

6. Location—Each location in which the applicant proposes to do business must be approved by the traffic conference. The location for which approval is sought must be an office, or department of an office, engaged solely in the promotion and sale of passenger transportation and services.

7. Professional Ability—An applicant will not be approved unless the Subcommittee determines that for any reason the applicant lacks willingness, ability or capacity to generate, promote and sell air transportation, or the applicant's plans for future generation, promotion or sale of such air transportation are inadequate.

8. Bond—There is now a proposal before the CAB to institute a bond similar to the ATC bond mentioned above.

9. Experience Requirement—There is now a proposal before the CAB to institute experience requirements similar to those imposed by the ATC which have been mentioned above.

It should be noted that under both the ATC and IATA resolutions, violation of any of the resolutions by agents can lead to removal of the agent from the approved agency list and the termination of the agent's eligibility to sell transportation for the member carriers. Both carrier conferences have highly active investigative branches to ensure compliance with their regulations by the agents.

II. Regulation of Travel Agents by the Shipping Conferences

Under Section 15 of the Shipping Act, 46 USC 814, shipping conferences are similarly allowed to institute regulations, by agreement among themselves, which govern the eligibility of travel agents to sell transportation of the member lines. Under Transatlantic Passenger Steamship Conference (TAPC) Agreement No. 120, approved by the Federal Maritime Commission, agents are subject to the following requirements:

1. Bond—The agent must maintain a surety bond for the protection of the member lines. The amount of the bond is based on the amount of expected sales of the agent.

2. Change of Ownership—No transfer sale or change of address or name of an agency can be accomplished without prior consent of the steamship companies which are the agent's principals.

3. Ethical Standards—Maintenance of unethical or unsatisfactory business standards in the conduct of the agency business is grounds for cancellation of eligibility for appointment as agent.

4. Advertising—All advertising by agents must avoid even the appearance of being misleading and must be limited to statements of fact.

5. Inspections—The agent's books must always be open for inspection by the conference.

III. Regulation of Travel Agents Who Sell Motor Transportation

No travel agent can sell motor transportation to the public without securing a license from the Interstate Commerce Commission as a Motor Transportation Broker, 49 USC 311, et seq. As motor transportation brokers, travel agents must satisfy the following requirements:

1. Bond—In order to secure a license, an applicant must furnish a bond to the commission in a minimum amount of \$5,000.

2. License Standards—In order to secure a license, an applicant must be able to show that its issuance "will be consistent with the public interest and the national transportation policy declared in this act."

3. Transfer—No license issued to a motor transportation broker can be transferred unless the commission is convinced that the "transferee is fit, willing and able to perform the duties, and that the transfer will not be contrary to the public interest." A similar requirement is made with respect to the change in the control of a corporation which is operating an agency.

4. Inspection—All motor transportation brokers must be ready to submit all of their records to inspection by the Interstate Commerce Commission.

5. Use of Noncertified Carriers—Motor transportation brokers are forbidden to use motor vehicle carriers who do not hold effective certificates or permits to perform the transportation.

6. Penalties—Violations of any of the provisions of the Interstate Commerce Act can, of course, lead to criminal and civil penalties, and motor transportation brokers are required to appoint an agent for the service of process.

It is obvious from the foregoing that the travel agency industry—while not subject to state or federal licensing per se—is one of our country's most highly regulated industries. Despite this, and despite his recognition that the "vast majority of people involved in the travel industry are reputable businessmen working hard to serve the public,"⁴ Attorney General Mosk has recommended across-the-board licensing for all travel agents. Instead of proposing a specific solution for the specific problem, that is, the elimination of the relatively few unscrupulous travel promoters who have used the charter mess to bilk the public, the Attorney General has come out in favor of imposing increased restrictions on an industry that is beset at every side with restrictions.

In order to prove the need for across-the-board regulation, Attorney General Mosk has pointed to the strandings that have occurred and has mentioned other complaints about travel agents that he has received. But the mere fact that unscrupulous travel promoters exist does not justify the imposition of licensing. It is only if licensing is, in fact, generally needed that it should even be considered. In our opinion, no such general need has been demonstrated.

In sum, ASTA cannot support general across-the-board state licensing and bonding because (1), as noted above, it would increase the already almost intolerable burdens of regulation and bonding which now are imposed on the travel agency industry, and (2) imposition of state licensing would not be an effective way of preventing the recurrence of the strandings which occurred last summer.

We are convinced that the existing federal policy on pro rata charters and affinity group tariffs is the basic cause of the countless hardships imposed upon members of the traveling public who have been stranded or otherwise inconvenienced. Therefore, the most effective solution to this problem, which is of such great concern to the travel agency industry, is the elimination of the present system of pro rata charters and affinity group fares.

Certainly the travel agency industry should not be made the whipping boy for this problem by the imposition of state licensing merely out of a feeling that something—anything—must be done.

The American Society of Travel Agents, Inc., is strongly in favor of curing whatever ills exist in the travel agency industry. We stand ready to cooperate in any way we can in supporting any specific proposals which would deal with the specific evils that do exist.

⁴ Letter to Governor Brown, dated Sept. 3, 1963, p. 3.

88TH CONGRESS—1ST SESSION

S. 2321

IN THE SENATE OF THE UNITED STATES

NOVEMBER 20 (legislative day, OCTOBER 22), 1963

MR. MAGNUSON (by request) introduced the following bill; which was read twice and referred to the Committee on Commerce

A BILL

To amend the Federal Aviation Act of 1958, as amended, to prohibit the fraudulent sale of transportation in interstate, overseas, or foreign air commerce, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That title XI of the Federal Aviation Act of 1958 (49 U.S.C. 1501) is amended by adding at the end thereof the following new section:

“FRAUDULENT SALE OF TRANSPORTATION IN INTERSTATE,
OVERSEAS, OR FOREIGN AIR COMMERCE

“SEC. 1112. No person, other than a carrier or aircraft operator engaged in providing transportation by aircraft in interstate, overseas, or foreign air commerce, or a bona fide employee of such carrier or aircraft operator, shall sell or offer for sale any such transportation, or hold himself out by solicitation, advertisement, or otherwise as one who sells, provides, furnishes, or contracts for such transportation, except to the extent that such person is specifically authorized in writing by a carrier or aircraft operator to do so.”

SEC. 2. Section 901(a) of the Federal Aviation Act of 1958 is amended—

(1) by striking out the words “any provision of title III, IV, V, VI, VII, or XII” where they appear in paragraph (1), and inserting in lieu thereof the words “any provision of title III, IV, V, VI, VII, XII, or section 1112 of title XI.”

(2) by striking out the words “or by the Board in the case of violations of title IV or VII” where they appear in paragraph (2), and inserting in lieu thereof the words “or by the Board in the case of violations of title IV or VII or section 1112 of title XI.”

SEC. 3. That portion of the table of contents contained in the first section of the Federal Aviation Act of 1958 which appears under the heading “TITLE XI—MISCELLANEOUS” is amended by adding at the end thereof the following:

“Sec. 1112. Fraudulent sale of transportation in interstate, overseas, or foreign air commerce.”

PROHIBITION OF FRAUDULENT SALE OF
AIR TRANSPORTATION

Mr. MAGNUSON. Mr. President, by request, I introduce for appropriate reference, a bill to amend the Federal Aviation Act of 1958, the essential objective of which is to prohibit the fraudulent sale of air transportation. Specifically, the proposed law would prohibit any person other than an airline or its employees to sell or offer for sale air transportation or to hold himself out by solicitation, advertisement, or otherwise as one who sells, provides, furnishes, or contracts for such transportation, except to the extent that such person is specifically authorized in writing by an airline.

During the past year, as in previous years, national attention has been focused on incidents in which unsuspecting air travelers have been stranded. They had contracted for specific air transportation, often on charter flights, or believed they had done so, only to find on arrival at the airport that either no plane was available or that the trip had been overwise cancelled. It is not difficult to imagine the disappointment and frustration of one who finds that the trip, to Europe perhaps, or elsewhere, which he had planned and saved for so long, had been cancelled only hours before departure. Such incidents can be attributed almost invariably to unscrupulous promoters who claim that they have authority to sell air transportation when in fact they do not. They claim that they can secure transportation on airline X for a certain price on a certain day. Yet the airline has no knowledge of the commitment and gave the promoter no authority to contractually obligate it. Consequently the transportation is not provided. A tourist looking forward eagerly to his journey finds himself victimized and stranded.

This, or course, is not a practice of recognized travel agents. In fact they have been the greatest champions for legislation to eliminate it. The recognized travel agents are reputable and conscientious businessmen and women who are dedicated to serving the needs of the public. They are responsible citizens and a credit to their community. It is indeed unfortunate that a relatively few so-called promoters, engaged in the fraudulent sale of air transportation, have blemished their fine reputation.

This bill, through the imposition of civil penalties will, in my view, do much to minimize, if not eliminate, the fraudulent sale of air transportation and will afford the public the necessary protection against strandings and similar incidents alluded to previously.

The PRESIDING OFFICER (Mr. BAYH in the chair). The bill will be received and appropriately referred.

The bill (S. 2321) to amend the Federal Aviation Act of 1958, as amended, to prohibit the fraudulent sale of transportation in interstate, overseas, or foreign air commerce, and for other purposes, introduced by Mr. MAGNUSON, by request, was received, read twice by its title, and referred to the Committee on Commerce.

Statement of Representative Emanuel Celler Before the
New York-New Jersey Chapter, American Society of Travel Agents,
Hotel Astor, New York City, January 17, 1963, 7:30 p.m.

Travel Agents and the Public Interest

I look back over many years of travel here and abroad, and I have always found it to be indeed a broadening experience. I am therefore delighted tonight to be with you, since my avocation is your vocation.

I heartily concur with the English essayist, William Hazlitt, who observed that "one of the pleasantest things in the world is going a journey."¹

Hazlitt contented himself with a simple and prosaic formula for travel. "Give me," he wrote, "the clear blue sky over my head, the green turf beneath my feet, a winding road before me, and three hours to march to dinner . . ."²

The modern tourist is faced by a great many more complications, whether to travel first class, second class, tourist class, or on the champagne flight, and how to achieve the humanly impossible task of seeing every artifact and monument in Europe on a 10-day vacation. Your society represents a profession devoted to insuring that despite all the complications, travel shall continue to be "one of the pleasantest things in the world."

One of the complications of modern travel is the art of making and meeting trains. In this regard I am reminded of an anecdote about Mrs. Theodore Roosevelt, the younger, who after having been absent from home for several days, wired her husband to meet her at a certain station. Hurrying to be on time, Colonel Ted arrived at the station just in time to see the train whiz through at a great speed. Somewhat bewildered, he stared at the speeding cars and was more astonished to see his wife standing on the very back platform frantically waving an important looking envelope in her hand. Spying him, she threw it at him, and, the train rounding a corner, she disappeared from sight.

Scrambling about in the bushes into which the envelope had fallen, the colonel finally found it and quickly opened it. He was amused and somewhat relieved to read:

"Dear Ted: This train doesn't stop here."

In a similar vein is the story told about Sir Winston Churchill. One time Sir Winston almost missed a train and Lady Churchill was alarmed. Sir Edward Marsh, Churchill's private secretary, tried to calm her by saying, "Winston is such a sportsman, he always gives the train a chance to get away." I am sure that many of you have had clients who likewise spiced their taste for travel with a zest for sport.

Man has always felt the urge to travel. Homer's *Odyssey* recounts the travels and adventures of Ulysses on his return from the Trojan War. If I remember my Homer, it took Ulysses 10 years to make

¹ Hazlitt, "On Going a Journey," *Table-Talk* 249 (1871 ed.).

² *Id.* at 250.

that trip. I understand that today the Mediterranean and the Aegean World can be done in somewhat less time—in perhaps a few days—even with a trip to Israel thrown in. Perhaps all has not changed for the better, however. I wonder whether you travel agents with all your ingenuity are able to offer in the package tour an interview with a one-eyed Cyclops or a rendezvous with Circe.

Not only has the world shrunk but world travel has ceased to be a luxury confined to the very rich. Today the average citizen with the average bank account can afford a "grand tour." Indeed, I understand that trips to Europe are now being sold out of mail order catalogs along with other less exotic commodities, a practice which I am told is causing concern to some of you.

Along with this broadening of the base of the traveling public, we have witnessed in the past 10 years a veritable "travel boom." Passenger departure by sea and air from the United States rose from about 1.2 million in 1952 to 3.3 million in 1962.³ All this, of course, has given a tremendous boost to your business. In 1958, the House Antitrust Subcommittee, of which I am chairman, took note of this expansion of the travel agency business. The subcommittee attributed this remarkable development to such factors as a favorable rate of population growth, a high level of national income, the long-term trend toward a shorter work week, mass travel opportunities for the middle income class group and technological improvement in the development of high-speed aircraft.⁴ At that time the subcommittee predicted:

"There is every reason to believe that the travel market will continue its recent substantial rate of growth and that the role of the travel agency in this process will be substantial."⁵

Time has shown both predictions to have been amply justified.

As with so many other activities in our lives, travel has come to be clothed with a national interest. There is an oft-repeated cliché to the effect that every American citizen who travels abroad is his country's ambassador. Indeed, our image abroad is often formed more by the impression which an individual American makes on his trip to a South American village than by the official action which our government takes in carrying out international policy. Witness the success of the Peace Corps in Africa, Asia and South America. More recently, a new facet to this picture has developed. Travel by foreign nationals to our shores has become highly important to this nation in view of our balance of payments problem. As you know, Congress passed the International Travel Act of 1961 and the United States Travel Service was established under the Department of Commerce. I understand that this office is doing a grand job in encouraging tours here and in closing "travel gap."⁶

All these developments in the field of travel I have followed with great interest for I believe that travel is not only one of the pleasantest things in the world but also one of the most valuable. As you know, I have served for some time as a member of a body down in Washington

³ Lindsey, *The Service & The Travel Boom*, Immigration and Naturalization Reporter, October 1962.

⁴ Antitrust Subcommittee, Committee on the Judiciary, *The Airlines Industry*, H. Rept. No. 1328, 85th Congress, 2d Session, 1958, at page 191.

⁵ *Ibid.*

⁶ Congressional Record, July 16, 1962, page 686.

which is generally very enthusiastic about travel (particularly around adjournment time).

I can assure you that there is no substitute for the first-hand knowledge that can be secured from these trips abroad. So firmly do I believe this that I have supported the right of Americans to travel abroad when that right has been threatened by executive action, and have introduced in the past legislation to guarantee that fundamental right.

In all these developments in the field of travel, you, the professional travel agent, have played a major role. It has been your function to help mightily in the business of promoting travel in this country and abroad, in selling people on the idea that travel is within their means, and that their lives can be enriched by that travel and, finally, in advising people as to the millions of details which they need to know in making an intelligent travel choice.

With the increasing need for your service has come greater responsibilities and new and difficult problems. I have noted with keen interest that there is presently raging within your ranks something of a great debate. That debate is focused on the question: Should the travel agent be required to obtain a government license before being permitted to sell tickets or travel services to the public? A related or subsidiary question is whether your profession should be subject to some kind of organized regulation.

I am not prepared to give a definitive answer to these questions here. A definitive answer would require more information and more expertise concerning your business than I presently possess. At best as to licensing, I have a sort of benevolent neutrality. As a member of the traveling public, I have the feeling that federal licensing, coupled with some form of self regulation, might well serve to increase public confidence in the services which you provide. But I think, at this point, the decision as to whether and how you shall be regulated is up to you. My sole contribution to your debate is to suggest some precedents in the field of government regulation of business and industry self-regulation that may be helpful to you.

But, first, let me remind you that I have always had a personal interest in the competitive and regulatory problems of your profession.

As you know, during the 87th Congress, our antitrust subcommittee made a comprehensive study of the airline industry and gave considerable attention to the relationship between the airlines and their travel agents. The subcommittee found that the airline industry, through its Air Transport Association, prescribes conditions which travel agents must meet in order to qualify for commissions on sales of airline passage. To be eligible to act as a travel agent for a certificated carrier, one must be accredited by the ATA's Air Traffic Conference. Thereafter, the agent is subject to a regulatory code prescribed and enforced by the conference. At the time of the antitrust subcommittee hearings, the conference's procedure permitted it to cancel an agent's accreditation by decisions made in closed secret session. These procedures provided a travel agent no right of appeal from such a sanction; nor did the agent have any right to be advised of the reasons for his cancellation.⁷

⁷ Antitrust Subcommittee Report on the Airlines Industry, *supra*, note 4, pp. 189-216.

The subcommittee also found that travel agents selling tickets for flights on international routes were subject to a similar set of controls and procedures administered by the IATA, the International Air Transport Association.

Your society (ASTA) had complained of this unilateral exercise by the Air Traffic Conference of arbitrary power in agency matters, free of any effective check or supervision by the Civil Aeronautics Board and without proper consideration of the travel agency viewpoint.⁸

The subcommittee concluded that in permitting these procedures and this degree of control, the Civil Aeronautics Board had conferred on the certificated carriers far-reaching regulatory powers over the travel agency industry, which the board itself did not have statutory authority to regulate in the first instance. The subcommittee rejected the claim that the then existing agency procedures of the ATC and IATA equitably served the public interest, the interest of the ticket agents and the interest of the certificated carriers.

Sometime after the issuance of the subcommittee's report, the CAB took action to erect safeguards around the ATC's exercise of its authority over travel agents. At the time the board took this action, I noted the significance of the board's requirement that a record be kept of the ATC's travel agent proceedings and that the travel agent be notified and afforded *de novo* arbitration proceedings as well as an opportunity to rebut charges against him.⁹ Thus, I believe the work of the antitrust subcommittee in this field has led to an improvement of certain conditions which were operating to the detriment of your profession.

I should also note in passing that the antitrust subcommittee's recent report on the shipping industry also dealt with the relationship between travel agents and the passenger steamship conferences engaged in the foreign trade of the United States.¹⁰ I understand that there is presently pending before the Federal Maritime Commission a proceeding initiated by your society involving the propriety of certain activities of such conferences insofar as they relate to travel agents.¹¹

Let me return to the central question which is now apparently before your society, namely, whether travel agents should be licensed. At the time of its 1958 report, the antitrust subcommittee suggested that if the CAB believed that licensing of travel agents based upon a review of their qualifications was necessary to encourage and develop our air transportation system, this function should be exercised by an agency of the government. Once licensed by the government, travel agents would then be eligible for appointment by any ATC or IATA carrier desiring their services. It was the subcommittee's understanding that such licensing would satisfy the ATC.¹² This principle remains sound. Let me restate it here. If your profession is to be subject to some form of regulation, the regulating should be done by the government or by yourselves, not by some other industry. I should think your society might profitably consider the possibility of such

⁸ *Id.* at 199.

⁹ Press release of Representative Emanuel Celler, June 19, 1959.

¹⁰ H. Rept. No. 1419, 87th Congress, 2d Session, 1962.

¹¹ FMC Docket No. 873.

¹² Report *supra* note 4 at p. 215.

licensing in working out your relationship with both the airline and the steamship industries.

However, as I have said, the decision as to regulation and licensing should be worked out first by your society and the members of your profession. I think it is an indication of the healthy and constructive outlook of your industry that you are now going through this period of self-examination. In the case of many other industries in this country, it has taken catastrophe or scandal to spur the establishment of a system of complex government regulations in order to restore public confidence. I do not suggest that there are any such derelictions in your profession today; however, you know as well as I do that a few bad apples can spoil the barrel.

Much can be learned from existing systems of self-regulation in other businesses.

The first of the systems of self-regulation which I should like to talk about tonight is represented by the National Association of Securities Dealers or NASD as it is called. As you may know, the Maloney Act amended the Securities Exchange Act of 1934 to provide for a system of self-regulation for the over-the-counter securities industry. Although the Securities Exchange Act then provided a modicum of government regulation over such brokers and dealers, Congress thought this regulatory scheme needed to be strengthened and supplemented in order "to protect the investor and the honest dealer alike from dishonest and unfair practices by the submarginal element in the industry" and "to cope with methods of doing business which, while technically outside the area of definite illegality, are nevertheless unfair both to customer and to decent competitor . . ." ¹³

To accomplish this end, Congress considered two alternatives. It might have greatly increased the scope of government regulation over the industry by multiplying the functions of the Securities and Exchange Commission. The second alternative was the adoption of a program of "cooperative regulation" in which the primary task of regulation was to be performed largely by the industry itself through its organization of investment bankers, dealers and brokers, with the government exercising appropriate supervision in the public interest. It was this latter alternative which Congress thought preferable and which it ultimately adopted in the Maloney Act. The NASD thus became the industry's self-regulatory body.

I stress this history because I suspect that you are considering a similar set of alternatives—whether to support direct licensing and regulation by some agency of government or whether to establish a system of self-regulation presumably under the aegis of a government agency. I suggest that the possibility of organized industry self-regulation may be preferable to direct government control, although I recognize that your problems are very different from those of the securities industry.

Basically, the securities industry is open to all comers and the bad apples are weeded out through this complex process of cooperative regulation which I have been discussing. I understand in your own case you are seeking some form of control which would bar unsuitable persons from engaging in your business. Nevertheless, whatever program

¹³ S. Rept. No. 1455, 75th Congress, 3d Session, 1938.

of entrance requirements you settle on, I should think that some system of regulation to insure adherence to ethical standards would be valuable.

Government would, of course, have an essential role to play in a program of self-regulation. In the case of the securities industry, the Securities and Exchange Commission may review disciplinary action taken by the NASD against its members. The SEC may set aside the board's action if unwarranted or it may cancel or reduce the penalty if excessive or oppressive. Thus, the SEC plays somewhat the role of an appellate court, protecting the broker dealer against too harsh treatment at the hands of his own competitors. This points up one of the greatest difficulties with a system of self-regulation. A profession or industry can be very hard on its own. Earlier in the history of the NASD, the SEC had to warn the association to pay greater attention to due process and to bear in mind that a system in which competitors regulate each other can be easily cast into disrepute.¹⁴

In balance, however, the program of self-regulation has been effective. Professor Louis Loss in his authoritative treatise on our securities laws concludes that the NASD has helped to improve the ethical standards of the over-the-counter securities industry; that "that association is a force for the public good in the over-the-counter industry (and that there is room in such a field for a degree of self-regulation properly supervised by a disinterested government agency)." ¹⁵

I should like now to turn briefly to a more recent example of industry self-policing, one that is now in an experimental stage. This is the so-called neutral body system which is being tried out by a number of conferences of ocean freight carriers engaged in the foreign commerce of the United States.

As I have mentioned, the antitrust subcommittee conducted a three-year investigation into monopoly problems in the ocean freight industry. Among numerous other distressing discoveries, we found that a great many steamship lines engaged in "malpractices" — the name which the trade attaches to violations of conference agreements and shipping laws through rebating, false billing and the like. In addition to tightening up the federal regulatory program, which we recommended, it was clear that something else was needed to eliminate this spate of "malpractices." Spurred in part by our discoveries and in part by a recognition that "malpractice" was bad medicine for the industry, the shipping conferences themselves decided to establish better machinery for self-regulation. They hit upon a device somewhat hopefully named, the "neutral body."

A "neutral body" is simply a firm — generally but not necessarily a firm of accountants — which is employed by a steamship conference to investigate and adjudicate complaints of "malpractice" against members of the conference. If the neutral body finds, for example, that a member line has given a shipper an illegal rebate, the neutral body may impose a substantial fine upon the offending company. If the company fails to pay up, the conference may expel it.

The antitrust subcommittee expressed considerable interest in these neutral body systems and recommended that some such vehicles of self-

¹⁴ *Sherman Gleason*, 15 SEC 639.

¹⁵ Loss, *Securities Regulations* 783-4 (1951).

policing be generally established in all conferences. Presently, only two steamship conferences have really operating neutral bodies, and it is therefore too early to tell how effective the program will be.

One other "precedent" may be instructive. As you may know, the last Congress, in Public Law 87-254 attempted to deal with the ticklish problem of the ocean freight forwarder. The new law provides for the licensing of qualified independent freight forwarders by the Federal Maritime Commission. Again it is too early to tell what the effect of this remedial legislation is going to be. However, the Chairman of the Federal Maritime Commission, in a recent progress report to the antitrust subcommittee, gave some hint as to what has been happening under this federal licensing provision. Chairman Stakem reported that at the time the law was passed there were about 1,700 freight forwarders.¹⁶ Although the deadline for applications has expired under the new law, only about 900 freight forwarders have filed for registration. Thus, according to Mr. Stakem, the law has had the effect of eliminating some 800 forwarders who could not comply with new financial and other requirements of the new law. This can be a mixed blessing. It may eliminate a lot of unqualified individuals from a business; at the same time, it may eliminate both competition and jobs. It seems to me that a licensing provision would have to be carefully drawn so that it does not throw the baby out with the bath water.

In summary, I should think it would be helpful for members of your society to watch carefully the developments in this very interesting area of industry self-regulation under government supervision upon which I have touched tonight. There are, of course, other helpful examples of self-policing which I have not discussed — such as the fund which the bar associations provide to indemnify clients of defaulting attorneys — but the systems I have mentioned should give you some indication of the possibilities in this field. I believe that self-regulation or "cooperative regulation" is going to become an increasingly important device for the preservation of the public interest. It may be that your society will find it profitable to itself to experiment with some such system of cooperative regulation and to do so in conjunction with some system of federal licensing through the CAB or Commerce Department. I think that such a program will surely help to maintain public confidence in your profession.

However, if you do adopt such a program, I hope that you will avoid some of the pitfalls it presents — notably the tendency of self-regulating bodies to be particularly harsh on the smaller competitors and the danger that a rigid licensing system will eliminate persons or firms able to offer a useful service to the public.

Let me close by again referring to that English essayist whom I mentioned at the outset. In that same essay from which I quoted earlier he expressed a sentiment which I think we all share:

"I should . . . like well enough to spend the whole of my life in travelling abroad, if I could anywhere borrow another life to spend afterwards at home!"¹⁷

¹⁶ Hearing before the House Antitrust Subcommittee, *Progress Report from the Federal Maritime Commission*, 87th Congress, 2d Session (1962) at p. 24.

¹⁷ Hazlitt, *Table Talk* 261 (1871 ed.).

CIVIL AERONAUTICS BOARD

Washington, D.C. 20428

MR. ALAN SHORT, *Chairman*

Senate Factfinding Committee on Business and Commerce
California Legislature, State Capitol
Sacramento, California

Dear Mr. Short:

By letter of November 19, 1963, the board advised that, although unable to send a representative to testify at the hearings before your committee relating to complaints involving the activities of local travel agents, it would transmit a written statement for the committee's consideration. This letter constitutes the board's statement.

While the facts known to the board surrounding the unfortunate incidents of last summer which gave rise to your investigation are hereinafter set forth, a brief statement concerning the status of ticket agents and the board's regulations relating to charter flights will be helpful.

Provisions of Law Applicable to Ticket Agents

Ticket agents as such are not generally subject to the regulatory provisions of the Federal Aviation Act. Rather, the board's power to control their activities is primarily an indirect one resulting from its authority to control the activities of air carriers. Nonetheless, the board's powers over the carriers, and particularly those conferred by Section 412, are such that a considerable degree of regulatory supervision is provided by the board over the activities of those ticket agents actually utilized by the majority of air carriers, and the regular route operators have established, with the board's approval and under its supervision, what amounts to a system for licensing and regulating the ticket agents utilized by them.

Section 412 of the act empowers the board to approve or disapprove in the public interest certain types of agreements entered into between air carriers and between air carriers and other carriers. As a practical matter, the regular route carriers find it necessary to deal on a uniform basis with ticket agents, and to establish a central clearinghouse for the scrutiny and approval of agents. Accordingly, the domestic certificated route airlines many years ago through their trade organization, the Air Traffic Conference of America (ATC), adopted a resolution establishing uniform procedures governing the initial selection of independent agents to engage in the sale of passenger transportation, and the subsequent working arrangements between these agents and the carriers. This resolution constituted an agreement subject to Section 412, and was approved by the board. A similar resolution relating to the utilization of agents in foreign air transportation promulgated through the machinery of International Air Transport Association (IATA) also was approved.

In October, 1956, the board instituted an investigation into the standards and operating procedures relating to the utilization of agents in domestic transportation (*ATC Agency Resolution Investigation*, Docket 8300). The board's decision was issued therein in 1959 29

C.A.B. 258), and subsequently was affirmed by the courts (*McManus v. Civil Aeronautics Board*, 286 F. 2d 414 (C.A. 2, 1961), *cert. denied*, 366 U.S. 928 (1961)). The board in its investigation conducted extensive public hearings at which persons including ticket agents were given an opportunity to express their views concerning the desirability of the conference method of dealing with matters relating to ticket agents. The board concluded that continuation of the system was in the public interest, subject to the introduction of certain reforms designed to eliminate restraints upon the right to engage in the agency business which had no relationship to the qualifications of an agent. The board did approve those standards designed to assure that the carriers and the public are served by qualified agents. While it may be stated in this connection that the supplemental air carrier industry does not have an overall industry agency program and each carrier appoints its own agents, the board is not aware of any instance in recent years in which a supplemental carrier has not accepted responsibility for the actions of its agents.

As a result of the board's actions, there exists today a comprehensive set of airline rules which constitutes an effective screening process for any person seeking to be approved as a sales agent for ATC members, and a comprehensive set of rules governing the day-to-day conduct of those agents. Failure to observe these rules may result in a loss of agency status under procedures approved by the board. Comparable procedures also have been required by the board with respect to the agents utilized by the United States and foreign flag carrier members of IATA. Order E-16459, *Affirmed, McManus v. Civil Aeronautics Board*, 310, F. 2d 762 (C.A. 2, 1962). The board's orders relating to these actions have heretofore been transmitted to Mr. Neil A. Holding by letter of September 19, 1963, from the Chief of the Board's Routes and Agreements Division.

We also understand that procedures and rules similar in nature to those described above are presently applicable to ocean carriers regulated by the Federal Maritime Commission. Also, of course, many other surface carrier agents fall within the coverage of those provisions of the Interstate Commerce Act relating to brokers. Accordingly, there are only a few agents who serve the public directly who are not subject to a screening process.

In those instances in which the agent involved is not one approved and governed by either the ATC or IATA procedures and resolutions, the only provision of the Federal Aviation Act directly applicable to the activities of the agent is Section 411,¹ which proscribes those unfair or deceptive practices or unfair methods of competition which the board finds to have been committed. While the scope of this provision

¹ Section 411 provides:

"The board may, upon its own initiative or upon complaint by any air carrier, foreign air carrier, or ticket agent, if it considers that such action by it would be in the interest of the public, investigate and determine whether any air carrier, foreign air carrier, or ticket agent has been or is engaged in unfair or deceptive practices or unfair methods of competition in air transportation or the sale thereof. If the board shall find, after notice and hearing, that such air carrier, foreign air carrier, or ticket agent is engaged in such unfair or deceptive practices or unfair methods of competition, it shall order such air carrier, foreign air carrier, or ticket agent to cease and desist from such practices or methods of competition."

has never been fully delineated, we doubt its applicability to a broker's failure to carry out an undertaking to obtain transportation where he assembles a group for travel in advance of a commitment from a carrier to provide transportation and this fact is known to the group. While a false representation that there was a commitment for transportation well might constitute a false or deceptive practice, Section 411 does not lend itself to prompt action against this or any other improper activities of travel agents within its scope in the event of contest, since it merely enables the board to direct a cessation of activities found to be improper after full evidentiary proceedings. Similarly, any activity by, or legally attributable to, a carrier which might fall only within the scope of Section 411 likewise could be proscribed only after such procedures. In neither case could criminal sanctions be imposed for the conduct involved unless it should be continued after issuance of the board's cease and desist order. In that event, the offense or charge would be a violation of the board's order, and not of Section 411.

Regulations Applicable to Air Carriers

As previously stated, the board is empowered to issue regulations governing air carriers in providing or selling transportation. Violations of specific board regulations or orders stand on a different footing from Section 411 ones, and will subject the carrier to possible civil and criminal penalties (Sections 901 and 902 (49 U.S.C. 1471, 1472)), to the entry of a cease and desist order (Section 1002 (49 U.S.C. 1482)), or to a civil suit for injunction (Section 1007 (49 U.S.C. 1487)). The board has promulgated a number of regulations relating to the conduct of charter flights by air carriers, and copies of these regulations have heretofore been sent to the committee. The one principally involved in the incidents of last summer is Part 295 relating to transatlantic charter trips, and a copy is attached (Exhibit A) for the committee's additional convenience. That regulation contains various restrictions upon the groups of persons who may be afforded charter transportation, including restrictions relating to the use of agents.

These restrictions relating to the solicitation of groups and their eligibility for transportation must be imposed to avoid circumvention of the tariff rates applicable to individual transportation, since otherwise persons could be assembled by an agent from the general public merely for the purpose of obtaining individual transportation at a reduced rate. However, a failure to observe these limitations does not constitute a violation by the agent, but rather the transportation of groups assembled other than in conformity with the board's regulations constitutes a violation by the carrier. Also, again as Part 295 discloses, special authority is required from the board to conduct transatlantic charter flights. A representation by a carrier that it will provide transportation if authorized to do so by the board, or an agreement to transport contingent upon board approval, is neither a violation of any board regulation nor deemed to be an unfair practice. On the other hand, as in the case of an agent, a representation of present authority to transport where none exists probably would be within the reach of Section 411.

The Board's Information and Actions Relating to the Activities of World Travel Center

We now turn to the incidents which gave rise to the instant inquiry. In the early spring of 1963, information was brought to the attention of the board's Bureau of Enforcement indicating that World Travel Center (Jerry Davis) of Palo Alto was engaged in solicitation and promotional activities in relation to a group of charters being organized for the ostensible purpose of carrying college students to Europe which might in many ways render the transportation improper under the board's regulations. The board's staff also had information that Aerovias Sud Americana (ASA) was reportedly committed to carry these charters, and that representations were being made that ASA was the carrier notwithstanding that it had no authority to perform them. Davis was not an ATC or IATA approved agent, and hence not subject to the disciplines exercised by the traffic conferences. His activities were brought to ASA's attention in April by the board's enforcement bureau; ASA was cautioned concerning the possibility of violations resulting from these activities; was asked to investigate them; and to advise the board of its findings.

Moreover, there were received during this period several inquiries concerning the proposed flights, and the enforcement bureau advised in response thereto that ASA had no authority to provide the transportation, that it would need a special order from the board, and, up to May 22, 1963, that ASA had not applied for such an order. Further, during the entire period while these charters were being organized, the board's bureau of enforcement, in response to various inquiries, emphasized that any charter which failed to conform to Part 295 of the economic regulations would be considered illegal, and that any carrier subject to board regulation which attempted to perform would do so at its peril. Additionally, the bureau of enforcement on May 27, 1963, addressed a telegram to the president of one of the California colleges involved, cautioning that improper activities by World Travel Center already known to the board might preclude the flights from falling within the scope of the board's charter regulations and thus cause hardship to many students at the last moment who had relied upon the possibility of charter transportation. Also, on May 28, 1963, a three-page multilithed announcement was issued by the Better Business Bureau of Santa Clara Valley (Exhibit B) pointing out the possible illegality of the Davis activities. Expressions of concern relating to the activities of World Travel Center also were received from various private individuals, a member of Congress, and a college newspaper editor. In sum, the facts that these flights well might not be permitted and that the activities of the agent were improper appear to have been well publicized and generally known.

On May 29, 1963, the board by its Order E-19624 (Exhibit C) denied the application by Aerovias Sud Americana for authority to conduct the flights in question. What subsequently transpired with respect to these charter groups has been pieced together from indirect sources, and we may not have the whole story. It is understood that when ASA failed to obtain authority from the board, Davis apparently sought substitute service. How all of the passengers were moved

from California to New York is not known to the board. However, arrangements were made by someone (whether by Davis or the groups, we do not know) for Intercontinental, U.S., purportedly operating as a private carrier and not subject to the board's jurisdiction, to move most of these groups to Europe and to return them to the United States. We understand that one group was disbanded in New York after Intercontinental refused to carry them to Europe, and that substitute service could not be found. We further understand that transportation between New York and California was not available to some of the groups upon their return to New York from Europe, and that the travelers were put to the additional expense of paying their way back to the point of origin of their flight. On September 5, 1963, the board granted a special authorization to United States Overseas Airlines to move these people to California at \$72 per person (a rate well below its tariff for similar service), and many of the returnees utilized this service. Whether Intercontinental failed to carry out its contractual commitments for transportation, or whether it fully performed its commitments and the difficulty lay in the fact that sufficient funds were not advanced by Davis to arrange for the substitute transportation, is not known, but it is our understanding that the latter very well may be the case.

The additional expense and inconvenience occasioned to the passengers involved in these charter flights is attributable primarily to the activities of the World Travel Center. On the basis of the facts known to the board, the travel agent's activities well may have been such as to constitute an unfair or deceptive practice within the meaning of Section 411 of the Federal Aviation Act. However, they do not appear to have involved violations of any other provision of the Federal Aviation Act, and, as previously stated, Section 411 is neither self-enforcing nor does it lend itself to prompt remedial action. Thus far, our bureau of enforcement has not instituted any complaint before the board concerning Mr. Davis' activities, nor does it appear that proceedings against him and the issuance of a cease and desist order would provide any benefit since it is our understanding that his activities have resulted in penalty actions pursuant to state law.

Insofar as Aerovias Sud Americana is concerned, our information discloses that certain of the carrier's employees stationed on the west coast very well may have actively aided Mr. Davis and made representations that ASA would provide the transportation. Again, on the basis of the facts known to our staff, however, it does not appear that there was a violation of any express prohibitions of the act or the board's regulations, but rather that the conduct may have constituted an unfair or deceptive practice. The board has not proceeded against ASA with respect to the transactions here involved since the carrier terminated the employment of its California representatives, closed its California office, voluntarily accepted a cease and desist order as to certain other practices in which it was engaged, and reorganized its operations under new management. We also are informed that the carrier's charter venture in California caused it severe financial losses, and that the carrier returned to Davis all of the sums deposited by him with it in relation to the charters in question. Also, insofar as we know, none of the financial losses suffered by the travelers was

due to any defalcation by ASA. Again, in these circumstances, it has not been considered that any useful purpose would be served by bringing formal proceedings against the carrier under Section 411 of the act.

As to Intercontinental, U.S., enforcement proceedings have been instituted on allegations that the carrier's various activities, including the transportation here involved, constituted common carriage subject to the economic regulatory provisions of the act, and hence that the carrier has been and is unlawfully engaged in air transportation.

CONCLUSIONS

It is by no means clear that additional legislation at either the federal or state level would serve to preclude future incidents such as the one involving the activities of World Travel Center. Rather, as in any other area of activity, there always will be found some persons who will engage in activities which constitute violations of law, just as Davis' activities appear to have been in violation of various provisions of California law. To the extent, however, that legislation purporting to regulate ticket agents is indicated, it is the board's view that any legislation should be by the federal government rather than by individual states.

As previously detailed, travel agents, for the most part, already are subjected to extensive regulation, with federal government approval, by the carriers which they represent. It is not believed, therefore, that any additional system of licensing of agents is necessary, or that the air carriers should be burdened by local licensing requirements in the sale of air transportation subject to federal control.

As to other possible legislation, a bill recently has been introduced into the Congress of the United States proposing to make it a criminal offense for an agent to sell, or offer for sale, transportation by aircraft in circumstances in which there is no written authorization from the carrier to do so (S. 2321). Yet another bill has been introduced which in effect would make it a crime for an agent to sell transportation without an enforceable commitment from a carrier to provide it (H.R. 7542). These prohibitions, if enacted, presumably would apply to activities such as the ones conducted by Mr. Davis. Additionally, the board has under consideration proposals designed to enable it to deal more effectively with carriers such as Intercontinental, U.S., which purport to conduct operations which are outside the scope of the board's jurisdiction.

It is hoped that the foregoing information will prove of assistance to the inquiry by your committee.

Sincerely yours,

ALAN J. BOYD
Chairman

[Reprinted from FEDERAL REGISTER of April 28, 1961]

Exhibit A

Civil Aeronautics Board, Economic Regulations, Effective April 28, 1961

[Reg. ER-326]

PART 295—TRANSATLANTIC CHARTER TRIPS

Revision of Part

Adopted by the Civil Aeronautics Board at its office in Washington, D.C., on the 20th day of April 1961.

This part contains the amended general requirements governing applications for, and operations under, individual exemption orders authorizing the performance of transatlantic passenger charter flights by United States air carriers other than carriers certificated to provide unlimited passenger service over designated routes. The regulation does not itself grant any authority for the operation of transatlantic passenger charters and any carrier seeking such authority must file application in accordance with the provisions of this part for an exemption pursuant to section 416(b).

Historically, a major objective of the Board has been the development of the potentially large mass international travel market in the United States without undue diversion from the regularly-scheduled, individually-ticketed services of United States and foreign flag route operators. In furtherance of this objective, the Board has granted individual authorizations for transatlantic charter flights to carriers not otherwise thereunto authorized, but has also imposed and from time to time has redefined standards for charter eligibility of groups. Thus, in 1957, we amplified the general criteria for charter eligibility which we had followed in 1955 and 1956. These criteria were largely those that had been previously developed by the carriers and the Board, and had been embodied in IATA Resolution 045, which contains the requirements established by scheduled international route operators for their own operations. In 1958, we made these criteria more specific and susceptible of precise application. And in 1959, we embodied them with minor modifications in an Economic Regulation (Part 295), giving them greater stability and legal effect than theretofore. In 1959, we also concluded the Foreign Off-Route Charter Investigation, Docket 7173, in which foreign air carriers were for the first time authorized to perform off-route charters in air transportation. In addition to amending their permits to provide this authority, we promulgated a new Economic Regulation (Part 212) and established as guides for issuance of a charter authorization standards similar to those in Part 295. In 1960, after the IATA carriers had finally undertaken, upon the Board's suggestion, to provide more definitive and enforceable standards for their own operations, we undertook to modify Parts 295 and 212 in order to conform our requirements in substantial respects to those now provided in amended IATA Resolution 045.¹ Consequently,

¹ It was also necessary to impose as conditions to approval of Resolution 045 certain standards, especially with respect to travel agency participation in charters, which IATA had not provided for in the Resolution. See Order E-16295, dated January 23, 1961.

at such time charter requirements for all classes of transatlantic carriers had become substantially similar.

During the developmental period of this program, the Board considered it necessary and desirable to pass on each individual passenger charter flight in foreign air transportation by supplemental and certificated cargo carriers, and Part 295, as hitherto in effect, thus required special authorization by exemption for each charter.

However, on November 14, 1960, the Board issued a notice of proposed rule making (EDR-21, Docket 11907, 25 F.R. 10944) in which it proposed to amend Part 295 to provide, instead, the framework within which it might grant temporary (seasonal) blanket exemption authority. Upon consideration of all relevant matter in the comments received in response to the notice, the Board has decided to adopt revised Part 295 substantially as proposed.

The regulation contemplates the granting of temporary exemption authority, during the tourist charter season, individually to those supplemental and all-cargo carriers which are also applicants in a now current proceeding to determine whether such carriers, or any of them, should be certificated to conduct transatlantic passenger charters² and which are otherwise qualified. This regulation further sets forth the criteria and conditions which shall be observed in conducting passenger charter operations pursuant to such temporary authority as may be granted hereafter.

It should be noted that such exemptions as may be subsequently granted will be within the seasonal period of transatlantic charter activity from April through September. Further, pending completion of the aforesaid charter investigation, seasonal exemptions will be annually renewable upon regular application as set forth in §295.5 of the part. Of course, applications for exemption authorization for individual charter trips may still be made in conformity with Part 302 of the Board's Procedural Regulations, and insofar as charterworthiness is concerned, the standards of this regulation will be largely determinative of the disposition of such applications. However, the Board does not contemplate that it will grant individual flight approvals to supplemental or cargo carriers where the carrier either has not applied, or has applied and been found unqualified, for the seasonal exemption herein contemplated, except in unusual or compelling circumstances.

The Board believes that several basic considerations support the conclusion that seasonal passenger charter authority in the transatlantic market for supplemental and all-cargo carriers will be in the public interest. It is recognized that there has been a substantial and sustained growth of transatlantic passenger charters and that supplemental air carriers have provided a significant part of this service. During the 1960 season, for instance, supplemental carriers conducted a total of 226 flights or approximately 17 percent of the combined number of flights conducted by Part 295 and IATA carriers. There is reason to believe that such services by these carriers will continue to be needed. The charter season is, for the most part, also the extremely busy regular service season over the North Atlantic for the IATA carriers. Further, these latter carriers have generally been engaged in a jet reequipment program and may increasingly find it uneconomic to maintain appropriate facilities to operate piston aircraft

² Transatlantic Charter Investigation, Docket 11908.

merely to serve a seasonal charter market. Yet, jet capacity and costs may be such as to reduce substantially the potential of jet aircraft for charter services, particularly with respect to small groups. From its contacts with chartering groups in past years, the Board is informed that such groups have sometimes been unable to obtain charter flights at the times they desired them.

A second major consideration is that it no longer is administratively necessary to retain the requirement that nonroute operators obtain special authority for each charter. The standards of charter eligibility are now sufficiently precise and understandable to preclude substantial inadvertent violations of charter principles which would lead to a breakdown in the proper distinction between charter and individually-ticketed services and thus have a serious adverse effect on regularly scheduled services.

A third consideration for the present action is the economic and administrative burden which supplemental and cargo carriers have had to sustain in being required to obtain special approval for each passenger charter trip. These carriers are relatively small particularly as compared with passenger route operators, and the necessity of obtaining prior authorization for each charter makes advance planning of their operations considerably more difficult. As comment from carriers reveal, equipment must often be committed a substantial time in advance and projection must be made with respect to the economical use of aircraft (e.g., resolving the problems of filling empty ferry legs). It was further stated in comments that amelioration of these factors would afford greater opportunity for the subject carriers to maintain and develop all their services. Comments also indicated that the expense, time and paperwork required for preparing and pursuing so many applications is not insignificant in total effect, and the adverse sales impact of a charterer's knowing that specific authorization must be sought from the Board appears to be undue competitive disadvantage. Comments showed that such factors may well have been instrumental in causing withdrawal from the market of seemingly successful passenger charter operators and apparently have contributed to the changing identities of carrier participants in transatlantic charter operations. Since the market for these carriers is seasonal, its attractiveness from an economic standpoint is limited.³ Under these circumstances, relatively small impediments can loom as large factors in a decision to devote resources to it.

These three basic considerations noted above have prompted the Board to institute the proceeding to investigate whether certificates should be granted to those carriers which would undertake on a sustained basis to meet such need as may exist for passenger charter services additional to those provided by the passenger route operators. The same considerations also indicate that any exemptions which may be issued to such carriers pending final determination in the aforesaid proceeding should be on a seasonal rather than an individual charter basis.

Various objections to the proposed regulation were received from transatlantic passenger route carriers. Thus, they assert that the con-

³ We, of course, recognize that the fluctuations in MATS' policy and its effect on the availability of backhauls affect the economy of charter service and the desirability of participation in this market.

templated blanket exemptions would be issued on the theory that supplemental and all-cargo carriers have a right to be in the transatlantic passenger market free of the disadvantage of adherence to a prior approval procedure which does not apply to route carriers. However, the Board's conclusion that a change from individual to seasonal exemption would be in the public interest is not based on the concept of affording relief because of any rights in the market. The rule contemplates appropriate temporary relief for qualified carriers coming within its purview in the conduct of operations which supply a needed supplementation of other services. It is consonant with the declared policy of the Board to develop charter services as the public interest requires. It does not place the supplemental and all-cargo carriers on an equal competitive basis with transatlantic route operators which retain the advantages of more stable authorizations, market identification, larger sales organizations, and in case of on-route charters, established stations. Further, seasonal exemptions, like individual charter exemptions, can be granted only if they satisfy the requirements of section 416(b).

Comments also asserted vagueness of the Board's tentative conclusions concerning the burden involved in existing procedures, and question whether any appreciable burden would be removed from the supplemental and all-cargo carriers by eliminating the requirement of prior approval. These comments also question the Board's conclusion that the identification of carriers participating in this traffic has changed because of the burden of making prior application, and call it unsupported and a mere guess, advocating the hypotheses that the transatlantic passenger charter service is inherently unprofitable for supplemental air carriers. Conversely, other comments from a route air carrier object that the regulation would attract additional supplemental and all-cargo carriers to this market. Comments of supplemental and all-cargo operators generally tend to confirm the Board's tentative conclusion, derived from processing of Part 295 charter applications during the past years, that the prior approval requirement was a serious administrative and economic burden. Since exemptions will be granted only upon application and in accordance with the provisions of section 416(b), the regulation as such is not determinative of the number of authorizations which the Board will issue thereunder. Of course, no exemption will be issued to other than qualified carriers.

It is also asserted that a change to seasonal authorizations is untimely in that it would result in substantial awards not required by any emergency and in the face of doubt as to whether decision in the certificate proceeding, Docket J1908, will result in awards of any charter authority. Various arguments relating to the issues in that proceeding are made to show the existence of such doubt. Another carrier comments that the awards would prejudice the certificate proceeding. However, as stated above, the Board presently deems continuation of the transatlantic charter services of supplemental and all-cargo carriers necessary in the public interest, and this revision of the regulation merely reflects the Board's conclusion that this should be accomplished by seasonal grants. Any exemption that may be issued will be for the peak charter season of the year and renewal of such exemption will require a de novo determination under section 416(b). The issue of

seasonal exemptions will not prejudice the certificate proceeding, Docket 11908, or any issue therein.

Objection to the regulation is also made on the ground that transatlantic charter operations by supplemental and all-cargo carriers adversely affect the economy of the scheduled airlines, at the very time when unnecessary duplication of service should be eliminated and such operations are not needed. We do not conceive of the transatlantic passenger charter service as unnecessary duplication. Thus the Board believes that the standards of Part 295 adequately protect the scheduled route carriers from undue diversion.

Further comment was submitted advocating that this regulation should be effectuated only after formal hearing. The hearing to be held in the certificate proceeding which we have instituted will be directed to the long range needs and authorizations in the transatlantic passenger charter field. The comments contained nothing that would establish that hearings prior to the issuance of this regulation are required as a matter of law or by public interest considerations. Although this regulation, by itself, grants no rights, the Board is adopting the regulation in the belief that the requisite findings under section 416(b) can be made in the event that an application is filed by a properly qualified applicant. There will be adequate opportunity for objection respecting any particular application for temporary authority filed pursuant hereto.

In further comments received, objection has been made to the exclusion of any supplemental carrier from eligibility for exemptions under this rule and especially to exclusion on the ground that the supplemental carrier is not an applicant for a charter certificate in the above-mentioned proceeding. Conversely, other comments deplored an alleged lack of adequate standards or limitations to insure the fitness of carriers granted blanket authority. The Board is satisfied that the public interest justifies keying its transatlantic charter policy to the operations of those carriers which have exhibited a sustained interest in the operation of transatlantic charters. Further, this part contemplates that successful applicants will have met completely adequate standards of fitness. Section 295.5 now specifically requires that applications be accompanied by such additional supporting information as data showing whether the applicant possesses aircraft capable of providing the service; whether capital required to operate is available to it; whether it has made arrangements for protecting charterers' deposits so as to be in a position to make prompt refunds when flights are not operated; whether it has definite plans to operate, such as signed conditional contracts for options; whether it has a reasonable program for assuring on-time departures and for suitable substitute arrangements where emergency situations necessitate substitute service; whether it will provide a point of contact overseas for charter groups for securing information regarding return trips; and that it has the ability to conform to all the provisions of the Act and the requirements thereunder. Previous experience in the transatlantic pro rata charter market will also be a factor to be considered.

It was also suggested that all-cargo carriers be excluded from this Part in conformity with a concept of encouraging specialists to denote their endeavors to developing their own limited markets. The proposi-

tion would have greater force if the all-cargo carriers were firmly established in their regular cargo work on a stable and sound economic basis. The role of the all-cargo carrier in the subject charter services may be better determined after decision in the Domestic Cargo-Mail Service Case (Docket 10067, et al.). There is insufficient reason to exclude all-cargo carriers at this time from this regulation.

Several comments were submitted suggesting greater safeguards against violations of bona fide charter operations hereunder. It was proposed that basic charter data be filed prior to each flight with the Board, be open to public scrutiny and objection, and be subject to disapproval by the Board. Concern was also voiced as to the availability of effective sanctions.

Charter standards are not sufficiently clear and precise and so well known to carriers that there can be no confusion on the part of an operator or his competitor as to what constitutes a violation of the Board's charter concept. Any substantial violations can be expected to become readily known to competing carriers and could be reported to the Board by appropriate complaint. Further, information on every charter flight must be filed monthly pursuant to this part and can serve as an additional source of information available to the public for checking on the validity of operations performed. In addition, much more detailed data, under certification of charterer, travel agent, and carrier, as to each charter operation must be retained by the carrier available for Board inspection. With such opportunity to discover violations being available there is little likelihood that carriers would knowingly engage in unauthorized operations and risk the quite sufficient sanction of later not being eligible for renewed exemption authority or not being found fit for a charter certificate. Such authority as may be issued under this part will be subject to amendment or revocation in the discretion of the Board.

While it is true that the self-interest of supplemental and all-cargo air carriers would not directly cause them to protect the individually-ticketed passenger market, their self-interest in remaining eligible for renewal of authorizations and eventual certification will constitute a strong incentive for them to abide by the regulation.

From the fact that in the past some carriers submitted charter applications which the Board had to reject, it does not follow that they would have performed such charters on their own responsibility. It is expected that the carriers will, for their own protection, ask for an advisory opinion in doubtful cases, and for a waiver in cases more clearly outside the standards of these rules.

In addition to the above, other comments were received urging the Board to make several changes not specifically dealt with in the notice of proposed rule making. The American Society of Travel Agents proposed a 23-day year-round excursion fare on individually-ticketed services in lieu of the provisions of Part 295. It may be noted that the recent meeting of IATA at Cannes did not result in a proposal to the Board of such a fare, and thus we have no basis for considering this proposal in connection with the subject amendment of this part. One cargo carrier suggested a limitation on carriage of cargo on passenger charter ferry legs to avoid undue diversion from cargo carriers. There

has been no showing of any undue diversion through prior operations conducted under the provisions of Part 295 and the change from individual flight exemptions to blanket authorities should not unduly increase the chances of such an occurrence. Another carrier suggested inclusion of a rate floor to prevent uneconomic operations. This is not now found necessary inasmuch as the transatlantic passenger charter market has not exhibited any tendency toward extreme rate cutting.

Several other proposals not dealt with in the notice were submitted in response thereto. Thus, comments were received urging the Board to allow for split charters whereby the aircraft is shared by separate charter groups; to permit any relative residing with a member of the charter group to participate in the trip as a member of his "immediate family", and to permit travel agents to participate in charter administration and allow them to receive commissions for charter services performed for the carrier even though they are members of the charter organization. The Board does not consider such amendments advisable. Split charters would tend to erode the concept of charters as planeload operations. Inclusion of all household relatives beyond spouse, children and parents (the usual resident categories) lends itself to abuse since determination of the true residential status of other relatives is not easily accomplished. The matter of relaxing restrictions on travel agents has been periodically considered and no new showing has been made which would warrant changing the Board's established position on the provisions mentioned.

Four supplemental carriers proposed liberalization of the prohibition against paying commissions to travel agents in excess of five percent of the total charter price or of the commission rate paid by a passenger carrier certificated to conduct regular service between the same points. They argued that supplemental carriers cannot engage in charter price competition with route operators, since the agent's commission, based on a lower charter price, would actually result in less remuneration for him and jeopardize his impartial representation of supplemental operations as opposed to certificated operations. The ceiling on commissions should not be lifted. It has served to reduce the incentive for promoters to act as indirect air carriers and to "create" charters through individual solicitation of the general public. In light of the limited nature of Part 295 operations, and the advisability of having distinctive safeguards for such operations, the proposed modification of the subject provision does not appear advisable.

Some carriers also suggested amendment of Part 295 to clarify permissible carrier solicitation of charter groups, advertising of individual rates for participants in pro rata charters, and carrier advertising of ground-tour arrangements. Section 295.11(a) states that a carrier shall not engage directly or indirectly in any solicitation of individuals as distinguished from the solicitation of an organization for a charter trip. Consistent with this provision carriers may engage in advertising not directed to the individual. To permit advertising of a pro rata charge by itself would encourage the carriers to direct advertising at individuals rather than officers of bona fide organizations and would in effect encourage individuals to form "clubs" for purposes of chartering. It should be noted that a carrier is not in a position to

state what a pro rata charge will be since such charge depends on the number of seats on the aircraft that are actually filled and such other matters as the administrative expenses assessed against pro rata shares in each particular charter. On the matter of advertising land tours, we do not interpret Part 295 as prohibiting such advertising so long as it is directed at groups rather than at individuals. Advertising of land tours directed at individuals would be an indirect method of soliciting individuals for charter flights. However, we interpret Part 295 as permitting a carrier to speak of the availability and general price range of land tours when it addresses its advertising to groups, and to refer such groups to tour operators.

Several carriers proposed elimination of § 295.2(j) which sets forth a presumptive standard for judging bona fide members of charter organizations and a safeguard against the carriage of spurious charter groups. The Board finds this provision should be retained expressly to avoid the admission of members through public solicitation for purposes of charter flight participation. The definition of bona fide members is modified in accordance with the notice of rule making. Previously it included a presumption that members were not bona fide unless they had belonged to the charter organization at the time of the filing of the application for special authority to conduct the particular charter. With the removal of this requirement for individual trip authorization the presumption was tentatively changed to refer to persons as not being bona fide unless belonging to the organization at the time it gives "notice to its members of firm charter plans."⁴ Objection was made to this definition as being too vague. To be more restrictive might unduly hinder charter participation. There will be many instances where a charterer's "Notice to its members of firm charter plans" will indicate a flight date which may serve to show a specific charter arrangement. Since such solicitation notices must be filed with the carrier under this Part and be retained by it for possible board inspection there is insignificant likelihood that the proposed standard of bona fide members as here amended will lead to spurious charter participation.

Comment was also received from the System Route Committee, Pilots-Pan American World Airways. This group felt that liberalization of charter rules would curtail charters by Pan American and adversely affect their job advancement. In the light of our discussion herein there is no showing of any possible injury sufficient to warrant further limitations concerning operations covered by this regulation.

In view of the foregoing, the Board finds that the subject amendment of Part 295 is in the public interest.

New § 295.5 contains the requirements for application for the new exemption authority. All former provisions which related to Board ap-

⁴The full definition § 295.2(j) reads as follows: "'Bona fide members' means those members of a charter organization who have not joined the organization merely to participate in the charters as the result of a solicitation directed to the general public. Presumptively persons are not bona fide members of a charter organization unless they are members at the time the organization first gives notice to its members of firm charter plans and unless they have actually been members for a minimum period of six months prior to the starting flight date. This presumption will not be applicable in the case of charters composed of (1) students and educational staff of a single school, and immediate families thereof, (2) employees of a single government agency, industrial plant, or mercantile establishment, and immediate families thereof, or (3) participants in a formal academic study course abroad. In the case of all other charters, rebuttal to this presumption may be offered for the Board's consideration by request for waiver."

proval of specific aspects of charters not generally permitted under this part (such as provisions in § 295.33(a) (2) and § 295.35(b) (3)) have been omitted. The effect of this is that air carriers which receive authority under this part may not perform charters which do not comply with this part in every respect unless a waiver has been granted by the Board pursuant to § 295.3.

Similarly, former § 295.17 which required individual postflight reports to the Board is being eliminated. However, such information will have to be filed with the carrier by the travel agent and the chartering group as before. The revised provisions of Part 295 require the filing of a report by the carrier within 15 days after the close of each month concerning each charter trip operated during such month; setting forth (a) date of trip; (b) points served; (c) number of round-trip and one-way passengers; (d) name of chartering organization; (e) description of chartering organization disclosing basis for conclusion that group is bona fide; (f) name of travel agent; and (g) basis for construction of tariff charge. These provisions will be found in new § 296.6 which also refers to the necessary record-retention requirements incorporated in Part 249.

Amendment to § 295.30 has been incorporated raising to 20,000 the former numerical maximum of 15,000 for chartering groups drawn from an area other than a local area. This has been accomplished in conformity with Board Orders E-16147 and E-16295. Docket 11879 approving an amendment to the IATA Charter Resolution carrying out a parallel change.

Apart from the aforementioned changes, the provisions of Part 295 remain substantially the same. As previously noted, the rule contains restrictions on the transatlantic passenger charter business which guard against the entry into the field of indirect air carriers and which also prevent charterers from soliciting the public or segments of the public for charter flights. In addition, there are protective provisions guarding participants in charter trips from inequitable burdens and charges.

With regard to the prohibition against charterers obtaining participants for charter group by soliciting the general public, the rule prevents the forming of a group by (1) general advertising or (2) unlimited soliciting of charter participants from an organization easy to join, and of uncertain or large and scattered membership. The rule thus provides the general framework within which to judge the charter-worthiness of the cases on their own facts. For example in accordance with the provisions of § 295.30 as amended, prospective charter participants solicited without limit from organizations or other entities with a total membership of more than 20,000 (except colleges or universities located in one local area) would be considered as solicited from the general public which would preclude their charter trip. However, if the solicitation of charter participants should be limited to a group of selected delegates who are members of a large association with scattered membership, the size of the association would not appear to bar the charter.⁵

⁵ Thus, if the organization is participating in a scientific convention abroad, the individuals selected to read papers at the convention may be organized into a charter group. Or if an international organization is to hold a meeting, delegates elected by various chapters might properly be organized into a charter group.

Further, in the case of employees of a business whose total employment would apparently render a charter ineligible for approval, a valid charter might be solicited from the employees of two or more plants of such enterprise, provided the total number of employees in such plants would be sufficiently limited as to meet the tests applied by the Board in the case of a single organization. Also, the decision to limit the charter solicitation to the plants involved would necessarily have to be made prior to solicitation for the charter, and each such charter (if there were more than one) would have to be locally administered, independently of the others. It would be inappropriate to make a general solicitation of the employees of the entire enterprise and subsequently limit the charter group in an attempt to conform with the criteria of the regulation.

In those cases, furthermore, where federations of groups are the organizations from which charter groups are sought to be derived, several issues under the solicitation criteria set forth herein would necessarily arise: for instance, whether the federation provides services directly to members of several separate organization in a given locality, or is merely a superstructure tying several individual associations together. Factors to be weighed would include the relationship of members represented by such federation to the total population of the area covered by the federation, past history of joint activities sponsored by the federation, and whether the federation exists only nominally as a means of exchanging information, with participation limited to meetings of representatives of each member group and individual membership therein being merely a matter of record or form at the most.

To facilitate advising a prospective charterer of (1) charter prerequisites and (2) the opportunity to obtain advisory opinions on charterworthiness, it is provided that a copy of this regulation shall always be sent to each prospect directly by the carrier concerned. The carrier, where known, will receive a copy of any advisory opinion requested by a charterer.

In order to facilitate the use of this regulation by charterers, the Board has decided to reissue the regulation with all amendments incorporated therein rather than to promulgate an amendment to the regulation as a separate document. In consideration of the facts that the subject amendment is principally a relaxation of heretofore existing restrictions; that the amendment relates only to operations to be authorized in the future; that waivers of the provisions of the regulation may be granted where justified in the public interest and warranted by special or unusual circumstances; and that time is of the essence since the transatlantic charter season is approaching, the Board finds that the public interest requires and good cause exists for making this regulation effective upon less than 30 days following publication.

In consideration of the foregoing, the Civil Aeronautics Board hereby reissues Part 295 of the Economic Regulations (14 CFR Part 295), effective April 28, 1961, as follows:

Sec.

- 295.1 Applicability.
- 295.2 Definitions.
- 295.3 Waiver.
- 295.4 Separability.
- 295.5 Application for exemption authority.
- 295.6 Reporting and record retention.

Subpart A—Provisions Relating to Pro Rata Charters

Requirements Relating to Air Carriers

- 295.11 Solicitation and formation of a chartering group.
- 295.12 Pre-trip notification.
- 295.13 Tariffs to be on file.
- 295.14 Terms of service.
- 295.15 Agent's commission.
- 295.16 Prohibition against payments or gratuities.

Requirements Relating to Travel Agents

- 295.20 Limited activities.
- 295.21 Permissible solicitation, sale or ticketing or individual participants for land tours.
- 295.22 Agents who are members of the chartering organization.
- 295.23 Prohibition against double compensation.
- 295.24 Prohibition against incurring obligations.
- 295.25 Prohibition against payments or gratuities.
- 295.26 Statement of supporting information.

Requirements Relating to the Chartering Organization

- 295.30 Solicitation of charter participants.
- 295.31 Passengers on charter flights.
- 295.32 Participation of immediate families in charter flights.
- 295.33 Charter costs.
- 295.34 Statements of charges.
- 295.35 Passenger manifests.
- 295.36 Statement of supporting information.

Subpart B—Provisions Relating to Single Entity Charters

- 295.40 Tariff to be on file.
- 295.41 Terms of service.
- 295.42 Commissions paid to travel agents.

Subpart C—Provisions Relating to Mixed Charters

- 295.50 Applicable rules.

Subpart D—Procedure for Advisory Opinion on the Eligibility of a Charterer

- 295.60 Advisory opinion.

Authority: §§ 295.1 to 295.60 issued under sec. 204(a), 72 Stat. 743; 49 U.S.C. 1324. Interpret or apply secs. 407(a) and 416(b), 72 Stat. 766, 771; 49 U.S.C. 1377, 1386.

§ 295.1 Applicability.

This part establishes the requirements governing applications for, and operations under, individual exemption orders authorizing for periods up to 180 days but terminating not later than September 30 of any year, the performance of pro rata; mixed and/or single entity charter flights for transatlantic passengers by United States flag air carriers other than carriers certificated to provide unlimited individually ticketed passenger service over designated routes. Each application will be considered and passed upon by the Board in accordance with the statutory standards of section 416(b) of the Act. Such application shall be filed and submitted in compliance with the

applicable provisions of this part. Operations under any such individual exemption authorizing the performance of transatlantic passenger charter flights shall be conducted in conformity with the pertinent requirements of this part unless otherwise specifically authorized by the Board. The provisions of this regulation shall not be construed as limiting any other authority to engage in air transportation issued by the Board.

§ 295.2 Definitions.

As used in this part, unless the context otherwise requires—

(a) "Charter flight" means transatlantic air transportation performed by a direct air carrier where the entire capacity of one or more aircraft has been engaged for the movement of persons and their baggage, on a time, mileage or trip basis:

(1) By a person for his own use (including a direct air carrier or surface carrier when such aircraft is engaged solely for the transportation of company personnel or commercial passenger traffic in cases of emergency); or

(2) By a representative (or representatives acting jointly) of a group for the use of such group (provided no such representative is professionally engaged in the formation of groups for transportation or in the solicitation or sale of transportation services).

With the consent of the charter, the direct air carrier may utilize any unused space for the transportation of the carrier's own personnel and property.

(b) "Pro rata charter" means a charter the cost of which is divided among the passengers transported.

(c) "Single entity charter" means a charter the cost of which is borne by the charterer and not by individual passengers, directly or indirectly.

(d) "Mixed charter" means a charter the cost of which is borne, or pursuant to contract may be borne, partly by the charter participants and partly by the charterer.

(e) "Person" means any individual, firm, association, partnership, or corporation.

(f) "Travel agent" means any person engaged in the formation of groups for transportation or in the solicitation or sale of transportation services.

(g) "Charter group" means that body of individuals who shall actually participate in the charter flight.

(h) "Charter organization" means that organization, group or other entity from whose members (and their immediate families) a charter group is derived.

(i) "Immediate family" means only the following persons who are living in the household of a member of a charter organization, namely, the spouse, dependent children, and parents, of such member.

(j) "Bona fide members" means those members of a charter organization who have not joined the organization merely to participate in the charter as the result of a solicitation directed to the general public. Presumptively persons are not bona fide members of a charter organization unless they are members at the time the organization first gives notice to its members of firm charter plans and unless they have

actually been members for a minimum period of six months prior to the starting flight date. This presumption will not be applicable in the case of charters composed of (1) students and educational staff of a single school, and immediate families thereof, (2) employees of a single Government agency, industrial plant, or mercantile establishment, and immediate families thereof, or (3) participants in a formal academic study course abroad. In the case of all other charters, rebuttal to this presumption may be offered for the Board's consideration by request for waiver.

(k) "Solicitation of the general public" means (1) a solicitation going beyond the bona fide members of an organization (and their immediate families), such as advertising directed to the general public by radio, television, newspaper, or magazine, or (2) the solicitation, without limitation, of the members of an organization so constituted as to ease of admission to membership, nature of membership, area of residence of members, and size of membership, as to be in substance more in the nature of a segment of the public than a private entity.

§ 295.3 Waiver.

A waiver of any of the provisions of this regulation may be granted by the Board upon the submission by an air carrier of a written request therefor not less than 30 days prior to the flight to which it relates provided such a waiver is in the public interest and it appears to the Board that special or unusual circumstances warrant a departure from the provisions set forth herein.

§ 295.4 Separability.

If any provision of this part or the application thereof to any air transportation, person, class of person, or circumstance is held invalid, neither the remainder of the part nor the application of such provision to other air transportation, persons, classes of persons, or circumstances shall be affected thereby.

§ 295.5 Application for exemption authority.

Proceedings on applications for exemption authority pursuant to section 416(b) of the Federal Aviation Act of 1958 to conduct transatlantic passenger charter flights (pro-rata, mixed and/or single entity charters) shall be governed by §§ 302.400 to 302.409 of this chapter (Rules 400 to 409 of Part 302 of the Board's Procedural Regulations), subject, however, to the following additional or different provisions:

(a) Applications may be filed only by air carriers which are applicants in good standing for transatlantic charter authority in Transatlantic Charter Investigation, Docket 11908, instituted by Board Order E-16023 of November 14, 1960.

(b) Applications for exemption authority shall be filed with the Board at least 60 days prior to the proposed first flight under such authority.

(c) The application shall state whether authority to fly pro-rata charters, mixed charters, and/or single entity charters is requested; the scope of the charter service to be provided; and the program to be employed for screening charters for full compliance with this part (including provisions for canceling charters contracted for but found not to be bona fide). It shall also be accompanied by all other pertinent

data including but not limited to a showing whether the applicant possesses aircraft capable of providing the service; whether the capital required to operate is available to it; whether it has made arrangements for protecting charterers' deposits so as to be in a position to make prompt refunds when flights are not operated; that it has appropriate pro rata charter tariffs on file with the Board pursuant to § 295.13; whether it has definite plans to operate, such as signed conditional contracts or options; whether it has a reasonable program for assuring on-time departures and for suitable substitute arrangements where emergency situations necessitate substitute service; whether it will provide a point of contact overseas for charter groups for securing information regarding return trips; and that it has the ability to conform to all the provisions of the Act and the requirements thereunder.

(d) Copies of the application shall be served on each direct air carrier certificated to provide unlimited transatlantic passenger service.

§ 295.6 Reporting and record retention.

(a) Fifteen days after the end of each calendar month, each carrier holding operating authority pursuant to this part shall file with the Board's Bureau of Economic Regulation a report setting forth the following information pertaining to each charter flight performed during said month pursuant to such authority:

- (1) Date of trip;
- (2) Points served;
- (3) Numbers of round-trip and one-way passengers;
- (4) Name of chartering organization;
- (5) Description of chartering organization disclosing basis for conclusion that the group is bona fide (identify criteria relied upon);
- (6) Name of travel agent; and
- (7) Construction of tariff charge.

(b) Prior to performing any charter flight pursuant to this part the carrier shall execute, and require the travel agent (if any) and charterer to execute, the form "Statement of Supporting Information" attached hereto and made a part hereof.

(c) Each air carrier holding operating authority pursuant to this part shall comply with the applicable record-retention provisions of Part 249 of this subchapter, as amended.

Subpart A—Provisions Relating to Pro Rata Charters

REQUIREMENTS RELATING TO AIR CARRIERS

§ 295.11 Solicitation and formation of a chartering group.

(a) A carrier shall not engage, directly or indirectly, in any solicitation of individuals (through personal contact, advertising, or otherwise) as distinguished from the solicitation of an organization for a charter trip.

(b) A carrier shall not employ, directly or indirectly, any person for the purpose of organizing and assembling members of any organization, club, or other entity into a group to make the charter flight.

§ 295.12 Pre-trip notification.

Upon a charter flight date being reserved by the carrier or its agent, the carrier shall provide the prospective charter with a copy of this

regulation. Part 295.¹ The charter contract shall include a provision that the charterer, and any agent thereof, shall only act with regard to the charter in a manner consistent with this regulation and that the charter shall within due time submit to the carrier such information as specified in §§ 295.34 and 295.35 and submit to each charter participant the information identified in § 295.34. The carrier shall also require that the charterer and any travel agent involved shall furnish it in due time for review before flight the information required in §§ 295.36 and 295.26, respectively.

§ 295.13 Tariffs to be on file.

At the time an exemption application is submitted, the carrier shall have on file with the Board a tariff showing all its rates, fares, and charges for the use of the entire capacity of one or more aircraft in air transportation and all its rules, regulations, practices and services in connection with the transatlantic pro rata charter transportation which it offers to perform. Tariffs filed pursuant hereto shall expressly recite that the transportation may not be furnished unless the Civil Aeronautics Board specifically exempts the air carrier from the requirements of section 401 of the Federal Aviation Act of 1958.

§ 295.14 Terms of service.

(a) The total charter price and other terms of service rendered pursuant to authority granted under this part shall conform to those set forth in the applicable tariff on file with the Board and in force at the time of the respective charter flight and the contract must be for the entire capacity of one or more aircraft. Where a carrier's charter charge computed according to a mileage tariff includes a charge for ferry mileage, the carrier shall refund to the charterer any sum charged for ferry mileage, which is not in fact flown in the performance of the charter: *Provided*, That the carrier shall not charge the charterer for ferry mileage flown in addition to that stated in the contract unless such mileage is flown for the convenience of and at the express direction of the charterer.

(b) The carrier shall require full payment of the total charter price or the posting of a satisfactory bond for full payment prior to the commencement of the air transportation.

(c) In the case of a round-trip charter, one-way passengers shall not be carried except that up to five percent of the charter group may be transported one way in each direction. This provision shall not be construed as permitting knowing participation in any plan whereby each leg of a round-trip is chartered separately in order to avoid the five percent limitation aforesaid. In the case of a charter contract calling for two or more round-trips, there shall be no intermingling of passengers and each payload group shall move as a unit in both directions.

§ 295.15 Agent's commission.

The carrier shall not pay its agent a commission or any other benefits, directly or indirectly, in excess of five percent of the total charter

¹ Copies of this regulation are available by purchase from the Superintendent of Documents, Washington 25, D.C. Single copies will be furnished without charge on written request to the Publications Section, Civil Aeronautics Board, Washington 25, D.C.

price as set forth in the carrier's charter tariff on file with the Board, or more than the commission related to charter flights paid to an agent by a carrier certificated to render regular service on the same route, whichever is greater. The carrier shall not pay any commission whatsoever to an agent if the agent receives a commission from the charterer for the same service.

§ 295.16 Prohibition against payments or gratuities.

A carrier shall make no payments nor extend gratuities of any kind, directly or indirectly, to any member of a chartering organization in relation either to air transportation or land tours or otherwise. Nothing in this section shall restrict a carrier from offering to each member of the charter group such advertising and good will items as are customarily extended to individually-ticketed passengers (e.g., canvas traveling bag or a money exchange computer).

REQUIREMENTS RELATING TO TRAVEL AGENTS

§ 295.20 Limited activities.

A travel agent may not assist in the organization or assembly of a charter group, handle the sale of the air transportation to any individual members of a group, or otherwise engage in the administration of the charter flight (including signing the charter agreement for the charterer or collecting or disbursing pro rata shares of participants). The agent may arrange land tours for a charter group provided he deals with the group as a whole. He may deal with individual members of a group regarding land tours only under the circumstances indicated in § 295.21. While his services may be utilized to prepare brochures or other literature describing all aspects of the charter trip, the distribution of such material to individual participants must be confined to the hands of the charterer. Nothing in this section, however, shall prohibit the carrier from having a travel agent make distribution to the charter flight participants of boarding passes pursuant to Warsaw Convention practices.

§ 295.21 Permissible solicitation, sale or ticketing of individual participants for land tours.

A travel agent may deal with individuals for land tours (including ticketing and receipt of individual deposits for such tours) if such persons, on an individual bases after arranging for charter participation, initiate a contact with him to request of him land tour arrangements different from those which have been made available to the charter group as a whole through the organizer of the group. A travel agent (or person controlled by, controlling, or under common control with such travel agent) who does not assist in the engaging of aircraft for the charter² and does not receive remuneration from the carrier in connection with the charter may, in addition, solicit (i.e., initiate the approach to) individual members of the charter group (i.e., persons who have already arranged for charter participation) for land tours, and with respect to such tours receive deposits and conduct ticketing of such individual members.

² This would include assistance in any form which would place the carrier under even an implicit obligation to the agent for having procured the charter. However, it would not include mere discussion between agent and charterer about the several airlines which the charterer might wish to contact.

§ 295.22 Agents who are members of the chartering organization.

If a travel agent, or officer, director, or employee of such an agent, is a member of the chartering organization, such agent, or officer, director, or employee, may not receive, directly or indirectly, any commission or other compensation with respect either to the charter flight or the land tour. Subject to this prohibition, he may participate in these activities, and only those, permitted to other travel agents.

§ 295.23 Prohibition against double compensation.

A travel agent may not receive a commission from both the direct air carrier and the charterer for the same service, nor may he receive directly or indirectly any part of the administrative labor cost referred to in § 295.33(c).

§ 295.24 Prohibition against incurring obligations.

A travel agent shall not incur any obligation on behalf of a chartering organization relating to the expenses of solicitation or organization of the individual participants in the chartering organization, whether or not it is intended for the organization to assume ultimately the obligation incurred.

§ 295.25 Prohibition against payments or gratuities.

A travel agent shall make no payments nor extend gratuities of any kind, directly or indirectly, to any member of a chartering organization whether in relation to air transportation or otherwise. Nothing in this section shall restrict a travel agent from offering to each member of the charter group such advertising and good will items as are customarily extended to individually-ticketed passengers (e.g., a canvas traveling bag or a money exchange computer).

§ 295.26 Statement of supporting information.

Travel agents shall execute, and furnish to air carriers, section A of Part II of the Statement of Supporting Information, at such time prior to flight as required by the carrier to afford it due time for review thereof.

REQUIREMENTS RELATING TO THE CHARTERING ORGANIZATION**§ 295.30 Solicitation of charter participants.**

As the following terms are defined in § 295.2, members of the charter group may be solicited only from among the bona fide members of an organization, club or other entity, and their immediate families, and may not be brought together by means of a solicitation of the general public. Charter participants solicited without limit from organizations or other entities with a total membership of more than 20,000 (except colleges or universities located in one local area) shall be considered as solicited from the general public.

§ 295.31 Passengers on charter flights.

Only bona fide members of the charterer, and their immediate families, may participate as passengers on a charter flight. Where the charterer is engaging round-trip transportation, one-way passengers shall not participate in the charter flight except as provided in § 295.14(c). When more than one round-trip is contracted for, inter-

mingling between flights or reforming of plane-load groups shall not be permitted and each plane-load group must move as a unit in both directions.

§ 295.32 Participation of immediate families in charter flights.

The immediate family of any bona fide member of a charter organization may participate in a charter flight. The immediate family of such member shall be construed to include only the following persons who are living in his household, namely, the spouse, dependent children, and parents of such member.

§ 295.33 Charter costs.

(a) The costs of charter flights shall be prorated equally among all charter passengers and no charter passenger shall be allowed free transportation; except that (1) children under twelve years of age may be transported at a charge less than the equally prorated charge; (2) children under two years of age may be transported free of charge.

(b) The charterer shall not make charges to the charter participants which exceed the actual costs incurred in consummating the charter arrangements, nor include as a part of the assessment for the charter flight any charge for purposes of charitable donations. All charges related to the charter flight arrangements collected from the charter participants which exceed the actual costs thereof shall be refunded to the participants in the same ratio as the charges were collected.

(c) Reasonable administrative costs of organizing the charter may be divided among the charter participants. Such costs may include a reasonable charge for compensation to members of the charter organization for actual labor and personal expenses incurred by them. Such charge shall not exceed \$300 (or \$500 where the charter participants number more than 80) per round-trip flight. Neither the organizers of the charter, nor any member of the chartering organization, may receive any gratuities or compensation, direct or indirect, from the carrier, the travel agent, or any organization which provides any service to the chartering organization whether of an air transportation nature or otherwise. Nothing in this section shall prevent any member of the charter group from accepting such advertising and good will items as are customarily extended to individually-ticketed passengers (e.g., a canvas traveling bag or a money exchange computer).

(d) If the total expenditures, including among other items compensation to members of the chartering organization, referred to in § 295.33(c) above, but exclusive of expenses for air transportation or land tours, exceed \$750 per round-trip flight, such expenditures shall be supported by properly authenticated vouchers to be given to the carrier with the "Post Flight Report"³ required pursuant to § 295.34.

§ 295.34 Statements of charges.

(a) Any announcements or statements by the charterer to prospective charter participants of the anticipated individual charge for the charters shall clearly identify the portion of the charges to be separately paid for the air transportation, for the land tour, and for the administrative expenses of the charterer.

(b) Within 15 days after completion of each one-way or round-trip flight the charterer shall complete and supply to each charter par-

ticipant and the air carrier involved a detailed report showing the charge per passenger transported and the charterer's total receipts and expenditures. This report shall be submitted in the form of, and contain such information including the above as more fully specified by, the "Transatlantic Charter—Post Flight Report" annexed hereto and made a part of this part.

§ 295.35 Passenger manifests.

(a) Prior to each one-way or round-trip flight a manifest shall be filed by the charterer with the air carrier showing the names and addresses of the persons to be transported and specifying the relationship of each such person to the charterer (by designating opposite his name one of the three relationship categories hereinafter described). The manifest may include "stand-by" participants (by name, address and relationship to charterer).

(b) The relationship of a prospective passenger shall be classified under one of the following categories and specified on the passenger manifest as follows:

(1) A bona fide member of the chartering organization at the time the organization first gave notice to its members of firm charter plans and will have been a bona fide member of the chartering organization for at least six months prior to the starting flight date. Specify on the passenger manifest as "(1) member."

(2) The spouse, dependent child or parent of a bona fide member who lives in such member's household. Specify on the passenger manifest as "(2) spouse" or "(2) dependent child" or "(2) parent." Also give name and address of member relative where such member is not a prospective passenger.

(3) Bona fide members of entities consisting only of persons from a study group, or a college campus, or employed by a single Government agency, industrial plant, or mercantile company, or persons whose proposed participating in the charter flight was permitted by Board pursuant to request for waiver. Specify on the passenger manifest as "(3) special" or "(3) member" (where participants are from a study or campus group or from a Government agency, industrial plant or mercantile company).

(c) In the case of a round-trip flight, the above information must be shown for each leg of the flight and any variations between the eastbound and westbound trips must be explained on the manifest.

(d) Attached to such manifest must be a certification, signed by a duly authorized representative of the charterer, reading:

The attached list of persons includes every individual who may participate in the charter flight. Every person as identified on the attached list (1) was a bona fide member of the chartering organization at the time the chartering organization first gave notice to its members of firm charter plans, and will have been a member for at least six months prior to the starting flight date, or (2) is a bona fide member of an entity consisting of (i) students and educational staff of a single school, or (ii) employees of a single Government agency, industrial plant, or mercantile establishment, or (3) is a person whose participation has been specifically permitted by the Civil Aeronautics Board, or (4) is the spouse, dependent child, or parent of a person described hereinbefore and lives in such person's household, or (5) is a bona fide participant in a charter composed of participants in a formal academic study course abroad.

(Signature)

§ 295.36 Statement of supporting information.

Charterers shall execute and furnish to air carriers section B of Part II of the Statement of Supporting Information, at such time prior to flight as required by the carrier to afford it due time for review thereof.

Subpart B—Provisions Relating to Single Entity Charters**§ 295.40 Tariff to be on file.**

The direct air carrier shall have a currently effective tariff on file with the Board prior to flight which discloses all the rates, fares and charges for the use of the entire capacity of one or more aircraft in air transportation and all its rules, regulations, practices and services in connection with the transatlantic single entity charter transportation which it offers to perform.

§ 295.41 Terms of service.

The total charter price and other terms of service shall conform to those set forth in the applicable tariff filed in accordance herewith and the contract shall be for the entire capacity of one or more aircraft.

§ 295.42 Commissions paid to travel agents.

No direct air carrier shall pay a travel agent any commission in excess of five percent of the total charter price or more than the commission related to charter flights paid to an agent by a carrier certificated to fly the same route whichever is greater.

Subpart C—Provisions Relating to Mixed Charters**§ 295.50 Applicable rules.**

The rules set forth in Subpart A of this part shall apply in the case of mixed charters.

Subpart D—Procedure for Advisory Opinion on the Eligibility of a Charterer**§ 295.60 Advisory opinion.**

An air carrier or prospective charterer may request an advisory opinion from the Bureau of Economic Regulation, Civil Aeronautics Board, Washington 25, D.C., regarding the eligibility of the prospective charterer to obtain charter service in accordance with this regulation. The Bureau's opinion will be based on the representations submitted and shall not be binding upon the Board in any proceeding in which the lawfulness of the respective charter may be in issue. Such representations should include as much of the information specified by section B, Part II, of the Statement of Supporting Information annexed to this part as is available to the person requesting the advisory opinion.

NOTE: The reporting requirements contained herein have been approved by the Bureau of the Budget in accordance with the Federal Reports Act of 1942.

By the Civil Aeronautics Board.

JAMES L. DEEGAN,
Acting Secretary

Gurney, Member, dissenting:

I cannot agree that the present charter regulations requiring the supplemental and cargo carriers to secure individual exemptions from the Board for operating charters in foreign air transportation are in need of amendment. For the most part, this charter policy has met the requirements of group travel and has tended to insure compliance with the Board's requirements. The blanket exemption authority given by this revision of Part 295 of the Economic Regulations will complicate, instead of ease, the Board's problems in this field by requiring more surveillance of the operations of the carriers and the charterers without providing a prompt and adequate remedy for any irregularities which may be found. Tighter controls over this market are required rather than a relaxation of requirements as here provided. Nor am I convinced that this amendment is necessary for administrative convenience. In the long run, little, if any, manpower in the Board will be saved.

Since the Board is determined to adopt this amendment, a vital safeguard should have been provided to insure that minimum rate practices are followed. The experiences in the bidding practices relative to the "Classification and Exemption of Air Carriers While Conducting Certain Operations for the Military Establishment" (Part 294 of the Economic Regulations) should be sufficient warning to the Board to establish minimum rates here. In adopting a new policy toward the international charter market, the Board should assist those carriers in establishing a profitable business and thereby assure an efficient operation to that segment of the public which will be served. Instead of waiting for a rate war to develop, the Board could effectively lessen the danger of competitive practices which could reduce the rate to an uneconomical level for all participating carriers. Action by the Board on each tariff filing under this regulation will impose unwarranted workload problems on the Board.

Futhermore, the exemptions contemplated by this revision fail to meet the legal requirements of Sections 416(b) and 801 of the Act and tend to prejudice the Board's determination of need for such service in the *Transatlantic Charter Investigation*, Docket 11908.

It is difficult to understand how the Board will be able to make the necessary findings required by Section 416(b) of the Act that a 180-day exemption, renewable annually, would relieve an undue burden by reason of the limited extent of or unusual circumstances affecting the operations of such air carriers. It is more reasonable to conclude that exemption authority for each individual flight as is the current practice more clearly meets the standards of Section 416(b) than a blanket authority for an unlimited number of flights over a prolonged period.

Since this exemption policy applies to foreign air transportation over which the President has exclusive authority, it is incumbent upon the Board to submit this policy pronouncement to the Executive in accordance with the provisions of Section 801 of the Act. The issuance of blanket exemption authority to the many supplemental and cargo carriers who may make application therefor is an action in which the President may have an interest and upon which he should have an opportunity to comment.

The Board's action here also tends to prejudice the determination of the need for transatlantic charter carriers in Docket 11908 by granting substantially similar authority by Exemption to those carriers filing applications for certificates in the *Transatlantic Charter Investigation*. Without a showing of an emergency requiring expeditious action, the present practice of granting individual exemptions should not be amended. The Board's freedom of action in the certificate proceeding is being seriously impaired.

/s/ CHAN GURNEY

STATEMENT OF SUPPORTING INFORMATION *

PART I—To be completed by air carrier for each single entity, mixed, or pro rata charter. (Where more than one round-trip flight is to be performed under the charter contract, clearly indicate applicability of answers.)

1. Name of transporting carrier: _____
2. Commencement date(s) of proposed flight(s): (a) Going _____
(b) Returning _____
3. Points to be included in proposed flight(s): (a) From _____ to _____
(b) Returning from _____ to _____ (c) Other stops required by charterer: _____ (d) Technical stops required by carrier: _____
(e) Planned routing: _____
4. (a) Type of aircraft to be used: _____ (b) Seating capacity: _____
(c) Number of persons to be transported: _____
5. (a) Total charter price: _____ (b) If pro rata or mixed charter, does charter price conform to tariff on file with the Board? _____ (c) If pro rata or mixed charter, explain construction of charter price in relation to tariff on file with the Board (in case of mileage tariff, show mileage for each segment involved and indicate whether segment is live or ferry.) _____
6. (a) Has the carrier paid, or does it contemplate the payment of any commissions direct or indirect, in connection with the proposed flight? Yes ☐ No ☐ (b) If "yes," give names and addresses of such recipients and indicate the amount paid or payable to each recipient. If any commission to a travel agent exceeds 5 percent of the total charter price, attach a statement justifying the higher amount under this regulation. _____
7. (a) Will the carrier or any affiliate provide any services or perform any functions in addition to the actual air transportation? Yes ☐ No ☐ (b) If "yes," describe services or functions: _____
8. Name and address of charterer: _____
9. If charter is single entity, indicate purpose of flight: _____
10. On what date was the charter contract executed? _____
11. If the charter is pro rata, has a copy of Part 295 of the Civil Aeronautics Board's Economic Regulations been mailed to or delivered to the prospective charterer? Yes ☐ No ☐

PART II—To be completed for pro rata or mixed charters only:

Section A—To be supplied by travel agent, or, where none, by the air carrier or an affiliate under its control where either of the latter performs or provides any travel agency function or service (excluding air transportation sales but including land tour arrangements):

1. (a) Is the travel agent a member of the chartering organization? Yes ☐ No ☐
(b) Is any officer, director, employee or family member of the travel agent a member of the chartering organization? Yes ☐ No ☐ If answer is "yes," give name(s) of such person(s) and designate whether such person(s) be an officer, director, employee, and/or family member: _____
2. Has agent furnished solicitation materials to charterer? Yes ☐ No ☐ If answer is "yes," supply copy of each type of material herewith.
3. What specific services have been or will be provided by agent to charterer on a group basis? _____
4. What specific services have been or will be provided by agent to individual participants in the proposer charter? _____

* This must be retained by the air carrier for two years pursuant to the requirements of Part 249, but open to board inspection, and to be filed with the board on demand.

5. (a) Did or will the agent collect deposits from individual participants in the charter? Yes ☐ No ☐ If answer is "yes," explain: _____
 (b) Did or will the agent collect deposits from the person(s) organizing the charter? Yes ☐ No ☐ If the answer is "yes," are the deposits in the form of a check, draft or money order drawn on the account of the chartering organization? Yes ☐ No ☐ If not so drawn, explain: _____
6. Has the agent incurred any obligations on behalf of the chartering organization relating to the expenses of solicitation or organization of the individual participants in the chartering group whether or not it is the intention of the chartering organization to assume ultimately the obligations incurred? Yes ☐ No ☐
7. Has the agent or, to his knowledge, have any of his principals, officers, directors, associates or employees compensated any member of the chartering organization in relation either to the proposed charter flight or any land tour? Yes ☐ No ☐
8. Does the agent have any financial interest in any organization rendering services to the chartering organization? Yes ☐ No ☐ If answer is "yes," explain: _____

Verification ¹

STATE OF _____ }
 COUNTY OF _____ } SS: _____

_____, being duly sworn, deposes and says that to the best of his (Name) knowledge and belief all the information presented in Part II, Section A of this Statement is true and correct.

Signature and address of travel agent or, if none, of authorized official of air carrier (as to questions 2-8) where such carrier or an affiliate under its control performs any travel agency function or service (excluding air transportation sales but including land tour arrangements).

Sworn to before me this day, the _____
 of _____, 19____

(Signature of person administering oath. Also, set forth here below the name, address, and authority of such person.)

(SEAL)

Warranty

I, _____, (Name) represent and warrant that I have acted with regard to this charter operation (except to the extent fully and specifically explained in Part II, Section A) and will act with regard to such operation in a manner consistent with Part 295 of the Board's Economic Regulations.

Signature and address of travel agent or, if none, of authorized official of air carrier (as to questions 2-8) where such carrier or an affiliate under its control performs any travel agency function or service (excluding air transportation sales but including land tour arrangements).

Section B—To be supplied by charterer:

1. Description of chartering organization, including its objectives and purposes: _____
2. What activities are sponsored by the chartering organization? _____
3. When was the organization founded? _____
4. Size of membership: ² Present _____ Last year _____ Year before last _____
5. Qualification or requirements for membership in organization and membership fee, if any: _____
6. Has there been any reference to prospective charter flights in soliciting new members for the chartering organization? Yes ☐ No ☐

¹ Whoever, having taken an oath before a competent . . . person . . . that he will testify, declare, depose, or certify truly, or that any written testimony, declaration, deposition, or certificate by him subscribed, is true, willfully and contrary to such oath states or subscribes any material matter which he does not believe to be true, is guilty of perjury, and shall, except as otherwise expressly provided by law, be fined not more than \$2,000 or imprisoned not more than five years, or both. Title 18, U.S.C. §1621.

² This figure should represent the number of persons eligible to participate in the charter by reason of their employment, membership, enrollment, etc. For example, if the charter is being sponsored by an employee recreation association but is open to all employees (whether or not affiliated with the association) the membership figures should represent the total of all the employees, not merely the membership of the association.

7. Give geographic distribution of membership. (If confined to one city, it will be sufficient to so indicate, otherwise describe local or larger area.)³-----
8. If total membership in the chartering organization is less than 1,000, submit list showing names and addresses of members in good standing.⁴ If total membership in the chartering organization is 1,000 or more, state where a list of members is available for inspection. (Groups of 1,000 or more may be required to submit membership lists upon specific requests.)-----
9. Attach list of prospective passengers, showing for each: Name, address, and whether a member of chartering organization or relationship to a member of chartering group. (Note: This is a list of *prospective* passengers and does not necessarily have to represent the passengers actually carried.)-----
10. Purpose of trip:-----
11. What are requirements for participation in charter?-----
12. How were prospective participants for charter solicited (attach any solicitation material)?-----
13. Will there be any participants in the charter flight *other than* (1) members of the chartering organization or (2) spouse, dependent children, and parents of a member of the chartering group, *residing in the same household with the member?* Yes ☐ No ☐-----
14. Will there be any members of the chartering organization participating in the charter who will have been members of the organization for a period of less than six months prior to flight date?⁴ Yes ☐ No ☐ If answer is "yes," give names of participants who will not have been members for six months and justify (see §295.2(j)) :-----
15. If there is any intermediary involved in the charter, other than the travel agent whose participation is described in Section II (A), submit name, address, remuneration and scope of activity:-----
16. Estimated receipts: ----- x ----- = \$-----
(pro rata charge) (No. of passengers) (Estimated receipts from charter)
Estimated receipts from other sources, if any: Explain:-----
(a) Total receipts \$-----
Estimated expenditures, including aircraft charter (separately itemize air transportation, land tour, and administrative expenses) :

Item	Amount	Payable to
------	--------	------------

(b) Total expenditures \$----- Explain any difference between (a) and (b) :-----
17. Are any of the expenses included in item 16, above, to be paid to any members of the chartering organization? Yes ☐ No ☐ If "yes," state how much, to whom and for what services:-----
18. Is any member of the chartering organization to receive any compensation or benefit directly or indirectly from the air carrier, the travel agent, or any organization providing services in relation to the air or land portion of the trip?----- If "yes," explain fully:-----
19. Will any person in the group (except children under two years) be transported without charge? Yes ☐ No ☐-----
20. Will charter costs be divided equally among charter participants, except to the extent that a lesser charge is made for children under twelve years old? Yes ☐ No ☐-----
21. Separately state for the outbound and inbound flights the number of one-way passengers anticipated to be transported in each direction:-----
22. If more than one round trip is contracted for, will each plane/load group move as a unit in both directions? Yes ☐ No ☐-----

³ If eligibility to participate in the charter is dependent upon employment by a particular entity, the answer to this question should reflect the geographic location of the plants or offices in which those persons are employed.

⁴ Not applicable to college campus or study-group charters, nor to charters limited to employees of a single Government agency, industrial plant or mercantile company.

23. If transatlantic charters have been performed for organization during past 5 years, give dates and name of carrier performing charters:-----
24. Has a copy of Part 295, "Transatlantic Charter Trips," of the Economic Regulations of the Civil Aeronautics Board been received by the charterer? Yes ☐ No ☐

Verification of Charterer¹

STATE OF ----- }
COUNTY OF ----- } SS:

----- and -----, being duly sworn, hereby separately depose and say that to the best of the knowledge and belief of each of them all the information in Part II, Section B, of this Statement is true and correct.

(Signature and title of officer—This should be the chief officer of the chartering organization except in the case of a school charter, in which case the verification must be by a school official not directly involved in charter.)

(Signature—person within organization in charge of charter arrangements.)

Sworn to before me this day, the -----
-----, 19

Sworn to before me this day, the -----
-----, 19

(Signature of person administering oath. Also, set forth here below the name, address and authority of such person.)

(Signature of person administering oath. Also, set forth here below the name, address and authority of such person.)

(SEAL)

(SEAL)

Warranty of Charterer

I, ----- and -----, represent and warrant that the
(Name) (Name)
charterer has acted with regard to this charter operation (except to the extent fully and specifically explained in Part II, Section B), and will act with regard to such operation, in a manner consistent with Part 295 of the Board's Economic Regulations.

(Signature and title of officer—This should be the chief officer of the chartering organization except in the case of a school charter, in which case the warranty must be by a school official not directly involved in charter.)

(Signature—person within organization in charge of charter arrangements.)

VERIFICATION OF EMPLOYER¹

(To be furnished where eligibility to participate in charter is dependent upon employment by a particular entity).

STATE OF ----- }
COUNTY OF ----- } SS:

-----, being duly sworn, deposes and says that to the best of his
(Name)
knowledge and belief the answers to questions 4 and 7 of Part II, Section B, of this Statement are true and correct insofar as they represent the number and employment location of persons employed by -----

(Name of employer entity)

(Signature and title of authorized official of employer.)

Sworn to before me this day, the -----
-----, 19

(Signature of person administering oath. Also, set forth below the name, address, and authority of such person.)

(SEAL)

WARRANTY OF AIR CARRIER

To the best of my knowledge and belief all the information presented in this statement, including but not limited to, those parts verified by the charterer and the travel agent, is true and correct. I represent and warrant that the carrier has acted with regard to this charter operation (except to the extent fully and specifically explained in this statement or any attachment thereto) and will act with regard to such operation in a manner consistent with Part 295 of the Board's Economic Regulations.⁵

(Signature and title of authorized official of air carrier.)

⁵ Any air carrier, or any officer, agent, employee, or representative thereof, who shall, knowingly and wilfully, fail or refuse to keep or preserve accounts, records and memoranda in the form and manner prescribed by the Board, or shall, knowingly and wilfully, falsify, mutilate, or alter any such report, account, record or memorandum, shall be guilty of a misdemeanor and, upon conviction thereof, be subject for each offense to a fine of not less than \$100 and not more than \$5,000. Title 49 U.S.C. §1472.

TRANSATLANTIC CHARTER POST FLIGHT REPORT**Instructions:**

The charterer shall complete and file a report in this form with the air carrier within 15 days of each one-way or round-trip charter flight. A report in this form shall also be furnished each charter participant by the charterer within 15 days after completion of each one-way or round-trip charter flight.

1. Name of carrier: _____

2. Name of chartering organization: _____

3. Analysis of charterer's receipts.

(a) _____ x _____ = _____

No. round-trip psgrs.

Charge per psgr.¹
(Including amounts
later refunded)

(b) _____ x _____ = _____

No. one-way psgrs.

Charge per psgr.¹
(Including amounts
later refunded)

(c) Receipts from other sources (explain) = _____

(d) Total receipts [(a) + (b) + (c)] = _____

4. Analysis of charterer's expenditures:

Item of expenditure ²

Paid to ³

Total ⁴

Amount

Verification ⁵

STATE OF _____ }
COUNTY OF _____ } SS:

I, _____, being duly sworn, hereby depose and say that this report has been prepared by me or under my direction, that I have carefully examined it and that to the best of my knowledge and belief it is a complete and accurate statement, and a copy hereof has been distributed to each charter participant.

Sworn to before me this day, the _____
of _____, 19 _____

(Signature of person in charge of charter arrangements.)

(Signature of person administering oath. Also, set forth here below the name, address, and authority of such person.)

(SEAL)

¹ If charter cost was not divided equally among all participants actually transported, indicate clearly the individual amounts collected and the number of passengers paying each such amount.

² As a separate item there should be listed here a total of all the amounts refunded to the charter participants; also list separately air transportation, land tour, and administrative expenses (showing compensation for labor and personal expenses paid to any member of chartering organization).

³ Disclose any relationship to chartering organization.

⁴ If this item does not agree with item 3(d), submit an explanatory statement as to the reasons therefor. If the total expenditures (including among other items compensation to members of the chartering organization but exclusive of expenses for air transportation or land tours) exceed \$750 per round trip, such expenditures shall be fully supported by vouchers submitted to and retained by the direct air carrier operating the charter. Such vouchers must cover all expenditures made on behalf of the chartering group including any expenditures for banquets, gifts, local transit, etc.

⁵ Whoever, having taken an oath before a competent . . . person . . . that he will testify, declare, depose, or certify truly, or that any written testimony, declaration, deposition, or certificate by him subscribed, is true, willfully and contrary to such oath states or subscribes any material matter which he does not believe to be true, is guilty of perjury, and shall, except as otherwise expressly provided by law, be fined not more than \$2,000 or imprisoned not more than five years, or both. Title 18, U.S.C. §1621.

ECONOMIC REGULATIONS AMENDMENT NO. 1 TO PART 295

PART 295—TRANSATLANTIC CHARTER TRIPS

Present Part 295, promulgated on April 28, 1961, sets out the general requirements governing applications for and operations under individual exemption orders authorizing the performance of transatlantic passenger charter flights by United States air carriers other than carriers certificated to provide unlimited passenger service over designated routes pursuant to Section 416(b) of the Act.

Since that time, the authority of the carriers formerly operating transatlantic passenger charters under exemption authority granted pursuant to Section 416(b) has been altered by the enactment of P.L. 87-528. In that legislation, the all-cargo carriers were given authority to perform passenger charters by an amendment which is now Section 401(e)(6) of the Act.¹ The general authority of the supplemental carriers to operate charters is derived from interim operating authority issued by the Board Under Section 7 of P.L. 87-528.

The Board has before it, in the *Transatlantic Charter Investigation*, Docket 11908, the issue of the certification of carriers to conduct transatlantic passenger charters and the conditions thereof. Pending decision in that case, however, it is necessary to amend Part 295 to reflect the present bases of charter authority of the carriers heretofore operating in the transatlantic passenger charter market in order that such operations may be conducted in the forthcoming season in the same manner as in the past. Thus, as to all-cargo carriers, authority formerly sought through the exemption process must now be obtained by application for a special order (Part 207, Amendment 2, issued simultaneously herewith).

With respect to the supplemental carriers, in granting interim operating certificates under Section 7 of P.L. 87-528, pending determination of applications for permanent supplemental authority under Section 401(d)(3) of the Act, the Board did not grant such carriers any interim operating authority to carry passengers in foreign air transportation (except as to planeload transportation for the Defense Department), no such authority having been held by the supplementals prior to the enactment of P.L. 87-528. Thus, participation by such supplemental air carriers in the transatlantic passenger charter market for the forthcoming season will require an amendment to the interim operating certificates of such carriers.

Accordingly, in order to set forth the existing regulatory bases for the grant of transatlantic charter authority for the forthcoming season, the Board will amend Part 295 by substituting the terms "special order" and/or "amendment to interim operating certificates" for the term "exemption" and by deleting references to the statutory standards of Section 416(b) in §295.1 which, in view of the carriers' new statutory authority, is no longer appropriate. Similar amendments necessitated by the substitution of special orders and amendments to interim operating certificates for the exemption procedure will be made in §§295.5 and 295.13. §295.5 has also been further amended by reducing the time for filing applications under subparagraph (b) thereof from

¹ The Board, in EDR-48, noted that with the enactment of P.L. 87-528, Part 207 of the Economic Regulations, applicable to Charter Trips and Special Services, automatically became applicable to passenger charters performed by all-cargo carriers.

60 to 45 days prior to the proposed first flight under such authority.

Since these amendments impose no additional burden upon any person and merely preserve the status quo pending final decision in the *Transatlantic Charter Investigation*, and in view of the imminence of the transatlantic charter season, the Board finds that notice and public procedure thereon are not required, and the amendments may be made effective on less than 30 days' notice. However, comments (10 copies) of interested persons on these amendments, submitted to the Docket Section, Civil Aeronautics Board, Washington 25, D.C., on or before April 15, 1963 will be considered by the Board and the regulation may be further amended in light of such comments.

In consideration of the foregoing, the Civil Aeronautics Board hereby amends Part 295 of the Economic Regulations, as amended (14 CFR Part 295), effective March 26, 1963, by

1. Amending §295.1 to read:

“§295.1 *Applicability*. This part establishes the requirements governing applications for, and operations under, special orders to carriers holding certificates of public convenience and necessity for the carriage of property only and property and mail only pursuant to Part 207 of the Economic Regulations and amendments to interim operating certificates of supplemental carriers operating under Section 7 of Public Law 87-528, authorizing for periods up to 180 days but terminating not later than September 30 of any year, the performance of pro rata, mixed and/or single entity charter flights for transatlantic passengers. Such application shall be filed and submitted in compliance with the applicable provisions of this part. Operations under any such special order or amendment to interim operating certificate authorizing the performance of transatlantic passenger charter flights shall be conducted in conformity with the pertinent requirements of this part unless otherwise specifically authorized by the Board. The provisions of this regulation shall not be construed as limiting any other authority to engage in air transportation issued by the Board.”

2. Amending the introductory paragraph of §295.5 as follows:

“§295.5 *Application for exemption authority*. Proceedings on applications for special orders pursuant to Part 207 of the Economic Regulations and amendments to interim operating certificates under Section 7 of Public Law 87-528 to conduct transatlantic passenger charter flights (pro rata, mixed and/or single entity charters) shall be governed, to the extent applicable, by §§302.400 to 302.409 of Subpart D of Part 302 of the Board's Procedural Regulations, entitled 'Rules Applicable to Exemption Proceedings', subject, however, to the following additional or different provisions:”

3. Amending paragraph (b) of §295.5 as follows:

“(b) Applications for special orders or amendments to interim operating certificates shall be filed with the Board at least 45 days prior to the proposed first flight under such authority.”

4. Amending §295.13 as follows:

"§295.13. *Tariffs to be on file.* At the time an application for a special order or amendment to an interim operating certificate is submitted, the carrier shall have on file with the Board a tariff showing all its rates, fares, and charges for the use of the entire capacity of one or more aircraft in air transportation and all its rules, regulations, practices and services in connection with the transatlantic pro rata charter transportation which it offers to perform. Tariffs filed pursuant hereto shall expressly recite that the transportation may not be furnished unless the Civil Aeronautics Board pursuant to §207.13 of Part 207 of the Economic Regulations issues such special order or amendment to an interim operating certificate issued pursuant to Section 7 of Public Law 87-528."

(Sec. 204(a), 72 Stat. 743; 49 U.S.C. 1324. Interpret or apply secs. 407(a), 401(e)(6), and sec. 7, P.L. 87-528, 72 Stat. 766, 76 Stat. 144, 147; 49 U.S.C. 1377, 1371.)

By the Civil Aeronautics Board:

HAROLD R. SANDERSON
Secretary

ECONOMIC REGULATIONS AMENDMENT NO. 2 TO PART 295

PART 295—TRANSATLANTIC CHARTER TRIPS

Elimination of Certain Limitations on Eligibility for Charters of Colleges, Universities, Businesses and Government Agencies

Part 295 of the Economic Regulations relates to transatlantic charter operations of United States supplemental and certificated cargo carriers. §295.30 provides that charter groups may not be formed or members solicited from the general public and that in this regard an organization or other entity with more than 20,000 members is considered the general public. An exception to this consideration is made in cases of colleges or universities *located in one local area*. This section is made applicable to off-route charter operations of foreign air carriers by a specific provision in § 399.35 (14 CFR Part 399).¹

In Order E-19309, February 18, 1963, the Board tentatively approved an IATA charter agreement which exempts business firms, government organizations and colleges and universities without area restriction from the 20,000-member limitation. In the same order, as further evidence that it no longer considered universal application of such a limitation to be in the public interest, the Board states its intention to revise Part 295 so as to exempt business firms and government organizations from the limitation and to eliminate the "local area" limitation applied to colleges and universities. It noted specifically that the revision would affect the off-route charter operations of foreign air carriers as well as United States supplemental and certificated cargo carriers.

¹ Section 399.95 was adopted in Regulation Policy Statement No. 11. It prescribes standards used in processing applications for Statements of Authority by foreign air carriers to conduct off-route charter trips pursuant to Part 212 of the Economic Regulations. Section 399.35 incorporates by reference many provisions of Part 295.

This order was published in the Federal Register (28 F.R. 1746, February 22, 1963) and provided 15 days for any interested person to submit written comments on the Board's proposal. Comments received were discussed by the Board in Order E-19426, March 28, 1963, which finally approved the IATA Agreement and stated the intention to amend Part 295 in the manner previously stated. Therefore, further general notice of proposed rule making is not necessary in this case. Additionally, the period in which summer charter season plans must be concluded is at hand and the delay inherent in the publication of further notice might operate to the detriment of public and carriers alike, and hence would be contrary to the public interest.

In consideration of the foregoing, the Civil Aeronautics Board hereby amends §295.30 of Part 295 of its Economic Regulations (14 CFR Part 295), effective immediately, to read as follows:

§295.30 *Solicitation of charter participants.* As the following terms are defined in §295.2, members of the charter group may be solicited only from among the bona fide members of an organization, club or other entity, and their immediate families, and may not be brought together by means of a solicitation of the general public. Charter participants solicited without limit from organizations, clubs or other entities with a total membership of more than 20,000 (except business entities, government departments or agencies, colleges and universities) shall be considered as solicited from the general public.

(Section 204(a), 72 Stat. 743; 49 U.S.C. 1324. Interpret or apply Section 401(e) (6), 76 Stat. 144; 49 U.S.C. 1371, and sec. 7, P.L. 87-528, 76 Stat. 147.)

By the Civil Aeronautics Board:

HAROLD R. SANDERSON
Secretary

Exhibit B

WORLD TRAVEL CENTER
555 Ramona Street, Palo Alto California
and
JERRY DAVIS, PRINCIPAL

World Travel Center first came to the attention of our office in January of 1960. We wrote to the firm requesting information but received no response. A followup request was sent on February 10, but still no information.

On August 5, 1960, we wrote a personal letter to Mr. Glassman, owner of World Travel Center, calling the above facts to his attention and requesting his cooperation in furnishing us with information from which we could prepare a report for our use in answering inquiries.

Under the date of August 8, 1960, we received information prepared by and submitted over the signature of Jerry Davis indicating that World Travel Center was the sole proprietorship of Ben Glassman.

Davis indicated that the business was formed October 6, 1959, that it had five employees with an anticipated gross of \$500,000. Davis referred to the firm's affiliation with Air Traffic Conference of America, and as trade references listed the names of Hawaiian Airlines, c/o Ed. Sullivan, 291 Geary Street, San Francisco, and Trans-Continental Airlines Agency, c/o Ed. Kristeef, Oakland International Airport.

During the time this agency has been in operation, we have had a number of complaints from clients indicating dissatisfaction in their dealings with the firm. Most of the complaints involve the inability to get refunds for services paid for but which were not available on trips booked through World Travel Center.

The major activity of this firm at the present time appear to be that of student "charter" trips to Europe. Through advertisements placed in various campus newspapers these trips, referred to as "Europe '63," are advertised at \$399, which covers the air transportation only.

From information furnished this office by interested parties, it appears that several "charter" flights are planned for Stanford University, San Jose State College, University of San Francisco, Cal Poly, Oregon State, and possibly other colleges or universities.

Many of the persons making inquiry to our office on the reputability of World Travel Center and their "Europe '63" program indicated that they had been told that they need not have an affiliation with the specific group in order to participate in that group's charter.

Our investigation indicated that this affiliation is a basic requirement under Civil Aeronautics Board Regulations. After having been given this information several persons again contacted World Travel Center and questioned the legality of their participation in these flights and were assured by Davis or others in his office that they (World Travel Center) were "mixing" flights and that even though an investigation might be undertaken by the authorities, such investigation would probably not be undertaken until November and by that time the return flights would have been made so that the clients had nothing to worry about.

The airline through which World Travel Center is chartering the planes is Aerovias Sud Americana (ASA), a certificated cargo carrier, with home offices in Miami, Florida. This line's passenger service, which we are told is confined strictly to charter trips, is conducted out of their office at 5912 Avion Drive, Los Angeles, telephone 776-0734. The manager at this office is Mr. George Patterson.

On May 9, 1963, we contacted Mr. Bob Bauer, of the Los Angeles BBB and asked him to check with Patterson to determine how much money had been forwarded to ASA by Davis for flights being sold. Bauer determined that these funds were being deposited in the Bank of America Branch at the LA International Airport and on May 9, there was an amount in the account of something over \$70,000. Patterson told Bauer that ASA charged \$38,000 per flight for the use of their equipment.

We were able to determine that on or about this same date, Davis had on deposit in the "Europe '63" account in the Sumitomo Bank of San Jose, approximately \$4,000. In the same bank there were two other accounts, one under the name of N. C. Davis in which there was some \$32,000 and the other under the name of G. J. Davis, which contained some \$57,000. While the "Europe '63" account required two signatures, only one signature was required on the other two accounts.

Under date of May 13, 1963, we wrote to Mr. John G. Adams, Director, Bureau of Enforcement, Civil Aeronautics Board, Washington, D.C., calling the attention of that office to what appeared to be irregularities in the operation of these so-called "charter" flights being promoted by World Travel Center.

On May 20, we received a response to this letter from Mr. Robert Burstein, Acting Director, Bureau of Enforcement, in which it was indicated that that office had had "other complaints" on this matter and that an investigation was being conducted.

Because of the steadily increasing volume of inquiries being made to our office by persons who were interested in these flights, and because of what appeared to be violations of CAB regulations governing charter flights we were interested in determining whether the CAB investigation might result in the cancellation of the flights in question. This office called Mr. Burstein on Friday, May 24, 1963, and spoke with both Mr. Burstein and Mr. Joseph Stout, Chief Investigator, for the Bureau of Enforcement. These men were reached through AC 202, 382-7695, Washington, D.C.

Both of these gentlemen showed a great interest in this matter and indicated that another of their investigators had been contacted and moved from an assignment in Los Angeles to this area to proceed with an investigation of World Travel Center activities. We were informed that this man would be here no later than Wednesday, May 29.

Under date of Monday, May 27, The Stanford *Daily* featured a story on the front page entitled "AUTHORITIES MAY CANCEL STANFORD CHARTER FLIGHT." Representatives of the Stanford *Daily* told this office that the story had been written because of the many students and/or faculty members who were scheduled for departure on one or the other of the charter flights in question.

Since the appearance of this story, our office has had many calls from the public, from other travel agencies, and from representatives of air lines complimenting our office on our activities in bringing this matter before the appropriate authorities, and pledging their help.

We will keep all interested parties advised of future developments.

Better Business Bureau
of Santa Clara Valley

Report prepared by:
WES STROUSE, *Manager*

Exhibit C

UNITED STATES OF AMERICA CIVIL AERONAUTICS BOARD
Washington, D. C.

*Adopted by the Civil Aeronautics Board
at its office in Washington, D.C.
on the 29th day of May, 1963*

Application of

AEROVIAS SUD AMERICANA, INC.

for a special order pursuant to
section 207.13 of the Economic
Regulations.

Docket 14514

ORDER DISMISSING APPLICATION

On March 26, 1963, the Board issued Amendment 2 (Regulation ER-375) to Part 207 of its Economic Regulations, which provides, *inter alia*, that a certificated cargo carrier may engage in transatlantic civil passenger charters for the period April 1-September 30, 1963 without regard to the restrictions of sections 207.5, 207.7, 207.8, and 207.10 if it obtains from the Board a special order authorizing the performance of such charters. The amendment also provides that applications for such orders, and charters performed pursuant thereto, shall be in conformance with Part 295 of the Economic Regulations. A certificated cargo carrier may perform a transatlantic passenger charter pursuant to section 401(e) of the Federal Aviation Act, as amended by section 3 of Public Law 87-528, without obtaining the above-mentioned special order, but such charters would be subject to the above-cited sections of Part 207 which impose restrictions on regularity and volume and a first refusal procedure in favor of the certificated route carriers.

On May 22, 1963 Aerovias Sud Americana, Inc. (ASA) filed with the Board an application for such a special order authorizing it to perform unlimited pro rata, mixed, and single entity transatlantic passenger charters between June 8 and September 30, 1963. ASA simultaneously filed a motion requesting leave to file this application less than 45 days prior to the first proposed flight, alleging that its failure to file in the time provided by section 295.5(b) of the Economic Regulations "was inadvertent and attributable to a misunderstanding between the carrier and its counsel"; and that no interested party would be prejudiced by the granting of the motion.

In support of its application for a special order, ASA alleges among other things, that it has entered into contracts for not less than 20 round trip transatlantic passenger charters, the first of which is scheduled to depart on June 8, 1963; that it has the necessary aircraft, capital, trust account arrangements, screening provisions for eligibility, and arrangements for representation abroad; that it has an appropriate tariff on file with the board; that it has had prior experience in the performance of charters; and that its future depends in part upon successful commercial operations.

The Board, upon consideration of this application and motion,¹ and all pertinent circumstances, has decided to dismiss the application. Section 295.5(a) provides that: "Applications may be filed only by air carriers which are applicants in good standing for transatlantic charter authority in *Transatlantic Charter Investigation*, Docket 11908, instituted by Board Order E-16023 of November 14, 1960." Although ASA was an applicant in this investigation, its application therein was dismissed by Order E-18319, adopted May 9, 1962. Thus, it is not eligible to apply for the authority in question nor does its application in any way offer an explanation as to why it might be construed as eligible despite its failure to satisfy the requirement contained in section 295.5(a). The application will, therefore, be dismissed.²

ACCORDINGLY, IT IS ORDERED: That the application of ASA in Docket 14514 be and it hereby is dismissed.

By the Civil Aeronautics Board:

HAROLD R. SANDERSON
Secretary

Excerpt from: Report of the Antitrust Subcommittee (Subcommittee No. 5) of the Committee on the Judiciary, House of Representatives, Eighty-fifth Congress, First Session. Pursuant to H. Res. 107 on Airlines April 5, 1957

Chapter V

TRAVEL AGENTS

Congress, in the Civil Aeronautics Act, conferred extensive powers on the Board to regulate all persons engaged in "air transportation." Since the term "air transportation" does not include the sale of air travel tickets, the Board has no authority to regulate directly entry into the travel agency business. Lack of such authority was recognized by the Board in its statement, "Travel Agency Agreements" submitted to the committee at the hearings. There the Board said:

The term "air transportation" does not include the sale of air transportation or ticket agency services, and, accordingly, there is nothing in the Civil Aeronautics Act which prohibits a ticket agent from engaging in such business without first securing prior Board authorization therefor. Any person is free to act as a ticket agent for any airline which cares to use his services without securing Board approval. In this sense, the Board does not have jurisdiction to "license" travel agents.*

¹ While the explanation given for filing the application less than 45 days prior to the first proposed flight might well be construed as an inadequate one, the Board has decided to grant the motion for leave to file. By letter of February 19, 1963, the Board's staff reminded Aerovias of the status of its authority with respect to transatlantic passenger charters in the forthcoming season. By letter of April 4, 1963, the President of Aerovias acknowledged this letter and noted also the recent issuance of the amendment to Part 207 which indicated how such authority could be sought. Thus it is clear that Aerovias was fully aware of the necessity for filing for such authority and had such knowledge well in advance of the required 45-day period.

² Although the matter of ASA's compliance with other requirements of Part 295 is not reached, certain problems in this regard should be noted. ASA has no past experience in the transatlantic civil passenger charter market. Moreover, its financial reports filed with the Board indicate that its ability to meet the test of financial fitness for this particular type of program might be questioned.

* Hearings, vol. 1, p. 318.

Board approval under section 412 of the act of a series of agreements submitted by the certificated industry, however, has resulted in the exercise of controls, with immunity from the antitrust laws, by the air traffic conference, over entry into the business of selling travel agency services for air transportation on the scheduled industry's routes. Thus, by indirection, the Board has authorized a type of regulation it could not undertake to exercise directly itself.

For the past 15 years the majority of the certificated carriers through joint action in the Air Transport Association, have prescribed the conditions which travel agents must meet and under which they must operate in order to qualify for commissions on sales of passenger space on any of the member airlines. These conditions apply whether the travel agents' sales are made in conjunction with a tour, excursion, or any other form of air travel.

Before he is eligible to act as a travel agent for a certificated carrier, a travel agent must be accredited by ATA's air traffic conference.² Once qualified, the agent must thereafter observe an elaborate regulatory code prescribed by the conference, on penalty of his accreditation being canceled. In addition, the air traffic conference has preemptory power to cancel an agent's accreditation by decision made in closed secret session. ATC's procedures provide a travel agent no right of appeal, and there is no requirement that he be advised of the reasons for his cancellation.

The scheduled industry's agency system is founded upon an agreement among the ATC carriers. This agreement defines the conditions for dealing with travel agents and establishes a standard commission rate for their remuneration. Deviations from the ATC agency resolution subject a carrier to a system of enforcement sanctions administered by the Air Transport Association. Penalties for violations of the agency agreement include a possible fine of \$25,000 for each offense, in addition to costs and other measurable damages that might be involved.³

ATA's agency system was approved by the Civil Aeronautics Board under section 412 of the Civil Aeronautics Act in April 1941. It has persisted without substantial alteration to the present time, despite the far-reaching changes that have taken place in both the travel-agency business and in commercial air transportation itself.

Travel agents who sell tickets for flights on international routes are subject to a substantially similar system of controls. All United States-certificated airlines that are engaged in foreign air transportation are parties to the travel-agency agreement promulgated and administered by the International Air Transport Association (IATA). IATA is the trade association of the certificated airlines flying international routes. Insofar as the participation of American carriers is concerned, the Civil Aeronautics Board has extended its approval to IATA's program.

In its statement to the committee, the Board contended " * * * the agency arrangement secures important public benefits and, on an over-

² According to the Air Transport Association, "the affairs of the air traffic conference * * * include, by definition, all matters involving, directly or indirectly, traffic; sales; and advertising problems upon which the members of the conference desire joint and coordinated action" (hearings, vol. 3, p. 1456).

³ Hearings, vol. 3, p. 1766.

all basis, serves the best interests of the ticket agents, the air-carrier, parties to the resolution, and the public.”⁴

THE NATURE OF THE TRAVEL AGENCY INDUSTRY

During the hearings, travel-agent representatives testified there are currently approximately 5,000 travel agencies doing business in the United States and Canada, of which approximately 2,000 are accredited to sell tickets for the certificated carriers.⁵ This comparatively young industry is made up in the main of small firms with a high degree of participation in the detailed operations of the business required of the owner-manager. Although there are some large firms in the industry, the “typical” travel agency has gross bookings of about \$300,000, which yield a gross business income averaging \$20,000 yearly and a net annual income averaging from \$5,000 to \$7,000.⁶

There are two travel-agency trade associations: The American Society of Travel Agents (ASTA) with a membership of about 1,100, and the Travel Agents Guild of America (TAGA), organized in September 1955, with a membership of less than 100.⁷ In terms of bookings, ASTA travel agents account for almost \$500 million in gross volume annually. One-fifth of the gross bookings of “the typical ASTA agent” comes from the sale of domestic air transportation. Conference appointments with the ATC are held by 89 percent of all ASTA agents.⁸

Definitive statistics on the total market for travel are not available. Estimates covering the classes of travel with which travel agents are concerned, however, range from an annual expenditure of \$6 billion to \$8 billion.

Until recent years, the services of travel agencies were confined largely to providing accommodations in the narrow and specialized steamship market. Over the last decade, the travel-agency business has experienced tremendous expansion due to such factors as a favorable rate of population growth, a high level of national income, the long-term trend toward a shorter workweek, mass travel opportunities for the middle-income class group, and technological improvement encompassing the development of highspeed aircraft, as well as the modernization of facilities for other classes of transportation and hotel accommodations.⁹

There is every reason to believe that the travel market will continue its recent substantial rate of growth, and that the role of the travel agency in this process will be substantial.¹⁰ In view of the continuing expansion trends in air transportation, the air-travel market will be increasingly important to the travel-agency industry.

⁴ Hearings, vol. 1, p. 321.

⁵ Hearings, vol. 1, p. 320; hearings, vol. 4, pp. 2356, 2362.

⁶ Hearings, vol. 3, p. 2285. Cf. CAB, *North Atlantic Tourist Commission* case, docket No. 5422, appendix, initial decision of examiner, served May 26, 1952.

⁷ Hearings, vol. 3, p. 2285; hearings, vol. 4, pp. 2357, 2359.

⁸ Hearings, vol. 3, p. 2285.

⁹ Cresap, McCormick & Paget, *Survey of the Travel Agency Business*, April 1955. This comprehensive study was conducted by the management-consultant firm of Cresap, McCormick & Paget for the American Society of Travel Agents and was submitted as an exhibit at the hearings (vol. 4, p. 2399) but has not been incorporated in the printed record because of its bulk.

¹⁰ *Ibid.*, p. IV-16.

While there are significant variations in methods of operation, the functions of the "typical" travel agent has been described as follows:¹¹

He spends a substantial part of his time and labor in advertising and promoting travel. This may be done by one or more of the customary means of publicity, such as newspaper, radio, or television; speaking and exhibiting travel pictures, both still and moving, to local groups; distributing handbills; or direct mailing of travel folders.

Once a client is attracted to the agent's office he must be given personal attention and his needs for information and advice satisfied, and, if possible, a trip sold. The nature of this work, of course, varies with the individual client, but a person who does comparatively little traveling might want information upon the following matters:

- 1 The cost by the various modes and classes of transportation.
- 2 Distances and times involved.
- 3 Type of accommodations obtainable.
- 4 Schedules available.
- 5 Method of obtaining passports.
- 6 Comparative merits of surface and air transportation.
- 7 The availability of living accommodations at the point or points of destination.

The travel agent is called upon to plan various aspects of his client's journey (including motor transportation, itineraries, hotel, and other accommodations en route, sightseeing, etc.) and to quote a firm price for the composite trip, including compilation of various fares, rates, tariffs, and applicable taxes. On receipt of an order for specified travel, the travel agent must accomplish the necessary reservations for the accommodations requested. Finally, the ticket must be issued and the fare collected.¹²

Some travel agencies specialize in planning and operating tours, both domestic and foreign, which are marketed through other agents. Such an agent may specialize in a particular geographical area and is regarded as a "wholesaler" of the tours he plans and operates. Other agents, who are referred to as "retailers," provide a considerable amount of booking for the tour. Another speciality is devoted to "those segments of the population having the same national origin and * * * arranging trips for this clientele to the country of origin either on business or to visit friends and relatives."¹³

In addition to the convenience afforded by numerous widely dispersed ticket-booking facilities, travel agents provide the public an opportunity for an objective appraisal of competing airline services. Counsel for ASTA, in a brief filed with the CAB, pointed to a num-

¹¹ CAB *North Atlantic Tourist Commission* case, docket No. 5422, appendix, initial decision of examiner, served May 26, 1952.

¹² Since travel may now extend to virtually any part of the globe, there are a number of miscellaneous functions which the travel agent may perform for his client, as, for example, help in handling applications for passports or furnishing information on such matters as health, customs regulations, and currency-exchange problems in foreign lands.

¹³ *North American Tourist Commission* cases (CAB Docket No. 5422), decided August 14, 1952.

ber of services provided by travel agents that could not be provided by the airlines' ticket offices. He said:

* * * The individual airline offices are not in a position to render such service, since they do not offer bookings on airlines generally and on competing lines in particular—though in many instances such competing lines offer a service more convenient to a particular passenger. * * * the great majority of the ticket offices of the carriers are situated in the center of the larger cities and at the airports and do not offer the convenience and service to the public that is offered by the numerous independent agents, who have their offices scattered not only in various parts of the larger cities, but also in the environs and suburbs, where, by reason of distance from the carrier's office and the expense of telephone-toll charges for calls to carriers' offices, the traveling public would be inconvenienced if forced to do business exclusively at the ticket offices of the carriers. Moreover, the carriers cannot through their ticket offices offer a general travel service to the public * * * 14

The travel-agency industry makes an important contribution to air transportation and provides important benefits to air carriers. In this regard, the Civil Aeronautics Board said:

The desirability of air carriers maintaining agents as a sales medium cannot be questioned. Through the maintenance of agency relationships, carriers are provided extensive sales outlets to aid in the development of business without maintaining ticket and information offices at numerous points. Increased sales representation is provided, which in many instances otherwise would be costwise prohibitive.¹⁵

The Board's view is fully endorsed by the ATC, in its statement that—

* * * in the case of all of the scheduled airlines, both large and small, considerable reliance must be placed upon the travel agents to promote traffic at off-line points. As a result, the scheduled airlines regard the travel agents as an integral and essential part of their sales promotion and service programs.¹⁶

THE CONFERENCE SYSTEM

There are significant variations in the degree of joint industry action involved in the appointment of agents for the sale of travel and related services.

The great majority of hotels and resorts, foreign railroads, and sightseeing companies have not established any joint industry arrangement for the appointment of agents, but rather will accept business from virtually any firm or individual representing himself as a travel agent.¹⁷

Airlines, steamships, and domestic railroads, by contrast, appoint travel agents pursuant to agreements promulgated by industry com-

¹⁴ Hearings, vol. 2, p. 1334.

¹⁵ *IATA Agency Resolutions Proceedings*, Docket No. 3350. January 26, 1951.

¹⁶ Hearings, vol. 3, p. 1760.

¹⁷ Cresap, McCormick, and Paget, op. cit., p. III-6.

mittees or "conferences." The "conference" system, in its most favorable light, has been defined as "joint action by the carriers to standardize relations with agents and to establish a list of qualified agents from which the individual carriers can pick their representatives."¹⁸ The conference designates specific firms as authorized agencies, and establish the standard conditions applicable to all agency agreements. There are six conferences dealing with travel agency matters in the United States and Canada: The Air Travel Conference of America (domestic air transportation), International Air Transport Association (foreign air transportation), Transatlantic Passenger Conference (steamship), Western Hemisphere Passenger Conference (steamship), Transpacific Passenger Conference (steamship), and the Rail Travel Promotion Agency.

Among the United States carriers notable differences exist in concept as to the utilization of travel agents. The following differences were noted in ASTA's study:

The steamship lines and international airlines consider that agents can serve most markets more effectively and economically than these can be served directly.

Most of the larger domestic airlines feel that competitive and traffic factors require that they establish extensive networks of direct sales offices, and so they place lesser dependence upon the facilities of travel agents.

The railroads have accepted the principle of selling through travel agents only with respect to carefully defined "tours."¹⁹

AIR TRAFFIC CONFERENCE AGENCY PROCEDURES

It was on April 18, 1941, that the CAB first approved an agency resolution submitted by the ATC which, according to the Board, incorporates the "procedure in use today."²⁰

The Air Traffic Conference's master agency resolution establishes the operating conditions for travel agencies permitted to sell transportation for the certificated airlines on a commission basis in the United States and Canada.²¹

ATC's procedures require a travel agency that desires to qualify for commissions on the sale of certificated airline transportation first to be "accredited" by a committee of air carriers.

In its agency resolution, ATC stipulates that "Any person who desires to be named * * * shall make written application to the executive secretary *through a member*."²² This requires an agent to become accredited to first prevail on a certificated airline to act as his sponsor.

¹⁸ Hearings, vol. 3, p. 2286.

¹⁹ Cresap, McCormick, and Paget, op. cit., p. III-6.

²⁰ Hearings, vol. 1, p. 319. With the advent of World War II the payment of commissions to agents was suspended. Thereafter, on September 27, 1945, the Board approved a revised version of the agency resolution (CAB No. 402), which among other provisions reinstated the 5 percent commission rate on the sale of domestic air transportation. With the subsequent incorporation of other amendatory resolutions approved by the Board from time to time, there evolved the ATC agency resolution which is currently in effect.

²¹ Reproduced at hearings, vol. 3, pp. 1774-1786. The agency resolution and its amendments are compiled in a trade practices manual distributed by the ATC to the member carriers and binding upon them.

²² Sec. IV-B, hearings, p. 1776. [Emphasis supplied.]

His application is then presented for review to the "agency committee" which is "empowered to approve or disapprove any * * * application." This committee is composed of representatives of seven ATC members and meets "no more frequently than once each year." The agency committee, in passing upon applications, acts by a two-thirds vote of the members present. If they so desire, other ATC carriers are eligible to participate in meetings of the agency committee.²³

The criteria which guides the agency committee in its consideration of an application are "the willingness, ability, and activity of the agent in promoting and selling air passenger transportation, particularly vacation, pleasure, and tour travel; the number of authorized agency locations in the area involved; and the need of members for agency representation in the area involved."²⁴ The applicant must also have "a satisfactory credit standing and a reputation for ethical practice in the sale of passenger transportation and services related thereto."

There is no right of appeal or review afforded an agent from an adverse decision of the agency committee. Nor can the agent determine the basis upon which his application was rejected.

Accreditation, when given, extends only to specified business locations, designated as the "authorized agency location", which must, in order to meet ATC qualifications, be operated on an independent basis, exclusively or primarily "for the promotion and sale of passenger transportation and general travel services."²⁵

After a travel agent has been accredited, the ATC retains complete control over continuation of his status. The ATC agency committee may "review the eligibility of an agent" on its own initiative at any time and is required to conduct such a review on request of any member carrier. If a review is conducted, two-thirds of the committee must again approve the agent's eligibility at that time or he loses his accredited status.²⁶ At present, there is no right of appeal from an adverse decision of the committee in its review of the agent's status.

After approval of his application and entry of his name on the "agency list," the agent must enter into a standard sales agency agreement with the certificated carriers who compose the Air Traffic Conference. Although there is a procedure by which a carrier can enter into a sales agency agreement without prior approval of the agency committee, the normal procedure requires approval of the agency committee prior to the agent's functioning on behalf of any conference

²³ Agency resolution, secs. IV-C and IV-D, hearings, vol. 3, p. 1776. The applicant also is required to complete a comprehensive questionnaire for the use of the agency committee, hearings, vol. 2, p. 1315.

²⁴ Agency resolution, sec. IV-C, hearings, vol. 3, p. 1776.

²⁵ Hearings, vol. 3, pp. 1775-1776. Only in exceptional cases may the agency committee deviate from the requirement that the "authorized agency location" be a "bank travel department, a transportation bureau, or a travel bureau" as defined in the agency resolution.

²⁶ Agency resolution, sec. IV-G. The pertinent provision of the agency resolution reads: "The committee may, from time to time, on its own initiative, and shall upon the application of any member, review the eligibility of any agent or any authorized agency location. In any such review, the committee shall consider the same factors as would be considered in acting upon an original application, and in addition shall consider the experience of the members with such agent and the agent's record in performing its sales agency agreement with the members. Approval of the eligibility of any agent or any authorized agency location shall require the affirmative vote of two-thirds of the persons present and entitled to vote at a duly constituted meeting of the committee." Id. p. 1777.

carrier.²⁷ The sales agency agreement²⁸ prescribes and delimits the scope of the agent's authority and activities, sales office location, the deadlines by which he must make collections and remittances, sales requirements, maximum remunerations and commissions, and many other basic conditions governing the agent's method of operation and relationships with the ATA carriers.

Upon the execution of this agreement any member carrier is authorized to appoint the approved agency as its agent by the delivery of a standard "Certificate of appointment." Only after he has received his certificate of appointment may the agent proceed to sell transportation for the conference carriers at a commission.²⁹ The travel agency is also required to pay to the ATC an entrance fee of \$50 in addition to an annual fee as fixed by the conference.³⁰

The sales agency agreement implements section VIII of the agency resolution by which the carriers are mutually bound not to pay travel agents in excess of the maximum commissions fixed by the ATC. The standard commission rates established by the contract are a ceiling of 5 percent on the price of domestic air transportation, 7 percent on international travel, and 10 percent on "advertised" or "independent" air tours that include such items as hotel accommodations, sightseeing, and plane transportation in a single all-inclusive price "package."³¹

A significant feature of the sales agency agreement is that it "may be terminated at any time by the carrier." The agreement may be terminated for "any reason * * * deemed sufficient by the carrier," and the carrier is under no "obligation to justify such determination."³²

According to testimony at the hearings, in the event that any one carrier terminates the agency and repossesses its ticket stock and certificate of appointment, it is the general custom that all other ATC airlines also shortly withdraw their appointments.³³

The terms of the agency agreement severely restrict the agent's ability to dispose of his business. An agent's ATC appointment and his rights under the agency agreement are not "assignable, or otherwise transferable,"³⁴ and any changes in ownership or location require

²⁷ Agency resolution, secs. IV-H and VIII-B, hearings, vol. 3, pp. 1777, 1781. There are three possible contingencies in which the executive secretary of the ATC "if requested in writing" by a member carrier may place a person's name on the agency list and enter into a sales agreement with that person without prior approval of the agency committee: (1) where any person "acquires the ownership of the business of any other person whose name appears on the agency list then in effect"; (2) where a member "desires representation in a community in which no other authorized agency location exists" and there is no authorized agency location within 20 miles of that community; and (3) where a member wishes to designate "as an authorized agency location" a place of business which has been included on the appropriate IATA list of agents "continuously during the most recent 12-month period." In each instance this status is contingent upon final action by the agency committee.

²⁸ Reproduced at hearings, vol. 3, pp. 1786-1794.

²⁹ Hearings, vol. 3, p. 1787. Par. 4 of the standard sales agreement provides that the "Carrier may, at its option, provide the agent with supplies of its ticket forms or exchange orders for issuance to the agent's clients to cover transportation purchased."

³⁰ Sales agency agreement, par. 20, hearings, vol. 3, p. 1791 and pp. 1797, 1801.

³¹ Agency resolution, sec. VIII-C; par. 8 and schedule A, sales agency agreements, hearings, vol. 3, pp. 1781-1782, 1788-1789, 1793.

³² The contract also contains a provision for termination at will by the agent (sales agency agreement, par. 24, hearings, vol. 3, p. 1792). This ostensibly reciprocal right is of dubious value, since the agent would rarely voluntarily surrender his valuable accreditation privileges.

³³ Hearings, vol. 4, p. 2364.

³⁴ Par. 22, agency agreement, hearings, vol. 3, p. 1791.

prior approval of the conference authorities. As in the case of any new applicant, a new owner must find a sponsoring carrier. Since a travel agent cannot assure a prospective purchaser that the ATC will maintain the agency's accredited status, "it is difficult to dispose of a travel agency at a fair price."³⁵

THE AGENCY PROCEDURES OF THE INTERNATIONAL AIR TRANSPORT ASSOCIATION

As pointed out by the CAB, the agency procedures of the International Air Transport Association is "now substantially similar in administration and procedure to that of the ATC."³⁶

IATA's standard passenger sales agency agreement,³⁷ which must be signed by all travel agencies approved by IATA's agency committee is analogous in all material respects to the standard sales agency agreement used by the Air Traffic Conference. It is administered by IATA, and governs its relationships with over 8,000 travel agents accredited by that organization.³⁸

POSITION OF THE CAB

At the hearings, the Board took the position that it is "not adverse to the public interest" to approve industry agreements under which the ATC "carriers have the power by collective action" to: (1) Establish "standard commission rates"; (2) "limit the number of travel agents" with the concurrent "elimination of * * * nonproductive agents"; and (3) "limit the number of travel agents in each area to economic levels."³⁹

It is clear that ATC decisions in these matters not only regulate the travel agency industry to a significant degree but may spell the difference between success or failure in the business life of the individual agent. Nevertheless, the Board in its testimony at the hearings found nothing to criticize in the domestic agency procedures. On the contrary, the Board's presentation was such as to lead to the belief that the present agency system involved no serious problems. The CAB advised the committee "that the agency arrangement secures important public benefits and, on an overall basis, serves the best interests of the ticket agents, the air carrier, parties to the resolution, and the public."

The Board further contended:⁴⁰

The services of ticket agents comprise an important part of the efforts of airlines which are striving to provide the traveling public with the best service possible * * * A uniform procedure for the selection and retention of agents makes for stability in the rendition of agency services to the public, and eliminates a potentially destructive competitive practice among the air carriers. The mechanics of the procedure are set up on a basis most practical and feasible to effectuate this objective * * *

³⁵ Cresap, McCormick & Paget, op. cit., p. III-8.

³⁶ Hearings, vol. 1, p. 321.

³⁷ Reproduced at hearings, vol. 4, pp. 2382-2389.

³⁸ Hearings, vol. 2, pp. 1055, 1056, 1079. IATA also utilizes a standard type of agreement for cargo sales agents.

³⁹ Hearings, vol. 1, p. 509.

⁴⁰ Hearings, vol. 1, pp. 321, 509.

* * * Such agreements among these carriers are necessary to deflect their competitive efforts into channels serving the public interest, namely, striving to provide the traveling public with the best quality and dependability of service and equipment possible in relation to the fare charged.

* * * *

Prior to the approval of these agreements, a large portion of these [travel] agencies were mere order takers, such as hotel porters.

POSITION OF THE CERTIFICATED INDUSTRY

Similarly at the hearings the ATC indicated that the present agency system which it administers was entirely satisfactory. The point of view of the ATC carriers was fully articulated at the hearings by Mr. D. W. Markham, assistant general counsel of ATA, who made the following contentions:⁴¹

(1) "Every airline feels that it has a very legitimate interest in the agents appointed by other carriers" because an agent once appointed "becomes a subagent for all of the other carriers" in that "he can issue interline tickets involving both his immediate principal and the other carriers with whom his principal has interline ticketing agreements." This means that "in the eyes of the general public * * * that agent represents the airlines generally," so that if a particular airline "were to appoint every shoeshine parlor and every drug store and every pool hall in the communities they serve as their agents," and "if the public is victimized by a dishonest or incompetent agent," this would unfairly reflect on all the certificated airlines. Another reason why the "carriers feel that they have an interest in the agents appointed by the other carriers" is that "simply as a matter of philosophy" they "feel that if one of their principal competitors appoints an agent, they must appoint him also * * * for the protection of their own competitive interests."

(2) Each airline is concerned with the agents it appoints because the "airlines are civilly and criminally liable for the actions of their agents." Moreover, the airline "has a very large financial stake in the operations of that agent" in terms of the valuable block of blank tickets placed in his hands and the money collected by the agent which belongs to the airline.

(3) The airlines not only "regard the agent as a supplement to their own sales organizations" but "as specialists in developing pleasure, vacation, and casual-type traffic. Frequently the agents can reach the potential passenger in that field better than an airline sales organization can. And consequently they want agents who have the competence * * * the knowledge, and * * * the financial resources that are required to do the sales and promotional job" the airlines desire. Therefore, the ATC asserts that as a matter of "sound sales policy" its agency procedure is designed to "assure the selection of competent, reputable, and aggressive agents."

⁴¹ Hearings, vol. 3, pp. 1755-1757.

TRAVEL AGENTS' COMPLAINTS AGAINST THE AGENCY PROCEDURES

According to the Board, notwithstanding the fact that the agency resolution initially submitted by the ATC has "been amended a number of times, the basic procedure established by it and now in effect" has been *unchallenged by any formal protest* by the ticket agents or any other interested parties."⁴² This implication, that travel agents have regarded the basic workings of the ATC agency resolution with approval, is misleading and, on the Board's own records, grossly inaccurate. There can be no question but that there has been major dissatisfaction on the part of the travel agencies, including those accredited by the ATC, with nearly all aspects of the certificated industry's agency procedures that have been sanctioned by the Board. The agents have forcefully presented their grievances to the ATC and to the Board by both formal and informal protests.

ASTA'S COMPLAINTS

To begin with, in July 1953, ASTA filed a formal protest against the existing agency system under section 412 of the Civil Aeronautics Act,⁴³ which was served upon the Board and the ATC.⁴⁴ In its protest, counsel for ASTA made the following charges about the inequities of the "basic procedure" incorporated in the ATC system:⁴⁵

It is respectfully submitted that this procedure for the imposition of the will of a monopoly of carriers upon individual agents violates the constitutional rights of the agents and involves an illegal delegation of power to the carriers. It is submitted that it is beyond the power of the Board to approve, and to exempt from the antitrust laws, actions taken by a combination pursuant to such procedures.

No authority is vested in the Board to broadly delegate the resolution of relations between the carriers and their agents to a combination of carriers without supervision or safeguards required by law. The automatic approval of such resolutions subject only to a substantial showing of injury by third parties constitutes an illegal delegation. The Board should be governed in regulating ATC by the provisions applicable to industrial committees under the Defense Production Act, which specify that such meetings must be supervised by Government representatives, must have complete minutes, must only advise and recommend and not attempt to de-

⁴² Hearings, vol. 1, pp. 320-321. [Emphasis supplied.]

⁴³ Hearings, vol. 2, pp. 1329-1338. Secs. 412 and 1002 of the act authorize the filing of such a complaint setting forth the respects in which agreements approved by the Board under sec. 412 are adverse to the public interest or in violation of the act; the Board may modify or rescind approvals previously granted or impose such conditions as are required by the public interest.

The agreement in question, which was proposed by the ATC, would have reduced the agency commission rate on domestic point-to-point travel from a flat 5-percent maximum to a maximum of \$1.50 on one-way tickets and \$3 on round-trip tickets. ASTA contended that under the proposed arrangements, commissions would have approximated no more than 1 percent on long-distance domestic travel, thus imposing a "death sentence" on such agency sales.

⁴⁴ Hearings, vol. 3, p. 2285. Since the bylaws of ASTA require, as a condition of membership, that an agency have a reasonable number of conference appointments, the complainants were not new to the ways of the conference system. In fact, 89 percent of the ASTA membership is accredited by the ATC. Also ASTA is the major, and at that time was the only, trade association in the field, with almost a quarter century of experience. Hearings, vol. 4, p. 2359.

⁴⁵ Hearings, vol. 2, p. 1336.

termine policies of the industry or to coerce or compel compliance with the committee's actions * * *.

In the instant case none of these elementary safeguards of the public interest and the interests of affected parties has been afforded. No overriding public interest is shown to be served by the proposed violation of the antitrust laws.

At the hearings, ASTA's president, Thomas J. Donovan, testified:⁴⁶

We are convinced, however, that the Board has never informed itself about the business problems and conditions of the travel agents, which it views almost entirely from the standpoint of the problems of the carriers which it regulates.

The attitude of the travel agents which I am expressing here is not unknown to the CAB. In 1953, [this was conveyed by] ASTA in connection with its very strong protest to the CAB against a proposed unilateral reduction of our rate of commission from 5 percent to as low as 1 percent * * *.

The gravamen of ASTA's complaint was the unilateral exercise by the ATC of arbitrary power in agency matters, free of any effective check or supervision by the Board and without proper consideration of the travel agency viewpoint. Mr. Donovan, at the hearings, said:

I am saying quite candidly that CAB has a responsibility, which it has so far failed to recognize fully, to take account of the effect on travel agents of the conference resolutions, both ATC and IATA, which it is periodically asked to approve * * *. We wish to call the attention of this committee, as forcefully as possible, to our view that the exercise by the Board of its statutory exemption power on ATC and IATA conference resolutions carries with it a clear obligation to provide procedural safeguards to the travel agents in their dealings with the combination of airlines made possible by Board action. We do not feel the CAB has so far discharged this obligation.⁴⁷

TAGA'S COMPLAINTS

Criticisms directed at the workings of the certificated industry's agency program by the Travel Agents Guild of America were more sweeping than those presented by ASTA. Mr. Richard W. Joyce, TAGA's president, asserted that the Board had in effect granted "licensing" powers to ATC, which cannot be considered an impartial and disinterested party. As a result the travel agent industry has been curtailed and trade restraints have occurred.⁴⁸

There are, according to the estimates of TAGA, at least 2,000 full-fledged travel agents doing business in the United States who are without ATC accreditation, although only a handful of this group has failed to seek appointment by this conference. In this view, "there is no reason" why there should not be "four to five thousand travel

⁴⁶ Hearings, vol. 3, p. 2288.

⁴⁷ Hearings, vol. 3, p. 2297.

⁴⁸ Hearings, vol. 4, p. 2366.

agents appointed doing business and developing and promoting air travel,"⁴⁹ instead of the existing 2,337 "authorized agency locations."⁵⁰

TAGA took issue with virtually every phase of the agency procedures. With respect to the agent's problem in securing sponsorship in the first instance, Mr. Joyce testified:

The refusal to "sponsor" has been uniform throughout all the carriers, and bears no relationship to the qualifications of the agent.

At a time when travel and the need for travel counsel has been increasing tremendously, as acknowledged by carriers, agents, and governmental bodies alike, this one factor "refusal to sponsor" has been most effectively used to curtail the growth of the travel agency industry, and at the same time to plant the seed for its destruction.⁵¹

TAGA further contended that "the carriers do not desire any more travel agents, and are using the conferences as joint action to appoint only those few where pressure is brought to bear in their favor, and disqualify the rest with no reason."⁵² TAGA alleged that the qualifications of the agency applicant often "played no part" in the refusal of the ATC to grant an appointment. Instead, Mr. Joyce contended the following factors account for ATC's refusal in many instances:

(1) In the case of an agent being sponsored for appointment in a city served by competing carriers, it is common practice for the nonsponsoring carrier to vote against the agent, as a matter of "eliminating their competitors' agents."

(2) The voting at the conference consists of "horse trading" or "you vote for my agent and I'll vote for yours."

(3) In the case of an agent being sponsored for appointment in a city where there are agents already appointed, the carriers are happy to use as a "refusal to appoint", the basis that they are protecting the interests of the agents already appointed.⁵³

In this connection, TAGA called attention to the following complaint lodged by the owner of a travel agency located at Fresno, Calif.:

* * * Due to what has in effect become a licensing procedure, I have for the past year been unable to obtain appointments to sell air transportation from member airlines of ATA and IATA, the conferences.

Rather than consider an applying agency on the basis of the demonstrated need in a given area, and the ability of the agent to develop new business, it is common knowledge in the trade that voting on acceptance of a new agent frequently becomes a matter of vote trading among the member airlines—the merits of the agent taking no place in the discussion.⁵⁴

⁴⁹ Hearings, vol. 4, pp. 2356, 2362.

⁵⁰ Hearings, vol. 1, p. 321. According to CAB statistics, this was the number approved as of February 1956.

⁵¹ Hearings, vol. 4, p. 2354.

⁵² Hearings, vol. 4, p. 2356.

⁵³ Hearings, vol. 4, p. 2357.

⁵⁴ Hearings, vol. 4, p. 2372.

TAGA president Joyce testified that in his own case 1 year had been required to negotiate the first hurdle—that of obtaining sponsorship by an ATC carrier; that he was rejected for appointment when the agency committee considered his application for the first time at its yearly meeting; and that it had taken a total of about 2½ years to secure an ATC appointment. Mr. Joyce alleged that the delay “was due to intercarrier pressure, a case of one carrier feeling that if I were appointed I would be too good an agent for another carrier.”⁵⁵

Another complaint of TAGA is that the carriers themselves have come into direct competition with the travel agencies by virtue of the fact that the carriers have been expanding their own sales offices and organizations. “These offices,” it was stated, “sell not only transportation, but also packaged tours operated by wholesale travel agents, tours constructed and retailed by the carriers themselves, automobile rentals, hotel reservations, and some of the related services one would expect to find in a travel agency.”⁵⁶ TAGA claims the agency procedures in these circumstances subject the travel agent to unfair competitive pressures. The conflict of interest involved was outlined by Mr. Joyce as follows:

At the same time the carriers reserve the right to govern the travel agent's conduct in business, and to dictate the business which he is permitted to handle. They reserve the right to invade his field and compete with him on their terms.

It cannot be called fair or legal competition to allow them at the same time to have jurisdiction over the travel agency industry with whom they are competing.⁵⁷

In addition to complaints from the travel agents associations, there have been numerous complaints about the operation of the certificated carriers procedures from individual agents. Many of the individual complaints concerned the difficulties in obtaining sponsorship.

Mr. James F. McManus, Levittown, N.Y., testified that the reluctance of ATC carriers to sponsor travel agency applications, in part was based upon the concern of some airlines that travel agents were “‘intercepting’ commercial accounts.”⁵⁸ Regarding the carriers' attitude toward travel agents promoting “commercial” as distinguished from “pleasure” sales, the authors of ASTA's study conclude that the “practice of what certain principals, primarily domestic airlines, term ‘interception’ of traffic which they believe they should handle directly, is a major source of friction between principals and agents at this time, and undoubtedly contributed to the recent attempt

⁵⁵ Hearings, vol. 4, p. 2358. Mr. Joyce had been associated with the travel agency industry for more than 8 years, and had operated his own agency business in New York City for about 2 years prior to the time his application was first considered for ATC action.

⁵⁶ See, e.g., carriers' illustrated advertisement, TAGA exhibit G, hearings, vol. 4, facing p. 2388. This trend is primarily in the domestic field. Cf., Cresap, McCormick, and Paget, op. cit., p. IV-20.

⁵⁷ Hearings, vol. 4, p. 2361.

⁵⁸ Hearings, vol. 2, p. 1310.

of the ATC to reduce agents' commissions on sales of domestic air travel."⁵⁹

The hurdles that are imposed by the sponsorship requirement were graphically illustrated by the experience of Mr. McManus, who operates a travel agency in "a large community of approximately 17,000 houses."⁶⁰ In 1954, the representatives of several certificated carriers inspected his business but none would recommend him for sponsorship. While the airline representatives were, according to McManus, "vague as to what the requirements were" it "developed that a travel agency in Hempstead, a town approximately 8 miles to the west of Levittown, was, by common report objecting to my organization of a travel agency in the vicinity of Levittown" and had indicated that it would "be ill disposed if any of the young men representing the airlines would recommend us for sponsorship."⁶¹ The reputed opposition of the Hempstead agency, which geographically was the nearest rival concern,⁶² was, apparently "only one of the factors."

Nevertheless, no question was ever raised as to the financial status or credit rating of Mr. McManus, nor was he ever given a definitive reason why sponsorship was being withheld.

In his efforts to find a sponsor Mr. McManus "wrote every member of ATC, and * * * the main representatives of IATA." He related that the representative of one of the leading certificated carriers told him there were "no openings at the time" but that he might be considered more favorably for sponsorship if he generated "at least \$150,000 worth of business" within a year.⁶³

This requirement makes it virtually impossible to qualify for a sponsorship "opening." Mr. McManus stated:⁶⁴

Now, in creating \$150,000 worth of business, with the commissions * * * between 5 and 7 percent [for domestic and international sales], you might generate commissions of maybe someplace between \$7,500 and \$9,000, the personnel that you have to employ and the advertising and everything else like that, would be substantial to write that kind of business. You would have to do it without ticket stock. You would not be like their "con-

⁵⁹ Cresap, McCormick & Paget, op. cit., p. IV-7 through IV-10. This study observes:

"The business of travel agencies is frequently considered in two categories—pleasure and commercial. This distinction is fairly clear cut with respect to domestic travel even though some business undoubtedly is placed through traffic agents or other representatives of business firms for personal use and, conversely, some individual purchases do have commercial uses in mind. Purchases of foreign travel are somewhat harder to classify because of the frequency with which trips abroad are arranged to cover both business and personal plans * * *.

"There is no marked tendency toward concentration of a high proportion of commercial business in any particular region or size of city. However, it does appear that a few large [travel agency] firms with over \$1 million annual volume do tend to specialize in bookings from commercial accounts.

* * * commercial business appears to amount to only 15 percent of the total gross bookings of domestic travel of the typical agent, and only 9 percent of all agents obtain more than one-half of their domestic travel business from commercial sources. Were this volume related to total bookings, including foreign travel, the proportion would be even smaller."

⁶⁰ Hearings, vol. 2, p. 1308.

⁶¹ Hearings, vol. 2, p. 1309.

⁶² Hearings, vol. 2, p. 1312. In the same vein a west coast travel agency stated: "It is frequently difficult for any applying agent to obtain sponsorship for conference appointment due to pressures brought to bear on the airline by existing agencies."

Hearings, vol. 4, p. 2372.

⁶³ Hearings, vol. 2, p. 1313.

⁶⁴ Hearings, vol. 2, p. 1314.

ference" agents. You would have to do that without ticket stock, and there would be no commission on it, because there would be no assurance of the commission.

So you would be just doing them a favor. Before they "sponsor" you, they want you to write an awful lot of business for them. They do not provide you with the ticket stock to write the business, and it is just an impossible barrier that they have set up right there.

There are indications that ATC's agency procedures are utilized to prevent accredited travel agents from selling tickets for non-ATC carriers. On January 13, 1954, ATC's executive secretary was asked by Kaymax Travel Agency, an approved agency in Richland, Wash., whether it could properly represent a small intrastate scheduled airline (Johnson Airlines) which was not an ATC member. Johnson proposed to pay higher commissions than those paid by members of the conference. ATC's reply on January 21, 1954, was that Kaymax could represent Johnson because the CAB had disapproved a proposed ATC resolution which would have restricted approved agencies from accepting higher commissions from outside carriers. The ATC executive secretary recommended that Kaymax, if it had further questions, should "** * * approach those ATC Airlines by whom you are appointed.*"⁶⁵ The ATC, however, on February 8, 1954, explained to the West Coast Airlines—its member in the area, for whom Kaymax Agency made substantial sales—the past attempts ATC had made to keep accredited agents from representing nonskied carriers and carriers paying higher commissions than ATC members. In this letter ATC advised:

I can appreciate the competitive position of WCA in this matter. However, the agent is not in violation of his agreement if he undertakes to represent Johnson Airlines. It is important, however, that all concerned realize that an agent will hardly provide the services and promotional activities expected by ATC members under the terms of the agreement if he is, in fact, selling transportation on behalf of other airlines which pay higher commission rates. *Under this premise, it is, of course, always possible for the members to vote deletion of the agent from the approved ATC list,* and other agents who have indulged in similar activities have been brought up for consideration at the annual review of the agency list by the agency committee. If Kaymax Travel Agency does actually promote sales over nonconference members which pay higher commissions, and to the detriment of conference members, such action on his part would, in my opinion, subject him to the consequences which can result by his failure "** * * to create and stimulate the sale of air passenger transportation offered by the carrier * * *.*"⁶⁶

Thus ATC suggested a technique by which its members could bring pressure—the loss of accreditation—to bear upon Kaymax in the eve it made sales on behalf of a nonmember. By the same token, ATC suggested circumvention of a restriction which the Board previously had

⁶⁵ Hearings, vol. 3, p. 1767.

⁶⁶ Hearings, vol. 3, p. 1768. [Emphasis supplied.]

flatly disapproved, "because of the lack of strong and impelling reasons as to why the domestic carriers should be granted antitrust immunity," in this regard.⁶⁷

IATA PROCEDURES

The foregoing complaints apply equally, and in some respects to a greater degree, to IATA agency procedures. Notwithstanding the fact that, according to the CAB, "travel agencies generate a substantial portion of total international ticket sales,"⁶⁸ the Board has seen fit to relegate to IATA even greater agency prerogatives than those exercised by the ATC.

IATA was unsuccessful in its first effort in March 1946 to obtain CAB approval⁶⁹ of its agency procedures. The Board objected particularly to provisions which would have vested in the IATA agency committee unlimited discretion with respect to the appointment of authorized agents. The Board subsequently approved⁷⁰ an amended resolution submitted by IATA which established standards to be used by the member carriers in making agency appointments. The amended resolution also provided for maximum commissions of 7½ percent on sales of passenger transportation and 5 percent on cargo, rather than the fixed commissions of 7½ percent and 5 percent that were stipulated in the initial resolution.⁷¹

In January 1951 the CAB took a major step in the agency field, insofar as international air travel was concerned, by approving two IATA resolutions over the opposition of the Department of Justice. These resolutions provided (1) that no IATA sales agent shall be retained unless he agrees not to accept from non-IATA carriers a rate of commission higher than he would receive from IATA carriers; and (2) that general sales agents for non-IATA carriers shall not serve as IATA sales agents without special conference approval.⁷²

It should be noted that the Board refused to approve resolutions incorporating similar provisions when presented by the ATC.⁷³

In its approval of these sweeping resolutions, the Board admittedly "recognized the possible undesirable effects inherent in these resolutions" and stated that they "will be kept under our surveillance and subject to further review if evidence appears to indicate inequitable application of the provisions thereof." As of the time of the hearing, it was the official view of the Board that "nothing has been presented to the Board which would warrant a change in the Board's action."⁷⁴

In August 1952 the Board approved an IATA resolution that reduced the commission on transatlantic sales from a 7½-percent to

⁶⁷ Hearings, vol. 1, p. 510.

⁶⁸ Hearings, vol. 1, p. 510.

⁶⁹ CAB No. 558.

⁷⁰ Hearings, vol. 1, p. 321. The authority of the Board in this area, is restricted in scope to its statutory powers over United States carriers engaged in foreign air transportation; hence the Board's approval of IATA agency resolutions bears the same limitation.

⁷¹ Hearings, vol. 1, p. 321.

⁷² Hearings, vol. 1, pp. 321-322; IATA Agency Resolution Proceeding, Docket No. 3350. At the time this case was decided, sales generated by travel agencies represented about one-half of the total passenger and cargo sales of the three leading American carriers engaged in scheduled foreign air transportation; and agency sales constituted about three-fourths of the total business of Colonial Airlines, the only nonmember of the IATA involved in the proceeding.

⁷³ Hearings, vol. 1, p. 510.

⁷⁴ Hearings, vol. 1, p. 322.

a 6-percent maximum. This decision overruled the recommendations of the hearing examiner, who had found that in terms of average operating costs, travel agents would suffer an actual out-of-pocket loss on tourist sales at the reduced commission rate. ASTA also sought unsuccessfully to defeat the resolution. The agreement, which as approved was effective until March 31, 1953, operated to reduce the ceiling on the commission paid travel agents for the sale of tourist-class transportation between the North Atlantic gateways; the permissible maximum was fixed at 6 percent of the New York-Shannon tourist fare.⁷⁵

REMEDIES PROPOSED BY TRAVEL AGENTS

ASTA's 1953 protest⁷⁶ against the basic agency procedures was combined with its protest against a resolution proposed by the ATC that would have reduced the travel agents' 5 percent commission rate to a flat dollar amount per ticket. It was never acted upon by the Board. In 1955 the proceeding was terminated by the ATC's withdrawal of its proposed resolution because of ASTA's vigorous opposition. At the same time the ATC created a committee to meet semiannually with a travel agents' committee to "explore problems arising out of the airlines' agency relationship."⁷⁷

As for the value of this committee to the travel agents, ASTA's representative complained that ATC never intended the committee would give the travel agents an effective voice in the agency relationship. He gave the following evaluation of its accomplishments:

Both CAB and ATC have called this committee's attention to this travel agents' policy advisory committee with the implication that adequate consultative machinery now exists to give travel agents a voice in ATC decisions. Four members of this committee represent travel agents, two of whom are from ASTA * * * *While there is some value in this formalized contact between the agents and the carriers in keeping each aware of the views and attitudes of the other on less controversial matters, there have been no significant results from any of these meetings to my knowledge.* The travel agents' policy advisory committee is not a substitute for any degree of travel agent participation in ATC determinations. At most the carrier members can only report what we say. They can make no agreements which bind ATC. These still require unanimous consent of all carriers.⁷⁸

To correct the agency procedures ATA recommended that the Board develop "adequate standards" to govern the carriers both in their

⁷⁵ *North Atlantic Tourist Commissions Case*, Docket No. 5422, hearings, vol. 1, p. 322. The Board held that there was no basis for concluding that agents would suffer "any substantial financial injury during the period" and that any "short-run injury could hardly be serious in view of the other sources of agent revenues, the overall high current levels of travel, and the figures * * * [from the examiner's initial decision] showing greater commission revenues forecast for agents from North Atlantic air transportation in June 1952 under the agreement than in June 1951." The Board stated that it "was further influenced by the belief that to disapprove the resolution might jeopardize the success of the North Atlantic air tourist experiment, then being initiated." After the resolution expired, the commission for both first-class and tourist services was standardized at 7 percent.

⁷⁶ CAB No. 5044, hearings, vol. 2, pp. 1329-1337.

⁷⁷ Hearings, vol. 1, p. 321.

⁷⁸ Hearings, vol. 3, p. 2297. [Emphasis supplied.]

selection of travel agents to be accorded conference approval and in framing the agreements between the carriers which require joint or uniform action in their relations with the travel agencies. In its recommendations to the committee, ASTA took a noticeably weaker position than it took in its 1953 protest to the Board. ASTA now sees no problem of illegal delegation of the Board's power provided it has a greater participation in ATC's procedures. Most specifically, ASTA advocated that:⁷⁹

(1) submissions [by the ATC carriers] in support of applications for section 412 approvals should be required to include, as part of the public-interest showing, a statement of what the applicant understands the travel agents' views to be on those changes in resolutions affecting agents; and

(2) [the] CAB should make available a simplified and inexpensive procedure whereby, on the basis of a prima facie showing of failure of a conference to abide by its CAB-approved standards, any travel agent can apply to CAB for CAB supervision of a consultative meeting with conference representatives. CAB examiners should be made available for this purpose and records should be kept of such meetings. If requested by either the carriers or the agents, the examiner should file a report to the Board stating the position and reasoning of both sides.

With regard to the maximum commission rates approved by the CAB pursuant to section 412 of the act, ASTA contended that the Board " * * * should undertake an investigation to inform itself about the adequacy of travel agents' commissions * * *. The CAB inquiry should be directed at factors which should be taken into account in determining appropriate levels of commissions * * *." ASTA also urged that the Board, in considering resolutions establishing maximum commission rates that may be paid by the carriers, require the submission of justifying data.⁸⁰

TAGA, on the other hand, recommended changes in travel-agency procedures that go far beyond those advocated by ASTA. TAGA contends that the present airline conference systems are basically unsound. It is of the view that travel-agency standards should not be determined by the carriers, the travel agents, the trade associations of either group, or even the CAB. This function, TAGA believes, should be performed by the Department of Commerce which might well be given licensing powers over travel agencies after it had made a "suitable investigation of the industry's needs."⁸¹

REACTION OF THE CAB TO TRAVEL AGENTS' PROBLEMS

Despite this mounting tide of criticism the travel-agent procedures have evoked, the Board has persistently refused to cope with the problem or, indeed, even frankly to acknowledge its existence. It is difficult to understand the Board's statement, when the hearings started, that the "basic procedure" on agency matters established by the ATC has gone "unchallenged by any formal protest by the ticket agents," in

⁷⁹ Hearings, vol. 3, p. 2298.

⁸⁰ Hearings, vol. 3, pp. 1334, 2298.

⁸¹ Hearings, vol. 4, pp. 2362-2363.

view of the precise challenge on this score which ASTA formally laid before the Board in 1953.⁸²

Moreover, the Board referred the committee to this particular proceeding in which the ATC by resolution sought to drastically reduce agency commissions, as an example of the way in which "many issues are settled by negotiation between the carriers and the agents or between the carriers and the Board without the necessity of a hearing."⁸³ The Board's account, taken at face value, would lead to a conclusion that the fundamental objections of the travel agencies to ATC agency procedures has been dissipated by corrective action and that all was now harmony in the relationship between the travel agencies and the ATC. This was far from the case. Even ASTA's representative at the hearing complained that the Board had failed entirely to recognize or discharge its basic responsibility in providing any "procedural safeguards to the travel agents in their dealings with the combination of airlines made possible by the Board action."⁸⁴

Similarly misleading was the Board's tactic of seeking to focus the committee's attention on the lack of a "formal" protest to the agency procedures. In any realistic view, the Board is not so circumscribed by the Civil Aeronautics Act in its consideration or reconsideration of complaints. It is clear that the statute vests in the Board the authority, and indeed the duty, to initiate investigations into matters of the kind as the need arises.⁸⁵

The record is replete with testimony, such as this statement by the president of TAGA: "They [the Board] stated that they had never received a formal complaint about the system. I think they failed to state how many informal complaints they had received. Their requirements so far as a formal complaint is concerned are fantastic."⁸⁶ Similarly, Mr. McManus told the committee: "Of course I have [complained to the Board] but CAB writes back that I must complain under their rules. They write in a letter to you that they have never had any 'formal' complaints. They have had many complaints about this matter."⁸⁷ He pointed out also that it was "impractical" for an individual travel agent to interpose a "formal" challenge under the appropriate section of the Civil Aeronautics Act, unless he were financially and otherwise prepared to run the gamut of administrative proceedings before the Board as well as possible appellate litigation before a Federal circuit court of appeals. This burden increased by the fact that the aggrieved travel agent is not permitted to ascertain the reason why the carriers refused accreditation or sponsorship.

⁸² Cf. hearings, vol. 1, p. 321, with hearings, vol. 2, pp. 1329-1338.

⁸³ Hearings, vol. 1, p. 321. This is how the episode was summarized by the CAB: "The absence of a hearing is not indicative of a lack of consideration by the Board of these arrangements, or of a lack of concern with any antitrust aspects since, where approval is not indicated, the parties normally are offered the options of presenting supporting data, withdrawing the agreement in whole or in part, or requesting a hearing. Thus many issues are settled by negotiation between the carriers and the agents or between the carriers and the Board without the necessity of a hearing. For example, a resolution of ATC filed in 1953 (CAB No. 5044), which proposed an important change in the commission rate, i.e., from 5 percent to a flat dollar amount per ticket, was set for hearing. After prehearing conference had been held a series of meetings took place between the American Society of Travel Agents, a protestant, and the members of the airlines under the supervision of the examiner assigned to the case. Ultimately, the resolution was withdrawn and thus a formal hearing was not held."

⁸⁴ Hearings, vol. 3, p. 2297.

⁸⁵ Sec. 1022(b) of the Civil Aeronautics Act.

⁸⁶ Hearings, vol. 4, p. 2365.

⁸⁷ Testimony of James F. McManus, hearings, vol. 2, p. 1320.

It is evident that the CAB should have long since been aware that a full scale inquiry and corrective measures were overdue. Instead the Board refused to recognize any problem existed and sought to forestall any criticism that might arise with repeated avowals that all was well.

The inertia evidenced by the Board in coming to grips with the issue persisted, until insistent demands for action were made by the committee during the hearings. When pressed at the hearings, Chairman Rizley finally conceded: "I think it [the agency issue] needs to be looked into. We will put it that way." ⁸⁸

Following the hearings which were concluded on June 15, 1956, the committee "requested information as to the nature and extent of the Board's review of this matter." It was advised by the Board on September 7, 1956, that the staff of the CAB was completing an informal investigation and would then "make appropriate recommendations to the Board for action."

On September 29, 1956, TAGA filed a formal complaint with the CAB pursuant to section 411 of the Civil Aeronautics Act on behalf of one of its members whose accreditation had been revoked by the ATC.⁸⁹ In addition to seeking specific relief for the particular travel agency allegedly aggrieved, the complaint sought a comprehensive review of "each and every" travel agency resolution approved by the Board since its inception.⁹⁰

On October 24, 1956, Chairman Celler advised the new chairman of the CAB that with respect to the basic agency issues crystallized at the hearings: "I believe that it is imperative that the Civil Aeronautics Board resolve this matter without delay."⁹¹

Finally, on October 31, 1956, the CAB issued two orders⁹² that instituted investigations into the procedures used in the selection and retention of agents by the ATC and IATA to determine the resolutions "are adverse to the public interest or are in violation of the [Civil Aeronautics] Act."⁹³ The Board recognized that the basic ATC agency resolution as amended principally covers two matters: (1) appointment by ATC members of authorized agents and (2) remuneration paid agents for the sale of transportation. Nevertheless, the Board declared in its order that "we do not feel that matter of remuneration to agents warrants further discussion or inquiry at this time." For this limitation, the Board cited only the "termination by consent of all parties" of the 1953 ATC resolution seeking to reduce commission rates, and ignored the unequivocal request of ASTA for

⁸⁸ Hearings, vol. 1, p. 317.

⁸⁹ Docket No. 8238, *Travel Agents Guild of America, Inc., and David E. Dodgson, d/b/a Fruitvale Travel Center*. Sec. 411 of the act authorizes the Board to investigate and determine whether an air carrier is engaged in unfair or deceptive practices or unfair methods of competition in air transportation or the sale thereof.

⁹⁰ *Id.*

⁹¹ Letter dated October 24, 1956, from Chairman Celler to Chairman James R. Durfee, who had in the interim assumed this post at the Civil Aeronautics Board.

⁹² Docket Nos. 8300 and 8302, known respectively as the ATC agency resolution investigation and the IATA agency resolution investigation.

⁹³ The Board consolidated with the ATC agency resolution investigation (Docket No. 8300), that portion of the complaint filed by the Travel Agents Guild of America which, in the Board's words, sought "an investigation of ATC procedures for selection and retention of agents." The Travel Agents Guild of America, as well as the air carrier parties to the agency agreements in question were made parties to the proceedings.

an investigation into the adequacy of commission rates, that was made at the committee's hearings.⁹⁴

ATC'S CONCESSIONS

Some 2 weeks after the Board issued its order for a travel-agency investigation, the ATC transmitted to the Board, with a request for approval under section 412 of the Civil Aeronautics Act, a resolution incorporating certain procedural changes in its master agency resolution. These proposed amendments were adopted by the ATC on November 8, 1956. The most significant change provided by the amendments is that a travel agent who has been rejected by the ATC Agency Committee or whose appointment has been withdrawn shall have the right of appeal to an impartial arbitral tribunal. Significantly, however, ATC amendments still do not permit the agent to learn why he was rejected.⁹⁵

CONCLUSIONS

The net effect of the Board's approval of the agency system fabricated by the ATC and IATA has been to make it possible for the private trade associations of the certificated carriers to determine which agents, and how many of them, are to be singled out and accorded the privilege to sell transportation on the scheduled commercial airways. This entire process of decision making is carried out by the airlines on a unilateral basis and is not subject to review from any quarter.

The present sponsorship system, which requires an agent to first make the rounds of all airline carriers to present his case, may operate perpetually to foreclose an otherwise qualified agent from even initial consideration by the accreditation committee and thus bar his entry into the field of scheduled air transportation. Once past this hurdle, factors such as conflict or collusion between carriers may serve

⁹⁴ Hearings, vol. 3, p. 2298. The sole explanation given by the Board of its order for excluding the remuneration factor from the investigation is contained in a footnote which reads as follows: "Termination by consent of all parties of the *Air Traffic Conference Agency Resolution Case*, Docket No. 6265, by orders Nos. E-7640, dated August 17, 1953 and E-9020 dated March 17, 1955, disposed of, without investigation, a complaint by agents against ATC proposed reduction in compensation to agents and agency procedures."

By the same token the Board rejected, but without discussion, a similar request for a commission rate investigation put forward by TAGA in its formal complaint filed September 29, 1956. Clearly, this complaint—seeking a review under sec. 411 of the act of "each and every" ATC or IATA agency resolution or agreement approved by the Board—embraced in its scope the important resolutions which were instrumental in establishing the mandatory ceiling on agency commissions. Nevertheless, the Board in advertent to this complaint in its order of October 31, 1956, refers only to "the portion of the complaint * * * seeking an investigation of ATC procedures for selection and retention of agents."

⁹⁵ The other principal changes that would be made in the existing procedure are: An application for accreditation could be filed by a travel agency directly with the ATC, instead of through a sponsoring carrier, but would still not be considered for action by the conference unless a member airline indicates its willingness to sponsor the applicant; the ATC Agency Committee, which passes on such applications, would meet quarterly instead of "no more frequently than once a year"; a two-thirds vote of the agency committee would be required to remove a travel agency from the approved ATC agency list after "review" of his "qualifications" instead of the present automatic removal if less than two-thirds vote to retain the agency; in the event a travel agency is sold, the new owner will be placed on the agency list at his own request, and can be removed only by a two-thirds vote of the agency committee (while at present, the new owner can be placed on the agency list only at the request of a sponsoring carrier, "pending committee action as in the case of a new applicant"), and travel agents would be prohibited from doing 20 percent or more business with the agency owner thus preventing a user of transportation from, in effect, receiving a rebate through the use of "house" or "captive" agents. (Letter dated November 15, 1956, from Frank J. Macklin, executive secretary, ATC, to Hon. James R. Durfee, Chairman, Civil Aeronautics Board.)

to defeat the applicant who has already risked considerable capital in his operations. Moreover, the substantial investment and livelihood of the accredited agent remains in constant jeopardy, since he can continue to deal in scheduled air transportation only on sufferance of the carriers' trade associations.

These are life-and-death powers over the economic survival of the travel agents affected. Yet the ATC and IATA may exercise them arbitrarily and without restraint. An agent, unable to obtain a carrier sponsor, is forever barred from presenting his case for consideration. Neither the Board nor anyone else can determine why. If a sponsored agent is ultimately rejected by the accreditation committees which act in closed session, the reason is not subject to disclosure nor is it even a matter of record.⁹⁶ Furthermore, if the accreditation of an approved agent is summarily revoked, the same veil of secrecy is drawn.

Thus, joint industry action, which may do serious harm to present and prospective agents, remain immune from the antitrust laws and is subject neither to governmental review nor review from any quarter. At worst, as the travel agents testified, they may be at the mercy of the carriers' whim or a variety of considerations unrelated to the merits of their case. Since it is not privy to the secret sessions of ATC or IATA the Board is in no position to assess or endorse the objectivity of their procedures.

The CAB has placed major emphasis, both in its answers to the committee's questionnaire and in its appearance before the committee, upon the spectacle of the airlines dealing with "mere order takers such as hotel porters" and the need for the "elimination of such non-productive agents" in order to prevent serious "competitive abuses."⁹⁷ Indeed, the Board advised that without the agency agreements "the temptation to obtain more passengers by competitive bidding for agency-generated traffic might lead to the diminution of the carriers' revenues or to higher fares, and to the substitution of inferior transportation for the public where an agent can thereby obtain a higher commission."⁹⁸

The competitive situation that obtained in the decade of the 1930's was graphically described by counsel for the ATC in the following terms:⁹⁹

The airlines discovered that before World War II * * * that they were bidding against one another for every ticket. And my references to Joe, the shoeshine boy, the pool hall, and the drug store, I am informed, are not hypothetical. They were prepared to pay a commission in those days for any ticket that could be produced. And one carrier would tell Joe, the shoeshine boy, "Any time you can sell a ticket for us we will give you 5 percent."

⁹⁶ Hearings, vol. 3, p. 1763.

⁹⁷ Hearings, p. 509.

⁹⁸ Hearings, p. 321. It should be noted that the Board apparently does an injustice to the mode of operation of the modern travel agent as distinguished from the mere "order taker" or the past. The typical travel agent operates a comparatively small business in a community or area where he has a reputation to maintain. His self-interest would not necessarily dictate the sale of transportation on the particular airline from which he receives the most lucrative commissions. Ethical reasons aside, it simply would not constitute rational business practice to so subordinate the clients' needs and convenience, because the travel agency must depend for profitable operation upon the repeated patronage of an established clientele. Cresap, McCormick & Paget, op. cit., p. V-11.

⁹⁹ Hearings, vol. 3, p. 1765.

And the next carrier would find that Joe, the shoeshine boy, was pretty good at producing a passenger or two passengers a day. So they would give him 8 percent. And the third carrier would give him 10 percent, and so on.

In its statement, the Board similarly sought to justify the agency procedure and furnished a more complete account of this period:

The use of domestic air carriers of travel agents as additional sales outlets has a lengthy history dating back many years. About 1930, when a coordinated system of air transportation first began to emerge in the United States, the organizations operating the businesses were not staffed with adequate sales personnel to present air travel to the public. At that time the recognized travel agents could not or would not assume the task and thus the airlines were forced to create their own sales organizations. This could not be accomplished immediately and while sales organizations were being formed within the company structures, every effort was made to sell the idea of air transportation to anyone and everyone in a position to direct or influence the mode of travel of others. The most effective way to do this was to give such persons a tangible interest in promoting travel by air. Thus, commissions were offered and paid to, for example, hotel porters and traffic managers of large concerns and recognized travel agents when sales were made. Within a short period of time several thousand persons were receiving commissions and the amount paid was substantial. It became apparent to the airlines that a more definite agency program was needed and the problem became the subject of review by the Air Traffic Conference which was formed in 1939 to consider traffic and sales problems on which members desired coordinated action.¹⁰⁰

The difficulty with these attempted rationalizations is that they are completely anachronistic. The Board seeks to justify the existence of the current agency procedures by adverting to the exigencies of a by-gone era. In view of the sweeping transformation that has overtaken both the travel agency industry and the civil aviation industry, the committee does not believe these explanations have merit.

The record is devoid of any evidence to suggest that the certificated air carriers have had occasion, at any time in the postwar period, to resort to the techniques of generating passenger business that are depicted above.¹⁰¹ The techniques of a quarter of a century ago were associated with a novel industry in its early infancy. They would be

¹⁰⁰ Hearings, vol. 1, p. 319.

¹⁰¹ Nor are we impressed by the ATC claim (hearings, vol. 3, p. 1765) that the travel agents may be unduly influenced by the blandishments of the noncertificated carriers, holding out the lure of higher commission rates. The short answer to this supposed threat is supplied by the spokesman for the American Society of Travel Agents (hearings, vol. 3, p. 2285): "ASTA members do some business with nonskeds but it is held down by the difficulty of accomodating planned travel to unscheduled airline operations and by the tendency of nonskeds to use exclusive representation. In the recent CAB decision authorizing supplemental scheduled services by the nonskeds the Board virtually eliminated the possibility of this new class of carrier using travel agents by prohibiting a travel agent from representing more than one supplemental carrier—a position contrary to the basic function of the travel agent and against which ASTA has several times protested to the CAB." The CAB likewise sees no threat to the commission structure from this quarter. As we have seen the Board refused to approve an ATC resolution that would have precluded agents accredited by the ATC from accepting higher commission rates, if offered by non-ATC carriers.

unthinkable and self-defeating for the certificated air carriers of today, who have achieved a high degree of maturity and public acceptance.

It is common knowledge that the carriers certificated by the Board now have elaborately developed sales organizations of their own, which normally occupy the status of separate departments in the company organizational structure.¹⁰² These departments are staffed by high officials charged with promoting airline transportation sales and are manned, in the case of most airlines, by specialized personnel throughout the geographical area of the carrier's routes. Moreover, their efforts are abetted in many ways by the organized activities of the Air Transport Association, which retains in a vice presidential capacity an experienced public relations director to stimulate travel by air and otherwise promote the sales interests of the member carriers.

Indeed, some of the domestic carriers now actively resent what they regard as the "commercial" encroachments of those travel agents, who service members of the public purchasing air transportation for business travel. This is in sharp contrast to the early state of affairs described by the Board, when the airlines were eager for the sales assistance of "anyone and everyone."

The chaos envisaged by the CAB if the present agency restrictions were relaxed is all the more unlikely insofar as the ATC carriers are concerned, since travel agents, according to the Board, now "generate * * * only a minor portion of domestic ticket sales."¹⁰³

There are other persuasive reasons for rejecting the Board's contention that if the present agency procedures are disturbed, the resulting "competitive excesses" would lead in turn to "higher passenger rates" and "increased subsidy payments" by the Government to the carriers who have engaged in such practices.¹⁰⁴ The argument, of course, implies that the traveling public and the taxpayer will be required to subsidize the competitive abuses on the part of the carriers.

In the first place, if the Board were to permit the continuance of standard commission maximums based in part on ATC and IATA recommendations, this would in and of itself preclude competitive bidding for agency generated business regardless of what charges were made in the agency selection and retention procedures and the authority which the ATC and IATA now exercise in this regard.¹⁰⁵

Even if commission ceilings were not provided and there was a recurrence of competitive excesses by air carriers in their bids for agency generated business, the CAB underestimates its own regulatory competency to cope with this contingency. The Board would by no means be dutybound to underwrite such carrier expenditures by the grant of a domestic fare increase or by its assent to an IATA fare increase so inspired. The Board itself, in another connection, assured the committee of its statutory "power to regulate domestic passenger fares and * * * control any ultimate uneconomic effort * * * on

¹⁰² Hearings, vol. 1, p. 319.

¹⁰³ Hearings, vol. 1, p. 510.

¹⁰⁴ Hearings, vol. 1, pp. 509-510.

¹⁰⁵ The Board itself regards the matter of the carriers' "remuneration to agents" as entirely separable from the procedures relating to the designation of authorized agents. In its recent order instituting an investigation into the ATC agency resolution, the Board acknowledged that the compensation that may be paid agents is 1 of the 2 principal matters covered by the resolution. Nevertheless, this issue was excluded from any "further discussion or inquiry at this time," and the investigation is concerned solely with the "ATC procedures for selection and retention of agents."

domestic fares," in the event that higher commission rates were offered to travel agents by some carriers.¹⁰⁶

These reasons apply with even more force to rule out the hypothesis of increased subsidy payments occasioned by uneconomic commission practices. This is all the more true on the domestic front where the earnings of the trunkline carriers have reached alltime highs, with subsidy support almost a thing of the past.

For the foregoing reasons, the committee is not persuaded that dire consequences would follow any changes in the agency procedures that shifted the balance of power from the ATC and IATA. On the contrary, such a step would be beneficial to both the public and the air transportation industry.

The Board does not stop with a system under which the ATC and IATA are left to administer "standard commission rates" and a "uniform procedure for the selection and retention of agents" in the interests of "stability in the rendition of agency services to the public." The Board also permits the carrier's trade associations to "limit" the overall "number of travel agents" authorized to deal with its member airlines. The Board claims that "in addition * * * limitation on the number of travel agents by areas protects the approved agents from unbridled competition from other travel agents."¹⁰⁷ According to the Board this "promotes the financial stability" of the agents who have already won accreditation, and, presumably, helps to "foster sound economic conditions in air transportation."¹⁰⁸

If these considerations were valid, it would be both legitimate and desirable to place a limit on the number of aircraft manufacturers and oil-producing companies that operate in the United States, because they fulfill the vital function of supplying the airlines with their modern aircraft and aviation fuel. The Board's contention in this regard would extend to industry regulation of these concerns to protect them from the "unbridled competition" of other would-be rivals.

The committee rejects this argument of the Board. It is repugnant to basic concepts of competitive enterprise and has no warrant within the framework of the Civil Aeronautics Act itself. Carried to its logical extreme, the Board's thesis would sanction an artificially imposed check upon competition in the many industries which, like the travel agency industry, are on the periphery of commercial air transportation, but which admittedly lie outside the scope of the Board's regulatory authority insofar as "freedom of entry" is concerned.¹⁰⁹ Neither the act nor its legislative history contain any indication that Congress intended that the CAB transcend the bounds of its special jurisdiction and seek to shield nonregulated industry, whether large or small, from the normal incidents of competition.

The committee can envisage no more certain method to bring about a progressive emasculation of accepted antitrust safeguards, designed

¹⁰⁶ Hearings, vol. 1, p. 510. This was the reason advanced by the Board for disapproval of a restrictive ATC agency resolution in 1952 which would have prevented ATC agents from accepting higher commission rates from non-ATC carriers. The ATC argued that this was necessary to offset possible competitive advantages by the non-ATC carriers.

¹⁰⁷ Hearings, vol. 1, pp. 509-510. This power of restricting area representation "to economic levels" has in fact been exercised by the ATC. Hearings, vol. 3, pp. 1762-1763, 2357. A like policy has been pursued by IATA.

¹⁰⁸ Hearings, vol. 1, p. 509.

¹⁰⁹ Hearings, vol. 1, p. 318.

to protect a free economy from the inroads of monopoly and restraints of trade. Under the Board's theory, the concept of "regulated competition" might well spread unchecked to every vital artery of the economy. In the committee's view, it is intolerable for a governmental regulatory body to countenance a situation in which a private trade association determines the appropriate levels of competition for different areas of the country. It is all the more intolerable when this determination is made for the members of still another industry.

The Board has gone to unusual lengths in furtherance of its unique regulatory philosophy for travel agents. This is illustrated by the authorization which was given the ATC only a few years ago to bring the entire accreditation program to a halt and "maintain the status quo" for a period of fully 2 years ending August 31, 1955. Thus, in a boom period marked by rapidly expanding travel demands on the airlines and the travel agencies, the ATC was permitted to curb travel agency activity by virtually closing the door on new agency applicants seeking accreditation.¹¹⁰

At the hearings, the Board alluded to this moratorium on agency appointments as a "temporary" measure to facilitate "an orderly review" by the ATC of its agency program in view "of the rapid growth in the number of agents since World War II."¹¹¹ To employ the appellation "temporary" to the "freeze" authorized in these circumstances is to underestimate the significance of two such important and dynamic years in the recent history of air travel. While the Board's attitude is consistent with its predilection to relegate the management of agency affairs to the carriers' trade associations, the Board's statement to the committee contains no satisfactory explanation for such an extended period devoted to an ex parte review of the agency program.¹¹²

The Board's grant to the ATC of such exclusionary powers and its sanction of this prolonged stalemate, sacrificed the interests of the travel agents and of the public. This was particularly true with respect to travel agencies and their clients in the smaller communities far removed from an airline ticket office or the office of an accredited agent.¹¹³

With respect to its obligations under section 412 of the act, the Board has vacillated between two substantially different tests for measuring agency resolution submitted for approval. Initially the Board reasoned that it was required to approve "any agreement that it does not find to be adverse to the public interest or in violation of the act."¹¹⁴ Later the Board indicated that a more exacting test was required under the law.

When an agreement submitted by the carriers for approval "has among its significant aspects elements which are plainly repugnant to established antitrust principles," the controlling test now is that set

¹¹⁰ The exception was that any attrition in the existing ranks of approved agents could be made up by new appointments (hearings, vol. 3, p. 1762).

¹¹¹ Hearings, vol. 1, p. 320.

¹¹² The ATC apparently found that the program was operating to its satisfaction, because it advanced no proposals for significant change until November 1956, after the Board instituted its general investigation of agency procedures.

¹¹³ E. g., hearings, vol. 4, p. 2366.

¹¹⁴ IATA agency resolution preceeding, decided January 26, 1951.

forth in the *Local Cartage Agreement* case. There, the Board held that "approval should not be granted unless there is a clear showing that the agreement is *required by a serious transportation need, or in order to secure important public benefits.*"¹¹⁵

There is no question that any agreement among the carriers providing for "the fixing of uniform rates of commissions to travel agents for selling air transportation * * * would be contrary to the anti-trust laws" without CAB approval.¹¹⁶ This is a feature common to both the basic ATC and IATA agency agreements which have received Board approval. Since these agreements, on the basis of the commission fixing provision alone, are "plainly repugnant to established antitrust principles," it follows that, in the Board's terms, a clear and positive demonstration of a serious transportation need or the derivation of important public benefits is required to justify CAB approval and overcome their otherwise adverse effect on our anti-trust fabric.

It is the committee's view that the basic ATA and IATA agency resolutions do not satisfy either of these two criteria nor do they meet the earlier test applied by the Board.

The overall effect of the Board's course of conduct with respect to travel agents has been to confer on the certificated carriers far-reaching regulatory powers over the travel agency industry¹¹⁷ which the Board itself does not have statutory authority to regulate in the first instance.

ATC and IATA may, if they so desire, bar a travel agent from business access to what is now one of the world's main avenues of transportation, the airways flown on regular schedule by the ATC and IATA carriers. In view of the virtual preemption of the field of air transportation by the ATC and IATA carriers, and the narrow range of operations left to the noncertificated carriers, it is undeniable that a travel agent cannot engage in the effective and profitable sale of air-travel accommodations unless he has first secured conference recognition by the ATC and IATA.¹¹⁸

Even if the travel agents were not outside the orbit of the Board's jurisdiction,¹¹⁹ the committee could not accept the Board's claim that the present agency procedures equitably serve the public interest, the interests of the ticket agents, and the interests of the certificated car-

¹¹⁵ Order serial No. E6485, adopted June 4, 1952 (docket No. 4850), reaffirmed as to the above quote in the *North American Tourist Commissions* case (docket No. 5422), decided August 14, 1952. [Emphasis supplied.]

¹¹⁶ *The North Atlantic Tourist Commission Case*; see also: *Lowe v. Lawlor*, 208 U. S. 274; *United States v. Socony-Vacuum Oil Company*, 310 U. S. 150; *United States v. Trans-Missouri Freight Association*, 166 U. S. 296.

¹¹⁷ This was conceded by the ATC at the hearings (p. 1757):

"Mr. ROPILO. And then would you not say it is a fair statement that you, as a regulated industry, have been delegated authority by the CAB to regulate the conduct of members of an unregulated industry?"

"Mr. MARKHAM. To the extent that our interests are immediately and directly involved, I supposed that statement is correct. We have not undertaken to regulate the travel agency industry as an industry. We have undertaken to protect our own interests insofar as agents can affect them adversely. And we have undertaken to regulate our own relationship with our own agents."

¹¹⁸ There was testimony that ATC accreditation did not, strictly speaking, amount to a "license" to sell transportation on the certificated airlines since the travel agent could still arrange such accommodations for his customers, although without benefit of a ticket stock and with no expectation of reimbursement in terms of a commission. This would amount to furnishing a gratuitous service at considerable cost to the travel agent in view of the basic expenses involved in operating his business.

¹¹⁹ As we have noted, the Board does have disciplinary authority under sec. 411 of the act to curb unfair or deceptive practices by travel agents in the sale of air transportation.

riers. The Board apparently expects that these private commercial trade associations in whom it has reposed such extraordinary powers will somehow assume the attributes of quasi-judicial tribunals and conduct themselves accordingly. This view is unrealistic and does not accord with the principles of either good business administration or sound governmental regulation.

If the CAB believes that licensing of travel agents based upon a review of their qualifications, is necessary to encourage and develop our air transportation system, this function must be exercised by an agency of the Government. It would be appropriate for the CAB to recommend to the Congress, enactment of suitable legislation to accomplish this purpose. Once licensed by the Government, travel agents would then be eligible for appointment by any ATC or IATA carrier desiring their services. Such clearance would give the carriers the protection and assurance they desire.¹²⁰

Joint action by the certificated industry under section 412 of the act, of course, would be entirely separate from any licensing function authorized by legislation. Pending enactment of such legislation, the committee is of the view that the Board should approve under section 412 only such joint activities required for the ATC and IATA to propose maximum travel agent commission rates for their members and the minimum qualifications any travel agent must possess to be eligible for appointment by member carriers. Application of these qualification standards to the appointment of a particular agent should be exercised by the individual carriers and should not be undertaken by joint action of the carriers through the ATC.

The Board should withdraw its approval of all parts of the agency resolutions submitted by the ATC and IATA which are inconsistent with the foregoing recommendations. The certificated carriers no longer should be permitted to consult and take joint action, with a view to restricting on competitive grounds, the agents who may handle scheduled air transportation.

¹²⁰ Counsel for the ATC advised the committee that "adequate licensing * * * at the governmental level, would provide the airlines the kind of protection that they want," but that the ATC considers the protection afforded by the present arrangements necessary "in the absence of either Federal or State laws which would provide at least minimum qualifications, minimum financial responsibility, [and] minimum competency, as far as travel agents are concerned" (hearings, vol. 3, p. 1757).



REGISTRATION OF SMALL CRAFT

REGISTRATION OF SMALL CRAFT—ASSEMBLY BILL NO. 2497

Assembly Bill 2497 was introduced in the 1963 session of the Legislature, as an amendment to the Harbors and Navigation Code, to simplify and clarify the registration procedure on small boats for the Division of Small Craft Harbors. It would eliminate the possibility of double transfer fees being charged, which presently occurs when a used boat is purchased by a dealer for resale.

Introduction

Small pleasure boats have become big business since the end of World War II. During 1961 more than 35 million people spent in excess of two billion dollars for boats, their operation, and upkeep. Three hundred thousand boats are registered in California today and registration increases at the rate of 2,000 per month. San Francisco and Los Angeles are in the top seven boating markets in the United States. It is predicted that by the end of 1965 California will gain national leadership in boating registration.

The California laws pertaining to the registration and operation of boats within the state were passed in 1959. These laws apply to the vast majority of boats operating on our inland and coastal waters. The law provides for the registration and numbering of boats. It sets up safety requirements and operating practices, and provides for accident reporting and enforcement procedures.

Prior to the enactment of the California laws, registration, etc., was a federal activity handled by the Coast Guard. This original authority dates back to the Federal Numbering Act of 1918, which was superseded by the Federal Boating Act of 1958. At the inception of the federal regulations, an estimated 100,000 boats were affected. The development of reliable and lightweight motors, as well as the mass production of small boat hulls, increased this figure to an estimated 6 million in 1957.

This surge of boating popularity resulted in crowded waterways and an increase in accidents. It also brought about the enactment of numerous regulations by states, cities, and counties in an effort to increase boating safety, and secondarily to develop a new source of revenue. Many of these statutes conflicted with each other and, particularly, with established Federal Maritime Law. This created a chaotic situation. For example, the California Revenue and Taxation Code required each county assessor to register and number vessels. The 1918 federal statutes provide that only the federal number be displayed on the bow of the boat. If an owner displayed the California number, he violated the federal law; if he didn't, he was in violation of the California law.

As a result of the confusion and conflict, the pleasure boating industry and other allied groups requested Congress to study recreational boating problems. This study showed that additional federal legislation was required to restore uniformity throughout the country

and to enlarge the scope of such laws to cover small, high-speed, out-board motorboats. This brought about the Federal Act of 1958, commonly known as the Bonner Act. It permitted the individual states to adopt their own numbering systems and to administer them in accordance with the uniformity requirements of the federal regulations.

The California law is embodied in the Harbors and Navigation Code, and meets with the approval of the Secretary of the Treasury, in accordance with the 1958 federal statutes. Registration was originally handled by the Department of Motor Vehicles. On July 1, 1962, the Division of Small Craft Harbors assumed this responsibility.

Testimony in Support of Proposed Legislation

The purpose of the proposed legislation is to legalize a practice in the Bureau of Registration that arises out of conditions allegedly peculiar to this activity. Mr. Lachlan M. Richards, Chief of the Division of Small Craft Harbors, detailed these conditions and their proposed correction in his testimony to the committee:

Mr. Richards: "AB 2497 would make three changes in the boat registration law with respect to transactions involving dealers:

1. It would confirm the administrative procedure whereby the dealer holds the transfer documents on a vessel purchased for resale until he has resold the vessel.
2. It would add a requirement that the dealer is to notify the division within 24 hours after the purchase of a vessel for resale.
3. It would eliminate the fee for such transfers.

"The present law (Section 681 C) requires completion of the entire transfer of registration process, including issuing of new documents, each time the ownership of a vessel changes hands, and the payment of a transfer fee.

"Under this law a dealer purchasing a boat for resale would have to submit his documents to the division with a \$3 fee and obtain new documents showing him as owner. This process takes a minimum of 15 days. The dealer cannot complete the sale of the boat until he has received his new documents.

"To overcome this obstacle to legitimate commerce, an administrative procedure has been adopted by which the dealer may accept the certificate of ownership signed by the seller, sign it himself, and hold it until he has resold the boat. The new owner then receives the document, signs it, and sends it to the division. The division processes the transaction as a multiple transfer, charging a fee of \$3 for each change of ownership, and issues a new document to the current owner only."

The present law provides for transfer of ownership within 10 days. The problem that the division is trying to resolve occurs when a dealer purchases a boat from an individual for resale. As outlined in Mr. Richards' testimony, a dealer holds the papers, and when he makes the sale, then gives the new owner the documents. This in effect is a dual transfer, and under the law there is a \$3 fee for each transfer. In order for the new owner to secure the documents necessary to prove

ownership, etc., and comply with the state law, he must pay this dual fee. Mr. Richards' testimony continued and indicated that the following benefits would be derived from this change:

Mr. Richards: "Where the former owner has notified the division of the sale, the transfer may be recorded correctly but not without additional correspondence, investigation, and costs.

"In summary, the changes proposed in AB 2497 would:

- a. Confirm the procedure whereby the dealer may hold the ownership document until resale.
- b. Eliminate a transfer fee where no documents have been issued.
- c. Require the dealer to notify the division within 24 hours of any such purchase.
- d. Free the new owner of the annoyance of having to pay a fee incurred by the dealer."

When the question of the loss of revenue was discussed, the chief of the bureau testified that elimination of the \$3 fee should not result in any loss of income, as the cost of processing and collecting this is in excess of the amount collected.

It is apparent that the registration procedure was patterned after the tested methods used by the Department of Motor Vehicles. The present proposal is in line with that contained in the Vehicle Code. The basic difference in the registration program is that the Division of Small Craft Harbors has no branch offices similar to those set up by the Department of Motor Vehicles. It works through boating dealers who act as registration agents for the convenience of the boating public. This program is similar to that employed by the Department of Fish and Game with respect to the issuance of hunting and fishing licenses. The documentation issued by the Division of Small Craft Harbors provides for two types of certificates, such as those used by the Department of Motor Vehicles, wherein a white slip is issued to the registered owner and a pink slip to the legal owner and/or lien holder, as the case may be.

The question of the governing philosophy of boating registration and its general need was discussed.

Senator Pittman: "What is the purpose of the certificate? Do we really need it? Personally, I own a little fishing boat for my own pleasure, and it is a nuisance to me to put a number on that boat."

Mr. Richards: "I would like to comment on that. Originally . . . prior to my coming with the division, there was proposed legislation which set up a system of issuing a certificate of ownership, but up until the recent 1963 session, there was no requirement for showing proof of ownership at the time you registered a boat. There was always no such thing as a builder's hull number, so consequently this piece of paper didn't mean much and, in fact, many people, when they got in the midst of a transfer which was complicated took all of these papers and documents, I am told, and pushed them in a waste basket and went in and registered a

boat as a new boat, or on at least one occasion, someone has stolen a boat and gone in and registered it to themselves as a new boat."

There was a question as to possible duplication by the federal documents and state certification.

Senator Backstrand: "You are talking about federal registration. This a field where you have documented vessels, and where does this break off?"

Mr. Richards: "I jotted down what I think is about the simplest explanation I know as to what a documented and undocumented vessel is. A boat of five net tons or more on United States navigable waters is documented. A pleasure boat of five net tons or more may be documented. A ton is 100 cubic feet of space and net tonnage refers to the amount of space available for cargo. The boat must be owned by a United States citizen. In simply stating it, any boat 32 feet in length and 8 feet wide, if it is used commercially would probably have to be documented. If it is used as a pleasure boat, it is either documented by the owner at his discretion or registered with the Division of Small Crafts."

Testimony in Opposition

Opposition to the proposed changes came from the California Boating Council, represented by Mrs. Jan Mower, and the Southern California Marine Association, represented by Mr. R. D. Sweeney. Their principal objection to the legislation was based on the possibility of conflict with federal regulations.

Maritime laws as such are as old as history. The original ones date back to 900 B.C., and originated on the Isle of Rhodes, which regulated the carriage of goods and passengers for hire on the waterways. Over the years, such laws have expanded and have differed excessively from the common law. The U.S. laws are patterned after those of the High Courts of Admiralty in England.

The Federal Maritime Laws are applicable to all navigable waters of the United States. This has meant all waters, salt or fresh, with or without tides, natural or artificial, which are in fact navigable in interstate or foreign water commerce, whether or not the particular body of water is wholly within a state. To make it even more confusing, the terms "navigability" or "navigable" do not necessarily mean navigable in fact; court decisions in reference to these matters are not clear.

The jurisdiction of the state extends to all waters within its boundaries. It includes all islands, harbors, and bays along and adjacent to the coast line. The California Harbors and Navigation Code contains numerous provisions dealing with boats and their operation. In addition, many cities and counties have local ordinances regulating the use of water within their boundaries. Many of these provisions deal with subjects beyond the legislative authority of the state, city, or county; they are in fields preempted by the federal government. While it is true that the state laws apply to undocumented vessels (seemingly in accordance with the 1958 federal statutes), admiralty law, which is based on the characterization of the waters, could provide for some

dual jurisdiction. The navigable waters within the State of California which, as far as we can estimate, exceed 1,500 miles, include the waters of Lake Tahoe, the Colorado River to and including Lake Mead, the Sacramento River to Red Bluff, and the San Joaquin River to Hills Ferry. Of course, all the coastal harbors and marinas are also navigable waters and similarly subject to federal regulations.

In her testimony before the committee, Mrs. Mower pointed out that the numbering and licensing of undocumented vessels was required for safety reasons and as a protection for the public and financing institutions.

Mrs. Mower: "One inherent danger to the boatowner under the plan as set forth in AB 2497 is that a former boatowner would still be theoretically and probably actually liable, according to the permissive use Section 661 of the Harbors and Navigation Code, for damages arising from an accident with his boat that occurred while it was still in the dealer's possession and untransferred on paper to a new owner."

The whole question of liability was explored by the committee, and further testimony was in direct contradiction with Mrs. Mower's statement. Chairman Short asked Mr. Asklund if he would care to comment on Mrs. Mower's statement.

Mr. Asklund: "Yes, this question is asked by Mr. Lunardi of the Legislative Counsel and we have an opinion of his on that, saying that the liability remains with the dealer."

A copy of the Legislative Counsel's opinion was subsequently forwarded to the committee, and an extract, together with the question prompting the opinion follows:

Statement by Assemblyman Paul J. Lunardi: "This bill fights with Section 701 of the Harbors and Navigation Code and if this bill passes, will leave the poor seller of the boat the owner of record and therefore liable."

Opinion and Analysis from Stanley M. Lourimore, Deputy Legislative Counsel: "In our opinion the statement is not accurate. Assembly Bill No. 2497, as introduced, would amend Section 711 of the Harbors and Navigation Code to provide that when a dealer purchases a numbered undocumented vessel for resale and uses this vessel on California waters under his dealer registration number, he is not required to make application to the Division of Small Craft Harbors for a new certificate of number and a new certificate of ownership for the vessel and to pay the \$3 fee required by subdivision (c) of Section 681 and Section 701 of the Harbors and Navigation Code but may hold in his possession the certificate of number for the vessel until such time as he resells it.

"As we construe the proposed provision, it would make an exception for the acquisition of a numbered undocumented vessel by a dealer for resale from the requirements prescribed by subdivision (c) of Section 681 and Section 701 of the Harbors and Navigation Code that upon any transfer of ownership of a ves-

sel, an application for a new certificate of number and an application for a new certificate of ownership be made to the Division of Small Craft Harbors and a \$3 fee paid.

"This would not, however, leave the former owner of the vessel liable for the operation of the vessel while it is in the hands of the dealer. Under Section 704 of the Harbors and Navigation Code, even if an application is not made for a new certificate of number and certificate of ownership, the owner of an undocumented vessel who has made a bona fide sale or transfer of the vessel and delivered possession thereof to a purchaser is exempted from civil liability for the operation of the vessel by another if the owner has (1) made proper endorsement and delivery of the certificate of ownership and delivered the certificate of number as required by the law; or (2) delivered to the Division of Small Craft Harbors, or has placed in the mail, addressed to the division, the notice of the sale or transfer of the vessel which he is required to give the division by Section 710 of the Harbors and Navigation Code."

According to Mrs. Mower, the Boating Council had been concerned with unscrupulous dealers:

Mrs. Mower: "The proposal as set forth in this legislation will also open the door to 'double floor planning of boats' by unscrupulous dealers. This would be of major concern to banks and financial institutions. However, it is also conceivable that the small boat owner could become involved in red tape complications as a result of a dealer's manipulation of either loaning institutions or boatyards; or in having a boat in his lot on consignment if a lending institution should foreclose on him. It is also quite conceivable that this proposed legislation would open the door to improper attachment of a boat that had been sold, in the event a creditor of a former owner discovered the boat and found an untransferable registration. The dealer, of course, should cause such a wrongful attachment to be lifted by proving his purchase of the boat involved and his independence of the former owner's debt; however, there would be burdensome red tape involved."

Under the Harbors and Navigation Act, it is the duty of the Chief of the Division of Small Craft Harbors to apprise the county assessor of the ownership of any undocumented vessel registered to a resident of his county. This, of course, is for the purpose of levying personal property taxes. There is apparently some concern that if a dealer has purchased a boat for resale and ownership has not been transferred, then the owner of record would be subject to personal property taxes by reason of the ownership records in Sacramento.

The Yacht and Ship Brokers Commission raised the question as to whether or not the proposed change would be in conflict with Section 8937.1 of the Yacht and Ship Brokers Code, which reads as follows:

"Any person purchasing used yachts or ships for resale must transfer actual title to any such yacht or ship into his name and have in his possession subject to inspection by the commission a

good and sufficient bill of sale or other fit evidence of title if such person wishes to claim exemption under this chapter."

A Legislative Counsel's opinion was secured which indicated that there would be no conflict:

"It would follow that the amendments made by A.B. 2497 in the transfer of title requirements of Section 700 and the related provisions in Section 711 would not have any effect upon Section 8937.1 relating to regulation of yacht and ship brokers. In other words, we believe it would be held that a transfer of title to a dealer may occur for the purpose of Section 8937.1 regardless of a dealer's failure to comply with Section 700 or 711. Thus we do not think that the passage of A.B. 2497 would have any effect upon Section 8937.1."

In the course of the presentation by the Boating Council, the operation of the Bureau of Registration became a subject for inquiry and discussion.

Mrs. Mower: "The council surveyed a number of the boat dealers and brokers in California to determine just what the problem might be that caused rise to the introduction of this legislation. Not one of these people complained about paying the required \$3 fee to transfer ownership. Their sole complaint was that it took from 45 to 90 days to get a boat registration processed in the Division of Small Craft Harbors offices and they thought the service was deplorable. Many of these men told us this delay actually cost them sales. Others told us that the public was blaming them for the delay. Not one of them approved the legislation as outlined in Assembly Bill 2497, but all of them asked what could be done to speed up the paperwork processing in Sacramento."

The committee questioned representatives of the Small Craft Harbors Division relative to this.

Senator Backstrand asked *Mr. Askelund*: "Do you use IBM equipment?"

Mr. Askelund answered: "Yes. We process it through IBM."

Senator Backstrand: "Do you have it in your own office?"

Mr. Askelund: "It is in the Department of Parks and Recreation."

Senator Backstrand: "Now, Mr. Richards said it took about 15 days and, of course, the dealers were upset about that and, apparently, Jan (Mrs. Mower), here, says it is taking longer than that. Have you made any survey as to the length of time to know just how long it actually does take?"

Mr. Askelund: "Yes. If all the paperwork is in order, it is processed through in less than 15 days. If there is a technicality or something is not in order and clearance is required, it will take longer. Sometimes we engage in correspondence two or three times with people to get these correct or submit what we need."

The matter of liability was further discussed and explored:

Chairman Short: "I notice in your statement (Mrs. Mower) . . . that you say a former boatowner could still be theoretically and probably actually liable after turning the boat over to the seller. Do you have a legal opinion on that from your legal staff?"

Mrs. Mower: "That was the one I got from my legal staff. I didn't bring his thing with me."

Chairman Short: "Who is your attorney?"

Mrs. Mower: "Carl G. Petterly, from Petterly, Jones and Smith in Los Angeles."

Chairman Short: "Now, you heard the Legislative Counsel's opinion that the liability would not be present."

There was further examination of the question of revenue. While it is true that the testimony of the Bureau Chief indicated that the cost of the paperwork far exceeded the revenue, the committee questioned the division spokesman, Mr. Askelund, relative to this. He indicated that the high cost resulted from the paperwork and the correspondence involved. Under the present regulations, a dealer purchasing a boat must forward the documents to Sacramento showing the transfer of ownership from the previous owner to himself. It seemed rather unfair to compel an innocent purchaser of a boat from a dealer to pay a double fee to secure documents showing him as the owner.

Mr. Montgomery: "What do you do, if a person has come in and the dealer hasn't transferred title? Do you go to the dealer or do you pay as the party registering this?"

Mr. Askelund: "Well, the dealer is the party who is registering the boat."

Mr. Montgomery: "It is a misdemeanor for failure to transfer."

Mr. Askelund: "I don't think so."

Mr. Montgomery: "Have you ever been prosecuted?"

Mr. Askelund: "Since this is a misdemeanor, it is difficult to do and we proposed in the last session to put a penalty on failure to transfer."

Mr. Richards: "This is true. We recognize . . . that there is no penalty for failure to fulfill this section of the law and we had hoped to get legislation which would tighten that up. I believe your organization was opposed to that legislation, Mrs. Mower. We didn't pursue it strongly. There was no big fight over it, but we did propose putting teeth into it. We are not an enforcing agency, as the Department of Motor Vehicles. They enforce their section of their own law, and what we have been trying to do is to get legislation which would solve the problem without our getting into enforcement."

The statement "we are not an enforcing agency . . ." seems rather significant. It would appear that the Division of Small Craft Harbors is charged with the registration of undocumented vessels for which a fee is charged. Violation of the regulations is a misdemeanor. It would also appear that enforcement of these regulations where violations were discovered would eliminate some of the problems and some of the paperwork.

The testimony of the Southern California Marine Association was legalistic in nature. Mr. R. D. Sweeney stated, in part:

Mr. Sweeney: "As far as we can determine, it (AB 2497) serves no useful purpose, is harmful to both the dealer and the seller, it helps no one and opens a large field of fraud in the sale of undocumented vessels. It is our opinion that AB 2497 is contrary to the Federal Boating Act of 1958 and if this is correct and if it is enacted into a law, it could lead to withdrawal of the approval of the Secretary of the Treasury heretofore given to sections appearing in Article 2 of Chapter 5 of Division 3 of the Harbors and Navigation Code with reference to the registration and numbering of undocumented vessels by the State of California."

Mr. Sweeney's statement dealt at great length with the possible conflict and joint jurisdiction between the federal government and the State of California. In his testimony he pointed out some of the inconsistencies as follows:

Mr. Sweeney: "There is no provision in the federal law nor in our state law that a vessel can be operated by anyone except under the certificate of number issued for that particular vessel by the Division of Small Craft Harbors. The law provides that the certificate of number must be issued to the owner of record.

"In the event AB 2497 becomes a law, we would then have a boat being operated by a dealer who was not the owner of record under what the bill calls a 'Dealer Registration Number.' There is no such thing in our law as 'Dealer Registration Numbers.' I mean, the law is very evasive—I can't find it in the law; it may be there."

Chairman Short: "I would like to get an answer to that. . . . Will you comment on that please, Mr. DeBenedetti?"

Mr. DeBenedetti: "I refer to Section 5501.1 of the Administrative Code which says, 'Numbering requirements of these regulations shall apply to boats operated by manufacturers and dealers.

"The description of the boat will be omitted from the certificate of number since the numbers and the certificate of number awarded may be transferred from one boat to another. In lieu of the description of word 'manufacturer' or 'dealer' as appropriate will be plainly marked on each certificate.

"The manufacturer or dealer may have the number awarded printed upon or attached to a movable sign or signs to be temporarily but firmly mounted upon or attached to the boat being demonstrated or tested so long as the display meets the requirements of Section 5501.

"A manufacturer or dealer may have more than one certificate of number awarded if he is the owner of more than one undocumented vessel, provided, however, that upon the sale of any such vessel by said manufacturer or dealer, then a number shall be applied for by the new owner in the manner provided for in these regulations.'"

Part of the problem inherent in the change seems to hinge upon the status of an ownership being in "limbo," so to speak. The financing agencies could be placed at a disadvantage if title did not change as it should. Hidden ownership and dual flooring and financing could occur.

The question of liabilities and court actions was raised as a reason for objecting to the proposed legislation. Mr. Sweeney's statement gave extensive coverage to the matter of federal and state jurisdictions.

Mr. Sweeney: "If a collision occurs on the navigable waters of the United States, which are all the waters of California, except the Salton Sea and bodies that do not open into the sea—Lake Tahoe has been determined to be a navigable water of the United States because it is between two states. The Judiciary Act of 1789 stated, following our Constitution, which placed the admiralty and maritime jurisdiction in the federal courts, that the federal courts shall have all the admiralty and maritime jurisdiction save to the suitors their rights to common law, if any rights existed. Now, a port, for a collision of a vessel was a right at common law which existed when our Federal Constitution was enacted, . . . Therefore, a litigant has the right to select his form, you can go to the federal court if the collision is on a navigable water or you can go into the state court.

"Now, there is a very important decision of the State Supreme Court in California. I will give you the citation. It is real good. I will send it to you. You come in here to court but we are going to apply all the admiralty rules, and we are going to apply the rule of comparative negligence and not the common law rule of contributory negligence. They also said this, they stated the rule of the road. That is what is contrary to the federal law. They said the federal law is supreme on the navigable waters of the United States, so as far as the court action you can go either place but when you get in the federal court, they are not going to pay any attention to this law. They are going to say the owner of the record, and whoever the owner of the record is has the liability and is going to get it. It could be either one but every attorney will sue everyone he thinks he can sue."

Exception to Mr. Sweeney's testimony was taken by the Division of Small Craft Harbors. Legislative Counsel's opinions were solicited and are attached hereto.

RECOMMENDATION OF THE COMMITTEE

1. Serious questions were raised as to the efficient operation of the registration section of this division. It is the opinion of this committee that further study should be made of the entire registration procedure of the Division of Small Craft Harbors. If the transfer procedure takes an undue length of time, the reasons for same should be ascertained and the matter corrected.

2. Enforcement of the present laws is apparently lax or nonexistent. A legislative committee should investigate this situation and discover the causes thereof.

3. It would appear that the rate of the fee should be studied. The fee should be sufficient to finance the operation of the bureau and provide for an effective enforcement wherein to insure compliance with the law. The possibility of collecting the personal property tax and remitting same to the appropriate counties in a manner similar to that procedure used by the Department of Motor Vehicles should also be explored. This would eliminate the possibility of dual taxation, as suggested in testimony presented to the committee.

4. If, as the chairman indicated, the responsibility for any tort action would be on the dealer's shoulders when he purchased a vessel, then we see no harm in the proposed change.

APPENDIX

AMENDED IN SENATE JUNE 11, 1963

CALIFORNIA LEGISLATURE, 1963 REGULAR (GENERAL) SESSION

ASSEMBLY BILL

No. 2497

Introduced by Mr. Lunardi

April 18, 1963

REFERRED TO COMMITTEE ON NATURAL RESOURCES, PLANNING,
AND PUBLIC WORKS

*An act to amend ~~Section~~ SECTIONS 700 AND 711 of the Harbors and
Navigation Code, relating to undocumented vessels.*

The people of the State of California do enact as follows:

SECTION 1. Section ~~711~~ 700 of the Harbors and Navigation Code is amended to read:

700. No transfer of the title or any interest in or to an undocumented vessel numbered under this code shall pass, and any attempted transfer shall not be effective, until the parties thereto have fulfilled either of the following requirements:

(a) The transferor has made proper endorsement and delivery of the certificate of ownership and delivery of the certificate of number to the transferee as provided in this code and the transferee has delivered to the Division of Small Craft Harbors or has placed the certificates in the United States mail addressed to the Division of Small Craft Harbors when and as required under this code with the proper transfer fee and thereby makes application for a new certificate of ownership and a new certificate of number *except as otherwise provided in Sections 711, 712 and 713*.

(b) The transferor has delivered to the Division of Small Craft Harbors or has placed in the United States mail addressed to the Division of Small Craft Harbors the appropriate documents for the transfer of ownership of the vessel pursuant to the sale or transfer except as otherwise provided.

SEC. 2. Section 711 of said code is amended to read:

711. (a) Every dealer upon transferring by sale, lease or otherwise any undocumented vessel, whether new or used, required to be numbered under this code, shall, not later than the end of the next business day of the dealer, give written notice of the transfer to the Division of Small Craft Harbors upon an appropriate form provided by it, but a dealer need not give the notice when selling or transferring a new unnumbered vessel to another dealer.

(b) When a dealer purchases an undocumented vessel numbered under this act for resale and uses this vessel on California waters under his dealer registration numbers, he is not required to make application for transfer or to pay the three dollars (\$3) transfer fee required by Sections 681(c) and 701; *provided, however, that the dealer shall notify the division in writing of such purchase within 24 hours thereafter on an appropriate form available from the division.* The dealer may hold in his possession the Certificate of Number and Certificate of Ownership for vessel purchased for resale purposes until such time that he resells the vessel.



SYNOPSIS OF OTHER SUBJECTS
STUDIED BY THE COMMITTEE



OTHER SUBJECTS STUDIED BY THE COMMITTEE

In addition to the subjects covered in detail in the foregoing pages of this partial report, the committee held hearings and the staff of the committee did further study on the following subjects:

1. Furniture and bedding
2. Psychiatric technicians
3. Medical fees
4. Collection agencies
5. Private investigators and insurance adjusters
6. Exempt narcotics

The following is a brief synopsis of the ground covered by the committee and its recommendations.

FURNITURE AND BEDDING

The report of the committee on this subject is in preparation, and the following synopsis contains briefly the work of the committee. A full report on this subject will follow.

Senate Bill No. 797—Senators Teale, Miller, Arnold and O'Sullivan

FURNITURE AND BEDDING

This bill abolished the Bureau of Furniture and Bedding Inspection. It was the outgrowth of the licensing provision which set forth any manufacturer or dealer of upholstered furniture must be licensed to engage in that undertaking.

A small lumber dealer in a small foothill town, who had as an accommodation to one of his customers purchased an unpainted set of stools with a thin upholstered padding on them, was required to have a license which cost more than the merchandise he had purchased as a convenience for his customer.

The hearing held by the committee was lengthy and the subsequent investigation by the staff was penetrating and informative. It was indicated that many of the state laws and regulations were not being adequately enforced. That some control of out-of-state shipments should be adopted in order to protect the people of the State of California and also to protect California industry from unfair competition is indicated.

It was indicated that a great deal of merchandise in the trade channels of our country was in violation of Federal Trade Commission rules, which were not being enforced. In California there are only two F.T.C. enforcement officers. It was discovered that the administrative regulations setting forth quality and labeling requirements had been in effect for, in some instances, 15 years without change.

During the course of the hearing the license fees were spotlighted, and it was discovered that the largest license fee in the state was a drugstore chain and that three charitable organizations paid higher license fees than the largest furniture manufacturers in the state. The investigation indicated that the inspectors of the bureau did not feel free to take costly items of upholstered furniture in for inspection as no provision was provided to pay the dealer of same when these were taken at the retail level. Obviously, a small furniture dealer is placed at a serious economic disadvantage if a large sample is taken from his store.

RECOMMENDATIONS

1. That the present advisory board should be a full policy making and regulatory board with the authority to adopt rules, discipline licensees and set fees within the minimums set by the Legislature.
2. That there be a review of the license fees charged by the Bureau of Furniture and Bedding Inspection so that the fee be more equitable and reflect a volume of business transacted by said licensee.
3. Some consideration be given to the system of fines for violators. The money derived to be set up in a special fund to pay for samples taken for inspection.
4. There be a periodic review of the administrative rules and regulations adopted by the board. This should be done not less than biennially.
5. Some consideration be given to rules covering quality standards for all materials used, including the designation of the types of wood used in furniture construction.
6. Some control of out-of-state shipments be devised as better inspection could be enhanced.
7. A system of lot numbers be worked out so that merchandise found to be unfit for sale could be traced and placed off-sale.
8. The Legislature, by resolution, request through the Congress and executive branch of the government that the Federal Trade Commission rules and regulations with respect to furniture and bedding be rigidly enforced.
9. A statement of policy, that the California standards be not less than those adopted by the federal government for the furniture and bedding industry.

MEDICAL FEES

Senate Bill No. 374—Senator Christensen

This deals with medical fees paid by the state or any of the political subdivisions within the state to doctors, dentists, pharmacists, etc., for services. The bill provides that the amount paid by these bodies shall be equal to the usual and customary fees paid by the general public for these services.

At the public hearings held on this matter, the representatives of the healing arts testified that there was a great disparity between the fees paid by the state and various political subdivisions in the state to them for services to indigents and recipients of public programs. They pointed out that they had been unable to secure an adjustment of their fees and that it was unfair to expect them to continue in this fashion. The Department of Finance representatives indicated that they were paying more than the other states, that the fee schedule adopted was not unrealistic and that they had endeavored to be fair in their dealings.

RECOMMENDATIONS

No bill be enacted. That a Senate Resolution be introduced directing the Department of Finance to meet with the representatives of the healing arts and adopt a realistic fee schedule, taking into account, in setting same, the amounts the general public paid and pays for such services.

PRIVATE INVESTIGATORS AND ADJUSTERS

Senate Resolution No. 78—Senator Rodda

The above resolution introduced at the 1964 Special Session of the Legislature as the result of complaints from within the industry as to the operation of the Bureau of Private Investigators and Adjusters.

At the hearing, those parties who were instrumental in the introduction of the resolution pointed out that while there was an advisory board, the administration of the bureau did not reflect the wishes or suggestions of the board. The bureau licenses private investigators, insurance adjusters, repossessioners and also provides for the registration of those working under licensees. These are known as registrants and are subject to the same screening procedure as the regular licensees.

Subsequent to the hearing, the Chief of the Bureau resigned and the administration remained in the hands of the Chief Deputy Director of the Department of Professional and Vocational Standards.

During the course of the hearing on this resolution, it developed that the fiscal problems of this agency had partially been created by, perhaps, overzealous use of the Attorney General's office instead of using commonsense to solve some of the problems that crop up daily in any licensing agency. It also is apparent from the testimony and subsequent investigation that the cost of screening and investigating the so-called registrants far exceeded the revenue received from the registrants themselves. The fiscal problems had partially been solved by the elimination of the chief of the bureau's salary, but this obviously will be a temporary measure and will not continue.

The automobile repossessioners who are licensed by this agency pointed out in the hearing that they were compelled to be licensed as automobile repossessioners under the Private Investigators and Adjusters Act and also must have a collection agency license, as they collected money due. This resulted in a dual license fee for the repossessioners.

RECOMMENDATIONS

1. It is recommended that the present advisory board be eliminated and that a full policymaking and regulatory board for this bureau be created, the board to have the usual powers granted to such a body.
2. That the licensing of registrants be discontinued. As pointed out previously, this serves no useful purpose and costs more than the revenue produced for servicing this function.
3. That the automobile repossessioners be eliminated from this bureau. They are already licensed by the Bureau of Collection Agencies and, inasmuch as they are handling other funds, this license must be maintained. This is a small group and the loss of revenue will not be serious.
4. That the present maximum license fee be increased to \$150 so that the board will have latitude to increase the present fees if necessary to maintain the operation of the bureau.

PSYCHIATRIC TECHNICIANS

Senate Resolution No. 98—Senator Short

This resolution was the result of the desire of the psychiatric technicians themselves and other interested groups to get the registration program for the psychiatric technicians moving again.

The licensing and registration program was enacted in 1961. Because of internal problems such as incomplete registration and misunderstandings at certain levels, the registration program floundered.

After the introduction of the resolution, every interested group in the healing arts, as well as representatives of the various state employees' groups, met in San Francisco to discuss this program. They came up with a reasonable solution and presented it to the committee at its public hearing in Stockton last November. It was anticipated that with these changes and with full support of the program, it should function smoothly. The growth of private mental health facilities as well as expansion under the Short-Doyle program in local communities will greatly enlarge the need for psychiatric technicians.

RECOMMENDATIONS

That the program presented by the healing arts group be endorsed and submitted to the Legislature for passage.

COLLECTION AGENCIES

Senate Bill No. 1016 and Senate Bill 1017—Senator Gibson

These bills were the result of problems that have occurred in the collection field through the years and the combination of hearings by previous committees concerning the operation of this bureau. Two main problems occur that are still matters of controversy; one involves the administration of the bureau and the other concerns the audit program.

It is apparent from testimony at the public hearing held in Stockton and also from further investigation by the staff of this committee that there is a personality clash between the bureau chief and the licensees. The present advisory board is, on the main, ignored with respect to its recommendations and the bureau chief is prone to use the newspapers for disciplinary reasons and tends to use the licensees as whipping boys.

The audit provisions of the present licensing act were gone into in great detail. Previous to 1964, the licensees were audited by the state, some on an average of once every three years and many at much greater intervals. The present program of self-audit by licensed accountants was instituted. The very large agencies were most vehement in opposing this, alleging that the cost was prohibitive. The smaller licensees felt that this was most favorable and much better than the previous program. The estimates of the self-audit ranged from a low of \$100 to a high of \$12,000 for the largest licensee. Inasmuch as the result of the first self-audit has not been completed, the committee had no factual knowledge of the actual cost of the license.

RECOMMENDATIONS

1. That the present advisory board be eliminated. That a policy-making and regulatory board be formed and appointed to act as the administrative body to run this bureau.
2. That with respect to the audit program, this matter be deferred until such time as actual information is received from the bureau and the licensees regarding the cost of this audit. Should it develop that inequities are apparent, remedial legislation should be considered.

EXEMPT NARCOTICS

Public hearings were held in Stockton in December of 1964 arising from a request for the Board of Pharmacy to take action against certain licensees who are allegedly selling cough syrups containing exempt narcotics to teenagers and known narcotic addicts in the Stockton area. The Board of Pharmacy indicated that it did not feel that it had the authority to take appropriate action.

Hearings were scheduled by the committee to explore the powers of the Board of Pharmacy with respect to this alleged problem. Testimony was given by law enforcement agencies in the area as to the sale of cough syrup containing codeine to teenagers. It was pointed out that five pharmacies had been importuned to cease and desist. One pharmacy was reported to have sold over 3,000 bottles of these preparations in one month's time.

A subsequent audit revealed that five pharmacies in the area had sold over 50,000 bottles of these exempt narcotic preparations. The records in the area indicate that there are over 200 addicts under age 21, due to the easy access to these preparations. Testimony by the California Medical Association indicated that use of these preparations was addictive. A known death was attributed to narcotic cough syrup addiction. Subsequent investigation by the division and by the Board of Pharmacy indicated that this was not a problem peculiar to Stockton or local in any respect.

Surveys were made in the Los Angeles area and the San Francisco Bay area, showing flagrant violation of the spirit of the law and a need for changes. Comments by pharmacists in southern California were to the effect that only 1 purchase in 25 were for legitimate reasons. In the San Francisco Bay area one woman purchased six gallons of this preparation in a four-month period. Pharmacists have indicated that there are better cough syrup preparations on the market that contain no narcotics, which they recommend to customers, if so asked.

RECOMMENDATIONS

1. The exemption set forth in the Health and Safety Code which permits the sale of codeine in solution to the extent of one grain per ounce should be repealed.
2. Cough syrups containing narcotics should be dispensed only with a doctor's prescription.
3. The Board of Pharmacy be granted powers to administratively take appropriate action to restrict the sale of dangerous drugs so as to protect the public.
4. Manufacturers of any preparation containing narcotics should be designated on the label on any such preparation so that they might be easily traced to their source.
5. Wholesalers of preparations containing narcotics should be compelled to keep a separate record of these preparations and to whom they are sold. Retail outlets should be compelled to have corresponding records. Wholesalers should be prohibited from making special inducements to the retailers to buy large quantities of these preparations outside of normal demands. (At the present time dealers are importuned to purchase extra large quantities with the inducement that they will be given either a 50-percent or, in some cases, 100-percent bonus equal to the amount that they have purchased. In this manner it is almost impossible to keep accurate inventory control or check the sales and purchase records of the retailer.)

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REPORT TO THE LEGISLATURE

PART II

by the

SENATE FACTFINDING COMMITTEE ON BUSINESS AND COMMERCE

Members of the Committee

ALAN SHORT, *Chairman*

STAN PITTMAN, *Vice Chairman*

"J" EUGENE McATEER

LEE M. BACKSTRAND *

WALTER W. STIERN

LUTHER E. GIBSON

JOHN F. McCARTHY

* Deceased

W. W. MONTGOMERY, *Committee Consultant*



Published by the
SENATE
OF THE STATE OF CALIFORNIA

GLENN M. ANDERSON
President of the Senate

HUGH M. BURNS
President pro Tempore

JOSEPH A. BEEK
Secretary

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LETTER OF TRANSMITTAL

May 3, 1965

HON. GLENN M. ANDERSON, *President*
and Members of the Senate
Senate Chamber
State Capitol
Sacramento, California

Gentlemen :

Attached hereto is the report of the Factfinding Committee on Business and Commerce. The report contains a summary of the hearings held by the committee during the interim period from August 1, 1963, to December 31, 1964.

This report incorporates the views of the state agencies involved as well as private organizations and individuals as to those matters of particular concern to them.

Respectfully submitted,

ALAN SHORT, *Chairman*
LUTHER E. GIBSON
JOHN F. MCCARTHY

STAN PITTMAN, *Vice Chairman*
"J" EUGENE MCATEER
WALTER W. STIERN



ACKNOWLEDGMENTS

The committee has tried to make this report as comprehensive as possible. This could not have been accomplished without the cooperation of the Governors of the various states and their appointed officials dealing with furniture and bedding problems. The committee wishes to express its appreciation for this cooperation, which enabled it to compare the regulations in effect throughout the United States, and, probably for the first time, to compile in one volume all of the known existing rules and regulations affecting the furniture and bedding industry.

Through the cooperation of the Association of Bedding and Furniture Law Enforcement Officials, the committee was able to ascertain the level of enforcement throughout the country, and to obtain expert opinion as to suggested law changes for the benefit of the public as well as the industry.

The committee also wishes to express its appreciation to the Director of the Department of Professional and Vocational Standards and his staff for their assistance and cooperation in connection with the California study. The department, along with the California Manufacturers Association and the California Retail Furniture Dealers' Association, rendered invaluable service to the Committee. The high degree of public protection is a tribute to their coordinated desire to maintain high standards in this important industry.



THE FURNITURE AND BEDDING INDUSTRY

This study of the furniture and bedding industry is an outgrowth of action by the Senate resulting from the introduction of Senate Bill 797 by Senators Teale, Miller, Arnold, and O'Sullivan, which bill would have eliminated the licensing of all retail outlets engaged in the selling of furniture and bedding; it also would have eliminated the omnibus clause that requires licensing for all other sales of furniture and bedding by any other means.

Introduction of the bill itself came about because of complaints by retailers who are required to secure license from the Bureau of Furniture and Bedding Inspection as a result of their sale of items technically covered by the Furniture and Bedding Act. These complaints were from such outlets as lumber dealers who, as a convenience to their customers, purchased unpainted stools with a thin cotton padding on them, or dealers in beauty supplies, office furniture, et cetera.

The Standing Committee of the Senate on Business and Professions, after a lengthy discussion on the bill, referred it to the Factfinding Committee on Business and Commerce for further study and report to the 1965 Session of the Legislature.

HISTORY OF FURNITURE AND BEDDING LICENSING AND INSPECTION IN THE STATE OF CALIFORNIA

Background

The original act covering furniture and bedding dates back to 1909, at which time the Legislature enacted regulations which provided that all items of furniture and bedding containing used material must carry a designating label. Failure to comply with this regulation was a misdemeanor and punishable as such.

It was not until 1911 that it became apparent the law was not being enforced, inasmuch as the Legislature had not placed its enforcement with any specific bureau or governmental agency, and in that year the Legislature placed the enforcement of this section of the general statutes with the Bureau of Labor Statistics and under the State Labor Commissioner.

The Mattress Act, enacted by the Legislature in 1915, prohibited the sale of any mattress which did not have a cloth tag attached to it setting forth the type of material used in the filling of the mattress, whether it was new or used, and also containing the name of its manufacturer. This was the only protection offered to the public until 1927, at which time the State Department of Agriculture was designated to administer the program, a licensing procedure was established, and the coverage of all upholstered furniture was provided for the first time.

In 1929 the law was again rewritten, and the licensing of manufacturers and retail outlets of furniture and bedding was turned over to

the Division of Weights and Measures. No further changes were made until 1935, at which time the present agency, the Bureau of Furniture and Bedding Inspection within the Department of Professional and Vocational Standards, was created to enforce the furniture and bedding laws in the State of California. This bureau issues licenses and acts as an enforcement body in accordance with statutes creating the Bureau of Furniture and Bedding Inspection, which provided for greater enforcement powers under the chief of the bureau and gave the director of the department the power to issue regulations and take items off sale that were not in conformity with the law. The enforcement remains standard to this date.

The only other significant change has been that the inspectors who formerly worked directly under the chief of the Bureau of Furniture and Bedding now work within the Division of Investigation; they make routine inspections and report violations to the chief and director. When necessary, the bureau calls upon the Division of Investigation for special assignments.

In addition to the laws enacted by the Legislature, the bureau has adopted administrative regulations spelling out in concise terms how the licensees should operate in conformity with the law. A modern, efficient laboratory is maintained by the bureau for the purpose of checking samples to ascertain that same are in compliance with the state law and regulations.

In 1955 there was established within the bureau a seven-man advisory board consisting of representatives from the manufacturing, the retailing, dealer, and sterilizing phases of the industry as well as a public member. It is the duty of the board to inquire into the needs of the industry and to make recommendations to the chief of the bureau and to its director as to how the bureau might better serve the best interests of the public.

PROJECTED EFFECT OF PROPOSED SB 797 ON THE FURNITURE AND BEDDING INSPECTION PROGRAM IN THE STATE OF CALIFORNIA

Fees

As a result of legislation enacted in 1963, fees for all agencies within the department were placed on a biennial basis. The projected budget for 7-1-63 to 6-30-65 was \$1,240,000. There were at that time 14,226 licenses in effect that would have been eliminated with the passage of SB 797. The total revenue from these licensees was \$428,280. This would have left a deficit in the amount of \$368,280 from the biennial budget of the bureau had these licensees been eliminated. Approximately 72 percent of the inspections made by any enforcement of the licensing act were made of these retail outlets. The projection is attached as an appendix to the report of the committee and made a part of this report.

TRANSCRIPT OF COMMITTEE HEARING ON FURNITURE AND BEDDING LICENSES

SENATE BILL 797

Sacramento, October 30, 1963

Senator Alan Short, *Chairman*, presiding

Index of Witnesses (In Order of Appearance)

Mr. Frank C. Freer, Chief, Bureau of Furniture and Bedding Inspection
Mr. Howard C. Winslow, Laboratory Supervisor, Bureau of Furniture and Bedding Inspection
Mr. Earl G. Waters, Chief, Division of Investigation
Mr. Edward D. Veady, Supervising Inspector, Bureau of Furniture and Bedding Inspection
Mr. Eddy S. Feldman, Managing Director, Los Angeles Home Furnishings Mart
Mr. C. L. Matthews, Member, California Advisory Board of Furniture and Bedding
Mr. Lesley D. Fay, Managing Director, Furniture Retailers Association

The Senate Factfinding Committee on Business and Commerce commenced a hearing on Senate Bill 797 on Wednesday, October 30, 1963, at the State Capitol, Sacramento.

Present at the committee table were: Senator Alan Short, Chairman; Senator Stan Pittman, Vice Chairman; Senators Walter W. Stiern and Lee M. Backstrand, committee members; and William W. Montgomery, consultant to the committee.

PROCEEDINGS

The Chairman: We have a quorum present and the secretary will note the present members.

At this time we will go into the subject that has been designated for this morning's hearing, Senate Bill 797, which was introduced by Senator Teale. The Legislative Counsel's digest tells what this does. It says if you are a retailer, you don't have to have a retail furniture dealer's license. And it includes other provisions that take away the requirement of having a license. Some of you other members may recall the presentation that was made. Senator Teale stated that there was a very small retailer up in the Mother Lode area that was selling a few stools. In fact, they weren't even painted, I believe he said. He sold maybe \$20 or \$30 a year worth of these stools and he had to get a license. In order to sell these stools, it cost him more than the entire sale of stools. He wondered if this was fair. He asked that that being the case, where he wasn't making any money—in fact, he lost money—that he not be forced to pay this fee. This was kind of a new subject for the committee. At that time I think Mr. Freer from the department came in with various exhibits showing how toys were stuffed and mat-

tresses and pillows and cushions, and the work they did in making sure that shoddy materials were not put into these various pieces of furniture. I think we were all a little bit confused. There was certainly a lot of opposition from the manufacturing end of the business. So we assigned this matter for interim committee study. That is what we are doing here this morning.

Now, I have some material that I will use from time to time. I want to encourage members of the committee to ask questions and to dig into this thing and see if in fact this revenue that is obtained and the various ways of licensing is fair and equitable.

I think the license charges are set out in Exhibits B1 and B2 of the material that is prepared by the Department of Professional and Vocational Standards. I note here in looking at it quickly that Englander Company, bed manufacturer, pays a license fee of \$240; Selby Mattress, \$120; Simmons, \$240. The complaint is made that Penney's, which distributes, had a fee charge of \$6,780. They don't make it. They just have it. But they sure are soaked with the fees on these retail outlets. I have some other information that such places, for example, as Goodwill Industries are charged fees of \$3,980; the Salvation Army, \$1,920; St. Vincent de Paul, \$1,660. They license various places and recondition furniture and sell it. You have big manufacturing places that currently are getting off almost scot-free. I think we ought to go into that this morning.

Is Mr. Freer here?

Mr. Freer: Yes.

The Chairman: Will you come forward, please. This is Mr. Frank Freer?

Mr. Freer: Yes.

The Chairman: All right. You are head of the Bureau of Furniture and Bedding, is that correct?

Mr. Freer: Yes, sir.

The Chairman: Will you describe for the members of the committee some of the things that you do in your bureau. What is the purpose of your bureau?

Mr. Freer: The purpose of the bureau is to see to it that all articles of furniture and bedding—that is, posted furniture and article of bedding—are properly licensed as to the content of the filling material.

The Chairman: Excuse me. Properly licensed as to the contents?

Mr. Freer: That are properly labeled; to see that all of the establishments, the manufacturers, upholsterers, bedding renovators, sterilizers, wholesalers, supply dealers and retailers, are licensed as is required under the California Furniture and Bedding Inspection Act. Also to see to it that the articles that are secondhand and are offered and exposed for sale in retail establishments are reasonably clean and sterilized. Also to see to it that the retailers properly advertise their merchandise in the selling program.

The Chairman: All right. As I understand it, the classifications you have in your bureau—and this is in the memorandum. Do you have a memorandum? You have a furniture manufacturer's biennial fee of \$120, is that correct?

Mr. Freer: That's right, sir.

The Chairman: And you have a wholesale furniture dealer's biennial fee of \$120?

Mr. Freer: That's right.

The Chairman: And that applies equally to bedding manufacturers?

Mr. Freer: Yes.

The Chairman: Wholesale bedding dealers?

Mr. Freer: Yes.

The Chairman: Supply dealers?

Mr. Freer: Yes.

The Chairman: Toy manufacturers?

Mr. Freer: Yes.

The Chairman: Wholesale toy manufacturers?

Mr. Freer: Yes.

The Chairman: In other words, if you have a plant in Sacramento where we are making stuffed furniture, toys, or we are a wholesale bedding dealer, then we would pay for that particular establishment's license with a fee of \$120, is that correct?

Mr. Freer: That is correct.

The Chairman: And that is for two years, is that correct?

Mr. Freer: That is correct.

The Chairman: Thank you. Then we go from there to furniture repair, bedding renovators, sterilizers. Each of these establishments pays an \$80 fee, is that correct?

Mr. Freer: This is correct.

The Chairman: And then we get down to the small fry, the retail furniture dealer, the retail bedding dealer. I take that back. Some of them aren't too small. The retail toy dealer. And for each of those establishments they have a biennial fee of \$20, is that correct?

Mr. Freer: That is correct, for the one class. Sometimes they have both classifications, which would make it \$40.

The Chairman: So if they are a retail furniture dealer and also a wholesale bedding dealer they might be paying \$140, is that correct?

Mr. Freer: If they have a wholesale and bedding dealer's license they would not need the retail bedding dealer's license. If they have the larger license it wouldn't require the smaller one.

The Chairman: All right. Now let's take the case of that posed by Senator Teale, this retail outlet for unfinished stools that happened to need padding in the more rustic area of the Mother Lode region. I will ask you if you know about the particular case Senator Teale brought to the attention of the committee.

Mr. Freer: I know of the case.

The Chairman: Thank you. Was that uncovered by one of your investigators?

Mr. Freer: That was uncovered by one of the inspectors working in the Division of Investigation during one of his routine inspection calls.

The Chairman: Under the jurisdiction of Mr. Earl Waters, is that correct?

Mr. Feer: That is correct.

The Chairman: Thank you. I see Mr. Waters in the rear of the room. Now, how much fee did that individual pay?

Mr. Freer: That fee would be \$20 for the biennial period.

The Chairman: Do you know how much business he was doing?

Mr. Freer: I have no knowledge of how much business he was doing. I have an idea as to the type of operation that he has. I used to be in the field. I can assume he carries a few items, say, like the stool. He might have even carried a sleeping bag in those areas. I don't know.

The Chairman: Have you had complaints from small retailers that their fees are too high?

Mr. Freer: At the outset of the biennial licensing period we had complaints not only from the retailers, but from all classifications.

The Chairman: Englander, for example?

Mr. Freer: Their name wasn't—We have a file of letters that we received from the different firms who are subject to the licensing program. I don't recall that they were a part of the complainants.

The Chairman: Thank you. How many employees do you have in your bureau?

Mr. Freer: In our bureau now we have 15.

The Chairman: And what is your budget for the 15?

Mr. Freer: The budget for the 15?

The Chairman: Roughly speaking. I don't expect you to have the exact figures.

Mr. Freer: Well, for the entire operation it is in the neighborhood of \$507,000 this year. This would include the people working in other areas.

Mr. Chairman: Five hundred and what?

Mr. Freer: Five hundred and seven thousand.

The Chairman: For 15 people?

Mr. Freer: No. This is for the people that were turned over to the division. The way the budget is made it includes the pro rata charges for other units that service our agency.

The Chairman: Well, what do you mean by that? For example what? Can you explain that to us, please?

Mr. Freer: Yes, sir. I don't have the budget here, but there are pro rata charges that are in our budget, in our overall budget, that go beyond the actual employees who work under my direct supervision. There is a departmental pro rata charge and there is a pro rata charge for services rendered by the Division of Investigation. There is a pro rata charge that goes to the Department of Finance.

The Chairman: The Department of Finance charges you too?

Mr. Freer: Well, they charge the department. Then I think there is some sort of program where the department prorates the charges to the agencies under the department.

The Chairman: And your own investigative division charges you for services rendered?

Mr. Freer: Yes. We pay that also.

The Chairman: But in your own bureau that is directly accountable to you, do you have 15 employees? Is that correct?

Mr. Freer: That is correct.

The Chairman: And what do these 15 employees do?

Mr. Freer: There is my position, the assistant chief of the bureau; there are five clerks in the headquarters office.

The Chairman: In Sacramento?

Mr. Freer: In Sacramento. And we have a laboratory that has a staff of eight people, which includes one sterilization plant inspector. They are also located here in Sacramento.

The Chairman: Now, these eight laboratory technicians, what do they do?

Mr. Freer: They are charged with the job of analyzing the filling materials samples as they are submitted by the field force under Mr. Waters' supervision.

The Chairman: Then Mr. Waters goes out to these various manufacturing places and renovators and retail outlets, gets samples and submits them to your laboratory force?

Mr. Freer: That is correct.

The Chairman: Now, do you have anybody here from your laboratory?

Mr. Freer: Yes. I have the supervising chemist here, Howard Winslow.

The Chairman: Howard Winslow?

Mr. Freer: Yes. He is the supervising chemist.

The Chairman: Thank you. Mr. Winslow, will you please come up. Will you sit down there, please. I am asking these questions rather slowly because I want to give members of the committee an opportunity to read the agenda that has been prepared by the department and to go over this particular problem so that they will have a little more knowledge of this. Now, the amount of money that you collect from your licenses on the two-year period is what, Mr. Freer?

Mr. Freer: It was projected for this first biennial period at \$1,073,000.

The Chairman: Or approximately what you need to pay your expenses?

Mr. Freer: That is correct.

The Chairman: Now, the expenses of the 15 alone account for how much each year?

Mr. Freer: I didn't bring the budget along.

The Chairman: Well, I think—

Mr. Freer: I would say it would be—

Unidentified Speaker: Two hundred and thirty-five thousand.

The Chairman: \$235,000 for the 15. Thank you. And the rest of the money goes for investigative services?

Mr. Freer: And the other pro rata charges.

The Chairman: Pro rata charges including the Department of Finance that charges you for their work?

Mr. Freer: That's right.

The Chairman: What work do they do for you?

Mr. Freer: I have to ask the department to answer that. I think it includes part of the services of the Legislature now.

The Chairman: All right. Can you explain that latter category to me.

Mr. Freer: I think the department can answer that better than I can. This is a rather new—

The Chairman: Your remark is it includes part of the services to the Legislature?

Mr. Freer: Yes.

The Chairman: The Department of Finance service to the Legislature, is that correct?

Mr. Freer: I would imagine overall.

The Chairman: All right. Thank you. Do you pay anything to the Attorney General's office?

Mr. Freer: Yes, sir.

The Chairman: How much do you pay them? Do you know?

Mr. Freer: I think it was in the area of \$3,000 last year. The amount we pay them is for services rendered in administrative hearings or maybe in Attorney General's opinions.

The Chairman: Thank you. Do you want to be seated for a few moments. I would like to talk to Mr. Winslow a little bit before we go back to you.

Mr. Winslow, you can sit there if you want to. Use the microphone so everyone can hear you, if you please. Your name is Howard Winslow and you are the supervising chemist of the Bureau of Furniture and Bedding Inspection, is that correct?

Mr. Winslow: Yes.

The Chairman: Talk into the microphone, please. You have seven people working for you, is that correct?

Mr. Winslow: Eight.

The Chairman: You have eight people?

Mr. Winslow: That's right.

The Chairman: Well, with yourself that makes nine.

Mr. Winslow: That is true.

The Chairman: What do you do?

Mr. Winslow: We analyze materials that are submitted to the laboratory that are used in articles of furniture and bedding.

The Chairman: How are they submitted to you? Will you explain this process?

Mr. Winslow: The majority comes in by first-class mail from the Division of Investigation and Inspection. Others are submitted direct from our main office.

The Chairman: Where do they come from?

Mr. Winslow: You mean the source?

The Chairman: Yes. Do they mail them to you? Where do they generally mail these things from? Los Angeles, San Francisco?

Mr. Winslow: San Diego.

The Chairman: And when they come in what do you do then, Mr. Winslow? What are you looking for when they send these samples in? Whether it is sanitary, whether they are using the type of material in the stuffing that they say they are on the label, and things like that?

Mr. Winslow: Yes, sir.

The Chairman: Whether it is filthy or dirty?

Mr. Winslow: Yes, sir. We look first for the cleanliness factor and secondly—

The Chairman: Now let's go step by step on this because I think a lot of people would be interested, housewives would be interested in knowing what they are getting and about things that they purchase that have stuffing in it, what is underneath the pretty exterior. Now, I have a list, Mr. Winslow, of your inspection reports. And I will tell you the truth. I was shocked. Will you explain this process, if you please? Let's start by determining whether it is clean. What kind of material is sent to you and how do you determine whether it is clean or not?

Mr. Winslow: Well, in the animal products, which would include feathers and down, wool, and your hairs, cattle, goat and horse hair, the first thing we would check for is any of the pathogens which would be present in the colon bacillus.

The Chairman: Any of the what?

Mr. Winslow: Pathogenic bacteria that are present, that may be present because the material had not been washed.

The Chairman: Pathogenic bacteria? Is that a polite term that you are using? I have a feeling it is.

Senator Stiern: Very polite.

The Chairman: Dr. Stiern says it is very polite. Thank you. Excreta?

Mr. Winslow: That's right. In the animal products these are the factors that would be tested for. Now, in the vegetable fiber products, such as cotton and your jutes and so forth, we would go for what we call the sludge content, which is a measure of the actual dirt, or any of the material that would sift through the tick and would cause maybe some agitation to the nasal passages or any other skin allergies that might arise. And then secondly in the animal products we would also test for the actual trash content, which would be added material over and above that which is normally encountered in those products.

The Chairman: What kind of trash do you encounter?

Mr. Winslow: In the cotton we would encounter a sand, excessive stem, dirt, hull, fiber, and so forth.

Mr. Montgomery: Bacteria?

Mr. Winslow: In the vegetable products you don't find bacteria in the newly manufactured articles. In the secondhand, yes. The only thing I would encounter in, let's say, new cotton, would possibly be some of the fungi bacteria. But this is very rare.

The Chairman: That's on the dirt part of it?

Mr. Winslow: Yes.

The Chairman: Does that cover the sanitation part too?

Mr. Winslow: Well, then the sterilization program is another factor.

The Chairman: Well, now, in the newly manufactured items that are inspected you take a sample from them and you expect the contents to be sanitary, is that correct?

Mr. Winslow: Yes.

The Chairman: There must be some process that they go through to make it sanitary, isn't there?

Mr. Winslow: Yes, sir.

The Chairman: What process is that?

Mr. Winslow: In the animal products the hairs have to be steamed, sterilized, autoclaved. And in the feathers and down they would have to be washed, sanitized—not sterilized, but washed.

The Chairman: Washed in what?

Mr. Winslow: It would be similar to your washing process at home only with a higher degree of temperature.

The Chairman: You mean soap and water?

Mr. Winslow: That's right. And in the wools, of course, they would have to go through the normal scouring process to remove the possibility of anthrax and so forth.

The Chairman: And they do this at the manufacturing plant?

Mr. Winslow: Yes, sir.

The Chairman: They are supposed to under the code, is that correct?

Mr. Winslow: Yes, sir.

The Chairman: Now, what standard do you use? Is there a state standard or a federal standard? Does the Department of Public Health give you a standard or does the Surgeon General of the United States give you a standard? How do you go about determining when there is too much dirt or too much anthrax or too much of the other things you mentioned, sand, stems, and so forth?

Mr. Winslow: The only thing that we have established newly since I have been here has been the sludge content. The other cleanliness factors were already established before I was employed by the bureau.

The Chairman: Sludge content is what again?

Mr. Winslow: It is a measure of the dirt, the actual dirt in any material.

The Chairman: What about the Surgeon General? Does he advise you in regard to this?

Mr. Winslow: Yes, sir.

The Chairman: Because you have things moving in interstate commerce, don't you?

Mr. Winslow: Yes.

The Chairman: Manufactured in other areas and brought in for sale to California?

Mr. Winslow: Yes, sir.

The Chairman: New things?

Mr. Winslow: Yes, sir.

Senator Stiern: Internally too.

Mr. Winslow: Yes, sir.

The Chairman: And does the Surgeon General set any standard for you?

Mr. Winslow: He can't set the standards for us. However, he does advise on what should take place as far as cleanliness is concerned.

The Chairman: Has he advised you?

Mr. Winslow: Yes, sir.

The Chairman: Do you have any correspondence from him?

Mr. Winslow: Yes, sir, indirectly through the Academy of Sciences.

The Chairman: And they forward it on to you?

Mr. Winslow: That's right.

The Chairman: And who is the Academy of Sciences?

Mr. Winslow: Well, the National Academy of Sciences is a group supported by the government which selects certain people to advise the federal government on standards for various things, the clothing, cement, bedding.

The Chairman: Thank you. Now do you have any directives or information from Dr. Malcolm Merrill from the Department of Public Health, or anybody under his jurisdiction, in regard to the standard that you should use and what you should look for when you are conducting these laboratory tests?

Mr. Winslow: We have correspondence from Dr. Merrill. I don't know exactly what it is. I have read it but I just don't know exactly what it is. It is in reference to sterilization, I am sure of that.

The Chairman: Do you ever refer anything to him for further analysis?

Mr. Winslow: Yes, sir.

The Chairman: Do you have any results from him as to what he has found in further analysis?

Mr. Winslow: Yes, sir.

The Chairman: Well, we will go into that in just a bit. Now, I have something here from the department that indicates that in 1957-1958, 1,418 samples were submitted to you.

Mr. Winslow: That sounds reasonable.

The Chairman: And that is what you analyzed. Correctly labeled was 859. Misabeled and unfit for use was 559, or 39.4 percent. And in 1958-59 samples analyzed, 1,389. Correctly labeled was 605, or 43.6 percent; mislabeled and unfit for use, 784, or 56.4 percent. In the fiscal year of 1959-1960 there were 1,446 samples analyzed. Correctly labeled, 625, or 43.2 percent; mislabeled and unfit for use, 821, or 56.8 percent. And for the fiscal year 1960-1961—I think maybe this is when Mr. Waters was starting—I am not sure—maybe it was later—you had 2,599 samples. Correctly labeled was 1,620 or 62.3 percent. Misabeled and unfit for use, 979, or 37.7 percent. In 1961-1962 you had 1,698 samples. Correctly labeled was 1,107, or 65.2 percent; mislabeled and unfit for use, 591, or 34.8 percent. In 1962-1963, samples analyzed was 2,125. Correctly labeled was 1,426, or 67.1 percent; mislabeled and unfit for use, 699, or 32.9 percent. This year to date you have 495 samples through September. Correctly labeled was 244, or 49.3 percent; mislabeled and unfit for use, 251, or 50.7 percent.

Does this square with your knowledge of the investigations that you made in your laboratory and the results that you found of the random samples that were made?

Mr. Winslow: Yes, sir.

The Chairman: This may be a good question for Mr. Waters later. Are these samples taken from suspected shipments, or are they, as I term them, random samples, to your knowledge?

Mr. Winslow: I have no knowledge whether they are or not.

The Chairman: Do you have a breakdown of what percentage of this is new samples, used samples, or furniture that is being sold second or third hand?

Mr. Winslow: No, sir. I would have no knowledge of that.

The Chairman: Or what comes from out-of-state?

Mr. Winslow: No, sir.

The Chairman: Doesn't anyone keep those figures?

Mr. Winslow: Must be kept in the main office.

Mr. Freer: I haven't tallied that type of workload. All we have is by the total number of samples. Years ago we kept this kind of a record and we were going to get back to this type of—

The Chairman: I would think so. Isn't it important to know?

Mr. Freer: By volume of merchandise as well as by article and type. That is what we have in mind.

The Chairman: Well, you are interested in knowing whether new furniture coming from other states is accurately labeled, aren't you?

Mr. Freer: That's right.

The Chairman: And when you are making furniture and mattresses that they reach in the right bin and get the right piece of material to put in the piece of furniture, aren't you?

Mr. Freer: This is right.

The Chairman: How are you going to know if you don't keep records of that sort?

Mr. Freer: Well, these are things we have in mind. We have started other projects which will give us more information too.

The Chairman: But you don't have the information now?

Mr. Freer: We don't have it by category at the moment, by type of merchandise or by the number of pieces. We could probably if we reviewed the records from the sample book, go back and find out.

The Chairman: Can you do that? Is there any way of correlating this with the samples that have been brought in through the auspices of Mr. Waters' office to determine where they came from? I will ask you, Mr. Winslow. Do you know where these samples come from, what particular store or manufacturing plant?

Mr. Freer: He doesn't know this at all.

Mr. Winslow: No, sir.

Mr. Freer: We have the master book in our office.

The Chairman: Will you make that available to Mr. Montgomery, the consultant?

Mr. Freer: It will take us a little time, but we can put it together. We have the big master book as of July 1st and any other book—

The Chairman: We would like to get this as soon as possible so that when we write the committee report we can put that information in. I think it would be very helpful.

Mr. Freer: I have the statistics partially way back in the early 30's which we can give you too, if you want to make a comparison.

The Chairman: I think if we take half a dozen years recently it would give us a picture of what is going on now.

Mr. Freer: All right.

The Chairman: Now, how many samples this year, for example, Mr. Winslow, have you passed on to the Department of Public Health for further study and analysis?

Mr. Winslow: None.

The Chairman: Last year?

Mr. Winslow: I think we have only had one sample within the past three to four years that we have referred to the Department of Public Health.

The Chairman: And why did you do that?

Mr. Winslow: Well, in our routine tests for presence of TB we picked up something we weren't sure of so we submitted it to the Department of Public Health.

The Chairman: And they made a further analysis of this?

Mr. Winslow: Yes.

The Chairman: And hopefully it wasn't?

Mr. Winslow: It was negative.

The Chairman: Thank you. When you say mislabeled or unfit for use would you define what you mean? For instance, what do you mean by mislabeled?

Mr. Winslow: Well, mislabeled would be any material that did not analyze out as specified on the analysis sheet which we received from the main office. Unfit for use would be those materials which were rejected because of cleanliness factors.

The Chairman: And do you know what the breakdown is?

Mr. Winslow: It is about 22 percent unfit for use of the 50 percent mislabeled.

The Chairman: I wonder if we could digress just a moment and ask Mr. Waters if he would come up, please?

Senator Pittman: Mr. Winslow, what seems to be the predominate cause for the unfit for use? Is it cleanliness or—

Mr. Winslow: Cleanliness factors.

The Chairman: Mr. Earl Waters, will you come over to the microphone and tell us who you are and what you do and how the samples are gathered and as to whether you are picking on somebody, whether you go down to St. Vincent de Paul's more regularly than you do the Englander Company, for example. Can you comment on that if you please?

Mr. Waters: My name is Earl Waters, Chief of the Division of Investigation. You are asking about the samples. We pick up about 150 samples a month at random. They are obtained from two sources, principally: at the manufacturer's level and the production line, and at the retailer's level. There are also some samples taken from the sterilizers.

The Chairman: Thank you. How big is your staff of investigators?

Mr. Waters: In the division there are approximately 125 people, but there are about 20-some that work regularly on the furniture and bedding.

The Chairman: They send the samples from San Diego, San Francisco, Los Angeles and—where else?

Mr. Waters: All over the state. They make routine inspections throughout the state.

The Chairman: Do you know what the percentage is of those that come from manufacturing concerns and those that come from retail outlets?

Mr. Waters: No, sir, I don't.

The Chairman: Is there anybody on your staff who does?

Mr. Waters: Well, I have two of the supervisors here who can give you an approximate estimate. I don't know that they have records of that type.

Mr. Freer: We can get this out of our log, I think.

The Chairman: Mr. Montgomery has given me some forms here, furniture and bedding reports. It lists the firm names, street addresses and so forth, and what they have done in the way of filling out this form. If you have the gentlemen here I would like to ask them to—

Mr. Freer: There is Mr. Ed Veady, who is supervising inspector, and Charles Cadlon, inspector in Los Angeles. Can you answer the question, Mr. Veady, the chairman has asked about the approximate percentages of manufacturers against the retailers.

Mr. Veady: It would have to be a guess but it will be a close guess. I would say 60 percent or 70 percent would come from the manufacturer, and possibly 30 percent from the retailers. But from the retail stores we are on the alert for the out-of-state. That's the only place we can find it.

The Chairman: So roughly speaking 70-30?

Mr. Veady: That would be a good guess.

The Chairman: Thank you. How do you go about taking a sample from a manufacturer's plant?

Mr. Veady: In going into a manufacturing plant you go into the—

The Chairman: Do you tell them you are coming?

Mr. Veady: No. We make a routine inspection.

The Chairman: You say routine. Do you call at regular times?

Mr. Veady: At regular times?

Mr. Waters: No.

Mr. Veady: Oh, no.

Mr. Waters: It is random.

Mr. Veady: At random. And it is left up to the inspector in the field. If he has not been there according to his card file he goes from the last date on this IBM card file record that he keeps. In going through the plant he may see a shipment of cotton, for example, that may look speckled or a little too dirty as to his opinion. He will take a sample and then get an analysis.

The Chairman: Is this before or after it is stuffed into something.

Mr. Veady: Before. And we do watch the assembling. The inspector goes along the assembly line and watches the employees filling the mattress from this filling material. If it looks so bad that it would warrant maybe holding that item—well, it is practically completed—all it needs is to be sewn up—he will hold that for evidence in case they are using secondhand cotton and mislabeling it and calling it all new.

The Chairman: Do you ever get any reports back to you as to the results of the laboratory tests?

Mr. Veady: Oh, yes. And it is given to the men so they can carry through and inform the retailer or the manufacturer as to the outcome of the analysis.

The Chairman: These are all violations of the law, aren't they?

Mr. Veady: Some would be violations and sometimes the inspector will pick up a sample that is all right and it will come back passed. So then we let the retailer or the manufacturer know that the item is as labeled correct.

The Chairman: Are there varying costs in a particular grade of stuffing?

Mr. Veady: There is. And that is another thing to be on the alert for.

The Chairman: So if they mislabel and say they are putting in first-class stuffing, whatever it may be—cotton or wool, or what have you—maybe Mr. Winslow could tell us about some of the other stuffing, like feathers, fur, or what have you—then the manufacturer, if it should cost him \$100 per lot and he is putting in \$50 per lot, and he mislabels it, this is money in his pocket, isn't it?

Mr. Veady: That's right.

The Chairman: And fraudulently so.

Mr. Veady: Fraudulently so, yes.

The Chairman: You see the number we got this year. It was over 50 percent mislabeled and unfit for use. That indicates something, doesn't it?

Mr. Veady: It does, yes.

The Chairman: That may be widespread in this industry.

Mr. Veady: True, Senator. There is one point I could bring out. If a manufacturer makes 100,000 items a year and he saves 50 cents on the cost of cotton by mislabeling it, like a 70-30 blend as against a 85-15, or something like that, you can imagine what they would make on the side.

The Chairman: I see. All right. Tell us about this out-of-state stuff. Most of it is new, I presume.

Mr. Veady: Oh, yes. It is new merchandise.

The Chairman: How do you go about this? Say you got a sofa and you want to find out what is inside. You stick a knife in it or—

Mr. Veady: No, we don't take a knife. We have to open it. We have tools to open the item as carefully as possible so that it could be put back together after we are through with it.

The Chairman: That is kind of a big job?

Mr. Veady: It is a big job. You have to be practically an upholsterer to do that. You have to know something about it.

The Chairman: Some of them you really can't do it to, can you?

Mr. Veady: Oh, yes.

The Chairman: Anything that comes in you can take apart?

Mr. Veady: Yes. Sometimes we ruin it but—Senator, the plastic type of material is where you have your problem. When you try to take the tacks out you will rip it and tear it. It isn't as tough. It is not real good covering.

The Chairman: Thank you. Do you have any funds to reimburse the retailer when you do this, if you damage an article?

Mr. Veady: The division doesn't have, as far as I know.

The Chairman: Doesn't that make for a reluctance on your part to do this?

Mr. Veady: It isn't any of our concern actually to see that they are refunded. The law says we have the right to open and submit samples that are under suspicion and so on.

The Chairman: How can you tell if it is suspicious?

Mr. Veady: Well, we go deeply into it.

The Chairman: Do you have someone feeding you information?

Mr. Veady: Several ways of doing it. Geographically is one, out-of-state.

The Chairman: You suspect some states more than others?

Mr. Veady: Yes.

The Chairman: I won't ask you for a list.

Mr. Veady: Another thing, you carry a little knitting needle with you or a crochet hook and you pull out a little. If it looks dark it is an indication.

The Chairman: And any shoddy filling—

Mr. Veady: Shoddy or waste material or too greasy or oily or dirty to be used.

The Chairman: And has this happened?

Mr. Veady: Oh, yes. And other thing too, if it is mislabeled, if it doesn't comply with our labeling. For example, if it says "cotton felt" that is not acceptable in California. It should say "cotton felt" with a breakdown. So if it says "cotton felt" we always open it and take a sample of it. And generally from the East it comes back "shoddy," "waste," "too much grease," "unfit for use."

The Chairman: You find this frequently?

Mr. Veady: Frequently.

The Chairman: And they are mislabeled?

Mr. Veady: Yes.

The Chairman: How long have you been doing this kind of work?

Mr. Veady: About 19 years.

The Chairman: So you are well experienced?

Mr. Veady: Yes.

The Chairman: I think we can assume that. Now, do you find that some particular manufacturers in other states are frequent violators over the years?

Mr. Veady: Yes. They continue to violate.

The Chairman: And they are still doing business?

Mr. Veady: Well, eventually they straighten up. If they don't they quit shipping into California.

The Chairman: Well, I asked you in regard to over the years. Do you know for example, any particular companies, without naming them, that continue to ship mislabeled items into this state?

Mr. Veady: I couldn't say that they are now. I couldn't say.

The Chairman: What you mean by "now"? You mean this month or this year?

Mr. Veady: No. I have been out of the field. I have been in the supervisory capacity. These pass my desk but I don't pay too particular attention to these outside manufacturers.

The Chairman: Well, what happened to the outside manufacturer who puts shoddy and greasy material and mislabels it? What happens to that manufacturer? What do you do to him?

Mr. Veady: The bureau handles it from there on and it is out of the division's hands.

The Chairman: And you lose sight of it?

Mr. Veady: No. We are made aware of what happens. But then it is out of our hands.

The Chairman: Is anybody fined or anybody taken to court?

Mr. Veady: No.

The Chairman: Or anybody suspended?

Mr. Veady: Not out-of-state that I know of. Mr. Freer would have that knowledge.

The Chairman: But as far as you know nothing has happened to these people.

Mr. Veady: Not to these outsiders. But here is what does happen as a penalty, is that the retailer here will quit buying. That is a big penalty. He will refuse to buy because he is having trouble continuously. So they lose their West Coast sales. Their representatives will even quit handling their merchandise. Might give it to another outlet. But it gets around and they refuse to handle the merchandise.

The Chairman: But the fact is that you are finding frequent samples of out-of-state furniture that have been mislabeled, isn't that correct?

Mr. Veady: It is not too frequent.

The Chairman: Well, what is the frequency?

Mr. Veady: I have to make a guess at that.

The Chairman: Everything intrastate and interstate to date over 50 percent is mislabeled or unfit for use. That means something, doesn't it?

Mr. Veady: The out-of-state, if it is picked up, would be pretty near, I will have to say, nearly 100 percent.

The Chairman: 100 percent what?

Mr. Veady: It would be wrong. Because the man hesitates in opening something that somebody paid for, and the contact is back East and perhaps he wouldn't get any remuneration because he has already paid for the item. So we make sure there is something wrong with this out-of-state.

The Chairman: I want to know how they are punished. This is a fraud on the public.

Mr. Veady: Yes.

The Chairman: You are here to protect the public, aren't you?

Mr. Veady: That's right.

The Chairman: The housewife that buys the furniture could tell a little story about that. Anyone that goes in has a right to depend on that label.

Mr. Veady: That's right, to prevent fraud and deception.

The Chairman: If 50 percent of the cases this year on a random sampling have been mislabeled or unfit for human use then something is drastically wrong. Wouldn't you say that?

Mr. Veady: Yes, I would say that.

The Chairman: Now, what can we do with these out-of-state manufacturers?

Mr. Veady: I have the answer to that now.

The Chairman: All right. Give me the answer.

Mr. Veady: The answer is the chief of the bureau issues an off-sale order which goes throughout the entire state. Then the inspectors will hold this merchandise off-sale and it will be sold so everyone is alerted to this firm, that this out-of-state firm is shipping in illegal merchandise.

The Chairman: All right. Well, does that mean they can't buy from this out-of-state firm?

Mr. Veady: No, no. They can buy all they want. But if it is illegal, when we come back again it will be—

The Chairman: Well, that is kind of a toothless order, isn't it?

Mr. Veady: No, I don't think so. The thing is, we have an off-sale order. We work on that.

The Chairman: Do you have a list of your off-sale orders now? Do you keep a list?

Mr. Veady: Yes.

The Chairman: Do you, Mr. Freer?

Mr. Freer: Yes.

The Chairman: Will you make them available to Mr. Montgomery?

Mr. Freer: Yes.

The Chairman: Now, we have forms 401, Furniture and Bedding Inspection Report. I have a sample record. Do you keep books on this?

Mr. Veady: Yes, records are kept on it.

The Chairman: Are they available on all inspections that you make?

Mr. Veady: Yes. We have the carbon copies and the bureau has the original copies.

The Chairman: Who has the carbon copies?

Mr. Veady: It would be in San Francisco.

Mr. Freer: The original is in our office.

The Chairman: Do you mind if Mr. Montgomery goes over these records?

Mr. Waters: No, sir.

The Chairman: Thank you. Now, in the information that I have here from the department it indicates that their records show that as far as enforcement results are concerned that in 1958-1959 there were three licenses suspended and none revoked. In 1959-1960 there were six licenses suspended and one revoked. In 1961-1962 there were two licenses suspended and none revoked. In 1962-1963 there were three licenses suspended and none revoked. Now, the number of inspections from 1958 through 1963 to date indicates—

Mr. Waters: About 25,000 a year, Senator.

The Chairman: 25,000 a year? The information I have on this is not correct then. It indicates certainly to me that the number of violations that you are having—and I think they are serious—they are clearly cheating the public and are evidently deliberately cheating the public. I think they ought to go to jail for it, frankly. I mean, it is just

like writing a bum check. It is like looting your pocket in any form. That is illegal. Now, are there any criminal penalties for this that you know of?

Mr. Veady: It is a misdemeanor, \$50 or \$500 fine.

The Chairman: Has anybody been jailed for this in this 1958 period to the current time that you know of?

Mr. Veady: 1958?

The Chairman: From 1958 to 1963.

Mr. Veady: Yes. We have had several arrests and fines levied.

The Chairman: Well, here is what I have. Prosecutions, 1958-1959, 19, and convictions, 12. 1959-1960, 33 prosecutions and 14 convictions. In 1961 we had a perfect batting record with 7 prosecutions and 7 convictions. In 1962-1963, 20 prosecutions and 8 convictions. During the period 1958-1959 there were 6 administrative hearings. In 1959 to 1960 there were 7. In 1961-1962 there were 2 administrative hearings. In 1962 to date of this report there were 3. Now, any time you have mislabeling and it appears to be a deliberate—especially when it appears to be a deliberate policy, you have a right to go to an administrative hearing and suspend or revoke licenses to manufacturers to sell or renovate, don't you?

Mr. Veady: That's right. But there is a policy from the bureau that you give them a chance to correct the error of mislabeling, and then it is a record. When the record fills up in the bureau's office then the signal is given that this person has been warned on several occasions, twice, say twice, and then action is taken either in criminal or disciplinary action.

The Chairman: Well, it would appear to me from the number of violations that we have a most compassionate bureau. Mr. Freer, how do you go about—

Do you have any questions, members of the committee?

Senator Stiern: I have some.

The Chairman: Go ahead.

Senator Stiern: My questions are rather varied and I don't care who answers them. First I would like to ask the chemist as to your office. What is your definition of cleanliness as it pertains to what you are doing? You use the word "cleanliness." What do you define cleanliness to be as it relates to this type of operation?

Mr. Winslow: As far as we are concerned in the laboratory it would only be those sections set down in the regulations and the law that we would be checking for that define cleanliness.

Senator Stiern: What does it say?

Mr. Winslow: Within our regulations there are several sections, one that puts a tolerance on the amount of oil and grease permissible, one on the sludge, trash, and also the oxygen number, which would be the main points we would be testing for; except that any of the materials that do contain pathogenic materials would automatically be rejected.

Senator Stiern: From what I understand I assume you are doing both organic and inorganic chemistry.

Mr. Winslow: Yes.

Senator Stiern: You are running biological testing as well as straight chemical testing?

Mr. Winslow: We don't sir.

Senator Stiern: Now, you mentioned the pathogens. How do you determine whether these are from animal origin as you think of live-stock, or maybe it is from a rodent origin? Do you do warehouse inspection and do you intercept this between the manufacturer and the retailer, or is it taken right from the manufacturer? And how do you know whether it is rodent produced or whether it comes from the animals themselves?

Mr. Winslow: We don't, sir.

Senator Stiern: On imported products I want to ask you what checks you have on imported products, things that come from Mexico or things that come from the Orient? How do you control those products coming into the United States?

Mr. Winslow: I don't know, sir, because I don't know where the samples come from, where the source is.

Senator Stiern: Does anybody know? The reason I ask this question is because there are diseases in foreign countries that we don't have here, both of animals and humans. Mention was made of anthrax, which is a spore-producing disease. There are others. How do you control this?

Mr. Veady: May I answer part of that. The inspectors in the field, when they find down shipped from China, make a mention on the sample record so that the laboratory is made aware of what the bureau is made aware of, what locality it comes from. There is something in the very poor stock from China and then Mexico. When that sample is sent in the bureau is made aware of it. In fact, it is a must to tell where it is shipped from or brought from.

Senator Stiern: Is your laboratory able to detect anthrax?

Mr. Winslow: No, sir, I don't think so.

Senator Stiern: How do you determine it then?

Mr. Winslow: Well, we don't have any wools coming in lately, Senator, so we have not had a test for it.

Senator Stiern: What should you do if you wanted to test for it? Use the Public Health lab in Berkeley?

Mr. Winslow: We would probably, if it became a problem. If it is rare we would sent it to the Public Health. If it was something that was coming in on a routine basis, if we started to get a lot of wool in, we would set up our own procedure.

Senator Stiern: But you can't presently determine anthrax in your lab?

Mr. Winslow: No.

Senator Stiern: In other words, you can't check out for that disease?

Mr. Winslow: No.

Senator Stiern: How do you know whether the products come from slaughterhouses or tallow works or anything else as far as hide and hair and things like that are concerned? Do you have any way of determining these things?

Mr. Winslow: I have no knowledge of the source of the samples.

Senator Stiern: The reason I asked that question is because of what comes out of a tallow company and stuff that comes out of slaughter-houses, you have no way of knowing these things.

Mr. Winslow: No.

Senator Stiern: We were talking about cotton and wool. Do you inspect other things, like leather and bamboo and jute and burlap and this type of thing?

Mr. Winslow: Only as it would relate to a concealed filling material.

Senator Stiern: I assume you are doing tests of wool, of things that are put on animal wool to kill insects, ticks, and things. Are you able to determine whether there are chemicals in cotton and other products of this type that might be injurious to people on skin contact?

Mr. Winslow: Yes, sir. Especially your organic mercuries that they spray as a defoliant.

Senator Stiern: Are you able to test for these things?

Mr. Winslow: Yes.

Senator Stiern: Do you test for these things?

Mr. Winslow: Yes.

Senator Stiern: This is done on spot testing or random sampling?

Mr. Winslow: Random sampling.

Senator Stiern: I don't know whether you are the person to answer this or not. It seems to me that sometimes we lean way over backwards on some of these tests and other places we actually do very little. For example, if a mattress is sold from one part or the other we are very strict about sterilization and that type of thing so that the buyer isn't going to pick up something that is contaminated. Isn't that right? What I have a hard time reconciling myself is motels and hotels that have mattresses with hundreds of people sleeping on them every night and nobody does anything there. You sell automobiles in which the upholstery is shifted from one family to the other, or campers that have beds in them and all this type of thing. Do you do anything in this relation, or is that kind of an odd thing where we go so severely on one thing and are so lax on another? Would you discuss that?

Mr. Veady: The only thing we follow is the Furniture and Bedding Inspection Act, the law and what it covers. And that is not covered.

Senator Stiern: Why do you feel that the retailers should not be exempt if they are handling only products which carry proper labels from manufacturers and wholesalers? Why do you feel the retailer should not be exempt? What are the reasons?

Mr. Veady: That isn't for us.

The Chairman: What was the question?

Senator Stiern: The question is, why do you feel that retailers should not be exempted if they buy and sell merchandise that comes from manufacturers and wholesalers that carry proper labeling?

The Chairman: Will you answer that, Mr. Freer?

Mr. Freer: I can answer that by referring to several sections in the law.

The Chairman: We are talking about—

Mr. Freer: I would say that the law requires any person before they offer or expose for sale any article of bedding to be licensed in the category set up in the law, and each classification is defined. The retailer does have a responsibility insofar as when he begins to handle secondhand articles of upholstered furniture and bedding. I don't think I understood Senator Stiern. As I understood the question—The bulk of the sampling program in California is done at the manufacturing level. However, some is done at retail levels. The only place at the moment that we can check out the merchandise made by factories in other states or other countries is at these firms' distributing points in California, wholesale outlets, or at the retail level. The law provides that not only is the manufacturer responsible for the truthful labeling of articles, but anyone who has any articles of furniture and bedding in his possession contrary to the labeling provisions of the law. And I have been only following the law the way it is written. And these are the reasons I would say that the retailer's license—

Senator Stiern: I still don't understand why a small retailer, like variety stores, selling cushions, why he should have to be licensed and stand behind what that product is if the cushion has been labeled and is defined what it is and that it comes from a clean source, if the manufacturer or the wholesaler has so labeled that product. Why does the retailer have to be licensed and why does he have to verify—He couldn't verify anyway. He doesn't know what he is looking at. He isn't even trained like your inspectors are trained. What I want to know is what is lost where the retailer is exempted?

Mr. Winslow: Well, this law was here before I became the administrator of it and I don't know why this classification was included as a licensed classification. I know that the advisory board, since they have been a body of the bureau, have talked about this very thing at their meetings. Currently they are studying this problem also. Not only that, but maybe there should be a difference in fees if it is continued, a small retailer and a large retailer.

Mr. Montgomery: You could still make inspections whether they were licensed or not.

Senator Stiern: Do you do any work in the automotive field in this respect? The reason I ask this question, I know a man in my district who has an automobile upholstery shop setup. He can do anything he wants to cushions of cars. He can make them into—so that they break down into beds and campers. He can do anything he wants to a car that is a camper. But if he puts a piece of foam rubber into a footstool and puts a piece of naugahyde over it, you are on him like that. Do you do anything in the automotive field?

Mr. Winslow: We have not done anything in the automotive field. When I first came to the bureau I think there was a National Automotive Fiber Company in Oakland who not only furnished filling materials for auto seat cushions but also sold this material to the furniture and bedding trade. We did regulate that type of material that went into the furniture and bedding field.

Mr. Montgomery: Not as a supplier?

Mr. Winslow: As a supply dealer, yes.

The Chairman: I understand that Englander pays the state \$240 in biennial fees and here you have Thrifty Drugs with their outlets paying \$8,480 merely to merchandise it. He takes it as it comes in. I would suggest that one of the reasons is you probably get a real rise from the manufacturing end because they are not paying their fair share to support this bureau.

Senator Stiern: Is there a heavy traffic in these things across the Mexican border that you might consider illegal? I know in the automobile upholstering business there is a growing business. You drive the car across the border and have it reupholstered in Mexico and you drive back in and it costs you one-third what it costs to have it done here. Is this being done? Do people go down there and do people in San Diego go down there and buy mattresses and haul them back in the country without any inspection?

Mr. Winslow: This has happened. A couple of years ago there was a store in San Diego, I forgot who it was but I think they bought some mattresses—I don't remember the complete particulars—but I think that they were either sent back or they had to be relabeled. But I think they are pretty well out of control in that area.

Senator Stiern: This is a question I am just asking from a medical standpoint because it interests me. There are many diseases in animals which are called medically spore-form diseases. This is where the bacteria dies and the spore remains. How can you possibly kill them? You are concerned with things like pathogens but how can you possibly kill things like anthrax and some of the gangrene and that type of thing? How can you do this and still have a product left?

Mr. Winslow: You are referring to your sterilization clause?

Senator Stiern: Yes.

Mr. Winslow: The sterilization program was set down by the Department of Public Health and we just administrate their procedure. These procedures that they have set forth are now ours. They belong to the Department of Public Health.

Senator Stiern: Well, as a chemist, if you are familiar with what it takes to kill these things, you don't have—if you have a product that is a plastic or a naugahyde you don't have much left in the way of a product if you actually do this.

Mr. Winslow: That is true.

Senator Stiern: Then is this done?

Mr. Winslow: No. In the sterilization program actually to my knowledge all we are doing is killing the insects, the bugs that might be present. I don't think that we are killing all the germs.

Senator Stiern: I won't get fleas, but I will get anthrax?

Mr. Winslow: Yes.

The Chairman: We will take a five-minute recess.

(Thereupon a brief recess was taken.)

The Chairman: We will proceed.

I might say that this subject is broadening out to such an extent that I think maybe we better have another hearing on the matter. There are some things that our committee consultants should look into. It is my

understanding, for example, that one of the large furniture outlets has numerous stores in the State of California and that they have advertised sofas and mattresses that they were selling as damaged in shipment, whereas, in fact, they knew that they were secondhand. They had facilities to sterilize and they had a license to do so but it had not been in operation for 18 months. This is a rather flagrant violation. Apparently nothing was done to these people. Now, I think the committee consultants should get together with Mr. Freer and Mr. Waters and Mr. Winslow and do some more digging and find out why something wasn't done, whether people have been sending in samples that have been tested without paying for the testing, people that aren't ordinarily inspected by the State of California. Now, rather than to go into these things exhaustively this morning I would defer these and ask Mr. Montgomery to check these matters out and to continue compiling information. When we have sufficient information we will have another hearing on this matter. Because of the limited time and because there are witnesses here who have traveled long distances to testify in this matter I think we as members of this committee should allow them to go ahead without asking too many questions so that we can make our noon recess and then we will reschedule this whole matter at an agreeable date for further hearing. Is that all right?

Senator Backstrand: That's fine, Mr. Chairman. I do have a couple of questions that will be very brief.

The Chairman: Go ahead.

Senator Backstrand: They might be productive in our next hearing. I am going to preface this by saying if the factfinding committee and interim committee are going to justify their existence we should think seriously about what we are going to do in the way of—if legislation is necessary what are we going to do in this field at the next opportunity. Now, with that preface, Senator Stiern asked some questions about penalties. This is something that interests me greatly. I am not asking for an immediate answer right now, but what if anything is being done in checking our own state laws? I am interested in protecting our manufacturers and our retailers against anything that is unfair, anything that would hinder them. I think we should see what other state laws are. If there is no such thing as reciprocity you might have a focal point where articles might be manufactured that you would look into when they came into the state. Maybe we can do something in this connection that would not injure to the apparent extent that it has our local retailers and where our local manufacturers, California manufacturers, would not have unfair competition. There is another field that I suspect is not covered. In fairly recent years we have had synthetic materials that have been used and are being used. However, many of them are quite inflammable. I think possibly the Fire Marshal or somebody maybe should be incorporated in our laws because this can get to be a sort of a disastrous situation if a fire ensues and some of this inflammable material is used and at certain temperatures it practically explodes as you undoubtedly know. I don't expect that is covered in our present law. If it isn't I think it should be.

The Chairman: Thank you. Is Mr. Feldman here?

Mr. Feldman: Yes, sir.

The Chairman: I have a card from Mr. Feldman, who is the managing director of the Los Angeles Home Furnishings Mart. It is evidently a large one, judging from the picture of the mart on your card.

Mr. Feldman: It is, Senator. Thank you. I normally might not be expected to testify on this particular type of legislation, managing a home-furnishings mart which is simply a large building which rents space out to manufacturers and wholesalers, and where they use wholesalers and consumers and manufacturers, from the entire country and the world, not formally concerned with this kind of legislation. Prior to my present position I was secretary to the Furniture Manufacturers Association of California and have been rather closely associated with the legislation that we are considering this morning and also with some of the legislative changes in past years and with its administration. And so I would like to take a few minutes of your time especially to consider the ramifications of Senate Bill 797 and the nature of that proposed legislation as such that it spills over into these other areas that you have brought out so well, Mr. Chairman, this morning.

I might find myself repeating areas. Your questioning has been so comprehensive and the information so fine that there is very little for me really to say in addition.

The Chairman: I might say we just scratched the surface. Voluntary notes have been given us by our committee consultants so that if it may seem that we have broadly covered the subject, I think there is much more we can develop maybe in Los Angeles.

Mr. Feldman: I think there is. I might say the reason for my introduction here is that if one thinks of Senate Bill 797 by itself it is a fairly limited line of inquiry. If we are talking about the entire administration of furniture and bedding inspection in the State of California, then we do open an interesting series of matters that should be considered by the committee.

I am not only representing myself in terms of the interests, my own interests in this legislation by the interest of the association with it, but also the Furniture Manufacturers' Association of California which has about 200 furniture and bedding manufacturers in this state. I believe a wire was sent from some official of this organization to this committee indicating I might be testifying on their behalf.

The Chairman: Yes. We received telegrams indicating opposition to this bill and from the drycleaners in opposition to the bill that we will hear this afternoon. I assume they will have representatives here to personally testify. But generally that is something the legislative advocates representing these groups do during the session. Nevertheless, we will file the communications and see that they are given appropriate attention.

Mr. Feldman: Thank you. Speaking of Senate Bill 797 primarily here, which with a rather heavy hand wipes out all of the licensing of retailers in the state, I would like to say the following. Of course, in this last session of the Legislature the Legislature broadened the duties of the Bureau of Furniture and Bedding Inspection by adding the whole area of stuffed toys to its responsibilities. Stuffed toys, I might say, are only incidentally my interest. We do have wholesalers and manufacturers of stuffed toys who exhibit in our building, but the primary volume of that business comes from out of the state into the State of

California. As has been testified to here earlier, it is difficult to see how our laws will be complied with except through the retailer. The manufacturers of stuffed toys are rather negligible in California. The point of enforcement will have to be at a retail level. Enforcement through licensing at the retail level would be a little difficult for administration of the statute.

Your questioning and your introduction to the questions, Senator Short, brought out the problem of what seemed to be great inequities in the kind of fees that are being paid by retailers by way of manufacturers of this state. And there I think you have touched upon an interesting kind of problem. I would think that judging from the names of the stores that you have mentioned, like J. C. Penney and Sears—if you did not mention Sears that would be a case surely. What you have there is simply the number of outlets multiplied by the fee as prescribed in the statute. So consequently it looks quite large. Englander is just one manufacturer. And I might say to you it is a local branch of an out-of-state manufacturer, the ownership being elsewhere in the country—probably in the Middle West.

The Chairman: We weren't picking them out.

Mr. Feldman: But it was a good example and you were trying to demonstrate what appears to be an inequity. But it isn't the inequity it appears to be because it simply attaches a license fee on these particular outlets. The individual outlets may be buying through a coordinating buyer or they may be buying in each particular store under its own manufacturing manager, so the licensing is probably needed at those ends.

But let me go on and take another inference that I would draw from that. If we assume that the budget here, which has come in to some discussion is an appropriate budget—and I assume we are not really discussing the size of the budget in this department—but if we assume the half-million dollars which has been mentioned as a necessary amount to run this particular program as you have described—and you described a few things we don't seem to be doing—we are not worried about hotel bedding and theater seating and things like this which are of a great concern to some of us—if we assume that a half-million dollars is important it has got to be raised from someplace. And if you take that burden—wipe out the retailers as an illustration from licensing—I would gather that you probably would be wiping out half of the budget or at least half of the revenue. The revenue is going to have to come from someplace. And you said why don't the manufacturers pick it up, or something. You indicated it was a free ride for somebody. And we take that, we will say, \$250,000 and say okay, manufacturers, pick up your share of the burden. Then I think you are doing something to California industry which California industry or the manufacturers or producers can rather ill afford in the state. The retailers or dealers or people who are bringing in this merchandise from out of the state are bringing it in for a reason. There is a favorable economic reason for bringing it in. But whatever they bring in, Senator, means it isn't going to be purchased from local producers. They are buying it because it is cheaper elsewhere. Now, you say that revenue which retailers would normally be paying in license fees—put it on the manufacturers in California.

The Chairman: They pay a license fee too, don't they, out-of-state manufacturers?

Mr. Feldman: If you can find them, yes.

The Chairman: The same fee?

Mr. Feldman: It is a nominal fee. I am not complaining about the manufacturers in other states carrying a burden. You are going to load this on manufacturing. Numerically all manufacturers are smaller than all retailers. Take the furniture business alone. There are 6 thousand manufacturers in the United States and maybe 150-200 thousand retailers. I am probably small on retailers. But in any event the burden of the license—half of the budget will be saddled on a group of manufacturers, some of whom are out-of-state and the majority of which are in California. I am not prepared to give you the amount of money we are talking about but it would be a burden to producers in the state who are already paying the highest labor cost in the United States, paying a very good tax burden in the State of California with the finest social welfare program in the State of California. And to take this additional tax burden and put it on manufacturers is going to be another nail in a rather rapidly built coffin. I understand we are going to be talking about funeral directors. I would hate to provide them with any more business of this kind.

It has already been pointed out, Mr. Chairman, that when I said heavy-handed strokes in 797, if you were going to eliminate them the bill should be more carefully worded. I will give you one illustration. 19150 of the bill itself provides for something you discussed earlier, the enforcement of fraudulent advertising. 19150 embodies other sections of the B. and P. Code which relates to fraudulent advertising and misrepresentation and gives the chief, Mr. Freer, the power to go in and revoke a license by having embodied those other provisions of the B. and P. Code into our own furniture and bedding act. He now has the power to revoke a license for fraudulent advertising which otherwise they would have to be proceeded against criminally. And I think you are well aware how difficult criminal prosecution is in this field historically in this state.

The Chairman: I don't agree with your premise at all, but go ahead.

Mr. Feldman: It certainly has not been very effective in furniture and bedding.

Mr. Montgomery: You haven't tried.

Mr. Feldman: It has been pointed out the sterilization program, which is a part of the statute, is enforceable by this department. But again if you wipe out the retailer, this is the retailer who is receiving merchandise which has to be sterilized. Again the retailer has a function here and a function which should be supported. And as I am suggesting, of course, the retailer should and is not at all, as I understand it, unwilling to bear his particular burden of this kind of legislation and its administration.

I would think that your questioning revealed something lacking in the bureau's program. One of them was your expression of astonishment of the lack of knowledge we have about out-of-state merchandise coming into the State of California. You wanted to know properly the

volume of merchandise coming into the state. We can only tell you it must be increasing. I can tell you as an operator of a building who rents space to international producers that it must be quite good and must be expanding quite rapidly because we sell lots of space, increasing quantities of space, to those people as against our California manufacturers and exhibitors. I would say the department's problem should have an economist or somebody who is calculating or gathering data on these matters, and this might very well commend itself to your study and, I would trust, recommendation.

In conclusion it appears to me after watching this program for many years that to remove the retailers from the licensing provisions would handicap greatly the enforcement program of the problem and at the same time make it more difficult for local producers who would have to pick up the additional expense, make it more difficult for them to stay in business in this state under a wide variety of adverse circumstances. So in terms of Senate Bill 797 alone and asking for a recommendation on that one I would say that we would hope that a report on that piece of legislation as it is presently written would not be favorable.

The Chairman: Thank you. May I ask that you analyze the bill for amendments that you think would make it a good bill?

Mr. Feldman: Thank you. I would be pleased to.

The Chairman: Thank you.

Is Mr. Matthews present? This is Mr. C. L. Matthews, a member of the California Advisory Board of Furniture and Bedding.

Mr. Matthews: Members of the committee, I am a retailer representative on the board and I think that this law is a great threat to the retailer in the manner of protection. We have our people administer the law and help us to select our merchandise and offer to the public those things that we think are good to sell. And we are not thieves. We are people that would like to sell people merchandise that we think will stand up. If we don't do that the consequences are later when the lady comes back and says she wouldn't like to pay for that piece of merchandise because it is not what it was represented to be. Unfortunately the labeling of merchandise I don't think is very well understood by the buying public. I think the dealer has to more or less emphasize—

The Chairman: Apparently not by some of the manufacturers and retailers either.

Mr. Matthews: That's right. And I do think it would be rather difficult and probably beyond my scope of imagination to see as to how we would be able to control the people who are selling used merchandise and also those people that stoop to the level of changing labels. And we have had some of this happen in the past. It has been caught by either the manufacturer or the inspector.

The Chairman: Including one of the members on the Advisory Board.

Mr. Matthews: I am not cognizant of that so I wouldn't want to be condemning him. I think that one of the biggest items that we have and that I don't offer as being a complete correction is the misleading advertising. I think we have corrected some. I don't think we have been able to offer to the public a complete corrected agenda of adver-

tising. We find some lack in some of the district attorneys in the area. I find they are not always willing—as Senator Stiern mentioned, on the hotel mattresses—that they are not so willing to judge against one and not the other.

Are there any questions that you would like to ask me as a retailer? I think that I am paying for a real protection when I pay \$20 a store for my license.

The Chairman: How many stores do you have?

Mr. Matthews: I have three.

The Chairman: So \$60 every two years?

Mr. Matthews: Yes.

The Chairman: Do you represent all retailers?

Mr. Matthews: Well, I can't say that, Senator Short. I talked to Ralph Brown, the manager-director, and I believe you have a wire from him—of the Retail Furniture Association of California.

Mr. Freer: I think we have Mr. Fay here, their managing director. Is Mr. Fay here?

Mr. Fay: Yes.

The Chairman: All right. Thank you very much. Les Fay.

Mr. Fay: I am Les Fay, managing director of the Furniture Retailers Association of Southern California. At our last count at the last board meeting we had 748 members. I would like to say that in as many of my members as I was able to poll before I came here we sort of resent being protected to such an extent as to take our licenses away from us. Believe me, I don't know anyone that wants to hold on to a buck any more than our dealers do and they don't like inspectors in their stores, but this is one time that they certainly agree with the law because we have so many people in our industry, especially in southern California, that have little tiny stores, the man and the wife and the son and the daughter will run the store. So many of them are upholsterers themselves. And what would happen would be—

The Chairman: I gather they are not members that you represent.

Mr. Fay: Well, maybe they are and maybe they aren't. Anyhow, they can easily take it in the back room and shoddy, filthy materials could be put into it and there would be no way of catching them. I happen to have had experience for six years as a manager of our subsidiary and over the years we became the largest distributor of Eastern merchandise. We only handle furniture. And let me tell you something. There are more overstuffed chairs sold from the East than from California manufacturers. There is no regulation except through the retailer. Now, we are selfish. We know we are selfish. But we don't want these retailers—some of these people we call animals that don't care whether my little granddaughter could get into an overstuffed piece and catch some horrible disease. We want to be protected from those people and we want our dealers protected. And they are perfectly willing to pay the fees and to have the license. Now, the only thing we objected to when this new change came was against the principle of paying for two years—not the fee itself. But that is another question that is not appropriate here. So I would say that the great majority of our people in southern California in the furniture business definitely

do not want 797 passed in the Senate or in the House either. We just would like to keep the law as it is because it is working very effectively with our people.

The Chairman: Thank you very much.

Senator Stiern: Mr. Fay, you mentioned that you wanted your granddaughter protected against the horrible diseases. You heard a while ago the comment that we can't protect you against the horrible diseases, that they can't detect this. You realize this?

Mr. Fay: Well, I realize it, yes. But I think that in most cases the strict sterilization requirements would take care of most diseases, not entirely all of them possibly, but most of them.

Senator Stiern: Not the horrible ones. That's the words you used.

Mr. Fay: Maybe I was being overdramatic on that point.

Senator Stiern: Thank you.

The Chairman: We are all through with furniture and bedding today. This will be continued to another date.

LICENSE FEE STRUCTURE IN CALIFORNIA

It might be well to examine the fee schedule of the bureau in connection with the report which is attached as an appendix to the report of the committee. The bureau has 10 license categories with the fee ranging from \$20 to \$120 per biennium. The retail furniture dealer and the retail bedding dealer each pays the minimum fee of \$20; the furniture repairer, the bedding renovator and the sterilizer each pays a biennial fee of \$80. The furniture manufacturer, the wholesale furniture dealer, the bedding manufacturer, and the wholesale bedding dealer, as well as the supply dealer, pays a biennial fee of \$120.

In-state Licensees

By far the largest category and the major share of revenue is paid by the retail outlets. Seventy-two percent of the licensees, or 14,226, were either retail furniture dealers or retail bedding dealers. Twelve percent or 2,318 were sterilizers, renovators, and furniture repairers. Sixteen percent or 3,244 were manufacturers, wholesale furniture dealers, wholesale bedding dealers, or supply dealers. It might be noted that the small neighborhood upholstery shop owner, who occasionally may make a footstool or a small item for a customer, invariably pays the full manufacturer's license. The fee schedule and the apparent disparity in the application of fees, as shown in the exhibit and made an appendix hereto, are patently unfair and lopsided, which no doubt was the contributing factor in the introduction of SB 797. Concern with the fee schedule is perhaps best expressed by Chairman Short at the public hearing held in Sacramento on October 30, 1963.

Chairman Short: "I note here . . . that the Englander Company, bed manufacturer, pays a license fee of \$240, Sealy Mattress \$120, Simmons Mattress \$240. A complaint was made that Penney's . . . had a fee charge of \$6,780. . . . Some other examples are the Goodwill Industries—charged fees of \$3,980, the Salvation Army \$1,920, and St. Vincent de Paul Society, \$1,660—who license various places and recondition furniture and sell it. You have big manufacturing companies currently getting off almost scot-free . . ."

A cross-sampling was made of the amounts paid by various licensees engaged in the furniture and bedding business in the State of California pursuant to the regulations covering these operations. Attached as an appendix is the most interesting result of this selected survey. The Simmons Mattress Company, probably the largest manufacturer of sleeping equipment in the United States, which undoubtedly makes more mattresses in California than any firm, has one plant in California located in the San Francisco Bay area. Its licenses for furniture manufacturing and for bedding manufacturing total \$240.

The Kroehler Manufacturing Company, one of the largest manufacturers of upholstered furniture in the country, has two plants in California and pays biennial license fees of \$240 for these two plants.

The Englander Company, a large mattress concern with nationwide distribution, has two plants in California and pays total license fees of \$240.

The Sealy Mattress Company, which is a franchise of a national organization, has one plant in northern California and one in southern California. Each plant pays a license fee of \$120 as bedding manufacturers. These are probably the largest manufacturers of furniture and bedding in the State of California.

The real paradox occurs when we examine the licensees contributing the largest amount to the support of the Bureau of Furniture and Bedding Inspection. The committee learned that Thrifty Drug Stores, which paid \$8,480 for the licensing of its 212 retail outlets as a combination furniture and bedding retailer at \$40 per store, was the largest single contributor to the income of the Bureau of Furniture and Bedding Inspection.

Next in line was J. C. Penney Company, a retail dry-goods chain which specializes in white goods, workmen's clothing, and inexpensive general articles of clothing. It is hard to assume that a great deal of furniture is sold by this chain. Its biennial license total was \$6,780.

Safeway Stores, a food chain, pays \$6,440 biennially to the bureau for the retail bedding license it has for its California stores. F. W. Woolworth, the well-known five-and-dime chain, pays a total of \$6,240 in license fees.

It would appear from the foregoing that the supermarkets, the drug chains, and the charitable organizations which rehabilitate used items of furniture, pay by far the largest sums into the bureau.

Those firms that are in the furniture business and derive their income from this business obviously pay a disproportionate share of the license fees.

With the possible exception of Montgomery Ward and Sears, which pay biennial fees of \$4,320 and \$6,720 respectively, it is impossible to correlate fees and justify the inequities that now exist. The furniture chains in California are Breuners, Barker Bros., Jackson Furniture Company—department stores like the May Company and Macy's. The fees paid by these organizations as examined in the tax schedule are ludicrous.

It would appear that those stores selling decorative pillows and items of that kind are bearing a disproportionate share of the revenue derived and needed to support the Bureau of Furniture and Bedding Inspection.

Licensing of Out-of-state Manufacturers

One of the great problems, and one that will be touched upon later, is the licensing of out-of-state manufacturers. The tremendous growth of this state and the construction of hotels, motels, and apartments, has resulted in huge amounts of furniture being shipped directly to such

establishments within this state. It is almost impossible to police this operation to ascertain whether the manufacturer is licensed to do business in the State of California, if the wholesaler or broker is properly licensed, and if the items themselves are in conformity with the minimum standards established by the state.

In a further discussion of the license fees, to be conducted later in this report together with a comparison of the various laws and licensing procedures in other states, it would be well to consider the other methods toward the possibility of reevaluating the fee schedule in order to place the burden in its proper perspective.

Inspection of Licensees

Enforcement of the furniture and bedding laws and regulations in the State of California is manifold. The inspection bureau ascertains that those engaged in the industry are properly licensed; samples are referred to its laboratory for analysis; labels attached to various articles are checked to determine if they are in conformity with the laws; a final phase is the checking of advertisements to see that items advertised for sale and on display are not false and misleading.

With respect to articles manufactured in the State of California, the bureau makes calls on factories at frequent intervals and takes random samplings of filling material and the finished product for inspection by its laboratory. These inspections are a deterrent to mislabeling and to the manufacture of items not in conformity with state law.

Out-of-state merchandise obviously must be inspected at retail outlets. This method of inspection creates a hardship on the retailer, as there is no fund available to pay a retailer for an item removed from his store for inspection by the laboratory, and for the small retailer this is a hardship. It has created serious problems in the enforcement of the state furniture and bedding laws.

Quite obviously, an inspector is going to be extremely reluctant to appropriate a mattress costing over a hundred dollars or a day sofa costing four or five hundred dollars, for inspection. Insofar as out-of-state merchandise is concerned, this must be done.

What has resulted is a disproportionate share of small items such as pillows getting a great deal of attention, and supply dealers being inspected rigidly. It also means that the out-of-state manufacturers are in a much better position to gamble on evading regulations, for the odds of being inspected are obviously much less than for a manufacturer within the state.

Committee Uncovers Rampant Abuse

The most effective arm of the bureau is the laboratory. This laboratory, located in Sacramento, is of recent construction and is one of the most modernly equipped laboratories in the United States. The laboratory analyzes from 1,400 to 2,500 samples per year.

A great deal of consternation was created at the October hearing when it was revealed that for the three-month period prior to the hearing, over 50 percent of samples analyzed by the laboratory, at

the request of the committee, were found to be mislabeled and unfit for use by the public. Attached as an appendix is a breakdown of the laboratory reports for the years 1957 through 1963. This shows that the samples analyzed by the laboratory range from a low of 33 percent to a high of almost 57 percent found to be mislabeled and unfit for use.

One of the major problems in the enforcement of the bedding laws was the time lapse between the time the inspector sent the samples to the laboratory for checking, and the date he received the results with instructions from the bureau chief as to how to proceed. In many instances, there was a time lag of five weeks. This resulted in a complete breakdown of protection to the public.

In one instance, a dealer in chicken feathers, a sideline to his poultry business, was marketing feathers that were unfit for use. When the reports from the laboratory came back, the stock was gone and impossible to be traced.

In another instance, one of the large chains had advertised overstuffed chairs for sale at such a reasonable price that the bureau was suspicious; upon examination of one of the chairs, it was found that the product was improperly labeled. The advertised foam rubber cushions were actually filled with synthetic polyurethane foam. The difference in cost and quality of these two paddings was considerable. By the time the bureau had completed its analysis, all the chairs had been sold to the public.

It appeared to the committee at its hearings in October of 1963, that the laws of the state were good, but that there had been a breakdown in enforcement and, consequently, it must be assumed that the public has not had adequate protection for a number of years. There was no way to track merchandise that was improperly labeled. The public that had purchased items in good faith, assuming they were as labeled, was never advised that the products purchased were not as represented.

The committee received an avalanche of letters subsequent to its hearings because of the publicity that was generated. It was interesting to note that the large retail furniture stores, who paid the smallest fees, did the most complaining. The small dealer and those who did not derive their major income from furniture sales did not complain at all.

One letter indicated that there was previous knowledge of when the inspector would be coming to town. Others advised that the inspectors apparently were interested solely in ascertaining whether or not the licensee had secured his license for the ensuing year.

The staff of the committee was advised by a member of the Legislature, who is a licensee of the bureau, that his partner had been contacted by one of the bureau inspectors and treated rather abruptly when the inspector made his call. The purpose of the call was to ascertain why their license had not been renewed for the ensuing period. In checking, the partner of the legislator discovered that the renewal notice had been misfiled and, through an oversight, the biennial fee had not been paid. In all the years he had been in the business, that was the first time he had ever been visited by an inspector; he indicated that if he had paid his fee on time, he probably would not have

seen the inspector then. The legislator and his partner, who are in the office furniture business, stated that they have never had an item that is covered by the California regulations checked by anyone from the bureau.

The reaction to the public hearings of the interim committee was interesting. The industry was offended and so was the public, but for two different reasons. Letters from the public reported instances where they were unable to secure redress. These were forwarded to the bureau and, we are pleased to say, were handled with dispatch; in almost every instance the public was satisfied with the results. In some instances exchanges were made and in others adjustments were made.

As a result of the public hearings, a new enforcement program went into effect, resulting in a crackdown on violators and further speed on the part of the bureau. When inspectors in the field now find a violation of state regulations, the article is sent to the laboratory for analysis and all articles of the same style are withheld from sale. The laboratory procedure has been streamlined to get much faster results. In the past, a small sample was analyzed; now the entire article is analyzed. The inspectors now pick up and check large items such as mattresses, chairs, and sofas, rather than the former heavy concentration on pillows. Considering that a family's third largest item of expense is household furniture, it is logical to assume that these larger items, which represent a substantial investment by the retailer, are those deserving the closest scrutiny. Should a pillow be improperly labeled, the consumer might be out 10 or 15 dollars; however, if he bought what he felt was the best mattress or the best chesterfield set, and this was not the case, he could be out several hundred dollars. The results of the new procedure have not only been most heartening but indicate that it is working.

Since the new enforcement program went into effect, over 25,235 articles of furniture and bedding have been shipped out of the state instead of being destroyed by the bureau. About one-half million dollars worth of chairs and sofas from out-of-state was held at one off-sale early last year. This is the first time in the history of the bureau that such effective enforcement was established, but not without a storm of protests from eastern manufacturers. Some governors called on behalf of those manufacturers and the authority of the state was questioned. The bureau explained the legal basis for the inspection program and mailed letters to each of the manufacturers advising the type of violation and what was necessary to correct such violation.

As a result of the stepped-up activities on the part of the bureau, trade papers all over the United States publicized the new enforcement program in California. There was chain reaction. Supply dealers complained because manufacturers to whom they sold were holding them accountable for materials they had supplied. Some indicated that they felt California was discriminating against out-of-state manufacturers. When one considers the total number of manufacturers in the United States, there actually was not a disproportionate share of in-state and out-of-state inspections, and inasmuch as the California manufacturer is checked at his factory with closer control maintained, it

would seem obvious that more concentration at the retail level should be made on out-of-state merchandise. The new enforcement program of the bureau provides for the checking of each manufacturer's products at least once in a three-year period. This will be done by random selection.

Coordination Meetings Held

As a result of the enforcement program, there have been meetings of the committee staff and the Department of Professional and Vocational Standards officials with leading retailers and manufacturers in the United States. The bureau had discovered last year that, for technical reasons, almost every mattress for sale in California was not in full compliance with the state's regulations. Obviously, it would be impossible to withhold all of these items from sale. A meeting was arranged with the suppliers of material to the manufacturers and the manufacturers themselves. It was pointed out that the component parts were improperly listed and that the pads used were misquoted as to size, weight, etc. The group met with a committee staff member sitting in as an observer. As a result of this meeting, the manufacturers are now in full compliance with the California law and, where there had been complaints in the past, they are in full agreement that the high standards set must be maintained.

Guarantees that many manufacturers use in connection with the sale of their mattresses were questioned. As a result, new advertising language will be adopted with further protection of the public. The state officials have been advised that the quality of filling materials has been improved considerably since the stepped-up enforcement program. Manufacturers are insisting on materials that will meet California's requirements and the supply dealers must comply or lose their business. In order to comply, they are giving more than the minimum in order to insure that the items will pass inspection. This has resulted in the California consumer getting not only value received, but in some instances more value.

The consultant to the factfinding staff attended a meeting of bedding law enforcement officials and national bedding manufacturers in Chicago in early 1964 along with officials of the Department of Professional and Vocational Standards, and it was interesting to note that they were sought out by the out-of-state manufacturers to ascertain what was going on in California. It was apparent that the enforcement of the law and new procedure had shaken them up considerably. One of the manufacturers indicated that he was having a laboratory pre-test his supplies before he used them. This bodes well and good for the consuming public.

The Feather Merchants

The one area that has created the most trouble, strangely enough, is that area which has had the most service, that is, among the pillow manufacturers. Earlier in the report, it was stated that there has been more activity in this field than any other because of the low unit cost and the lack of reluctancy on the part of the inspector in checking pillows for possible violations.

The committee staff checked the inspection reports and ascertained that this was one area where the public was not getting value received. The greatest mislabeling was in this area. As a result of information received by the staff of the committee, and working in close cooperation with the Bureau of Furniture and Bedding Inspection, the bureau was able to throw out a number of pillows placed on sale that were not sized as set forth on the label and, almost without exception, all manufacturers were violating state regulations in one way or another.

At one time in 1964 there was not a down pillow for sale in California in any of the major outlets because of the inspection program. As a result, the large retail stores, the pillow manufacturers, and the suppliers met with state officials in Sacramento to see what could be done to rectify this matter. The manufacturers requested three months to get their houses in order, and stated that they would comply with the regulations if given the opportunity. This hope for a solution did not work out, and at the time this report is written, every major manufacturer of pillows doing business in California has an accusation filed against him by the bureau. Administrative hearings will be held setting forth the nature of the complaints and violations.

It would appear that the big problem lies with the manufacturers themselves. There is an outraged cry on their part that the regulations set forth by the bureau are unfair. They indicate that it is impossible to operate within these regulations. (Further on in this report, the various administrative regulations in California will be compared with those of other states.) The big problem lies in down stocks. The manufacturers are required to label their pillows accordingly. If a pillow contains roughly 80 percent "down" in fiber, it may be labeled "all down." This is because when the stock is cleaned and goes through processing, there is difficulty in maintaining a given level, and the bureau and the state have decided that this is a fit tolerance. In checking with other states, we have ascertained that over 90 percent of the more expensive-type down pillows, when checked, are found to be in compliance with state regulations. It is when there is a competitive situation that the problem becomes aggravated. It is further aggravated by the fact that laws are not enforced equally in each state. As a result of the stepped-up activity and the manufacturers being called to task in California, it was hoped that the problems would diminish. Such was not the case. While the federal regulations promulgated by the Federal Trade Commission are as stringent as, if not more so than, the California regulations, it was quite obvious that pillows are being shipped via interstate commerce that are in obvious violation of the Federal Trade Commission regulations. At the meeting in Sacramento earlier this year, FTC inspectors were present.

Discussion was made of the fact that used down was in new pillows shipped into California by an out-of-state manufacturer. While it is true the bureau could hold them off-sale at the request of the manufacturer, the bureau was forced to ship these pillows back to the manufacturer. As far as we can determine, no followup was made by FTC nor was any federal action taken against the violators of the federal regulations. Unless there is closer cooperation with the bureau and the federal government, California manufacturers are going to be

placed at a severe disadvantage and the California consumer cannot be assured of 100 percent protection. The manufacturers themselves will admit off the record that items that they ship out of state, or within a state that has little or no enforcement program, fail to meet not only the California specifications, although manufactured here, but federal specifications. One manufacturer admitted shipping pillows into a neighboring state that were labeled "all down" but had little or no down in them. This was to meet a competitive situation where a competitor was selling pillows to the same retail outlet labeling them as down and filling them with kapok. This could happen in California when federal regulations are being ignored, and the federal government is certainly not offering the protection that the public should expect. The chairman of the factfinding committee attended the meeting of the California manufacturers and suppliers in late 1964 and pointed out to them that they were being placed at a competitive disadvantage since federal controls are not being enforced.

NATIONWIDE SURVEY OF REGULATIONS

Subsequent to the hearings held in October of 1963, the staff of the committee surveyed the other states and the federal government to ascertain the types of controls used. The states were asked to forward to the committee a copy of their regulations and a breakdown of the types of licenses required, if any. The committee received replies from 26 states and also received a reply from the Federal Trade Commission with a copy of the regulations enforced by the federal government. In addition to the information received from those states replying, the committee understands that five other states have regulations but they failed to reply to our letter of inquiry. The District of Columbia and the City of Detroit also have regulations covering the furniture and bedding industry in their respective areas.

With the exception of the State of Nevada, there is a marked similarity with the type of state regulations enacted and the type of protection offered to the public. All of the larger states have laws covering furniture and bedding, with the exception of the States of Illinois and Michigan. All of the states replying required that all items subject to the licensing laws have a label setting forth the type of filling material. With one exception, all of them covered bedding such as mattresses and pillows. Upholstered furniture was covered by very few states. In all but one of the states reporting, the penalty for mislabeling any item was a misdemeanor and subject to prosecution.

Insofar as revenues are concerned, all of the states do not require a license, and only 12 of the states reporting had any licensing regulations of any kind. Five of the states, in addition to a license, raise revenue to support the enforcing agency by charging a stamp tax on the items subject to regulation. This ranges from 1 cent in the State of Texas to 5 cents in the State of Oklahoma. While the full amounts of monies received have not been reported, we understand that in the State of Indiana the taxes paid by furniture manufacturers and dealers are an important source of revenue to that state.

There are possibly six states in the United States that have a realistic enforcement program. The reports from the enforcement bodies, upon solicitation, indicate that little or no active enforcement takes place by the regulatory body. Those states that have no licensing requirements also have no enforcement. Attached hereto, and made a part of this report, is a comparison of the laws pertaining to furniture and bedding in the State of California, followed by applicable laws in those states and areas for which information has been received.

The only report that the committee was able to secure was that dealing with nomenclature which had been reduced to writing and submitted to the delegates for discussion. This report was adopted by the delegates and accepted as submitted. For information purposes, the committee consultant questioned a chemist in charge of the California laboratory relative to the terms, definitions, and rules which were spelled out in the nomenclature report. He was advised that these

were not only unacceptable to California but some actually were illegal. It appeared that a questionnaire was sent to California and no definite answer was received. It seems that such reports, while helpful, should be for advisory purposes only.

The second day of the ABFLO conference was interesting in that representatives from the feather and down industry met with a committee from ABFLO in an effort to work out a revision of state standards. The report that was presented orally to the delegates provided for a contract between the feather and down industry and ABFLO. This contract was to set forth a series of tests throughout the country to provide the basis for standards. It was pointed out that California could not obligate itself as a result of any vote of the delegates or by their acceptance of the report of the committee. It was further explained to those present that California probably had the best laboratory of any state and obviously was willing to cooperate, but that any contract that the feather and down industry would care to initiate would have to be between it and the State of California, and that such a contract would necessarily have to be approved by its Attorney General's office. An interesting sidelight to this report by the feather and down industry and the ABFLO committee is the fact that a member of the New York state enforcement board was the executive secretary of the feather and down industry.

There were interesting facets gleaned from the meeting of the officials from other states. The caliber of officials varied from state to state. The off-the-record discussions between those present led one to believe that there was rigid regulation for covering items for home consumption, but that manufacturers shipping products to other states could operate almost *carte blanche*, as there was either no enforcement or enforcement was extremely lax in this regard. It was reported that one New England state which prided itself on its enforcement of the furniture and bedding laws had a reputation as being the largest single source of used upholstering material in the United States. In talking to the various state officials, it was apparent that in most states furniture and bedding regulation enforcement was a part-time activity, and that the officials charged with this regulation had many other functions to perform.

As a result of some of the stepped-up activities of enforcement in California, the three Californians present at this meeting were sought out by manufacturers and suppliers as well as other state enforcement officials to ascertain what was happening in California. It became quite apparent to those talking with these people that the filling material used for merchandise being shipped into California was of vastly improved quality because of the change in enforcement.

Insofar as meetings of this kind are concerned, the committee consultant has ambivalent feelings. Quite obviously such meetings are beneficial and will be a useful source of information. It is doubtful that the best results will be obtained unless the reports and recommendations are reduced to writing for presentation and study by the various states a week or two before the meetings take place. It would also seem more appropriate that meetings of these law enforcement officials should be at a different time and place than when the manufacturers, whom they regulate, are meeting.

CALIFORNIA FURNITURE AND BEDDING ACT

DEFINITION

The California Furniture and Bedding Act covers all upholstered furniture (including bedding, mattresses, studio couches, pillows, cushions, etc.) irrespective of the exterior covering, and the types of filling material used therein. In addition to manufactured items, the regulations stipulated by the act cover all secondhand upholstered furniture and materials. The regulations apply to the manufacturer of such items, the wholesaler, the supply dealer, the repairer or renovator, and the sterilizer. All persons engaged in these activities require a license to operate within the State of California.

ADMINISTRATION

In addition to the laws embodied in the Furniture and Bedding Inspection Act, which is part of the Business and Professions Code of the State of California, a comprehensive set of administrative regulations has been adopted by the chief of the Bureau of Furniture and Bedding Inspection with the advice of the licensees, the advisory board, and with the approval of the director of the department.

Enforcement of the act is vested in the bureau chief, who makes use of the field staff of the Division of Investigation within the department for routine checking and for specific investigation of possible violations by licensees. The enforcement program is provided by the administrative rules and regulations adopted by the bureau, which spell out in detail the legislative intent and require all licensees to live up to these rules for the protection and benefit of the public.

REGULATIONS

Labeling

All items covered by the act must have a label attached. The label must be not less than two inches by three inches in size, and must be attached to all articles containing concealed filling materials, such as chairs, couches, davenports, and other seating pieces, under the cushion on the front edge of the material. Those furniture items which do not have loose cushions must have the label attached at the front under the seat rail.

New items must have a white label, which must include the phrase: "*Do not remove this label under penalty of law.*" It is also mandatory that the type of filling material, the factory registry number, and the name and address of the manufacturer be included on the label. The vendor's name is sometimes included but this is not mandatory. If loose cushions or pillows are part of the piece of furniture, the material in the body of the item must be indicated as well as that contained in the cushions and/or pillows. The same type of tag provided for

studio couches, mattresses, pads, comforters, and quilts, must state the finished size and the net weight of the filling material in the object. The finished size of the cushion must also be included.

Secondhand items must have a bright red label attached, and in large letters be designated: "SECONDHAND MATERIAL"; the basic information stipulated for the white label must also be included as well as a statement that the material therein has been sterilized in accordance with state law.

Sterilized items must have the yellow sterilization label attached, stating the item is secondhand and that it has been sterilized.

Filling material labels must be affixed to all filling material sold to manufacturers and dealers. This is done either with a printed label gummed to the covering, by tag, or by rubber stamp. The bureau has adopted minimum requirements for all filling materials used in articles covered by the regulations. Basically, these provide for a minimum amount of sludge; any amount in excess of three millimeters per 20-gram sample is considered unfit for use and cannot be used in items sold in the State of California. Items containing more than 5 percent of oil, grease, or fat, are classified as waste and are regarded as unfit for use in the State of California. When vegetable fibers are used for filling material, if the combination of shells, leaves, or pulp is in excess of 10 percent, this is considered as waste and must be so indicated on the label.

Size Requirements

All pads used in upholstered furniture and bedding must be of the same size as the object and this must be stated on the label. As a further protection to the public, the bureau has standardized pillow sizes. No feather or down pillow less than 20 x 26 inches in size may be sold as a standard-size pillow within the State of California. In addition, the bureau has set forth the minimum net weight of the down content of various pillow sizes: For instance, the standard-size pillow of 20 x 26 inches must contain no less than 13 ounces of down, and at 21- x 27-inch pillow must contain no less than 15 ounces of down. With respect to bedding, the bureau requires that the size of the item, meaning the length and breadth of same, be indicated on labels for comforters, sleeping bags, and mattresses.

Filling Material Specifications

Specific rules are set forth by the state covering the use of cotton fillers, the terminology to be used, and the quality to be used. Other types of filling material also are covered. The feather and down regulations are comprehensive. Any items using feather and down must spell out the type of fowl from which the feathers are derived, the type of feathers used, and, insofar as down stock is concerned, the label must state the percentage of down. In addition, a cleanliness standard has been drawn up by the state which prohibits the use of feathers in down where the oxygen content exceeds a specified amount.

Any filling material of animal origin that contains trash, burrs, stickers, seeds, sticks, epidermis, etc., in excess of 10 percent is considered as waste. Filling material may be regarded as unfit for use if the

combination exceeds 10 percent. These basic regulations are for the protection of the public and to prevent unscrupulous manufacturers from labeling such things as gin flues, combers, and strips from cotton gins as spun cotton or stapled cotton. It also assures that the type of filling material is of a quality set forth on the label and not waste, or shoddy, as the case may be. In order to give the manufacturers and the suppliers a fair rule to work on, a 5-percent deviation is permitted before an actual violation is considered.

Other filling material specifications pertain to the use of hair filling in upholstered items of furniture and require the type of hair to be indicated on the label. There are also regulations to cover the use of wool, its cleanliness, and the types of wool used.

Miscellaneous additional filling regulations are for the information and protection of the public and are an outgrowth from the advances in synthetic fibers and materials. In addition, these cover cocoa fiber, excelsior, kapok, moss, palm fibers, etc. The foam rubber regulations have been broken down into five grades, from latex foam rubber, which is the first quality, through imperfect latex foam rubber, shredded latex foam rubber, scrap latex foam rubber, and remolded latex foam rubber; sponge rubber is categorized similarly to latex foam rubber. It should be pointed out that the foam rubbers and their regulations are most important. The advent of polyurethane foam has made these take on greater significance. There has been an interchange of use of these products by manufacturers for mattress and cushion padding. The public has been misled by the use of the term "foam," and in many instances the bureau has withheld items for sale as being mislabeled when polyurethane foam was not spelled out.

Sterilization Regulations

Sterilization regulations of the bureau are comprehensive and provide that all articles of secondhand upholstered furniture and bedding must be sterilized before being offered or exposed for sale. They include box springs, mattresses, chesterfields, couches, etc. The method of sterilization is spelled out in the administrative regulations, and the process has been adopted and approved by the State Department of Public Health.

Advertising Limitations

The administrative regulations of the bureau go into great length in the field of false or misleading advertising and prohibit the use of the terms "former price," "regularly sold at," "reduced from," etc. These terms may not be used unless the article has been sold at that price within three months prior to the advertisement setting forth a special sale. It prohibits fictitious markups to provide for a base of advertised former prices. It prohibits special sales unless the items being offered for sale are special. It prohibits offering items for sale which have been added to the stock of the merchant for said sale. Pre-ticketing is also prohibited. No article which is imperfect, irregular, or a second, shall be advertised for sale unless it is indicated to the public that they are buying from a factory outlet, etc., unless the adver-

tiser is licensed by the state as a manufacturer, and the savings that he is representing to the public are true and in connection with his manufacturing business. It restricts use of the term "free labor" unless this is an actual fact. Guarantees, recommendations, and health properties are severely restricted in any advertising.

MISREPRESENTATION

The act covers advertising and representation by licensees of all articles required to be labeled. In the State of California every person who either falsely advertises or misrepresents in any way any of the merchandise covered by this act, by either making false statements or improperly labeling any such item, is guilty of violation of the Furniture and Bedding Act of the State of California and is subject to prosecution by being guilty of a misdemeanor.

EXEMPTIONS

The only exemptions to items that normally would be covered by the furniture and bedding regulations of the state are automobile seat cushions, baby strollers, bar stools, lawn chairs, the cushions one rents at baseball games, etc., doll mattresses, life preservers, quilted bedspreads, and items of this general nature. In order to be certain of exemptions, a manufacturer must submit either an item or a photograph to the bureau, where coverage is determined.

FEDERAL TRADE COMMISSION RULES AND REGULATIONS COVERING THE FURNITURE AND BEDDING INDUSTRY IN THE UNITED STATES

The FTC regulations covering the furniture and bedding industry and the feather and down products of the United States are embodied in three sets of FTC trade practice rules. These are the trade practice rules for the bedding manufacturing and wholesale distributing industry, the trade practice rules for the feather and down industry, and the trade practice rules for the household furniture industry.

1. BEDDING MANUFACTURER AND WHOLESALE DISTRIBUTING INDUSTRY RULES

Original FTC rules for the bedding manufacturer and the wholesale distributing industry were adopted in November 1950 and amended in January 1955. Insofar as the committee has been able to ascertain, there have been no changes since then. The rules were adopted after lengthy meetings with the industry under the trade practice conference procedure adopted by the FTC. Coverage included those persons and firms engaged in the manufacturing and selling of mattresses, box springs, bed pads, studio couches, sofa beds, and similar sleeping equipment. It also includes metal beds, metal cots, and metal bed springs. At the time of the adoption of the rules by the FTC, the sale of these products in the United States wholesaled at approximately 350 million dollars per year. The rules embody 11 points and are designed to promote fair competition and protect both the industry and the public. They are designed to eliminate illegal practices, unfair and deceptive acts, and unfair competition. The heading of each category, in most instances, is self-explanatory.

- (1) Covers deception as to used materials and parts.
- (2) Deception through misrepresentation or concealment.
- (3) Misuse of the terms "felt," "felting," and "felted."
- (4) Misuse of the terms "posture," "orthopedic," "germproof," and "waterproof."
- (5) Misuse of the terms "latex," "foam rubber," "latex foam rubber," etc.
- (6) Deceptive pricing.
- (7) Guarantees and warranties.
- (8) Failure to differentiate between the terms "wholesale" and "retail."
- (9) Misuse of the word "free."
- (10) False invoicing.
- (11) Commercial bribery.
- (12) Defamation of a competitor or his products.
- (13) Use of lottery schemes.
- (14) Misrepresentation as to character or type of his business.
- (15) Discriminatory returns.
- (16) Discriminatory prices, rebates, refunds, discounts, and credits, etc.

- (17) Restraint of trade, suppression of competition, and price-fixing.
- (18) Imitating trademarks and trade names, etc.
- (19) Aiding, abetting, or the use of unfair trade practices.
- (20) The use of push money to promote the sale of products.

Most of these rules are embodied in the California regulations. The FTC includes items not covered by the California regulations, in that metal beds, metal cots, and metal bedsprings are covered.

2. HOUSEHOLD FURNITURE INDUSTRY RULES

The FTC rules for the household furniture industry were adopted in December of 1963. These were, and are, the latest rules covering furniture items not previously included in federal rules and regulations. They are an outgrowth of hearings by the FTC in principal points of manufacturing in the United States, namely, Los Angeles, California; Chicago, Illinois; and High Point, North Carolina. The previous rules covering this industry were adopted in May of 1932, with numerous changes being incorporated in the latest regulations. The items covered by these FTC rules are those items necessary as furniture or decorations in a house, apartment, or similar type of dwelling place. They include, but are not limited to, chairs, tables, cabinets, desks, bedsteads, bureaus, chesterfields, etc. Excluded from the rules are major appliances, pictures, lamps, clocks, rugs, draperies, etc. The rules cover 19 basic points and in the main are self-explanatory. They differ from the California regulations in that the types of woods in furniture construction are covered, as well as the outer coverings used in the manufacturing of furniture.

- (1) Covers deception in general.
- (2) Wood and wood imitations. This pertains to the spelling out of the type of wood used and prohibition of using misleading terms; for example, it would be false to describe maple furniture as maple if it were actually constructed of birch. The term "solid mahogany" could not be used if in effect it was a mahogany veneer, etc.
- (3) Deceptive use of wood names. This would cover such items as using mahogany when, in effect, it was not mahogany. Woods from the Philippine Islands, such as luan, may use mahogany only in connection with the prefix *Philippine*, such as *Philippine mahogany* or *Philippine luan*, etc.
- (4) Pertains to leather and leather imitations and prohibits the use of misleading trade names, coin names, etc.
- (5) Pertains to outer coverings.
- (6) Stuffings.
- (7) Deception as to origin; for example, furniture manufacturers in the United States shall not be described as Danish, Swedish modern, etc.
- (8) Deception as to being new.
- (9) Misuse of the terms "floor samples," "discontinued models," etc.
- (10) Deceptive pricing.
- (11) Date advertising.
- (12) Guarantees and warranties.

- (13) Passing off through imitation or simulation of trademarks and trade names.
- (14) Misrepresentation as to character or business.
- (15) Push money.
- (16) Commercial bribery.
- (17) Exclusive dealings.
- (18) Unlawful price fixing and trade restraints.
- (19) Prohibited discrimination, incorporating, prices, rebates, discounts, etc.

3. FEATHER AND DOWN PRODUCTS INDUSTRY RULES

The third set of federal regulations contains the FTC trade practice rules for the feather and down products industry. These FTC rules, which were adopted in April of 1951, cover the manufacturing, processing, distribution, and sale of pillows, cushions, comforters, sleeping bags, and similar products which are wholly or partially filled with feathers or down. The regulations, with the exception of those dealing with rebates, price fixing, etc., are quite similar to the California regulations. Eighteen rules have been drafted with the effective law.

- (1) Misrepresentation and deception in general.
- (2) Deceptive pictures assembled.
- (3) Identification and disclosure of the kind and type of filling material and industry products. This spells out the terms "down," "down fiber," "crushed feathers," "waterfowl feathers," etc. It was interesting to note that federal regulations require down to have 85 percent of the weight therein to be pure down.
- (4) Disclosure as to covering materials. (California does not have such a regulation.)
- (5) Secondhand feathers, down, and other components.
- (6) Cleanliness of feathers, down, and other components.
- (7) Disclosure as to size.
- (8) Guarantees and warranties, etc.
- (9) Fictitious price lists.
- (10) Use of lottery schemes.
- (11) Misrepresentation as to character of business.
- (12) False invoicing.
- (13) Corrosion of fixed prices, suppressed competition, or trade restraint.
- (14) Prohibited discrimination.
- (15) Discriminatory returns.
- (16) Commercial bribery.
- (17) Defamation of competitors.
- (18) Abetting or aiding in the use of unfair trade practices.

In going over the FTC rules covering the furniture and bedding industry in the United States, it is quite apparent that these are very comprehensive. There would be little need for state regulations if the FTC rules were abided by and enforced. It is also apparent in checking over the violations uncovered by the Bureau of Furniture and Bedding Inspection in the State of California on out-of-state merchandise that the FTC rules are honored in the breach.

INDIVIDUAL STATE FURNITURE AND/OR BEDDING REGULATIONS

Arkansas

The regulations in the State of Arkansas are confined to mattresses, comforters, upholstered springs, pillows, or any similar item made for sleeping, and require the use of a label on each of the items covered by the state statutes. Said label shall designate whether it is made of new material. Used materials are not prohibited, providing that the label specifically spells out same. Any renovated bedding article to be re-used must be sterilized according to the state statute. Reuse of mattresses from hospitals or hotels, except after sterilization, is prohibited. The Arkansas regulations are enforced by its Bureau of Sanitation under the supervision and jurisdiction of the State Board of Health. Apparently there are no licensing provisions in the Arkansas regulations and no fees are required.

Violation of the regulations shall be subject to a fine of not less than \$25 nor more than \$250, or not less than 30 nor more than 90 days in jail, or both.

Colorado

The Colorado statute is known as the Colorado Mattress and Bedding Law and covers items used for sleeping and reclining purposes such as mattresses, comforters, quilts, pillows, studio couches, sleeping bags, etc. It provides for the regulation and enforcement by the State Department of Public Health. An annual license in the amount of \$25 is required to do business. In addition, all items covered by the Colorado statute must be labeled, spelling out the contents of the filling material used in the manufacturing of the items. Used material is permissible providing the label so designates. Any items containing used material must be sterilized before being sold or remanufactured. A revenue measure provides for affixing a stamp to each item covered. Each stamp has a unit value of two cents and the stamps are sold in blocks of one thousand upon the payment of \$20. The Board of Health has adopted regulations providing for the sterilization of items covered by the Colorado statute.

Violation of the statute is a misdemeanor, punishable by a fine of not more than \$300 and/or imprisonment of six months.

Connecticut

Connecticut has adopted regulations which are comprehensive and cover articles of bedding and upholstered furniture. These regulations are similar to those of the State of California. Enforcement of the Connecticut regulations is by its Labor Commissioner. In order to do business in that state, an annual license is required. Connecticut differs from California in that retailers of bedding and upholstered furniture may be exempted from the licensing procedure providing the articles that they offer for sale are properly labeled

and tagged, and that the manufacturer or supply dealer has paid the required license fee to do business within that state. Manufacturers, supply dealers, renovators, and secondhand dealers are covered by the statutes. All items of furniture covered by the statute must have the usual 2-inch by 3-inch label attached indicating the type of filling material contained in the articles of furniture or bedding. As in California, secondhand material requires a yellow label. The regulations covering terminology for the filling materials, while not as extensive or detailed as California, are more so than most states having furniture and bedding regulations. This state has set up terminology for cotton, wool, feathers and down, hair, rubber, synthetic fibers, and miscellaneous cleaning materials. It spells out the proper use of terms to be used in labels and the quality of the filling for items covered by the state regulations. In addition, Connecticut has regulations covering sterilization and provides for various acceptable methods of sterilizing products covered.

Violation of the Connecticut statutes constitutes a misdemeanor and is punishable by a fine and/or jail sentence.

Delaware

The statutes in the State of Delaware pertain to mattresses, pillows, and bedding and do not include upholstered furniture. Sterilization of used or any other secondhand material is required prior to sale. Enforcement is embodied in the State Department of Public Health. The state statutes provide that no person shall sell, lease, or consign any items covered by the statutes unless those items are properly labeled. The usual label, as required by most states, sets forth the filling material and indicates the sterilization of secondhand or used items. There is no annual license fee, but all items covered by the Delaware statutes must be labeled and have an adhesive inspection stamp affixed thereto. These are sold in boxes of 1,000 and cost \$15 per box. There is one unique provision in the Delaware statutes which provides for the inspection of products and plants of out-of-state manufacturers. In the event the State Board of Public Health, which is the regulatory board, deems it necessary to inspect an out-of-state factory, the owner of said factory must pay the travel expenses necessary for the inspection. Failure to do so will result in a revocation of any permit to do business within that state.

Violation of the statutes is subject to a fine, for each offense, of not less than \$10 nor more than \$50. Default of such payment results in imprisonment for not less than 10 days for each separate offense, not to exceed 10 months.

Florida

The Florida Bedding Law covers any item containing filling material used or intended for use for sleeping purposes. The State Board of Health is charged with the administration and enforcement of this law. All items must be labeled, with information to include the name of the material or materials used to fill such article of bedding; the name and address of the manufacturer, jobber, distributor, or vendor of the article. New articles bear white labels; composite items, one-half yellow

and one-half blue; used items, yellow labels; and if renovated, reprocessed or rebuilt for the owner, green labels.

Registration is required for manufacturers, distributors (annual fee \$25), renovators (\$10), and retailers (\$5). A separate registration is required for each branch. Adhesive inspection stamps are furnished by the Board of Health in quantities of not less than 500. One type is used on articles of bedding, for which the applicant pays \$10 for each 500; the other is used only on pillows, cushions, and comforters, for which the applicant pays \$5 per 500. Filling materials must be labeled and affixed with a 2-cent bedding inspection stamp. The statute applies to all bedding made or remade within the state or brought within the state for sale, but does not apply to bedding intended for export to points outside the state, provided such bedding is labeled "for export only."

Violation carries with it the penalty of a misdemeanor, with the resultant fine of not more than \$500 or a jail sentence of not more than 90 days for each offense, or by both such fine and imprisonment.

Georgia

Georgia's regulations cover any type of bedding article intended for use by any human being for sleeping purposes, which is filled in whole or in part with concealed material. Enforcement is vested in the Department of Health. An annual registration fee of \$100 for manufacturers and \$25 for renovators and reupholsterers is required to do business in that state; blind persons and local government and state agencies are exempt. Labeling is required for all bedding articles, which incorporate the name of the material or materials used therein, the name and address of the manufacturer, renovator, upholsterer or vendor of such article, the registration number, and whether such item is new, used, or secondhand. All suppliers of material must submit an itemized invoice to bedding manufacturers, which must be retained by such manufacturer for one year, subject to inspection by the Department of Health.

Violation of the provisions is considered a misdemeanor and is punishable as such.

Indiana

The Indiana statutes are entitled Indiana Bedding Law and cover all articles manufactured for use in connection with sleeping or reclining purposes: mattresses, mattress pads, protectors, box springs, davenports, day beds, sofa beds, pillows, sleeping bags, etc. A license is required of all those engaged in the stated businesses and include manufacturers, renovators, supply dealers, retailers, wholesalers, etc. In many respects the Indiana regulations are similar to those within the State of California. Enforcement of the Indiana regulations lies with the State Health Commissioner. All items covered by the Indiana statutes must have the legal label, which seems to be universal in all states having furniture and bedding regulations. The label requires that the type of material be spelled out on the label and, where size statements are required, those, too, must be included. Provision is made for sterilization of used and secondhand materials. In addition, admin-

istrative regulations have been adopted to enforce the regulations set forth in the Indiana statutes. Basically, they include the same type of information that most large industrial states have in their laws pertaining to sanitation, quality of filling material, and labeling. They also contain basic definitions covering the types of filling materials used by manufacturers and processors. The Indiana regulations spell out the types and methods to be used in sterilization processes. The one unique feature in the Indiana statutes is in connection with the licensing. The annual license fee in Indiana is \$25 for all covered categories. In addition, however, each licensee must file a quarterly report, made under oath, which details the exact number of articles of bedding or filling material sold in Indiana during the three-month period, with the Furniture or Bedding Advisory Board. Along with the report, the licensee remits a sum of money which is computed on the following basis: for all articles and filling material except pillows, comforters, and bolsters, $1\frac{1}{2}$ cents per piece. Pillows, cushions, comforters, and bolsters are taxed at the rate of $\frac{3}{4}$ cent per article. The committee staff has been given to understand that this is a large source of revenue to the state.

Violation of the statutes is deemed a misdemeanor, punishable by a fine of not less than \$10 nor more than \$500 for each offense and/or imprisonment for a period not to exceed six months.

Iowa

Iowa's law relates to the manufacture and sale of mattresses and comforts only, and it is administered by the Department of Agriculture. Labeling is required for every mattress and comfort offered for sale and must include the information: official statement, manufactured of new material (and description), and the manufacturer's name, address, and factory number. Registration is required of manufacturers, who are inspected at least once each year, for which inspection a fee of \$10 must be paid. All secondhand materials except sterilized feathers are prohibited from use in the manufacture of such articles, unless for an individual's personal use. Manufactured articles that do not comply with the state's standards may be kept by the manufacturer for sale in other states.

Violation of the regulations is subject to a fine of not less than \$10 nor more than \$100, or by jail not to exceed 30 days. A third conviction of the same offense may result in a restraint-from-doing-business order.

Maine

The Maine statutes cover all items of bedding and upholstered furniture, in addition to stuffed toys. Enforcement of furniture and bedding regulations is with the Department of Labor and Industry. The Maine statutes provide that all items and articles so covered must have the usual white cloth tag attached thereto setting forth the type of material contained in the filling. It also provides that any secondhand furniture must have a yellow label affixed thereto and that secondhand furniture or items made of secondhand material must have been cleansed and sterilized by a process approved by the department.

The bedding statutes cover mattresses, pillows, comforters, box springs, etc. The upholstered furniture section covers chairs, sofas, studio couches, and all items of furniture which have concealed stuffing, whether or not the cushions are attached to the sofa or chair. The stuffed toy statute covers all playthings, whether filled with chemical or synthetic stuffing, fibers, cotton, or otherwise. As is usual in most states, the Maine statutes require that all articles covered by these statutes be labeled: new items with a white cloth tag, printed in English, and showing the types of materials used in the filling, with the percentages of each contained thereon; used items which have been sterilized must have a yellow tag attached thereto. The revenue to enforce these statutes is derived from the stamp tax which is prevalent in many of the states. Anyone doing business in Maine must register with its Department of Labor and Industry which administers the furniture and bedding regulations; the department sells 500 stamps for \$5, and each article must have one stamp affixed to each label.

Violation of the Maine statutes is a misdemeanor, punishable by a fine of no less than \$10 nor more than \$100 for each offense. In lieu of a fine, 10 days' imprisonment is provided.

Minnesota

Regulation of the furniture and bedding industry in Minnesota is covered by the general statutes of that state, which pertain to false advertising, consumer fraud, etc. With particular reference to furniture and bedding, the state has a labeling law which requires that all articles of bedding must be labeled and must have the standard white tag attached thereto, designating the contents. There is a prohibition against the sale of any bedding used in hospitals and against the use of second-hand material in the manufacture of bedding. Any materials used in remaking or renovating bedding must be thoroughly sterilized in accordance with methods approved by the Minnesota Industrial Commission. The consumer fraud statutes are very strong and are an effective deterrent against false labeling. There is a prohibition against sales below cost, and it would appear that many of the consumer fraud and trade statutes were adopted from federal regulations.

Violation of the statutes covering any furniture and bedding is a misdemeanor, punishable by a fine of not less than \$25 nor more than \$100 and/or imprisonment for a period of from 30 to 90 days.

Missouri

The statutes of the State of Missouri cover bedding only and under their construction mean mattresses, box springs, comforters, pads, cushions, or pillows, which are used for sleeping or reclining purposes. Manufacturers within that state must have a permit and pay a \$20 fee for such permit. The head of the Department of Industrial Inspection inspects factories as to sanitation, etc. The supervision over the manufacturers in Missouri is unique in that, when an inspection is made and an unsanitary condition is found to exist, the inspector gives the manufacturer a reasonable length of time, not to exceed 60 days, to correct the unsanitary condition. It is only when he fails to correct such condition(s) within the time allowed by the head of the Industrial Inspection that his permit to operate is revoked. The Missouri statutes

prohibit the use of shoddy in any bedding articles and also provide that all items manufactured for sale in that state must have the usual label, which must contain the type of filling material, the name of the manufacturer, etc., and the filling contents indicating the percentage of each type used. As is customary in most states, all used items must be sterilized and disinfected before sale. The one difference in the Missouri statutes, which is not found in other states, gives the Director of the Division of Industrial Inspection the right to purchase articles for inspection for violation of the Missouri statutes. This has created quite a problem in California, where items sent to the laboratory for inspection have been at a direct cost to the retailer if picked up in a retail store, or to the manufacturer if picked up in a California manufacturing plant.

Violation of the bedding statutes is a misdemeanor, punishable by the penalty set forth in the Missouri statutes covering misdemeanors.

Nebraska

The regulations in the State of Nebraska cover articles of bedding only. Upholstered furniture is not covered. Bedding within its statutes means mattresses, mattress pads, comforters, or quilted pads designed for use in sleeping. All items of bedding offered for sale must have a label which shall designate the contents of the filling material as well as the name of the manufacturer. Any misleading language on the label is a violation of its statutes and a misdemeanor. All factories within the State of Nebraska are subject to inspection by the Department of Public Health and each pays an annual fee of \$10 for the inspection. The statutes prohibit the sale of any bedding that has been used by a person who has had an infectious or contagious disease. Any other bedding or material which has been used and is to be reused must be inspected or disinfected before its reuse. The Nebraska statutes do not prohibit used material in the manufacturing of bedding products but do require that the product be properly labeled. Enforcement of the statutes is within the State Department of Public Health.

A violation is a misdemeanor punishable by the usual fine and/or imprisonment.

Nevada

The State of Nevada has regulations which pertain only to the sale of used bedding. The statutes provide that any used mattress, bed covering, sheet, pillow, etc., must be sterilized before being offered for sale, and that each must be labeled "sterilized," "secondhand," with the usual cloth tag which is affixed to every item for sale of a furniture and bedding nature.

The Nevada statutes are enforced by the State Board of Health, and a violation of the statutes is a misdemeanor.

New Hampshire

The State of New Hampshire regulations cover all items of furniture and bedding, mattresses, pillows, cushions, quilts, upholstered furniture, or any article having a filling of hair, down, feathers, wool, cotton, or kapok. All items sold in the state must have a label attached thereto which shows the name of the manufacturer and the content of the

material. Used material is prohibited if used in a hospital or by a person who has had a contagious disease. Any used materials not so specifically prohibited must be disinfected before being reused. Any manufactured items containing used materials must be so designated on the label. The enforcement is vested in the State Board of Public Health. The sale of any item labeled "new" when it is not is covered by a special statute dealing with false representation.

Violation of the statutes shall be punishable by a fine of not more than \$500 and/or imprisonment not to exceed six months.

New York

New York, aside from California, probably has the most detailed set of statutes dealing with furniture and bedding of any state. The enforcement of these statutes was vested in the Department of Labor of the state until 1960. In 1960, the enforcement was transferred to the Department of State, and the Secretary of State became the chief enforcement officer. There is a great deal of similarity between the California law and the New York law. The statutes cover all items of furniture and bedding without exception. The labeling act is similar. White labels are designated for new items, yellow labels for used items and sterilized items, and also for a category not found in California: old furniture. Old furniture is not necessarily "used," but pertains to an item which, because of its age, has lost its natural qualities and probably has become faded. New York labeling requires a blue tag to be used by the enforcement bureau when items are removed from sale as being in violation of the New York statutes. The red tag is used to designate material that had been exposed to contagious and infectious disease. There are five licensing categories: a manufacturer who sells at wholesale, a manufacturer who sells at retail, a supply dealer, repairers and renovators, and retailers of secondhand items. The wholesale manufacturer and the supply dealer pay an annual license fee of \$50; the other licensees pay a \$10 annual license fee. Another similarity to the California statutes is the provision for an advisory board. The board has the authority to adopt rules, subject to the approval of the commissioner. They have one extra power granted to them, wherein they may make exceptions to the rules where undue hardship or practical difficulties make observing such rules an impossibility. In that instance, the board may make a variation by resolution and vote.

The administrative rules of the furniture and bedding bureau in New York are extensive. They define all types of materials in much the same manner as those in California. The filling materials are designated in lengthy fashion. The testing methods are spelled out in the administrative regulations. For instance, when an inspector is sampling feathers and down, he takes samples from three different parts of the article being examined; he divides the sample into two parts, places each part in a clean envelope, and seals it in the presence of the person observing how he has taken the material. One envelope is immediately transmitted to the laboratory of the department and the other is given to the owner of the object being sampled, if he so desires. This is quite unique.

The administrative regulations spell out in great detail the content, size, and label which must be affixed to all items covered by the statutes and offered for sale in the State of New York. These are almost identical with those used in the State of California. They require either the name of the manufacturer or his license number and in some instances, the name of the retailer selling the product. All tags must indicate the type of material and the percentages contained therein. There is one difference in the New York statutes in that secondhand material which has not been remade or renovated need not be sterilized unless it has been exposed to infectious or contagious disease. All the label requires on items such as this is that it be designated "all secondhand material," "contents unknown," with the designation "not sterilized."

Violation of the New York statutes is a misdemeanor subject to a fine not to exceed \$500 or imprisonment not to exceed six months, or both.

North Carolina

North Carolina is one of the largest furniture manufacturing states. Strangely enough, its regulations pertain only to bedding and not to upholstered furniture, with the exception of such items as studio couches and sofa beds which are used for sleeping purposes. Basically, the North Carolina laws are similar to the laws of most states which cover bedding only. They prohibit the sale of used materials in the manufacture of bedding, and prohibit the renovating of any mattress unless said used material has been sanitized. It is interesting to note that the term "sterilized" is not used in North Carolina statutes. The procedures outlined in the rules and regulations set forth by the State Board of Health of North Carolina for sanitizing are very similar to the processes set forth by the State of California. All items of bedding sold in the state must be labeled with the usual 2-inch by 3-inch label which contains the name of the article, the type of filling material contained therein, and the name and address of the vendor or the manufacturer. For all new items the white label is used, and for all items containing used material or used items, a yellow label is used. There is a provision in the statutes against false and misleading statements appearing on the tag. In addition to the label requirement, all manufacturers and sanitizers of bedding must secure a license from the State Board of Health. The charge is \$25 per year. Out-of-state manufacturers selling within the state also must secure a license. In addition to the license fee, stamps must be affixed to each label. These are sold by the Board of Health at the rate of 500 stamps for \$8. Large users of stamps may secure an exemption permit from the Board of Health by submitting to the board records showing the number of items manufactured and sold within the state and, in lieu of securing stamps, pay an additional fee in an amount not to exceed \$400. This is predicated on the number of sales made within the state. The Board of Health is the enforcement body, and it may adopt administrative regulations in carrying out enforcement of the statutes. It is interesting to note that in the North Carolina regulations the State Board of Health is authorized to require a greater amount of proof through the presentation of additional records from out-of-state manufacturers than from in-state manufacturers.

Violation of the North Carolina statutes is a misdemeanor subject to punishment by fine or imprisonment, the fine not to exceed \$50, nor the jail term 30 days.

Ohio

The Ohio statutes are fairly comprehensive and cover all items of furniture and bedding sold in that state. Enforcement is vested in the Department of Industrial Relations and the Division of Bedding and Upholstered Furniture Inspection. All items covered by the Ohio statutes and offered for sale are required to have the usual label affixed thereto. The white label for new items must have black printing, must contain the usual designation, and must have a clear description of the filling material. In addition, the Ohio registration number must be included as well as the name of the manufacturer, distributor, vendor and his address. Items containing used or secondhand material and used furniture offered for sale only must have a label affixed also. This label is white cloth, and the difference is that the printing is in red and the label must have a $\frac{3}{8}$ -inch red border. In addition to these two labels, the renovator or sterilizer also must have a label. A bright red label is required for secondhand furniture which is to be sold without any renovating being done to it. This label is designated "second-hand," "previously used," "contents unknown."

All persons offering upholstered furniture and bedding for sale in the State of Ohio must be registered with the Department of Industrial Relations, and must secure revenue stamps to be affixed to the labels attached to items offered for sale in that state. Cushions, pillows, comforters, headboards, mattress pads, and infant accessories must have stamps, sold at the rate of \$10 per thousand, affixed to those labels.

All other items require a different kind of stamp, available at \$20 per thousand. In lieu of securing stamps, a registrant with the department may secure a license from the director. Upon the issuance of such a license, the licensee must make a quarterly return to the director of the department, showing the number of articles manufactured for sale in the State of Ohio and remitting 1 cent per item for pillows, comforters, etc., and 2 cents for all other items. There is a state advisory board which is part of the Bedding and Upholstered Furniture Inspection Bureau. The board has the authority to adopt rules and regulations to carry out the functions of the act, and is also empowered to grant variances from the rules in cases of hardship.

As part of its enforcement practices and authority, the Ohio authorities enter into contracts with local laboratories to inspect items suspected to be not in compliance with the Ohio statutes. The administrative regulations deal with the definitions of filling materials and are quite similar to those contained in the larger states that have an active enforcement policy. The contents must be indicated on the label affixed to items sold in the state with respect to this filling material. The requirements for cotton, down feathers, hair, wool, synthetics, foams, and the foam rubber filling materials, are spelled out in detail. Ohio has issued a booklet for the benefit of the public with information as to the furniture and bedding requirements and what to look for on each label affixed to the furniture when purchasing items of furniture and bedding in that state.

Violation of the statutes is punishable by a fine of not less than \$25 nor more than \$500 or imprisonment for not more than six months, or both.

Oklahoma

The Oklahoma statutes apply to items of bedding only and not to upholstered furniture. All bedding items offered for sale must be labeled with the usual cloth label affixed to each item. Secondhand material and items must be so labeled. Any secondhand material must be germicidally treated, and this information so stated on the label. In addition to the label, a 5-cent revenue stamp must be affixed to each item offered for sale that is covered by Oklahoma regulations. The stamps are issued to manufacturers in that state and to anyone offering for sale items within the state, and are sold in quantities of 100. In addition to the usual regulations, administrative rules have been adopted which cover enforcement of the act and are promulgated by the State Board of Health. They deal with items covered by the statutes and are quite similar to those in other states, wherein they designate mattresses, box springs, mattress pads, mattress protectors, quilts, comforters, pillows, bolsters, feather beds, sofa beds, chair beds, day beds, studio couches, convertible lounges, and any other upholstered item used for sleeping purposes. The rules also spell out requirements of what shall be contained on the label with respect to filling materials, and provide for standard definitions thereof. The usual materials such as cotton, wool, felt, feather and down, hair, synthetics, rubber, and foam are covered. Interestingly enough, the Oklahoma regulations provide that if the terms "100%," "all," or "pure" are used, the items so labeled must be so designated without variation or tolerance. Failure to do so would be misrepresentation.

Violation of the Oklahoma statutes is a misdemeanor, subject to a fine of \$50 to \$100.

Oregon

The Oregon statutes cover all items of furniture and bedding, from mattresses through upholstered furniture. The enforcement is vested in the State Board of Health, and, in addition, there is a Furniture and Bedding Advisory Council which may propose rules and regulations and advise the board on its enforcement policy. The usual requirements are in effect in Oregon in that all items covered by the statutes must have a label affixed thereto, and any used items must be properly labeled. There are 15 different types of operations covered by the Oregon statutes: branch factories, branch renovator shops, branch repair shops, fumigators, manufacturers, repairers, renovators, residence dealers, retailers, retail branch stores, sterilizers, supply dealers, supply depots, transit repairers or renovators, wholesale branch houses, and wholesalers. There are but seven categories insofar as license fees are concerned. A manufacturer of furniture and bedding, the furniture and bedding wholesaler, the supply dealer, and the supply depot each pays a fee of \$60; the renovator, the sterilizer or fumigator, \$25; and the furniture or bedding retailer, \$15. Comprehensive rules and regulations have been adopted by the Board of Health to carry out the enforcement of the state furniture and bedding laws.

They spell out the definitions of the various filling materials and the terminology to be used. Cotton is covered quite extensively. Feather and down regulations are very similar to the California regulations. The basic difference between the California and the Oregon regulations is that the latter permits the use of the term "100% down" in its feather regulations when the down stock contains 90 percent down and 10 percent feathers. As in California, sterilization and fumigation labels are issued by the state. Comprehensive fumigation and sterilization methods are spelled out in the rules and regulations and, in addition, they detail the types of signs to be used, the type of construction to be used in sterilizing and fumigating equipment, and the types of safety clothing and apparatus that the workers must wear in connection with this equipment. Regulations provide that all previously used articles of upholstered furniture and bedding must be fumigated or sterilized before being offered for sale to the public. The labeling requirements are quite similar to those in use in other states: the usual warning relative to not removing the tag is required, the size is standard, the name of the manufacturer or vendor with his address must be contained therein, and a definitive description of the material used for filling must be clearly imprinted. The label must be of cloth or fabric comparable to white vellum. Vanity benches or padded stools may use a rubber stamp on the smooth bottom panel in lieu of affixing a cloth label. In addition to the usual regulations covering cotton, wool, and synthetics, Oregon has spelled out a great deal and details the many miscellaneous materials which may be used.

Violation of the Oregon statutes is a misdemeanor, punishable by a fine not to exceed \$500, or jail sentence not to exceed six months, or both.

Pennsylvania

The Pennsylvania law is known as the Bedding and Upholstery Law. It is under the jurisdiction of the Department of Labor and Industry and covers all items of bedding and upholstered furniture as well as the bulk materials which are used in said products. The statutes require the use of a label on all items covered by the law. The labels are white for new items and yellow for used items. Any used or second-hand items offered for sale must be sterilized and disinfected before being offered to the public, and that process must be approved by the department. No secondhand material may be used in any newly manufactured item, even if sterilized or fumigated. Sterilizers and fumigators must secure a special permit from the department with an initial fee of \$25 and a \$5 annual renewal fee. The revenue derived by the state is mainly from the sale of stamps which are affixed to items covered by the Pennsylvania regulations. These are sold by the department at the rate of \$15 per thousand. Exemption to these statutes is similar to that in other states, whereby a manufacturer may secure a license and registration number and make his report to the state quarterly, indicating the number of items sold by said licensee and including therein payment of $1\frac{1}{2}$ cents for each item. These reports are subject to audit by the state; failure to pay or failure to make a report results in forfeiture of license and registration. A comprehensive set of administrative rules has been adopted by the Department

of Labor and Industry. The rules and regulations also define terms to be used on the labels with respect to filling material and are quite similar to those in most of the other states. The type of label is similar to the requirements of most states, and is a cloth tag listing the registration and permit number, the contents of the filling material by percentage and weight, a place for the stamp if necessary, and the name of the manufacturer and his address.

Violation of the Pennsylvania statutes is a misdemeanor, subject to a fine not to exceed \$100 or a jail sentence not to exceed six months.

South Carolina

The South Carolina statutes cover bedding only. The enforcement is vested within the State Board of Health. The board has the authority to adopt rules and regulations and has done so. The statutes are similar to most states in that all items covered by the state laws must have the usual cloth label affixed thereto, setting forth a description of the contents, the name and address of the manufacturer or vendor, and a place for the revenue stamp. The regulations adopted by the board spell out in detail the types of filling material and how they must be labeled. The statutes require that no shoddy or millsweeps be used in the manufacture of any articles of bedding; no other filling materials are covered by the South Carolina statutes. There is an absolute prohibition of the use of any material that has had previous use by a person with a contagious or an infectious disease. All used materials must be sterilized or disinfected for reuse in the renovation or manufacture of bedding articles. The one unique regulation in the South Carolina statutes provides that any supply dealer supplying material to a manufacturer must provide an itemized invoice to him. It further provides that the manufacturer must keep these invoices on file for a period of one year for inspection by the State Board of Health. The state does not require any licensing and derives its revenue from the sale of stamps, which must be affixed to each item covered by its regulations. The stamps are \$5 for 250 stamps.

Violation of the South Carolina statutes is a misdemeanor subject to a \$100 fine or 30 days in jail.

Texas

The Texas statutes cover bedding and allied products only. Upholstered furniture is not covered. Enforcement of the Texas statutes is vested in the Department of Health, which has a bedding division for enforcement of the act. All persons engaged in the manufacturing, sale, renovation, or sterilization of products covered by the Texas statutes require a license fee in the amount of \$15. In addition, all items covered by the statutes must have a revenue stamp affixed to each label. These stamps are for sale by the Department of Health in units of 500 at a cost of \$5 per unit. The Department of Health has adopted extensive administrative regulations dealing with the types of filling material used in the items covered by the Texas statutes. It also defines those materials and spells out the terminology to be used. It is interesting to note that the State of Texas permits the use of filling materials such as clay and only requires that, if there is an excess of 5 percent in the

filling, it be so labeled on the white tag affixed to the bedding. A tolerance of 10 percent is allowed on filling materials with respect to the label. Contrary to California statutes, Texas permits the use of filling material which contains oil, stipulating that if the oil content is over 5 percent, the designation "oily" be affixed to the label. The label requirements on Texas items are the same as those used throughout the country; new or used material must be indicated, the type of filling material, a piece provided for the stamp, the name of the manufacturer and vendor, and the permit number issued by the state. Secondhand material must have a special tag, and the only requirement is that the printing be in red ink on a white background.

Violation of the statutes is a misdemeanor and is punishable for each offense by a fine of not less than \$50 and not more than \$200.

Utah

The regulations in the State of Utah are incorporated in the Bedding and Upholstered Furniture Inspection Act, enacted by the state in 1959 and amended in 1961. The regulations cover all items of furniture and bedding as well as the supply dealers and the materials they sell for the manufacture of such. Enforcement is with the Utah State Board of Agriculture, which has an advisory board consisting of one member of the State Board of Agriculture and four members from the furniture and bedding industry in the state. The Utah regulations are similar to California's and require a license fee by all engaged in the sale, manufacture, or renovation of furniture within the state. The manufacturer, wholesale dealer, and supply dealer each pays an annual license fee of \$20 to \$45; a repair dealer, \$10 to \$25; and an employed upholsterer or repairer with no employees, \$5. The license monies collected by the Department of Agriculture are kept in a separate fund and are used exclusively for the administration of the Furniture and Bedding Inspection Act. All items sold in the state must have a label designating the type of material contained in the product for sale. There are three types of labels: those covering items of all new material, those of secondhand material, and those with owner's material.

Labels of new material must be on white cloth, used products or secondhand material on red, and those for the owner's material on green. The only exception to the cloth tag being affixed to any item sold pertains to slip seat covers or to raw material in bales, which must be imprinted with an indelible stamp. There is a provision for payment of damages for any item picked up for inspection that is not resalable or is damaged. As with most state statutes, the Utah regulations provide for holding articles off-sale that are not in compliance with the Utah statutes. In addition to the laws, the Board of Agriculture and the Advisory Board have adopted rules and regulations to carry out the regulations.

Anyone who violates any of the state provisions shall be guilty of a misdemeanor.

Vermont

Bedding, mattresses, and upholstered furniture are covered in Vermont's regulations promulgated by the State Board of Health, which prohibit used materials in such manufacture. The tagging of bedding

and furniture is required, which must indicate a description of the material used for filling, the name of the manufacturer or vendor, and a statement that such article contains all new material.

Effacing a tag is punishable by a fine of not more than \$50, and violation of the statutes may result in imprisonment for not more than six months or a fine of not more than \$500, or both.

Virginia

Virginia's Bedding and Upholstered Furniture Law regulates the manufacture and sale of bedding and upholstered furniture articles and the supplier of filling materials used therein, including renovating, reupholstering, sterilizing, licensing, and tagging, for which a six-square-inch label is required, which must include the name and address of the manufacturer or vendor, description of the material, and the manufacturer's registration number. White labels are used for new items and yellow for secondhand items. On all labels is the statement: "Certification is made that the materials in this article are described in accordance with law." All manufacturers, renovators, or supply dealers are licensed yearly at the rate of \$40, \$40, and \$10, respectively.

Violation of the regulations is subject to a fine of not less than \$25 nor more than \$100, or by a six-month jail sentence, or both.

Washington

The director of the Department of Health administers Washington's laws relating to its upholstered furniture and bedding industry. Labeling is required, which must include a complete description of the item; the manufacturer's name, address, and registration number; and a description of the filling material. Stamping may be used instead of labeling on furniture having a wood or metal bottom. Registration is required of furniture and bedding manufacturers, wholesalers, supply dealers, and supply depots at an annual fee of \$35; repairers, renovators, and sterilizers at a fee of \$25; and retailers, dealers, and auctioneers at a fee of \$10. An advisory council of seven members, four from the industry and three from the public, advises the director regarding enforcement policy.

A violation of the act is punishable by a fine of not less than \$50 nor more than \$500, or by a jail sentence of not less than 30 days nor more than six months, or by both such fine and imprisonment.

Wisconsin

The Wisconsin statute is included in its "Miscellaneous Health Provisions" under the section "Mattresses and Upholstering," and requires such to be properly labeled, which label must contain a statement of the materials used in the filling and in the covering, whether new or secondhand, and whether, if secondhand, they have been thoroughly cleaned and disinfected.

There is no provision for enforcement, but authority for prosecution is vested in the Industrial Commission. Violation of the regulations is subject to a fine of not less than \$25 nor more than \$500, or not less than six months in jail, or both.

BUREAU OF FURNITURE AND BEDDING INSPECTION

Bulletin No. 10



January, 1962

Furniture and Bedding Inspection Act

DIVISION 8

CHAPTER 3. BUSINESS AND PROFESSIONS CODE RELATING TO FURNITURE AND BEDDING

Article 1. General Provisions

19000. This chapter may be cited as the Furniture and Short title
Bedding Inspection Act.

19001. Unless the context otherwise requires, the general Construction
provisions hereinafter set forth govern the construction of this
chapter.

19002. "Person" includes individual, copartnership, asso- Person
ciation, firm, auctioneer, trust, and corporation, and the agents,
servants and employees of any of them.

19003. "Sell," or any of its variants, includes any of, or Sell
any combination of, the following: Sell, offer or expose for sale,
barter, trade, deliver, give away, rent, consign, lease, possess
with an intent to sell or dispose of in any other commercial
manner.

19004. (a) "Bureau" refers to the Bureau of Furniture Definitions
and Bedding Inspection.

(b) "Chief" refers to the chief of the bureau.

(c) "Inspector" refers to an inspector of the bureau.

(d) "Director" refers to the Director of Professional and
Vocational Standards.

(e) "Department" refers to the Department of Professional
and Vocational Standards.

(f) "Board" refers to the California Advisory Board of
Furniture and Bedding.

19006. "Upholstered furniture" means any furniture, in- Upholstered
furniture
cluding children's furniture, movable or stationary, which is
made or sold with cushions or pillows, loose or attached, or is
itself stuffed or filled in whole or in part with any material,
hidden or concealed by fabric or any other covering, including
cushions or pillows belonging to or forming a part thereof,
together with the structural units, the filling material and its
container and its covering which can be used as a support for
the body of a human being, or his limbs and feet when sitting
or resting in an upright or reclining position.

19007. "Bedding" means any quilted pad, packing pad, Bedding
mattress pad, hammock pad, mattress, comforter, quilt, sleep-
ing bag, box spring, studio couch, pillow or cushion made of
leather, cloth or any other material, which is stuffed or filled
in whole or in part with concealed material, which can be used
by any human being for sleeping or reclining purposes.

19007.5. "Filling material" means cotton, wool, kapok, Filling
material
feathers, downs, hair, or any other material, or any combina-
tion thereof, loose or in batting, pads, or any other prefabri-
cated form, concealed or not concealed to be used or that could
be used in articles of bedding or upholstered furniture.

- Secondhand** 19008. "Secondhand" means any materials or articles which have been previously used for any purpose, and shall include "sweepings" which are wastes recovered from gins, furniture and bedding factories, textile plants, or establishments using fibres or other materials. Manufacturing processes shall not be considered previous use, and new materials which are free from dirt or other contamination shall not be classified as sweepings.
- Secondhand article** 19008.5. Any article of upholstered furniture or bedding is secondhand if it contains any secondhand material in whole or in part.
- Same** 19008.6. Any article of upholstered furniture or bedding on sales floors in a private residence or room, which is not separated from living quarters, is secondhand.
- Retailer** 19009. "Retailer" means a person who sells any article of upholstered furniture or bedding or filling materials to a consumer or user of the article as purchased.
- Repairer** 19010. "Repairer" or "renovator" means a person who repairs, makes over, recovers, restores, renovates or renews upholstered furniture or bedding.
- Wholesaler** 19010.5. "Wholesaler" means a person who, on his own account, sells any article of upholstered furniture or bedding or filling materials to another for the purpose of resale, but shall not include an affiliate or a subsidiary where the ownership and name are identical, and which is the exclusive sales outlet of a manufacturer.
- Manufacturer** 19011. "Manufacturer" means a person who, either by himself or through employees or agents, makes any article of upholstered furniture or bedding in whole or in part, or who does the upholstery or covering of any unit thereof, using either new or secondhand material.
- Supply dealer** 19012. "Supply Dealer" means a person who manufactures, processes or sells any felt, batting, pads, or loose material in bags or containers, concealed or not concealed, to be used or that could be used in articles of upholstered furniture or bedding.
- Sterilizer** 19012.5. "Sterilizer" means a person who sterilizes articles of upholstered furniture or bedding or filling materials.
- Branch** 19014. "Branch" means any subordinate establishment situated apart from the parent house, maintaining a separate service to the trade.
- Members** **19035.1.** One member of the board shall be a bedding manufacturer, one member shall be an upholstered-furniture manufacturer, two members shall be retailers, one member shall be a supply dealer, one member shall be a sterilizer, and one member shall represent the public at large. All of the members, except the member representing the public at large, shall have been actively engaged and licensed as a manufacturer, retailer, supply dealer, or sterilizer, as the case may be, for a period of not less than five years immediately preceding the date of their appointment and shall continue to be so engaged and licensed during the term of their office.

19035.2. Each member of the board shall have been a citizen and a resident of the State of California for at least five years immediately preceding his appointment, and shall be at least 30 years of age and of good character. Qualifications

Each member of the board, other than the member representing the public at large, shall be of recognized standing in his branch of the furniture and bedding industry in the State of California.

19035.3. Members of the board shall be appointed for a term of four years and they shall hold office until the appointment and qualification of their successors. Terms

The terms of the members first appointed to the board shall expire as follows: the sterilizer, June 30, 1956; the supply dealer and the member representing the public at large, June 30, 1957; one manufacturer and one retailer, June 30, 1958; and one manufacturer and one retailer, June 30, 1959.

The Governor shall appoint the upholstered-furniture manufacturer authorized by the amendment made to Section 19035.1 at the 1961 Regular Session of the Legislature to the vacancy occurring on the board on June 30, 1962 in the membership of a manufacturer. Vacancies

Vacancies occurring in the membership of the board for any cause shall be filled by appointment for the balance of the unexpired term.

Each member appointed to the board, except the member appointed to represent the public at large, shall be from the same branch of the furniture and bedding industry as his predecessor.

No member shall serve more than two consecutive terms of office. Limitation on terms

19035.4. The Governor may remove any member of the board for misconduct, incompetency, or neglect of duty. Removal

19035.5. The board shall meet at least once in each calendar quarter of each year. Meetings

Four members shall constitute a quorum for the transaction of business. Quorum

The board shall elect from its members, each for a term of one year, a chairman and a vice chairman, and may appoint such committees as it deems necessary to carry out its duties. Chairman, etc.

19035.6. The chief shall serve ex officio as the secretary of the board, but shall not be a member of the board. Secretary

19035.7. Each member of the board shall receive a per diem and expenses as provided in Section 103. No compensation

19015. "Slip Seat" means the separate padded seat unit consisting of a plywood or similar base with its filling material and attached cover, which is used on chairs, benches, stools or similar articles, attached with screws or in any other manner. Slip seat

19016. "Slip Cover" means any casing or cover without filling material which is to be placed, on or over any completely manufactured article of upholstered furniture or bedding, and which is not permanently attached by tacking, sewing, or in any other manner. Slip cover

Exemption 19016.5. A person engaged exclusively in the manufacture of slip covers shall not be required to have a license under the provisions of this chapter.

Owner's material defined 19017. "Owner's material" means any article or material belonging to a person for his own, or tenant's use, that is sent to any manufacturer, repairer or renovator to be repaired or renovated, or used in repairing or renovating.

Article 2. Administration

**Adminis-
tration** 19030. There is in the Department of Professional and Vocational Standards a Bureau of Furniture and Bedding Inspection under the supervision and control of the Chief of the Bureau of Furniture and Bedding Inspection.

**Chief
Stats. 1937,
p. 2085** 19031. The chief shall be appointed by the Governor and shall serve at his pleasure. His compensation shall be fixed by the Director of Professional and Vocational Standards in accordance with law.

The duty of enforcing and administering this chapter is vested in the chief and he is responsible to the director therefor.

Personnel 19032. In accordance with the State Civil Service Act, the director may appoint and fix the compensation of such inspectors, investigators and other personnel as may be necessary for the administration of this chapter.

Powers 19033. Except as qualified by this chapter the chief has all the powers and duties of a head of a department under Chapter 2 of Part 1 of Division 3 of Title 2 of the Government Code.

**Rules and
regulations** 19034. With the approval of the director, the chief may adopt rules and regulations necessary for the administration of this chapter and declaring the policy of the bureau, and shall determine when any article, not otherwise clearly defined, is "upholstered furniture" or "bedding" under the provisions of this chapter.

**Same: When
effective** 19034.5. All rules and regulations shall become effective not earlier than 30 days after approval by the director, and upon compliance with the procedure provided in Chapter 4 of Part 1 of Division 3 of Title 2 of the Government Code.

**California
Advisory
Board of
Furniture
and Bedding:** 19035. There is in the Bureau of Furniture and Bedding Inspection a California Advisory Board of Furniture and Bedding, which consists of seven members appointed by the Governor.

**Powers and
duties** 19035.8. The board shall:

(a) Inquire into the needs of the furniture and bedding industry, the functions of the bureau and the matter of the policy thereof, and make such recommendations with respect thereto as, after consideration, may be deemed important and necessary for the welfare of the State, the health of the public, and welfare and progress of the furniture and bedding industry.

(b) Confer and advise with the director as to how the bureau may best serve the State, the public and the furniture and bedding industry.

(c) Consider and make appropriate recommendations on its own initiative as to changes in, or additions to or deletions of rules and regulations which the chief has adopted as, after consideration, may be deemed important and necessary.

(d) Consider and make appropriate recommendations in all matters submitted to it by the director or the chief.

(e) Confer and advise with the chief in the preparation of any rules and regulations to be adopted, amended or repealed.

(f) Assist the chief in the collection of such necessary information and data as the chief may deem necessary to the proper administration of this chapter.

19035.9. All meetings of the board shall be open and public, and all persons shall be permitted to attend any meetings of the board.

19035.10. Except as otherwise provided by law, all records of the board shall be open to inspection by the public during regular office hours.

Article 3. Licensing

19049. It shall be unlawful for any person to engage in a business regulated by this chapter unless, at the time of so doing, he holds a valid, unexpired license to engage in such business, in compliance with the provisions of this chapter. License

19051. Every upholstered furniture retailer, unless he holds a furniture manufacturer's license, a wholesale furniture dealer's license or a furniture repairer's license, shall hold a retail furniture dealer's license. Furniture
licenses:
Retail
dealers

19052. Every upholstered furniture repairer, unless he holds a furniture manufacturer's license, shall hold a furniture repairer's license bearing a registry number assigned by the bureau. Repairer

19053. Every upholstered furniture wholesaler, unless he holds a furniture manufacturer's license, shall hold a wholesale furniture dealer's license. Wholesale
dealer

19054. Every upholstered furniture manufacturer shall hold a furniture manufacturer's license, bearing a registry number assigned or approved by the bureau. Manufacturer

19055. Every bedding retailer, unless he holds a bedding manufacturer's license, a wholesale bedding dealer's license or a bedding renovator's license shall hold a retail bedding dealer's license. Bedding
licenses:
Retail
dealer

19056. Every bedding renovator, unless he holds a bedding manufacturer's license, shall hold a bedding renovator's license, bearing a registry number assigned by the bureau. Renovator

19057. Every bedding wholesaler, unless he holds a bedding manufacturer's license, shall hold a wholesale bedding dealer's license. Wholesale
dealer

Manufacturer **19058.** Every bedding manufacturer shall hold a bedding manufacturer's license, bearing a registry number assigned or approved by the bureau.

Supply dealer **19059.** Every supply dealer, unless he holds an upholstered furniture manufacturer's license or a bedding manufacturer's license, shall hold a supply dealer's license bearing a registry number assigned or approved by the bureau.

Sterilizer **19059.5.** Every sterilizer shall hold a sterilizer's license bearing a registry number assigned by the bureau.

Branches **19060.** Every person in any class shall obtain a separate license for each branch house: but one whose manufacturing plant is located in another state or foreign country, and who is licensed to manufacture upholstered furniture or bedding or filling materials for sale in California, may have one wholesale outlet operated in the same name in California, covered by the license issued to the factory.

Salesman, etc. **19060.5.** Every person who, on his own account, sells either directly or indirectly to any person either at wholesale or retail any merchandise subject to this chapter by means of a car, catalog, office or in any other manner, shall obtain the proper license for each such method of sale or distribution.

Solicitor, etc. **19060.6.** Every person who, on his own account, advertises, solicits or contracts to manufacture, repair or renovate upholstered furniture or bedding, and who either does the work himself or has others do it for him, shall obtain the particular license required by this chapter for the particular type of work that he solicits or advertises that he will do, regardless of whether he has a shop or factory.

Name **19061.** Every person doing business at the same address under more than one firm name is subject to the license provisions for each firm name.

Procedure re license, etc. **19061.5.** The chief shall prescribe the procedure relative to:
(a) Assignment or reassignment of serial or registry numbers.

(b) Transfer of licenses between persons, where such transfer is effected through rent, lease or sale of the business.

(c) Change in name, ownership, address, or of license classification.

Display **19062.** The license shall be posted in a conspicuous place in the main office or principal place of business of the licensee.

Furniture and bedding licenses: Denial of issuance to individual **19063.** The bureau may refuse to issue any license provided for in this chapter to any individual:

(a) Who has had any license issued to him revoked, or whose license is under suspension, or who has failed to renew his license while it was under suspension.

(b) If any license of a partnership of which he is or was a member, or of a corporation of which he is or was an officer or director, or of a firm or association of which he is or was an officer or of which he is or was acting in a managerial capacity, has had any license issued to it revoked or suspended, and while acting as such member, officer, director, or in such

managerial capacity he participated in any of the prohibited acts for which any such license was revoked or suspended.

19064. The bureau may refuse to issue any license provided for in this chapter to any partnership, corporation, firm, or association:

Denial of
issuance to
partnership,
corporation,
etc.

(a) Who has had any license issued to it revoked, or whose license is under suspension, or who has failed to renew its license while it was under suspension.

(b) If any member of any such partnership, or any officer or director of any such corporation, or any officer or person acting in a managerial capacity of any such firm or association has had any license issued to him revoked, or whose license is under suspension, or who has failed to renew his license while it was under suspension.

(c) If any member of the partnership, or any officer or director of the corporation, or any officer or person acting in a managerial capacity of the firm or association, was either a member of any partnership, or an officer or director of any corporation, or an officer or person acting in a managerial capacity of any firm or association, whose license has been revoked, or whose license is under suspension, or who failed to renew a license while it was under suspension, and while acting as such member, officer, director, or person acting in a managerial capacity participated in any of the prohibited acts for which any such license was revoked or suspended.

Article 4. Application of the Chapter

19070. This chapter shall apply to upholstered furniture and bedding and filling materials sold in California regardless of its point of origin.

Application
of chapter

19071. Secondhand upholstered furniture or bedding, or secondhand filling to be used or that could be used in upholstered furniture or bedding, received from outside of this State shall comply with all the sterilization provisions of this chapter before it is accepted, sold or delivered, either directly or indirectly by any person.

Sterilization
of second-
hand
material

19072. Responsibility for compliance with this chapter rests not only with the manufacturer but also with the wholesaler, and/or any person having in his possession any article of upholstered furniture or bedding or filling materials contrary to the provisions of this chapter.

Responsi-
bility for
compliance

19072.5. Responsibility for labeling of unlabeled foreign-made upholstered furniture or bedding in compliance with the requirements of this chapter, shall rest with the person selling such merchandise in California.

Responsi-
bility for
labeling

19072.6. The manufacturer of chairs and benches and similar articles, using slip seats which are manufactured by himself or purchased from another, is responsible for the labeling of such articles.

Same

19073. This chapter shall not apply to upholstered furniture or bedding which is manufactured and sold at wholesale in California for delivery outside the borders of this State.

Exemption

Article 5. Labeling

Labeling	19080. A person shall not, at wholesale, retail, or otherwise, directly or indirectly, make, repair, renovate, process, prepare, sell, offer for sale, display, or deliver any article of upholstered furniture or bedding or any filling materials in prefabricated form or loose in bags or containers, unless such article or material is plainly and indelibly labeled.
Labels: Approval	19081. The form and size of labels, the fabric of which they are made and the wording and statements thereon necessary to carry out the provisions of this chapter, shall be approved by the chief.
Rubber stamp	19082. A rubber stamp may be used in lieu of a label, on articles with slip seats having a smooth backing on which the imprint can be legibly and indelibly stamped.
Attachment	19083. Labels shall be securely attached to the article or filling material at the factory, in a position where they can be conveniently examined.
Required information	19084. The information required by this chapter shall be printed on one side of the label only.
No adver- tising, etc.	19085. Labels shall contain no advertising matter nor anything that detracts, or is likely to detract from the required statements.
Statements must show	19086. No mark, tag, sticker or any other device shall be placed upon labels by any dealer or any other person in such a way as to cover the required statements.
Removal unlawful	19087. It is unlawful for any person, except the purchaser for his own use, to attempt to, or to remove, deface, alter or cause to be removed, defaced or altered, the label or any mark or statement thereon, placed upon any article of upholstered furniture, bedding, or filling material under the provisions of this chapter.
Misleading terms	19088. It is unlawful to use, in the description of filling material, or in the statement on any label, any misleading term or designation or any term or designation likely to mislead.
Grades, etc., of material	19089. The bureau may establish grades, specifications and tolerances for the kinds and qualities of materials which are used or intended to be used in the manufacture, repair or renovation of upholstered furniture, bedding or filling materials, and may approve or adopt designations and rules which are not in conflict with any provisions of this chapter, for the labeling of articles filled with these materials.
Secondhand material	19092. The repairer or renovator of any secondhand upholstered furniture or bedding which is subsequently sold, shall affix the "Secondhand Material" label.
Owner's material	19093. Any person who repairs or renovates upholstered furniture or bedding for the owner for his own or a tenant's use, shall affix the "Owner's Material" label, which shall be attached to the article before delivery to the owner.

Article 6. Sterilization

19120. The enforcement of all sterilization regulations approved by the California State Department of Public Health pertaining to any article subject to the provisions of this chapter is vested in the bureau. Sterilization

19121. Filthy or soiled articles of new or used upholstered furniture or bedding cannot be sold, offered or exposed for sale unless the fabric covering them is either properly cleaned or replaced by a new covering and then subjected to sterilization when so provided for in this chapter. Dirt

19122. A person shall not engage in the business of sterilizing any article of upholstered furniture or bedding or filling material, provided for in this chapter, without first having his sterilization equipment tested and approved by the bureau. Sterilization:
Equipment

19122.5. Periodic tests and inspections shall be made by an authorized representative of the bureau, to determine whether or not the equipment and procedures used, comply with the requirements of the Sterilization Regulations. Inspections

19123. The provisions of this article apply only to persons subject to the license provisions of this chapter. Application
of article

19123.4. Newly manufactured articles of upholstered furniture and bedding which contain any secondhand filling material shall be sterilized before they are offered or exposed for sale, except feather and down filled articles. Feathers and down must be sterilized loose. Secondhand
filling
material

19123.5. Every article of upholstered furniture and bedding and all filling material, repaired or renovated for resale or repaired or renovated for an owner but subsequently offered for sale shall be sterilized before being offered or exposed for sale. Repaired and
renovated
articles

19123.6. Every article of upholstered furniture or bedding to which any secondhand material has been added in the process of repairing, shall be sterilized in accordance with the provisions of the Sterilization Regulations. Same

19124. Every person who receives for sterilization any upholstered furniture or bedding or filling material, shall sterilize all such articles and material in accordance with the Sterilization Regulations. Regulations

19124.5. Every person who sterilizes any upholstered furniture or bedding or filling material shall affix a sterilization label to the article or material immediately after the sterilization has been completed. The label shall be securely attached in a position where it may be conveniently examined. Label

19127. The form, size and color of sterilization labels, and the paper of which they are made shall be approved by the chief and as provided in the Label Regulations. Sterilization
label

19127.5. Sterilization labels shall be sold only to sterilizers licensed under this chapter. Illegal possession of any sterilization label is a violation of this chapter. Void or mutilated labels shall be returned to the bureau. Possession,
etc.

Records 19127.6. The sterilizer shall keep a record of all data and show the disposition of every label as required in the Sterilization Regulations. The record shall be accessible at all reasonable times to the chief and the inspectors.

Articles to be sterilized 19129. Articles of secondhand upholstered furniture and bedding listed in the Sterilization Regulations, and any secondhand article that can be used for sleeping or reclining purposes, shall be sterilized under the provisions of this chapter before being sold.

Diseases 19131. Every article of upholstered furniture or bedding from any private or public hospital, jail or other institution, or which has been used by any person, suffering from an infectious or contagious disease, shall be sterilized before it is repaired or renovated.

Articles to be kept separate 19132. New or sterilized articles of upholstered furniture or bedding or materials shall at all times be kept separate from any secondhand articles or materials that are unsterilized.

Article 7. Regulations

False advertising 19150. Every person who falsely advertises or misrepresents in any way any merchandise coming under the provisions of this chapter either directly or indirectly by any medium of advertising, including false statements made on the recognized California State labels or any other label or tag attached to the merchandise in question, is guilty of a violation of this chapter.

Affixing tags 19158. Every person, upon receiving upholstered furniture or bedding for repairing or renovating shall securely affix, immediately, a tag of identification showing the owner's or dealer's name, address and the date upon which it was received. The tag shall remain affixed until the article is in the process of repair or renovation.

Cleanliness 19160. The premises, delivery equipment, machinery, appliances and devices of all persons licensed under this chapter shall at all times be kept free from refuse, dirt contamination, insects or vermin.

Article 8. Fees

Fee schedule 19170. (a) The fee imposed for the issuance and for the renewal of each license granted under this chapter shall be set by the chief, with the approval of the director, at a sum not more nor less than that shown in the following table:

	Maximum fee	Minimum fee
Furniture manufacturer's license-----	\$120	\$40
Wholesale furniture dealer's license----	120	40
Bedding manufacturer's license-----	120	40
Wholesale bedding dealer's license-----	120	40
Supply dealer's license-----	120	40
Furniture repairer's license-----	80	20
Bedding renovator's license-----	80	20
Sterilizer's license-----	80	20
Retail furniture dealer's license-----	20	4
Retail bedding dealer's license-----	20	4

(b) A person who has paid the required fee and who is duly licensed as a furniture manufacturer, a furniture repairer, a bedding manufacturer or a bedding renovator under this chapter shall not be required to pay, in addition, the fee prescribed herein for a sterilizer's license.

19170.5. Licenses issued under this chapter expire at 12 p.m. on August 31, 1962, and thereafter, at 12 p.m. on August 31 of each even-numbered year, if not, in each instance renewed. To renew his license, a licensee shall, on or before the date on which it would otherwise expire, apply for renewal on a form prescribed by the chief, and pay the fee prescribed by Section 19170. If the licensee fails to renew his license before its expiration, a delinquency fee of twenty percent (20%) shall be added to the renewal fee. If the renewal fee and delinquency fee are not paid within 30 days after expiration of the license, the licensee shall be subject to such penalties as are provided elsewhere in this chapter. License expiration date

19171. Prorated license fees shall be on a quarterly basis beginning as of September 1st, December 1st, March 1st and June 1st. Prorating

19171.5. A person who applies for a license before September 1, 1962, and who did not hold such license during the last preceding license period may obtain the license on a prorated basis by payment of an amount equal to one fourth of the license fee in effect on July 1, 1961 for each quarter, or fraction thereof, remaining in the license period in which he applies. Same

A person who applies for a license after August 31, 1962, and who did not hold such license during the last preceding license period may obtain the license on a prorated basis by payment of an amount equal to one-eighth of the license fee in effect on the last preceding regular renewal date before the date on which he applies for each quarter, or fraction thereof, remaining in the license period in which he applies.

19171.6. The chief shall prescribe the procedure for licensing of any applicants for proration not clearly defined elsewhere in this chapter. Same: Procedure

19172. A person may not obtain a new license of the same class as a license held by him during the last preceding license period, but may renew the license previously held by him on payment of the renewal fee and delinquency fee in effect on the last regular renewal date before the date on which he applies for renewal. Reclassification

19173.5. Section 1034 of the Government Code authorizes the use of the United States postal cancellation on the envelope in which the fee is mailed, as the date of payment. Date of payment

19174. All fees collected under this chapter shall be reported to the State Controller and paid to the State Treasurer and credited to the Bureau of Furniture and Bedding Inspection Fund, to be expended only in carrying out this chapter. Special fund

Article 9. Enforcement

- Inspections** 19200. The chief or any inspector shall have access to the premises, equipment, materials, partly finished and finished articles and records of any person subject to the provisions of this chapter.
- Same; concealed material** 19200.5. The chief or any inspector may open any articles of upholstered furniture or bedding, including pillows or cushions belonging to or forming a part thereof, for the purpose of inspecting concealed filling material and may take either the entire article, or samples of filling material in such quantities as may be necessary for analysis.
- Same; fitness for sale** 19201. The chief or any inspector may determine the fitness of any secondhand or damaged article of upholstered furniture or bedding or filling material, for sterilization and sale.
- Unfit material** 19202. The bureau may condemn, withhold from sale, seize or destroy any upholstered furniture or bedding or any filling material which is found to be in violation of this chapter.
- Tag on condemned article** 19203. The tag to be affixed to any article of condemned upholstered furniture or bedding, or any material by an inspector shall be a red tag and shall contain such information as may be required by the chief.
- Removals** 19204. Every person who removes, or causes to be removed any tag or device placed upon any upholstered furniture or bedding or any material, by an inspector is guilty of a violation of this chapter.
- Production** 19205. The failure of any person to produce upon demand of an inspector any article that has been condemned and ordered held on an inspection notice signed by such person, or an inspection notice that the person has refused to sign, is a violation of this chapter.
- Interference** 19206. No person shall interfere with, obstruct or otherwise hinder any inspector of the bureau in the performance of his duties. The chief, his deputies, and assistants, and all inspectors in the performance of their official duties, shall have the same powers as are possessed by peace officers of this State.
- Notification of violations** 19207. Any inspector having knowledge of a violation of any of the provisions of this chapter shall notify the chief of the violation.
- Citations; hearing, etc.** 19208. The chief or any inspector may cite any person subject to the provisions of this chapter to a hearing before the chief or the inspector to show cause why he should not be subject to disciplinary action or prosecution for any act or omission in violation of this chapter.
- Proceedings; Administrative Procedure Act** 19209. Except as otherwise required to comply with the provisions of Article 9.5 of this chapter, the proceedings in any hearing or disciplinary action under this chapter shall be conducted in accordance with Chapter 5 of Part 1 of Division 3 of Title 2 of the Government Code.
- Suspension of license** 19210. After a hearing, the bureau may suspend a license for a period not to exceed six months for a violation of any of the provisions of this chapter or of the rules and regulations

of the bureau, or for a violation of Article 1, Chapter 1 of Part 3 of Division 7 of the Business and Professions Code, relating to false or misleading advertising; provided, however, that the license of a wholesaler or retailer shall not be suspended in the absence of a finding that the wholesaler or retailer knowingly offered for sale or sold articles not conforming to the requirements of this chapter or the rules and regulations of the bureau.

(a) In lieu of a third suspension, the bureau may revoke a license.

(b) In any order of suspension or revocation, the bureau may impose conditions relative to the disposition of articles not conforming to the requirements of this chapter or the rules and regulations of the bureau, or may impose conditions relative to the completion or fulfillment of any orders or contracts entered into prior to the date of the hearing.

19211. Any person who has been denied a license, or who has had his license revoked, or whose license is under suspension, or who has failed to renew his license while it was under suspension, or any person who has been a member of any partnership, or an officer or director of any corporation, or an officer or person acting in a managerial capacity of any firm or association, whose license has been revoked, or whose license is under suspension, or who has failed to renew a license while it was under suspension, and while acting as such member, officer, director, or person acting in a managerial capacity, participated in any of the prohibited acts for which any such license was suspended, or revoked, shall be prohibited from serving as a member of any licensed partnership, or as an officer or director of any licensed corporation, or as an officer or person acting in a managerial capacity of any licensed firm or association, and the employment, election, or association of such person in any such capacity by any such licensee shall constitute grounds for disciplinary action against the licensee.

Individual under discipline prohibited from serving as partner, director, etc.

19212. The performance by any partnership, corporation, firm, or association of any act or omission constituting a cause for disciplinary action, likewise constitutes a cause for disciplinary action against any licensee who is a member of any such partnership, or an officer or director of any such corporation, or an officer or person acting in a managerial capacity of any such firm or association, if such licensee participated in such prohibited act or omission.

Participation by individual in prohibited act of partnership, etc.

Article 9.5. Disciplinary Proceedings Against Nonresidents

19215. As used in this article, unless otherwise indicated, "chief" means the Chief of the Division of Administrative Procedure.

Chief

19215.1. The acceptance by a nonresident licensee of any of the rights and privileges conferred upon him by this chapter, as evidenced by his engaging within this State, either

Service on nonresident licensee

personally or through an agent or employee, in a business subject to license under this chapter, is equivalent to the appointment by such licensee of the chief as his true and lawful attorney upon whom may be served all lawful process in any disciplinary proceeding conducted against him under this chapter.

Effect of
service
on chief

19215.2. The acceptance of such rights and privileges as so evidenced shall signify the agreement of the licensee that any such process which is served against him in the manner provided in this article shall be of the same legal force and validity as if served upon him personally in this State.

Method of
service, fee

19215.3. Service shall be made by leaving a copy of the accusation, together with a notice of defense and statement to respondent as described in Section 11505 of the Government Code, with a fee of two dollars (\$2) for each licensee to be served, in the hands of the chief or in his office in Sacramento. Such service shall be sufficient service on the licensee subject to compliance with Section 19215.4 of this code.

Mailing of
notice

19215.4. A notice of such service and a copy of the accusation, together with the notice of defense and statement to respondent, shall forthwith be sent by registered mail by the chief to the licensee at his last known address as furnished by the bureau. Personal service of such notice, copy of the accusation, notice of defense, and statement to respondent upon the licensee wherever found outside this State shall be the equivalent of such mailing.

Proof of
compliance

19215.5. Proof of compliance with Section 19215.4 of this code shall be made in the event of service by mail by affidavit of the chief or his authorized employee showing such service by mailing, together with the return receipt of the United States post office bearing the signature of the licensee or his agent. Such affidavit and receipt shall be appended to the original accusation on file with the bureau. In the event of personal service outside this State such compliance may be proved by the return of any duly constituted public officer qualified to serve process in civil actions in the state or jurisdiction where the licensee is found, showing such service to have been made. Such return shall be appended to the original accusation on file with the bureau.

Continuance,
etc.

19215.6. The bureau, or if the proceeding has been assigned to a hearing officer of the Division of Administrative Procedure, such hearing officer, may order such postponements or continuances and grant such extensions of time as may be necessary to afford the licensee reasonable opportunity to defend the proceedings. In no event shall the licensee have less than 30 days after the date of mailing or delivery to him of the copy of the accusation in which to file a notice of defense, nor shall the notice of hearing provided for in Section 11509 of the Government Code or the notice and copy of affidavit referred to in Section 11514 of said code be mailed or delivered less than 20 days prior to the date of hearing, and the

time for making a request to cross-examine under said Section 11514 shall be not less than 15 days.

19215.7. The chief shall keep a record of all process served upon him pursuant to this article which shall show the day and hour of service. Records

19215.8. As used in this article "nonresident" means a person who is not a resident of this State at the time he engages in business in the State as described in Section 19215.1 of this code. Nonresident

Article 10. Penalties

19220. Every person who violates any of the provisions of this chapter is guilty of a misdemeanor and punishable for each offense by a fine of not less than fifty dollars (\$50) nor more than five hundred dollars (\$500) or by imprisonment for not less than three nor more than six months or by both such fine and imprisonment. Penalty

19221. The unit for a separate and distinct offense in violation of this chapter is each and every article of improperly labeled, or not labeled, upholstered furniture or bedding or filling material made, repaired, recovered, renovated, sterilized, sold, exposed or offered for sale, delivered, consigned, rented, or possessed with intent to sell contrary to the provisions of this chapter. Unit of offense

False Advertising in General

Article 1, Chapter 1 of Part 3 of Division 7 of the Business and Professions Code

17500. It is unlawful for any person, firm, corporation or association, or any employee thereof with intent directly or indirectly to dispose of real or personal property or to perform services, professional or otherwise, or anything of any nature whatsoever or to induce the public to enter into any obligation relating thereto, to make or disseminate or cause to be made or disseminated before the public in this State, in any newspaper or other publication, or any advertising device, or by public outcry or proclamation, or in any other manner or means whatever, any statement, concerning such real or personal property or services, professional or otherwise, or concerning any circumstance or matter of fact connected with the proposed performance or disposition thereof, which is untrue or misleading, and which is known, or which by the exercise of reasonable care should be known, to be untrue or misleading, or for any such person, firm, or corporation to so make or disseminate or cause to be so made or disseminated any such statement as part of a plan or scheme with the intent not to sell such personal property or services, professional or otherwise, so advertised at the price stated therein, or as so advertised.

Restrictions
on adver-
tising

17500.1. No state board or commission within the Department of Professional and Vocational Standards shall enact any rule or regulation which shall restrict or prohibit advertising by any commercial or professional person, firm, partnership or corporation which does not violate the provisions of Section 17500 of the Business and Professions Code. Any existing rules or regulations conflicting with this section are hereby repealed.

The provisions of this section do not apply to any rules or regulations heretofore or hereafter formulated pursuant to Section 6076 of this code.

Price
statements

17501. For the purpose of this article the worth or value of any thing advertised is the prevailing market price, wholesale if the offer is at wholesale, retail if the offer is at retail, at the time of publication of such advertisement in the locality wherein the advertisement is published.

Exception

No price shall be advertised as a former price of any advertised thing, unless the alleged former price was the prevailing market price as above defined within three months next immediately preceding the publication of the advertisement or unless the date when the alleged former price did prevail is clearly, exactly and conspicuously stated in the advertisement.

Good faith

17502. This article does not apply to any visual or sound radio broadcasting station or to any publisher of a newspaper, magazine, or other publication, who broadcasts or publishes an advertisement in good faith, without knowledge of its false, deceptive, or misleading character.

**Rules and Regulations
of the
Bureau of Furniture and Bedding Inspection
Contained in
Chapter 3, Title 4,
California Administrative Code**

CHAPTER 3. BUREAU OF FURNITURE AND BEDDING INSPECTION

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Article

1. General Provisions.
2. Labels for Upholstered Furniture and Bedding.
3. Labels for Bulk Filling Materials.
4. Universal Filling Material Requirements.
5. Cotton Regulations.

Article

6. Feather and Down Regulations.
7. Hair Regulations.
8. Wool Regulations.
9. Miscellaneous Regulations.
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Article 1. General Provisions

1100. Location of Offices. The principal office of the Bureau of Furniture and Bedding Inspection is located at:

530 Business and Professions Bldg., 1020 N Street,
Sacramento 14, California,

and branch offices of the bureau are located in San Francisco, Los Angeles, San Diego, Fresno, Chico, San Jose.

NOTE: Authority cited for §§ 1100 through 1265: Sections 19034, 19034.5, 19170(c) (Stats. 1950, Ch. 3), and 19089, Business and Professions Code.

History: 1. Originally published 3-22-45 (Title 4).

2. Revision filed 9-18-47 as an emergency; effective upon filing (Register 9).

3. Revision filed 5-23-50; designated to be effective 7-1-50 (Register 20, No. 5).

4. Amendment filed 7-31-56; effective thirtieth day thereafter (Register 56, No. 15).

1101. Correspondence. All general correspondence shall be directed to the principal office of the bureau at Sacramento.

1102. Tenses, Gender and Number. For the purposes of these rules and regulations, the present tense includes the past and the future tenses, and the future includes the present; the masculine gender includes the feminine, and the feminine includes the masculine; and the singular includes the plural, and the plural includes the singular.

1103. Definitions of Bureau and Act. For the purposes of these rules and regulations, the term "bureau" means the Bureau of Furniture and Bedding Inspection, and the term "act" means Chapter 3 of Division 8 of the Business and Professions Code, which chapter is also cited as the Furniture and Bedding Inspection Act.

1104. Scope. The purpose of these regulations, and it is hereby declared to be the policy, intent and direction to employ the terms, definitions and nomenclature as are commonly used, and as recognized in the manufacture, sale and distribution of furniture and bedding products. Classifications of materials in these regulations are intended to have understandable meaning to the ultimate consumer.

1105. "Separate service to the trade" as used in Section 19014 of the act, includes any of the following services rendered by the parent house, when rendered by a subsidiary establishment, viz.:

(a) **Sale of Goods.** Except that a display and sale of goods in an established furniture mart or exchange is not included unless it is the principal place of business of the wholesaler maintaining the display and service.

(b) **Delivery of goods** sold in the subsidiary establishment from a local stock independent of the parent house.

(c) **Entire or partial billing and/or collection** for goods so sold and delivered.

1106. The term "on his own account" as used in Sections 19060.5 and 19060.6 of the act, is intended to limit the requirement for a license to the person who is obligated as a principal in contracts to sell or contracts to render services. The requirement for a license does not extend to salesmen, brokers, factors, agents, solicitors, factory representatives or those who act only in a representative capacity for others.

1107. Exemptions. Articles which are not clearly upholstered furniture or bedding, as described in the act, may be declared exempt from the provisions of the act and these regulations, except that when exempted articles are labeled they become subject to the act and the regulations and must be labeled in conformity therewith. No questionable articles shall be considered as exempt, however, until the articles or photographs thereof, have been submitted to the bureau for inspection and final authority for exemption has been granted.

History: 1. Amendment filed 4-20-54; effective thirtieth day thereafter (Register 54, No. 9).

2. Amendment filed 7-31-56; effective thirtieth day thereafter (Register 56, No. 15).

1108. License Fees. The following schedule of license fees is hereby adopted:

Furniture manufacturer's license	\$45.00
Wholesale furniture dealer's license	45.00
Bedding manufacturer's license	45.00
Wholesale bedding dealer's license	45.00
Supply dealer's license	45.00
Furniture repairer's license	30.00
Bedding renovator's license	30.00
Sterilizer's license	30.00
Retail furniture dealer's license	7.50
Retail bedding dealer's license	7.50

Such schedule of fees shall be effective July 1, 1958, and shall be continued in force until this rule is amended or repealed.

History: 1. Amendment filed 4-4-58; designated effective July 1, 1958 (Register 58, No. 6).

Article 2. Labels for Upholstered Furniture and Bedding

1120. Attachment of Labels. Chairs, davenports, chaise longues, studio couches, and other seating pieces having loose cushions shall have the labels attached under the cushion on top and in the center of the front edge of the platform. Seating pieces without loose cushions shall have labels attached at the front under the seat rail.

1121. Label Fabric. (a) Labels shall be made of a fabric or other approved material of good quality which cannot readily be torn or will not flake when abraded (except sterilization labels—refer to Section 1129).

(b) Cloth backed paper labels will not be approved.

History: 1. Amendment filed 7-31-56; effective thirtieth day thereafter (Register 56, No. 15).

1122. Color of Labels and Ink. (a) Labels on articles manufactured wholly of new material shall be white in color.

(b) Labels on articles manufactured in whole or in part of second-hand material shall be red in color.

(c) Color of ink on labels shall be black.

1123. Size of Labels and Type in Printing. (a) The minimum size of labels shall be 2 x 3 inches. Labels shall be larger when the required size of type and statements make it necessary.

(b) Size of type in printing of labels shall be that specified in these regulations.

1124. Statements on labels shall be as follows:

(a) "Do not remove this label under penalty of law."

(b) Headings shall read "ALL NEW MATERIAL" when only new materials are used, "SECONDHAND MATERIAL" when the material is in whole or in part secondhand.

(c) Labeling Examples:

Cotton batting (or felt)

Linters -----75%
Staple -----25%

Blown cotton

Linters -----50%
Waste -----30%
Picker -----20%

Batting (or felt)

Cotton linters -----85%
Synthetic fiber -----15%

(1) When two or more kinds of materials are combined in batting, felt, pads or loose material, they shall be shown in the order of their predominance, the largest component first, followed by the percentage of each component. Any cotton, wool or other components, except shoddy, shall show grades as provided in Section 1158.1(c).

Labeling Examples:

Batting (or felt)

Cotton -----75%
Linters -----70%
Picker -----30%
Wool waste -----25%

Batting (or felt)

Staple cotton -----60%
Virgin wool -----40%
Pad
Curled hog hair -----85%
Sisal fiber -----15%

(2) The percentages of batting or felt or pad or any other prefabricated materials used in any article, when combined with other prefabricated or loose materials shall be shown on the label in the order of their predominance, the largest component first.

Labeling Examples:

Cotton batting (or

felt) -----60%

Linters -----75%

Waste -----25%

Curled hair pad -----40%

Hog -----85%

Cattle tail -----15%

(d) The size of articles of bedding, showing the width and length expressed in inches. Boudoir, decorative or fancy cushions need not show size. (See 1164 and 1165 of these regulations.)

(e) The net weight of filling material which shall be the minimum weight in articles of bedding, except in feather and down filled pillows and boudoir, decorative or fancy cushions. (See Sec. 1163 of these regulations.)

(f) The registry number assigned or approved by the bureau.

(g) "Certification is made that the materials in this article are described in accordance with law."

- History:* 1. Amendment filed 4-20-54; effective thirtieth day thereafter (Register 54, No. 9).
 2. Amendment filed 7-31-56; effective thirtieth day thereafter (Register 56, No. 15).
 3. Amendment filed 1-26-61; effective thirtieth day thereafter (Register 61, No. 2).

1125. Forms of Labels for New Upholstered Furniture and Bedding shall be substantially as follows:

Type No. 1. For: Seat cushions (for household use)
 Decorative or boudoir cushions
 Occasional chairs without loose cushions
 Cloth bottom slip seat chairs and benches
 Similar items.

(Space for stitching)	
DO NOT REMOVE THIS LABEL under penalty of law	
ALL NEW MATERIAL consisting of	
(This space for revenue stamp when required)	<div style="text-align: right; padding-bottom: 10px;">Registry No.</div> <hr style="width: 50%; margin: 0 auto;"/> Certification is made that the materials in this article are described in accordance with law.
Name and address of vendor or manufacturer	

(WHITE LABEL)

← Minimum type size one-eighth inch in height, in capital letters.

← Insert description of filling materials by clearly imprinting in English, using capital letters not less than one-eighth inch high.

← This space optional.

Type No. 2. For: Upholstered chairs with loose cushions
 Davenport with loose cushions
 Similar items with loose cushions.

(WHITE LABEL)

DO NOT REMOVE THIS LABEL under penalty of law	
ALL NEW MATERIAL consisting of	
BODY: 	
CUSHIONS: 	
PILLOWS: 	
(This space for revenue stamp when required)	<div style="text-align: right; margin-bottom: 10px;">Registry No.</div> <hr style="width: 50%; margin: 0 auto;"/> Certification is made that the materials in this article are described in accordance with law.
Name and address of vendor or manufacturer	
(Space for stitching)	

← Minimum type size one-eighth inch in height, in capital letters.

← { Insert description of filling materials by clearly imprinting in English, using capital letters not less than one-eighth inch high.

← This space optional.

Type No. 3. For: Studio couches.

(WHITE LABEL)

(Space for stitching at top or bottom)			
DO NOT REMOVE THIS LABEL under penalty of law			
ALL NEW MATERIAL consisting of			
BODY :			
MATTRESS or CUSHIONS :			
PILLOWS :			
(This space for revenue stamp when required)	<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="text-align: center; padding: 5px;">Registry No.</td> </tr> <tr> <td style="padding: 10px;"> Certification is made that the materials in this article are de- scribed in ac- cordance with law. </td> </tr> </table>	Registry No.	Certification is made that the materials in this article are de- scribed in ac- cordance with law.
Registry No.			
Certification is made that the materials in this article are de- scribed in ac- cordance with law.			
Name and address of vendor or manufacturer			
(Space for stitching at top or bottom)			

← Minimum type size one-eighth inch in height, in capital letters.

← Insert description of filling materials by clearly imprinting in English, using capital letters not less than one-eighth inch high.

← This space optional.

Type No. 4. For: Mattresses
 Pads
 Comforters
 Quilts
 Quilted mattress protector pads
 Similar items.

(WHITE LABEL)

(Space for stitching)	
DO NOT REMOVE THIS LABEL under penalty of law	
ALL NEW MATERIAL consisting of	
Finished Size -----	Net Wt. of Filling Mat'l -----
(This space for revenue stamp when required)	<div style="text-align: center; margin-bottom: 10px;">Registry No.</div> <hr style="width: 50%; margin: 0 auto;"/> Certification is made that the materials in this article are de- scribed in ac- cordance with law.
Name and address of vendor or manufacturer	

← Minimum type size one-eighth inch in height, in capital letters.

← Insert description of filling materials by clearly imprinting in English, using capital letters not less than one-eighth inch high.

← This space optional.

Type No. 5. For: Pillows**(WHITE LABEL)**

(Space for stitching)	
DO NOT REMOVE THIS LABEL under penalty of law	
ALL NEW MATERIAL consisting of	
<div style="display: flex; justify-content: space-between;"> <div style="width: 60%;"> <p>Finished Size _____</p> </div> <div style="width: 35%; text-align: center;"> <p>Registry No.</p> <hr style="width: 80%; margin: 0 auto;"/> <p>Certification is made that the materials in this article are described in accordance with law.</p> </div> </div>	
<div style="display: flex;"> <div style="width: 35%; text-align: center; padding-right: 10px;"> <p>(This space for revenue stamp when required)</p> </div> <div style="width: 65%;"></div> </div>	
Name and address of vendor or manufacturer	

← Minimum type size one-eighth inch in height, in capital letters.

← Insert description of filling materials by clearly imprinting in English, using capital letters not less than one-eighth inch high.

← This space optional.

Type No. 6. For: Rubber Stamp on slip seat articles. Permissible on dining room chairs, bedroom benches, or slip seats made with a smooth backing (hard bottom) so that the imprint will be legible. A fabric bottom on slip seats must bear a fabric label. (See Sec. 19082 of the act.)

ALL NEW MATERIAL
<hr style="width: 80%; margin: 0 auto;"/> <p>REGISTRY NO. _____</p>

(RUBBER STAMP)

← The heading shall be in 24-point gothic type, in capital letters.

← Insert description of filling materials by clearly imprinting in English, using capital letters not less than one-eighth inch high.

Rubber stamp size
3 x 1½ inches.

1126. Forms of Labels for Secondhand Upholstered Furniture and Bedding shall be substantially as follows:

Type No. 7. For: Articles which contain secondhand filling material, except feather and/or down filled articles.

(Space for stitching)	
DO NOT REMOVE THIS LABEL under penalty of law	
SECONDHAND MATERIAL consisting of	
Finished Size -----	Net Wt. of Filling Mat'l -----
(This space for revenue stamp when required)	<div style="text-align: center; padding-bottom: 10px;">Registry No.</div> <hr style="width: 50%; margin: 0 auto;"/> Certification is made that the materials in this article are de- scribed in ac- cordance with law.
Name and address of vendor or manufacturer	

(RED LABEL)

← Minimum type size one-eighth inch in height, in capital letters.

← Insert description of filling materials by clearly imprinting in English, using capital letters not less than one-eighth inch high.

← "Size" and "weight" not required on articles of upholstered furniture.

← This space optional.

Type No. 8. For: Articles which contain secondhand feather and/or down filling material. In addition to statements required in this article, this label shall bear the statement: "Materials contained herein have been sterilized by a process approved pursuant to Chap. 3, Article 6 of the Business and Professions Code."

(Space for stitching)	
DO NOT REMOVE THIS LABEL under penalty of law	
SECONDHAND MATERIAL consisting of	
Finished Size -----	Net Wt. of Filling Mat'l -----
(This space for revenue stamp when required)	<div style="text-align: center; padding-bottom: 10px;">Registry No.</div> <hr style="width: 50%; margin: auto;"/> Certification is made that the materials in this article are de- scribed in ac- cordance with law.
Materials contained herein have been sterilized by a process approved pursuant to Chap. 3, Article 6 of the Business and Professions Code.	
Name and address of vendor or manufacturer	

(RED LABEL)

← Minimum type size one-eighth inch in height, in capital letters.

← Insert description of filling materials by clearly imprinting in English, using capital letters not less than one-eighth inch high.

← "Size" and "weight" not required on articles of upholstered furniture.

← This space optional.

1126.1. Form of Labels for Upholstered Furniture in Which the Cushions Only Contain Secondhand Material.

History: 1. New section filed 10-3-51 as an emergency ; designated to be effective 10-2-51 (Register 26, No. 1).

2. Repealer filed 7-31-56 ; effective thirtieth day thereafter (Register 56, No. 15).

1127. Materials Used in Renovation. Any filling material added to "Owner's Material" shall be new, unless otherwise specifically agreed to by the owner.

1128. "Owner's Material" labels shall comply with the following specifications:

- (a) Color of label shall be green. Printing shall be in black ink.
- (b) Statements:
 - (1) "Do not remove this label under penalty of law."
 - (2) "This article not for sale."
 - (3) Heading: "Owner's Material."
 - (4) "Certification is made that this article contains the same material it did when received from its owner and that added materials are described in accordance with law, and consist of the following ALL NEW MATERIAL."
- (c)
 - (1) Kind and grade of material added as provided in this chapter.
 - (2) Registry number of the repairer or renovator.
 - (3) Date on which repaired or renovated.
 - (4) Name and address of the owner.

Type No. 9. For: "Owner's Material"—repaired or renovated.**(GREEN LABEL)**

(Space for stitching at top or bottom)

DO NOT REMOVE THIS LABEL
under penalty of law

This Article Not For Sale**OWNER'S MATERIAL**

Certification is made that this article contains the same material it did when received from the owner and that added materials are described in accordance with law, and consist of the following

ALL NEW MATERIAL

Renovated
or repaired
by:

Registry
No. _____

Date _____

Owner:

Address:

(Space for stitching at top or bottom)

Minimum type size one-eighth inch in height, in capital letters.

Insert description of filling materials by clearly imprinting in English, using capital letters not less than one-eighth inch high.

This space optional.

1129. Sterilization Labels shall comply with the following specifications:

- (a) Color of label shall be yellow. Printing shall be in black ink.
- (b) Label paper shall be erasure-proof and be of a grade that will not change color on application of adhesive.

(c) Size of label shall be 3 x 3 inches.

(d) Statements:

(1) "Do not remove this label under penalty of law."

(2) "Certification is made that this **SECONDHAND ARTICLE** has been **STERILIZED** by a process approved pursuant to Chap. 3, Article 6 of the Business and Professions Code." (Furniture and Bedding Inspection Act.)

(e) (1) Lot number in which the article was sterilized.

(2) Sterilization label number. Every label shall be numbered and the numbers shall run consecutively.

(3) Name of the article or filling material sterilized.

- (4) Name and number of loose cushions, pads, pillows, etc., belonging to and forming a part thereof.
- (5) Name of the person for whom sterilized.
- (6) Date sterilized.
- (7) Name and address of the sterilizing plant.
- (8) Registry number assigned to the sterilizing plant by the bureau.

Type No. 10. For: Sterilized articles.

DO NOT REMOVE THIS LABEL under penalty of law		(YELLOW LABEL) The words "SECONDHAND ARTICLE" and "STERILIZED" shall be in 24-point Gothic type, in capital letters.
Certification is made that this SECONDHAND ARTICLE HAS BEEN STERILIZED		
By a process approved pursuant to Chapter 3, Article 6 of the Business and Professions Code.		
Lot No. _____	Label No. _____	Sterilization labels shall be affixed to the article sterilized with silicate of soda or other approved adhesive.
Article _____		
With _____		
Ster. for _____		
Name _____		
Date _____		
<div style="display: flex; justify-content: space-between;"> Space for Name of Sterilizing Plant Registry No. </div>		

Article 3. Labels for Bulk Filling Materials

1140. Labels on Bulk Filling Material may be printed on the sleeves, wrappers, bags, cartons, or containers in which such material is sold, or may have such a label imprinted thereon with a rubber stamp or may be gummed stickers or tags, in compliance with the following specifications.

1141. Label Material. (a) Sleeves, wrappers, bags, cartons, and other containers shall be of material sufficiently strong to remain intact when delivered to the purchaser.

(b) Gummed stickers shall be made of reasonably strong material and the adhesive shall hold the sticker securely and permanently in place.

(c) Tags shall be made of material which will not tear easily and from which the attaching cord or wire will not tear out.

1142. Color of Labels. (a) Labels on material which is wholly new shall be of one color sufficiently light for the imprint to be plain and legible. When sleeves, wrappers, bags, etc. are varicolored or dark in color, a white space of sufficient size to imprint the label may be provided or a white gummed sticker attached.

(b) Labels in the form of stickers or tags shall be red in color, when attached to material which is in whole or in part secondhand.

1143. Color of Ink. (a) Labels on filling material which is wholly new, shall be printed in black ink.

(b) Labels on filling material which is in whole or in part second-hand, shall be printed:

(1) Black ink on a red background.

History: 1. Amendment filed 7-31-56; effective thirtieth day thereafter (Register 56, No. 15).

1144. Size of Labels. The minimum permissible size of labels is six square inches. They shall be larger when the required size of type and statements make it necessary. This shall not include the space required for statements of packing practices.

1145. Statements on Labels shall be as follows:

(a) "Do not remove this label under penalty of law."

(b) Headings shall read "ALL NEW MATERIAL" when the material is wholly new; "SECONDHAND MATERIAL" when the material is in whole or in part secondhand.

(c) Description of filling material:

(1) The kinds, grades and percentages of filling materials used, as provided in these regulations.

(d) The registry number assigned or approved by the bureau.

(e) "Certification is made that this material is described in accordance with law."

History: 1. Amendment filed 4-20-54; effective thirtieth day thereafter (Register 54, No. 9).

2. Amendment filed 7-31-56; effective thirtieth day thereafter (Register 56, No. 15).

1146. Forms of Labels for Prefabricated or Bulk Filling Materials shall be substantially as follows:

Type "A"—For: Batt sleeve or wrapper label. Entire label printed on wrapper.

DO NOT REMOVE THIS LABEL
under penalty of law

ALL NEW MATERIAL

← Minimum type size one-eighth inch in height, in capital letters.

← Insert description of filling materials by clearly imprinting in English, using capital letters not less than one-eighth inch high.

ONE SHEET

REGISTRY NO.

Certification is made that this material is described in accordance with law.

Name and address of vendor
or manufacturer

← This space optional.

Type "B"—For: Batting, felt or padding gummed label.

DO NOT REMOVE THIS LABEL
under penalty of law

ALL NEW MATERIAL

Registry No. _____

Certification is made that this material is
described in accordance with law.

Name and address of vendor
or manufacturer

← Minimum type size one-eighth inch in height, in capital letters.

← Insert description of filling materials by clearly imprinting in English, using capital letters not less than one-eighth inch high.

← This space optional.


Type "C"—For: Batting, felt or padding wrapper stencil or rubber stamp.

ALL NEW MATERIAL

Registry No. _____

← The heading shall be in 24-point Gothic type, in capital letters.

← Insert description of filling materials by clearly imprinting in English, using capital letters not less than one-eighth inch high.

Type "D"—For: Pad label or tag.


DO NOT REMOVE THIS LABEL
under penalty of law

ALL NEW MATERIAL

Size----- Net. Wt.-----

Certification is made that this material is described in accordance with law.

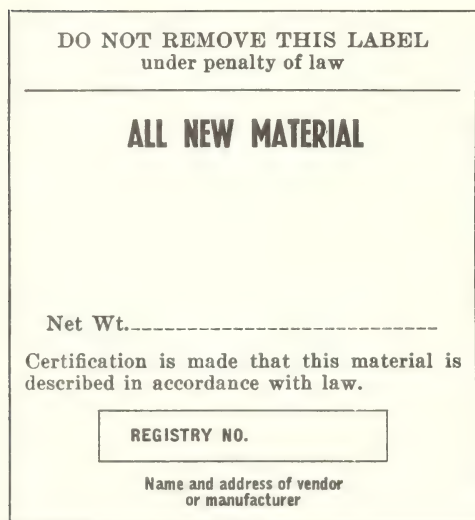
REGISTRY NO.

Name and address of vendor
or manufacturer

← Minimum type size one-eighth inch in height, in capital letters.

← Insert description of filling materials by clearly imprinting in English, using capital letters not less than one-eighth inch high.

← This space optional.

Type "E"—For: Label or imprint for paper package bulk materials. Entire label may be printed on container.


DO NOT REMOVE THIS LABEL
under penalty of law

ALL NEW MATERIAL

Net Wt.-----

Certification is made that this material is described in accordance with law.

REGISTRY NO.

Name and address of vendor
or manufacturer

← Minimum type size one-eighth inch in height, in capital letters.

← Insert description of filling materials by clearly imprinting in English, using capital letters not less than one-eighth inch high. (Kapak, Down, etc.)

← This space optional.

Type "F"—For: Bulk material tag or cloth label for cloth bags or containers.

The diagram shows a rectangular tag with a pointed top. At the top center is a circle. Below it is a horizontal line. The text "DO NOT REMOVE THIS LABEL under penalty of law" is printed below the line. Below this is a large rectangular area for text. To the right of this area, an arrow points to the text "Minimum type size one-eighth inch in height, in capital letters." Below the large text area is a line for "Net Wt.". Below that is the text "Certification is made that this material is described in accordance with law." Below this is a rectangular box labeled "REGISTRY NO.". Below the box is the text "Name and address of vendor or manufacturer". To the right of this text, an arrow points to the text "This space optional." Above the top circle, an arrow points to the text "Space for stitching or tying. (Method optional)".

History: 1. Amendment filed 7-31-56; effective thirtieth day thereafter (Register 56, No. 15).

Article 4. Universal Filling Material Requirements

1149. Application of This Article. The provisions of this article apply to all filling materials which are or are intended to be used in upholstered furniture or bedding.

History: 1. New section filed 4-20-54; effective thirtieth day thereafter (Register 54, No. 9).

1150. Cleanliness of Filling Materials. All filling materials shall be reasonably clean and free from extraneous material, dirt, dust, filth, epidermis, excreta, disagreeable odors, or contamination.

History: 1. Amendment filed 4-20-54; effective thirtieth day thereafter (Register 54, No. 9).

2. Amendment filed 1-26-61; effective thirtieth day thereafter (Register 61, No. 2).

1150.1. Sludge Limitation. When any filling material contains sludge in excess of .3 milliliters per 20 gram sample, it is unfit for use. As used in this section "sludge" means any material which will settle out of a solution which has been passed through a 40 mesh sieve.

History: 1. New section filed 1-26-61; effective thirtieth day thereafter (Register 61, No. 2).

1150.2. Oil and Grease Limitations. When any filling material contains more than 2 percent but not more than 5 percent of oil, grease, or fat or a combination thereof, it shall be classified as "Waste." Material which contains more than 5 percent of oil, grease, or fat or a combination thereof is unfit for use.

History: 1. New section filed 4-20-54; effective thirtieth day thereafter (Register 54, No. 9).

2. Re filed 7-31-56 (Register 56, No. 15).

1150.3. Trash Limitations. (a) **Vegetable Fibers.** When any batting, felt, pad, or any other prefabricated material of vegetable origin contains more than 7 percent but not more than 10 percent of trash, shell, shale, leaf, stem, pulp, undecorticated fibers, etc., it shall be classified as "Waste," and the word "Waste" shall be incorporated in its labeling term. When the trash, shell, shale, leaf, stem, pulp, etc., exceeds 10 percent, but does not exceed 20 percent, such extraneous material shall be stated on the label as "Trash" and the material itself shall be designated as "Waste." Any batting, felt, pad, or any other prefabricated material in which the trash exceeds 20 percent is unfit for use.

(b) **Animal Fibers.** When any product of animal origin contains more than 2 percent but not more than 10 percent of trash, burrs, stickers, seeds, sticks, epidermis, kemp, etc., it shall be classified as "Waste," and the word "Waste" shall be incorporated in its labeling term. When the trash, burrs, stickers, seeds, etc., exceed 10 percent, the material is unfit for use.

(c) When any filling material, not covered by (a) and (b) above, contains more than 10 percent of a combination of trash, debris, seeds, sticks, etc., and/or foreign material, it is unfit for use.

History: 1. New section filed 4-20-54; effective thirtieth day thereafter (Register 54, No. 9).

2. Amendment filed 7-31-56; effective thirtieth day thereafter (Register 56, No. 15).

3. Amendment filed 1-26-61; effective thirtieth day thereafter (Register 61, No. 2).

1150.4. Thread Limitation. Any material which contains more than 2 percent but not more than 5 percent of hard spun thread, yarn or roving shall be classified as "Waste." When hard spun thread, yarn or roving exceeds 5 percent, the percentage shall be stated on the label as "Thread," and the material itself shall be designated as "Waste."

History: 1. New section filed 4-20-54; effective thirtieth day thereafter (Register 54, No. 9).

2. Re filed 7-31-56 (Register 56, No. 15).

1151. Secondhand Filling Material. (Refer Section 19008 of the act.)

- History:* 1. Repealer filed 4-20-54; effective thirtieth day thereafter (Register 54, No. 9).
2. New section filed 7-31-56; effective thirtieth day thereafter (Register 56, No. 15).

1151.3. By-products. "By-products" shall mean new fibers that are the by-products removed from the various machine operations in the preparation and manufacture of yarn up to and including the process of spinning, spun fibers being subsequently reduced to individual fibers, together with the cotton known as gin flues, and shall include only the following materials:

- | | |
|------------------------|--------------------|
| (a) Comber | (f) Gin flues |
| (b) Strips | (g) Noils |
| (c) Fly | (h) Tanners wool |
| (d) Picker | (i) Napper flocks |
| (e) Textile spun fiber | (j) Fulling flocks |

The name of the kind and class of fiber shall be stated on the label, except that with respect to "Picker," "Fly," and "Gin Flues," any of such designations may be used interchangeably to describe any of such materials.

- History:* 1. New section filed 4-20-54; effective thirtieth day thereafter (Register 54, No. 9).
2. Amendment filed 1-26-61; effective thirtieth day thereafter (Register 61, No. 2).

1151.4. Waste. Any new material classified as "Waste" under Sections 1150.2, 1150.3, or 1150.4, and any other new material which is the by-product or waste of the various machines in any process of manufacture employing only new materials, except as provided in Section 1151.3, and fibers recovered from clean fabric clips and similar scraps made in whole of new materials, and which are subsequently completely defabricated, and cotton linter motes, pills and shank and tag wools, etc., shall be designated on the label as "Waste" in addition to the name of the kind of fiber used.

- History:* 1. New section filed 4-20-54; effective thirtieth day thereafter (Register 54, No. 9).
2. Amendment filed 7-31-56; effective thirtieth day thereafter (Register 56, No. 15).

1152. Shoddy. (a) Any material which has been knit or woven into fabric which has been used by the ultimate consumer and subsequently defabricated, together with fibrous material from used clips and scraps which contain any undefabricated cloth fragments, shall be designated on the red "Secondhand Material" label as "Shoddy."

(b) Any material which has been knit or woven into fabric which has not been used by the ultimate consumer and which subsequently has been defabricated, together with fibrous material from new clips

and scraps which contain any undefabricated cloth fragments, shall be designated on the white "All New Material" label as "Shoddy."

History: 1. Amendment filed 4-20-54; effective thirtieth day thereafter (Register 54, No. 9).

2. Amendment filed 5-1-59; designated effective June 1, 1959 (Register 59, No. 7).

1153. Manufacturing Processes are hereby defined as those operations necessary to produce finished goods, but shall not include the defabrication, shredding, blending or mixing of any clippings or scraps preparatory to re-use.

1154. Damaged Filling Materials, Upholstered Furniture, and Bedding. Filling materials and articles of upholstered furniture and bedding which have been damaged by fire, water, or otherwise shall be designated on the label as "Damaged."

History: 1. Amendment filed 4-20-54; effective thirtieth day thereafter (Register 54, No. 9).

2. Amendment filed 5-1-59; designated effective June 1, 1959 (Register 59, No. 7).

1154.5. Imperfect Materials. Filling materials which have been improperly prepared for use or are defective or of a type classified as "Seconds" by their producers shall bear the word "Imperfect" on the label in a position preceding other required terms.

History: 1. New section filed 4-20-54; effective thirtieth day thereafter (Register 54, No. 9).

1155. Dyed Materials. Any filling materials that have been dyed shall be designated by the word "Dyed" or the word "Colored" immediately preceding other required terms or designations.

History: 1. Amendment filed 4-20-54; effective thirtieth day thereafter (Register 54, No. 9).

1156. Names of Filling Materials. Filling materials shall be designated on the labels as provided in the following regulations. Any kinds or grades of materials that are not named or defined in these regulations will be assigned names for labeling purposes, when samples are submitted to the bureau.

1157. Additional Terms Not Prohibited. These regulations shall not be construed as prohibiting the use, in conjunction with the prescribed names or descriptive terms, of additional words or phrases that correctly designate and more fully describe any filling material, when such additional words or phrases are required or approved by the bureau.

1158. Blends. When two or more kinds of material are used in a blend, the materials shall be labeled as provided in these regulations. (See Article 2, Section 1124.)

1158.1. Description of Filling Materials. (a) The kinds, grades and percentages of filling materials used in articles of upholstered furniture and bedding shall be stated on the approved law label. Percentages shall be computed on the basis of the avoirdupois weight of

such filling materials only. Any deviation from percentages stated shall not exceed 10 percent of the smaller component.

(b) When the filling material consists of one kind and grade only, the percentage need not be stated, except as required in Article 6 of these regulations (Feather and Down Regulations).

(c) When batting or felt or loose material consists of different grades of any one kind of material, the grades shall be shown in the order of their predominance, the largest component first, followed by the percentage of each component, except that the percentages are not required to be shown in shoddies.

(d) In wastes or shoddies which contain more than one type of synthetic fiber, the quantity of the different types shall be combined and shall be designated on the label as "Synthetic Fiber."

History: 1. New section filed 7-31-56; effective thirtieth day thereafter (Register 56, No. 15).

1158.5. Deviation From Percentage Stated. No deviation from percentages stated on labels in excess of 5 percent is permitted in blends, except as provided in Article 6 of these regulations.

History: 1. New §§ 1158.5, 1158.6, 1158.7, filed 4-20-54; effective thirtieth day thereafter (Register 54, No. 9).

2. Amendments to §§ 1158.5, 1158.6, 1158.7 filed 7-31-56; effective thirtieth day thereafter (Register 56, No. 15).

1158.6. Other Materials. A material represented as consisting of one kind and grade of material may not contain more than 5 percent of other materials. When other materials than that specified exceeds 5 percent it must be designated on the label, except as provided in Section 1201.

History: 1. Amendment filed 1-26-61; effective thirtieth day thereafter (Register 61, No. 2).

1158.7. Incidental Admixtures. New fibers or other kinds of new materials which constitute less than 5 percent of a blend or of the total filling material in an article are not required to be stated on the label except as provided in Article 6 of these regulations.

1158.8. Naming Mixtures.

History: 1. New section filed 7-31-56; effective thirtieth day thereafter (Register 56, No. 15).

2. Repealer filed 1-26-61; effective thirtieth day thereafter (Register 61, No. 2).

1159. "Batting" or "Felt." Either of these terms shall be used only when fibers are garnetted or carded and used in layer form. They may not be used when batting or felt scraps or clippings are stuffed or blown in the same manner as unfelted materials. These terms must be followed by a listing of the component kinds and grades of materials and their respective percentages. (See Article 2, Section 1124 of these regulations.)

1160. Pads. Any material or fiber which is interwoven or punched on burlap or any other woven material, or otherwise fabricated into a pad, including the application of latex or synthetic rubber as a

component and as a factor in the molding process, shall be labeled "Pad." The word "Pad" shall precede a description of the component materials.

History: 1. Amendment filed 1-26-61; effective thirtieth day thereafter (Register 61, No. 2).

1161. Pad Size. Any pad used in upholstered furniture or bedding made of sisal fiber, curled hair, or any other material, is assumed to cover the entire top and bottom surfaces of the upholstered furniture seat cushions or bedding and the entire usable surface of non-reversible seat cushions and other parts or areas wherever used. This does not apply to upholstered furniture arms. If a pad smaller than the size of a mattress, cushion, or other article is used, the size of the pad must be stated on the label.

History: 1. Amendment filed 4-20-54; effective thirtieth day thereafter (Register 54, No. 9).

1162. "Standard Size" Feather and Down Pillows. A "Standard Size" pillow is hereby defined as a:

(a) Goose and/or duck feather and/or down pillow whose finished size is 20" x 26" or 21" x 27".

(b) No feather and/or down pillow whose finished size is less than 20" x 26" may be advertised or sold as a "Standard Size" pillow.

1163. Size and Weight Limitations. Pillows filled and labeled as 100 percent down, shall contain not less than the net weight of down specified in the following schedule of sizes and weights (weights are not required on labels). Sizes of pillows other than those set forth herein shall contain a proportionate weight of down.

<i>Finished pillow size</i>	<i>Minimum net weight of down</i>
21" x 27" -----	15 oz.
20" x 26" -----	13 oz.
19" x 26" -----	12 oz.
18" x 25" -----	11 oz.
17" x 24" -----	10 oz.

There shall be no requirement for weights of filling materials of pillows which contain blends or mixtures of goose and/or duck feathers and/or down or chicken or turkey feathers.

The provisions of this section shall not be applicable to articles manufactured and in stock prior to July 1, 1950, nor to articles ordered from a manufacturer or wholesaler prior to that date, but shall be applicable to all articles, orders for which are received by the manufacturer on or subsequent to July 1, 1950.

1164. Cut Size of Comforters and Sleeping Bags. The size stated on labels of comforters and sleeping bags shall be the "Cut Size" which shall be the length and breadth of the covering before the top and bottom are sewed together and before quilting or tufting. A tolerance of 3 percent is permissible only in the direction in which

widths of cloth are joined to make the cover. (Example: Comforter labeled 72" x 84"—When fabric is of 36" width, tolerance is in the 72" dimension only. When fabric is of 42" width, tolerance is in the 84" dimension only.)

History: 1. Amendment filed 4-20-54; effective thirtieth day thereafter (Register 54, No. 9).

1165. Finished Size of Bedding. The size stated on labels of articles of bedding other than comforters and sleeping bags shall be the minimum finished size.

History: 1. Amendment filed 4-20-54; effective thirtieth day thereafter (Register 54, No. 9).

Article 5. Cotton Regulations

(Also see Article 4)

1180. "Staple cotton" shall mean the staple fibrous growth as removed from cottonseed in the usual process of ginning (first cut from seed), free from excessive foreign material.

History: 1. Amendment filed 4-20-54; effective thirtieth day thereafter (Register 54, No. 9).

1181. "Cotton By-products."

History: 1. Repealer filed 4-20-54; effective thirtieth day thereafter (Register 54, No. 9).

1182. "Textile Spun Cotton."

History: 1. Repealer filed 4-20-54; effective thirtieth day thereafter (Register 54, No. 9).

1183. "Cotton linters" shall mean the lint or fibrous growth removed from the cottonseed subsequent to the usual first process of ginning. For labeling purposes cotton linters are divided into two grades and the name of the grade used shall be designated on the label, as follows:

(a) "Cotton linters" shall be equal to or higher in quality than grades 1, 2, 3, 4, 5, 6 or 7 of the official standards of the United States for Grades of American Cotton Linters.

(b) "Second cut cotton linters" shall be equal to chemical grade of the official standards of the United States for Grades of American Cotton Linters.

History: 1. Amendment filed 7-31-56; effective thirtieth day thereafter (Register 56, No. 15).

1184. "Cotton Waste."

History: 1. Repealer filed 4-20-54; effective thirtieth day thereafter (Register 54, No. 9).

1185. Oil Limitation.

History: 1. Repealer filed 4-20-54; effective thirtieth day thereafter (Register 54, No. 9).

1186. Trash Limitation.

History: 1. Repealer filed 4-20-54; effective thirtieth day thereafter (Register 54, No. 9).

Article 6. Feather and Down Regulations

(Also see Article 4)

1190. "**Down**" shall mean the undercoating of waterfowl, consisting of the light fluffy filaments growing from one quill point but without any quill shaft.

1191. "**Feathers**" shall mean the feathers of any fowl which are whole in structure and which have not been processed in any manner other than dusting, washing and sterilizing.

1192. "**Body feathers**" shall mean the feathers of any fowl other than wing and tail feathers. The term "**SMALL BODY FEATHERS**" will be permitted on the label, provided the overall length of the feathers used, does not exceed $3\frac{1}{2}$ inches.

1193. "**Quill feathers**" shall mean the wing and tail feathers commonly known as quills.

1194. "**Crushed feathers**" shall mean feathers which have been processed by a curling or crushing machine and includes the feather fiber resulting from such processing. Such feathers shall be designated on the label as "**Crushed Feathers**" or "**Crushed Quill Feathers**." (See Section 1198 of these regulations.)

1195. "**Free fiber**" shall mean the detached barbs from down plumes or detached barbs from the basal end of feathers and undistinguishable from the barbs of down plumes.

1196. "**Feather fiber**" shall mean the detached barbs and stripings of waterfowl, chicken and turkey feathers.

1197. "**Damaged feathers**" shall mean feathers which have been broken, injured by insects, or depreciated from the original value in any manner; provided, however, that this shall not apply to "**crushed feathers**" as defined in Section 1194 of these regulations.

"**Damaged feathers**" in excess of 5 percent of any stock shall be stated on the label.

1198. "**Residue**" shall mean quill pith, quill fragments, trash or any foreign matter and shall not exceed 2 percent of any feather and down stock. When residue exceeds 2 percent, the percentage shall be stated on the label as "**Residue**."

1199. **Name of Fowl.** (a) When feathers and down are derived from geese, ducks or eider ducks, the name of the fowl shall precede other required designations.

(b) Stocks composed entirely of turkey feathers or chicken feathers shall show the name of the fowl on the label. Stocks of mixed chicken and turkey feathers may be labeled as "**Colored Chicken and Turkey Feathers**" without showing the percentage of each.

History: 1. Amendment filed 1-26-61; effective thirtieth day thereafter (Register 61, No. 2).

1200. Color. (a) The color of waterfowl feathers and down shall be designated as "White" or "Gray."

(b) The color of chicken feathers shall be designated as "White" or "Colored." No statement of color is required for turkey feathers.

1201. Percentages. Percentages shall be shown on the label for each component heretofore defined.

(a) Down stocks containing not over 10 percent small natural body feathers of the same fowl as that from which the down is derived may be labeled as down.

(b) **Blends.** In a mixture of feathers and down, a tolerance not to exceed 10 percent of the down content is permitted.

(c) The "goose down" portion of any stock shall not contain in excess of 10 percent of duck down.

(d) The "goose feathers" portion of any stock shall not contain in excess of 10 percent of duck feathers.

(e) The "goose feathers" portion of any feather stock shall not contain in excess of 5 percent chicken and/or turkey feathers. Such chicken and/or turkey feather content shall reduce the permissible duck feather content in like amount.

(f) The "duck feathers" portion of any stock shall not contain in excess of 5 percent chicken and/or turkey feathers.

(g) "Free fiber" in excess of 5 percent shall be so indicated on the label or combined with excessive quantities of "feather fiber" and be designated as "fiber."

(h) "Feather fiber" from waterfowl feathers in excess of 5 percent shall be so indicated on the label or combined with excessive quantities of "free fiber" and be designated as "fiber." This does not apply to feathers defined in Section 1194 of these regulations.

(i) There shall be no tolerance for chicken or turkey feather fiber in down stocks.

(j) "Chicken feather fiber" or "turkey feather fiber" in excess of 5 percent of the chicken or turkey feathers in any stock shall be so designated. This does not apply to feathers defined in Section 1194 of these regulations.

(k) "Chicken feather fiber" or "turkey feather fiber" in stocks otherwise consisting wholly of waterfowl plumage, shall be so designated.

History: 1. Amendment filed 1-26-61; effective thirtieth day thereafter (Register 61, No. 2).

1202. Cleanliness. (a) The oxygen number of any filling material consisting of whole feathers or down or a combination thereof, and the oxygen number of any filling material consisting of an admixture of feathers and down which contains 5 percent or less of crushed feathers, shall not exceed 25 grams of oxygen per 100,000 grams of sample.

(b) The oxygen number of any filling material which contains more than 5 percent of crushed feathers shall not exceed 40 grams of oxygen per 100,000 grams of sample.

History: 1. Amendment filed 7-31-56; effective thirtieth day thereafter (Register 56, No. 15).

2. Repealer and new section filed 1-26-61; effective thirtieth day thereafter (Register 61, No. 2).

Article 7. Hair Regulations

(Also see Article 4)

1210. "Hair" shall mean the coarse filamentous epidermal outgrowth of such mammals as horses, cattle, hogs and goats. When used in the manufacture of upholstered furniture, bedding or filling material, it shall be clean, properly cured, free from epidermis, excreta, or foreign or objectionable substances or odors.

1211. Classification of Hair. Hair shall be classified and labeled as follows:

- "Horse Tail Hair"
- "Horse Mane Hair"
- "Hog Hair"
- "Cattle Tail Hair"
- "Cattle Hide Hair"
- "Goat Hair"

1212. Single Grades of Hair.

History: 1. Repealer filed 4-20-54; effective thirtieth day thereafter (Register 54, No. 9).

1213. Hair Percentages.

History: 1. Repealer filed 4-20-54; effective thirtieth day thereafter (Register 54, No. 9).

1214. Hair and Fiber Mixtures.

History: 1. Repealer filed 4-20-54; effective thirtieth day thereafter (Register 54, No. 9).

1215. Color of Hair. Hair may be identified as to color, and if so described on the label, it shall be as represented in all respects.

1216. Curled Hair. When any hair set forth in Section 1211 of this regulation has been curled, the appropriate designation shall appear on the label, preceded by the word "Curled."

1217. Uncurled Hair. When any hair has not passed through a curling process, the appropriate designation shall appear on the label, preceded by the word "Uncurled."

1218. Labeling Examples.

(a) Curled gray horse tail hair.

(b) Curled hair: { Hog -----85%
 { Cattle -----15%

(c) Latex rubberized curled hair pad: { Horse mane -----35%
 { Hog -----65%

(d) Curled hair and fiber: { Hog hair -----75%
 { Sisal -----25%

(e) Curled hair pad: { Hog -----85%
 { Cattle -----15%

Article 8. Wool Regulations

(Also see Article 4)

1230. "Virgin wool" shall mean the fleece of the sheep or lamb, which has been scoured, or scoured and carbonized. It shall not be the by-product of any process of manufacture nor shall it have sustained prior use. The fibers shall be reasonably uniform in length, viz: it shall not contain a mixture of long and short fibers. It shall be free from kemp and vegetable matter.

1231. Choice Virgin Wool. (Optional for those manufacturers who want to use, and get credit for using a finer quality of wool:)

"Choice virgin wool" shall mean wool as defined above that is "¼ blood" (48s) or finer in grade, according to the United States standards for grades of wool, and shall be natural or bleached white in color. The fibers shall be reasonably uniform in length, viz: it shall not contain a mixture of long and short fibers. The term "choice virgin wool" may not be used in describing the component parts of wool blends or mixtures.

1232. "Wool Noil."

History: 1. Repealer filed 4-20-54; effective thirtieth day thereafter (Register 54, No. 9).

1233. "Wool Waste."

History: 1. Repealer filed 4-20-54; effective thirtieth day thereafter (Register 54, No. 9).

1234. Oil and Grease Limitation.

History: 1. Repealer filed 4-20-54; effective thirtieth day thereafter (Register 54, No. 9).

1235. Trash Limitation.

History: 1. Repealer filed 4-20-54; effective thirtieth day thereafter (Register 54, No. 9).

Article 9. Miscellaneous Regulations

(Also see Article 4)

1240. "Fiber" shall mean any threadlike tissue. This term shall be preceded by a designation which will disclose the true source of the fiber. Examples: "Hemp fiber," "flax tow fiber."

1241. Trash.

History: 1. Repealer filed 4-20-54; effective thirtieth day thereafter (Register 54, No. 9).

1242. Label Terms: Definition of. Label terms shown in quotation marks in the following definitions shall be the proper names for labeling purposes:

(a) "Acetate fiber" shall mean fibers composed principally of cellulose acetate and containing amounts of other fiber-forming material.

(b) "Acrylic fiber" shall mean any long chain synthetic polymer containing acrylic acid, or its derivatives, and which is formed into a filament.

(c) "Cellulose fiber" shall mean wood or other vegetable growth reduced to a fibrous state.

(d) "Coco or coir fiber" shall mean the stiff elastic fiber obtained from the outer husk of the coconut.

(e) "Corrugated fiber board" shall mean a thick coarse paper, corrugated to give it elasticity.

(f) "Excelsior" shall mean shredded threadlike wood fibers, but shall not include waste products such as shavings, sawdust, or similar waste.

(g) "Flax tow" shall mean the coarse, broken and refuse parts of flax separated from the fine fibrous parts in preparing the flax for spinning.

(h) "Glass fiber" shall mean the very fine filaments or fibers made of glass.

(i) "Jute fiber" shall mean the bast fiber derived from several species of the *Corchorus* plant.

(j) "Kapok" shall mean the mass of fibers investing the seed of the kapok tree (*Ceiba pentandra*).

(k) "Milkweed fiber" shall mean the surface fiber from the inside of the seed pods of milkweed plants (*Asclepias*).

(l) "Moss" shall mean the processed fibers of epephytic plants forming pendant tufts from trees.

(m) "Nylon" shall mean any long-chain synthetic polymeric amide which is formed into a filament.

(n) "Palm fiber" shall mean the fibrous material obtained from the leaf of a palm, palmetto, or palmyra tree.

(o) "Polyester fiber" shall mean a synthetic filament or fiber made from polyesters.

(p) "Polyurethane foam" shall mean a synthetic product made entirely of foam containing urethane chemical linkage.

(q) "Rayon" shall mean regenerated cellulose fibers containing amounts of nonregenerated cellulose fiber-forming material.

(r) "Latex foam rubber" shall mean the product made from rubber latex to which compounding ingredients are added in dissolved form and the mixture usually agitated to a foam and vulcanized in this state. It has interconnecting cells.

For labeling purposes, the following five grades are hereby established:

(1) "Latex foam rubber" shall mean first quality latex foam rubber products.

(2) "Imperfect latex foam rubber" shall mean any foam rubber product which shows major manufacturing imperfections and which the producer sells as other than first quality material.

(3) "Shredded latex foam rubber" shall mean shredded waste or trimmings from cutting sheets or shapes, shredded imperfect products or shredded overflow from molds known as flashings and similar material.

(4) "Latex foam rubber scrap" shall mean unshredded waste from production and similar unshredded material.

(5) "Remolded shredded latex foam rubber" shall mean the material described in (3) above, remolded into a predetermined stable shape.

(s) "Sponge rubber" shall mean the product made from solid rubber into which the compounding ingredients are milled or mechanically worked and a blowing agent, usually sodium bicarbonate, is added which expands during vulcanization. It has interconnecting cells. For labeling purposes, the following five grades are hereby established:

(1) "Sponge rubber" shall mean first quality sponge rubber products.

(2) "Imperfect sponge rubber" shall mean any sponge rubber product which shows major manufacturing imperfections and which the producer sells as other than first quality material.

(3) "Shredded sponge rubber" shall mean shredded waste or trimmings from cutting sheets or shapes, shredded imperfect products or shredded overflow from molds known as flashings and similar material.

(4) "Sponge rubber scrap" shall mean unshredded waste from production and similar unshredded material.

(5) "Remolded sponge rubber scrap" shall mean the material described in (3) above remolded into a predetermined stable shape.

(t) "Sisal fiber" shall mean the leaf fiber derived from the Agave sisalana and similar species of Agaves.

(u) "Tula fiber" shall mean the leaf fiber derived from the Tula Istle and similar species of Agaves.

(v) "Vinyon fiber" shall mean a synthetic filament or fiber which is vinyl resin prepared by the conjoint polymerization of vinyl chloride and vinyl acetate.

(w) Synthetic fibers or man-made fibers not specifically provided for elsewhere in this article, shall be designated on the label as "Synthetic Fiber."

History: 1. Repealer and new section filed 4-20-54; effective thirtieth day thereafter (Register 54, No. 9).

2. Amendment filed 7-31-56; effective thirtieth day thereafter (Register 56, No. 15).

Article 10. Sterilization Regulations

1250. Secondhand Articles to be Sterilized. (a) The following articles of secondhand upholstered furniture and bedding shall be sterilized before being offered or exposed for sale:

Bed davenports	Feather beds
Box springs	Gliders
Chairs (with completely upholstered back and arms)	Lounges
Chairs (adjustable for sleeping)	Mattresses
Chesterfields	Mattress pads
Comforts	Packing pads
Couches	Pillows
Cushions (other than chair pads)	Quilts
Davenports	Quilted pads
Duofolds	Settees
	Sleeping bags
	Studio couches
	Upholstered baby carriages

(b) In addition to the foregoing articles, any other secondhand upholstered furniture or bedding that could be used for sleeping or reclining purposes, or any contaminated article of upholstered furniture or bedding shall be sterilized under the provisions of this section.

(c) Red tags affixed to articles which are withheld from sale for sterilization, may be removed, after sterilization, by the bureau or by a licensed sterilizer operator only. Tags removed may be mailed by the operator to the bureau district office or held by him for inspection and destruction by the bureau representatives.

History: 1. Amendment filed 7-31-56; effective thirtieth day thereafter (Register 56, No. 15).

1251. Application. Every applicant for permission to operate any type of sterilizing equipment shall furnish with his application, detailed plans in duplicate (2 copies) of the proposed equipment. Tentative approval of the plans may be given if they are in substantial compliance with requirements.

1252. Tests and Inspections. All sterilizing facilities shall be subject to tests for proficiency of operation, and the premises, equipment, books and records kept in connection therewith shall be subject to inspection at all reasonable times.

1253. Chamber Identification. When more than one sterilization chamber is operated on any premises by the same person, each chamber shall be permanently identified by a letter, beginning with "A" and proceeding in alphabetical order.

1254. Lot. A "lot" consists of all of the articles sterilized in one chamber during one operation. Lots shall be numbered consecutively.

1255. Charts. Vacuum-time recording charts on vacuum chemical chambers and heat-time recording charts on dry heat chambers shall have noted on the face thereof the date of the operation, the chamber letter if any and the lot number used in connection with each operation.

The following is an example of the correct form of keeping charts:

<i>Date</i>	<i>Chamber</i>	<i>Lot No.</i>
2/23/50		224
2/24/50	B	225

History: 1. Amendment filed 7-31-56; effective thirtieth day thereafter (Register 56, No. 15).

1256. Records. Records shall be kept in a bound book and shall show the date of sterilization, the chamber letter if any, the lot numbers and label numbers in consecutive order, the names of the articles together with the number of unattached cushions, pillows, etc., belonging to and forming a part thereof, and the name of the person for whom sterilized.

(a) Unattached cushions, pillows, mattresses, and pads that belong to and form a part of chesterfields, davenport, studio couches and the like shall be recorded only when actually received by the sterilizer and sterilized.

(b) Mattresses and pads with duofolds or divans shall be removed from such articles and sterilized and recorded separately.

(c) The following is a sample of the correct form of keeping records:

<i>Date</i>	<i>Chamber</i>	<i>Lot No.</i>	<i>Label Nos.</i>	<i>Articles</i>	<i>Private Individual or Firm Names:</i>
2/23/50		224	19440-19444 19445 19446-19447 19448	5 mattresses 1 divan 2 pads 1 chesterfield (with three cushions)	Jim's Furniture Store Hilmar Furniture Store Ace Furniture Store Ace Furniture Store
2/24/50	B	225	19449 19450-19452 19453-19458 19459 19460 19461	VOID 3 baby buggies 6 mattresses 1 mattress 1 davenport (with 3 cushions and 2 pillows) 1 studio couch (with 1 mat- tress and 3 pillows)	VOID (Voided labels to be picked up by inspectors.) Los Angeles Furniture Co. Los Angeles Furniture Co. Mr. O. K. Smith Mrs. A. F. Wood Antique Shop

(d) Records shall be kept of:

- (1) The kind of chemicals purchased
- (2) The quantity of chemicals purchased
- (3) The date of purchase
- (4) From whom purchased.

1257. Storage of Formaldehyde. Formaldehyde shall be stored in air tight containers which shall be kept tightly closed. Storage under other conditions may permit the crystalization of the formaldehyde in the solution.

1258. Method of Sterilization. Unless otherwise specifically provided for, the chief of the bureau or any inspector may determine the method to be employed in the sterilization of any article or material subject to the provisions of the act and these regulations.

(a) **Feathers and Down** shall be sterilized only by the methods provided therefor in Section 1261 of these regulations.

(b) **Secondhand Material** which is filthy or stained or has a disagreeable odor, or is otherwise contaminated shall be sterilized by the wet method as set forth in Section 1262 of these regulations.

(c) **Baled Filling Materials** shall not be sterilized while still in the bale.

1259. Vacuum Chemical Method. (a) The vacuum chamber shall be placed under 29-inch vacuum. For a chamber having a capacity of 500 cubic feet, 3 quarts of formaldehyde 40 percent solution and 3 pounds of potassium permanganate shall be placed in a water jacketed auxiliary tank previously heated to 120 degrees F. and the formalin

vapors introduced slowly into the chamber. This will cause the vacuum to drop to about 26 inches. A dosage of carbon dioxide gas shall then be introduced into the chamber until the vacuum drops to 24 inches. One-half gallon of carbon disulphide shall then be introduced into the chamber after running it through not less than 3 feet of coil in another water jacketed auxiliary tank previously heated to 180 degrees F. This process will reduce the vacuum to about 22 inches. Another dosage of carbon dioxide shall then be passed into the chamber until the vacuum is reduced to about 20 inches. After all gases have been admitted into the chamber, the vacuum shall be dropped to a point between 15 inches and 12 inches, after which all valves shall be tightly closed and the chamber held at this vacuum for a minimum of 2 hours. At the end of this time, air shall be admitted until the gauge reads 0. The chamber shall then be pumped out to 25 inches of vacuum not less than twice to remove the fumes, and then opened. If the capacity of the vacuum chamber is more or less than 500 cubic feet, the dosages of the respective gases shall be increased or decreased proportionately.

(b) A suitable recording device approved by the bureau shall be installed and maintained to record on a chart the time and vacuum factors prevailing during the entire operation.

1260. Dry Heat Method. (a) In sterilizing by the dry heat method a temperature of 230 degrees F. shall be maintained in all parts of an approved chamber for such period of time as may be necessary for sterilization, which shall in no case be less than one hour and 15 minutes, and thirty-two ounces of a 40 percent solution of formaldehyde shall be vaporized and liberated within the chamber for every 1,000 cubic feet of chamber and circulating ducts displacement. The formaldehyde solution shall be introduced into the chamber from an approved outside receptacle after the chamber has been sealed and immediately before the above-described temperature is reached and shall be vaporized in an approved receptacle within the chamber. All chambers shall be equipped with racks or devices and the articles to be sterilized shall be so placed therein that complete circulation of heat and gases around every article being sterilized shall be attained. All chambers shall be insulated sufficiently to insure maintenance of temperature and shall be tightly sealed to prevent any leakage of gases. A thermostat shall be connected with the heating device to provide and maintain a reasonably uniform temperature at 230 degrees F. \pm 5 degrees.

(b) A suitable recording device approved by the bureau shall be installed and maintained to record on a chart the time and temperature prevailing during the entire operation.

(c) Each chamber in which the dry heat method of sterilization is performed shall be equipped with a fresh air inlet and an exhaust fan

and duct discharging to the outside air. To clear the chamber of dangerous gases and fumes upon completion of the sterilization cycle, the fresh air inlet to the chamber shall be opened and the exhaust fan operated for 30 minutes or until all dangerous fumes have been exhausted through the discharge duct. The sterilized articles may then be removed from the chamber.

- History:* 1. Amendment filed 7-31-56; effective thirtieth day thereafter (Register 56, No. 15).
2. Amendment filed 5-1-59; designated effective June 1, 1959 (Register 59, No. 7).

1261. Feather and Down Method. In sterilizing secondhand feathers and down, the feathers and down of each customer shall be separately treated and not combined with feathers and down from other sources.

(a) In sterilizing feather and down filled pillows or other articles, the contents shall be removed from ticks and covers or containers, and the feathers and down sterilized loose or they may be placed in coarse mesh bags, loosely filled, and then sterilized.

(b) Ticking must be dry-cleaned or laundered in water of a temperature of not less than 212 degrees F. or new ticking shall be used.

(c) All feathers and down, loose or in mesh bags, shall be placed in a closed receptacle and subjected to streaming live steam out of jets not less than one-quarter inch in diameter. One jet shall be installed in the receptacle for every 50 cubic feet of displacement or fraction thereof.

(1) When feathers and down are sterilized in mesh bags, the material shall be inserted in the bags sufficiently loose to permit the steam and heat to penetrate to all of the material.

(2) Bags shall be inserted in the receptacle so that they can tumble freely and not restrict the penetration of the steam and heat into the feathers and down.

(d) The streaming steam shall be injected while the mesh bags or loose feathers and down are in motion to bring about complete sterilization, after which the steam shall be forced out of the chamber and the feathers and down subjected to sufficient heat for the period of time necessary to thoroughly dry them.

(e) The Muroza or kindred types of feather and/or down sterilizers may be used, provided the following requirements are complied with:

(1) A steam pressure of 100 pounds shall first be developed.

(2) The sterilizing chamber shall then be heated to 290 degrees F.

(3) The feathers and/or down shall then be drawn into the sterilizing chamber and subjected to streaming live steam for a period of at least one minute.

(4) The feathers and/or down shall then be subjected to heat at not less than 290 degrees F. for a period of at least 7½ minutes.

1262. Wet Method. In sterilizing by the wet method, the material to be sterilized shall be immersed in water, maintained at a temperature of 212 degrees F. for at least 10 minutes with proper arrangements for agitation of the material while in the vat, after which any portion of the material shall pass through a hole 1½ inches in diameter.

1263. Steam Under Pressure Method. In sterilizing by this method, the material to be sterilized shall be subjected to steam under pressure for a period of 30 minutes, the pressure of the steam to be a minimum of 15 pounds per square inch, the temperature of the steam to be a minimum of 248 degrees F. A properly checked steam pressure gauge and a thermometer, both visible from the outside of the chamber, shall be provided.

1264. Other Methods of Sterilization. Any method of sterilization not provided for herein shall be submitted to the bureau for test and shall have the approval of the State Department of Public Health before adoption or use.

1265. Methyl Bromide. Tests made by the bureau in vacuum chemical sterilizing chambers approved by the bureau, indicate that methyl bromide, when used as a fumigant only, will effect a satisfactory "kill."

Persons have been poisoned when exposed to concentrations of more than 32 parts per million of methyl bromide over an extended period of time. It is considered toxic and must be used carefully in well ventilated premises. Its use in a sterilizing plant is wholly the responsibility of the user.

Article 11. False or Misleading Advertising

1300. Application of Article. For the purposes of Sections 19150 and 19210 of the act, false or misleading advertising includes but is not limited to advertising, within the meaning of Section 17500 of the Business and Professions Code, which violates any provision of this article.

NOTE: Authority cited: Section 19034, Business and Professions Code. Additional authority cited for Article 11 (Sections 1300 through 1318): Section 19089, Business and Professions Code.

History: 1. New section filed 12-8-52; effective thirtieth day thereafter (Register 30, No. 5).

2. Repealer of Article 11 and new Article 11 (Sections 1300 through 1318) filed 5-1-59; designated effective June 1, 1959 (Register 59, No. 7).

1301. Former Price, Defined. The term "former price" as used in Section 17501 of the Business and Professions Code and in this article includes but is not limited to the following words and phrases

when used in connection with advertised prices: "formerly—", "regularly—", "usually—", "originally—", "reduced from -----", "was ----- now -----", "-----% off".

1302. Former Price of Same Article. (a) No price, whether expressed in words, phrases, price figures, symbols, fractions, percentages, or otherwise, shall be advertised as the former price of an article unless such advertised former price applies to the specific article advertised, as distinguished from similar or comparable articles, and, except as provided in subdivision (b) of this section, such advertised former price was, (1) within the three months immediately preceding the publication of the advertisement, the prevailing market price of the article, as defined in Section 17501 of the Business and Professions Code, in the locality wherein the advertisement is published, or (2) the date when such advertised former price did prevail is clearly, exactly, and conspicuously stated in the advertisement.

(b) Subdivision (a) of this section shall not be considered as prohibiting an advertisement of the advertiser's own former price of an article if (1) such advertised former price was in fact and within the three months immediately preceding the publication of the advertisement the advertiser's price for the article in the locality in which the advertisement is published, or (2) the date when such advertised former price did prevail is clearly, exactly, and conspicuously stated in the advertisement, and (3) if the fact that the advertised former price is the advertiser's own former price is clearly and conspicuously stated in the advertisement.

1303. Fictitious Markup. No fictitious markup shall be used to provide the basis for an advertised former price.

1304. Comparison With Prices of Other Merchandise. Nothing in this article shall be considered as prohibiting an advertiser from comparing his selling price for an article with the selling price of similar and comparable merchandise if: (1) the grade and quality of the merchandise with which the advertised article is compared are at least equal to those of the advertised article in all material respects, (2) the advertisement clearly and fairly discloses that the price comparison is between the advertised article and similar and comparable merchandise, rather than between the advertised price and a former price of the advertised article, (3) the advertisement is not false or misleading in respect to the time at which and the area in which the comparative price prevailed, and (4) the advertisement is not false or misleading in any other respect.

1305. Special Sale. No advertisement shall represent that because of an unusual event in the course of business or an unusual manner of doing business or for any other reason an article is offered for sale at a saving in price unless such advertisement is in all respects true and not misleading and unless, if the advertisement refers to a comparative price as described in Sections 1302 and 1304 of these

regulations, it complies with the provisions of whichever of such sections is applicable, or both of them, as the case may be.

1306. Purchase of Additional Merchandise. No advertisement shall represent that an article is offered for sale at a saving when the offer is conditioned upon the purchase of additional merchandise unless: (1) the terms and conditions imposed are clearly and correctly disclosed in immediate conjunction with the offer, (2) if the advertisement refers to a comparative price as described in Sections 1302 and 1304 of these regulations, it complies with the provisions of whichever of such sections is applicable, or both of them, as the case may be, and (3) the price charged for the additional merchandise required to be purchased is the price charged for such merchandise by the advertiser in the recent and regular course of his business, or if not, such price is not artificially fixed in order to permit the advertiser to represent an apparent saving.

1307. Pre-ticketing. No article shall be advertised by means of a "pre-ticketed" price, whether such price is used alone or in conjunction with descriptive terminology and whether such price appears on tags or labels affixed to the article, or in material such as display cards which are used with the article at the point of sale, or otherwise. A "pre-ticketed price", as used in this section, is a price which is in excess of the price at which the advertiser intends to sell or offer for sale the article to which it refers and which is artificially fixed in order to permit the advertiser to represent an apparent saving or price reduction.

1308. Imperfects, Irregulars or Seconds. No article which is imperfect, irregular, or a second shall be advertised in any manner, whether by means of comparative prices or otherwise, which represents or implies that such article is free from defects or is of the same grade or quality of the article as usually and customarily offered for sale in the normal course of business.

1309. Factory Outlet. No advertisement shall represent or imply, by the use of the terms "factory outlet," "factory to you," "factory to consumer," "manufacturer to you," or any term of similar import, that an article is offered for sale by the manufacturer at a saving from the usual and customary retail price of the article in the locality in which the advertisement is published, unless the person so advertising is licensed under the act as a manufacturer and the representation of savings is true, and except in connection with the sale of articles by the manufacturer thereof from his manufacturing premises.

1310. Custom Made. No article shall be advertised by means of the terms "custom made," "custom-built," "custom-grade," "made-to-order," or any term of similar import, unless the article has been or will be made to the order and specifications of a particular ultimate user. An article does not meet the requirements of this section merely because the customer has a choice of coverings.

1311. Labor Free. No advertisement shall represent or imply by means of the term "labor free" or any term of similar import that services with respect to an article will be performed without charge when a charge is made for such services in any manner whatever, including but not limited to an increase in the charge for the article or any material used therein.

1312. Liquidation. No advertisement shall represent or imply, by means of the term "going out of business," "selling out," "closing out," "liquidating," or any term of similar import, that the advertiser is going out of business, or is disposing of all or a portion of a stock of merchandise, unless such representation is true and is not in any respect misleading as to the advertiser's discontinuing business or as to the types and quantity of merchandise intended to be included, or otherwise. A mere change of business location, business name, or type of business entity does not constitute going out of business within the meaning of this section.

1313. Health Properties. No advertising shall contain any false or misleading representation concerning the special qualities of an article to prevent defects in posture, develop or encourage good posture, in any manner materially affect posture, or materially affect health generally.

1314. Recommendations. No advertising shall contain any false or misleading representation concerning the sponsorship, approval, or recommendation of an article by any person or organization or concerning the professional qualification or status or other special competence of such person or organization.

1315. Guarantees. No advertising shall contain any false or misleading representation concerning the nature, extent, duration, terms, or cost of a guarantee of an article or of any services performed under a guarantee.

1316. Secondhand Merchandise. No article which is second-hand, as defined in the act, shall be advertised in any manner which represents or implies that the article is new.

1317. Misleading, Defined. In determining whether advertising is false or misleading it shall be considered in its entirety and as it would be read by the persons to whom it is designed to appeal. It shall be considered to be misleading if it tends to deceive the public or impose upon credulous or ignorant persons.

1318. Knowledge. Nothing in this article shall be considered as applying to advertising which was not known, or should not in the exercise of reasonable care have been known, to be untrue or misleading.

Federal Trade Commission

TRADE PRACTICE RULES

For The

**BEDDING MANUFACTURING AND
WHOLESALE DISTRIBUTING INDUSTRY**

**As Promulgated November 14, 1950
Amended January 14, 1955 to include Rule 20**

FEDERAL TRADE COMMISSION

James M. Mead, Chairman,
William A. Ayres,
Lowell B. Mason,
John Carson,
Stephen J. Spingarn.
D. C. Daniel, Secretary

**FEDERAL TRADE COMMISSION
Washington**

Trade Practice Rules

For The

**BEDDING MANUFACTURING AND
WHOLESALE DISTRIBUTING INDUSTRY**

As Promulgated November 14, 1950

STATEMENT BY THE COMMISSION:

Trade practice rules for the Bedding Manufacturing and Wholesale Distributing Industry, as hereinafter set forth, are promulgated by the Federal Trade Commission under the trade practice conference procedure.

Members of the industry are the persons, firms, corporations and organizations engaged in manufacturing and selling in commerce mattresses (including baby crib mattresses), bed pads, bedsprings, box springs, metal cots, metal beds, studio couches, sofa beds, or similar sleeping equipment; also, all persons, firms, corporations and organizations engaged in selling in commerce as wholesalers or jobbers any of the products or equipment mentioned. Sales at wholesale of such products and equipment are estimated to approximate \$350,000,000 per annum.

The rules are directed to the elimination and prevention of unfair trade practices to the end that the industry, the trade, and the public may be protected from the harmful effects of such competitive methods, and of providing guidance and assistance to business in the maintenance of free and fair competition.

Proceedings leading to the establishment of rules were instituted upon application made on behalf of industry members. A general industry conference was held in Chicago, Illinois, at which proposals for rules were submitted for the consideration of the Commission. Thereafter, a draft of proposed rules were made available by the Commission and public notice given whereby all interested or affected parties were afforded opportunity to present their views, suggestions, or objections at a public hearing held in Washington, D. C.

Following such hearing, and upon consideration of the entire matter, final action was taken by the Commission whereby it approved and received, respectively, the trade practice rules hereinafter appearing in Group I and Group II.

Such rules become operative thirty (30) days from the date of promulgation.

THE RULES

These rules promulgated by the Commission are designed to foster and promote the maintenance of fair competitive conditions in the interest of protecting industry, trade, and the public. It is to this end, and to the exclusion of any act or practice which suppresses competition, restrains trade, fixes or controls price through combination or agreement, or which otherwise injures, destroys, or prevents competition, that the rules are to be applied.

DEFINITION

Bedding Products: As used in these rules the term "bedding products" shall embrace mattresses of all kinds (including baby crib mattresses), bed pads, bedsprings, box springs, metal beds, metal cots, studio couches, sofa beds, and similar sleeping equipment.

GROUP I

The unfair trade practices embraced in the Group I rules herein are considered to be unfair methods of competition, unfair or deceptive acts or practices, or other illegal practices, prohibited under laws administered by the Federal Trade Commission; and appropriate proceedings in the public interest will be taken by the Commission to prevent the use, by any person, partnership, corporation, or other organization subject to its jurisdiction, of such unlawful practices in commerce.

RULE 1 - DECEPTION AS TO USED MATERIALS AND PARTS.

(a) It is an unfair trade practice to manufacture for sale, sell, offer for sale, advertise, or otherwise represent, directly or indirectly, any bedding product as being new when such product is not in fact new and is not composed wholly of unused materials and parts.

(b) In the marketing of bedding products containing, in whole or in part, second-hand materials or parts, it is an unfair trade practice to fail or refuse to make full and nondeceptive disclosure, by tag or label attached to the products and in all advertising and trade promotional literature, of the fact that such products are not new but consist, in whole or in part, of second-hand materials or parts, such failure or refusal to disclose having the capacity and tendency or effect of misleading or deceiving purchasers, prospective purchasers, or the consuming public.

(c) Nothing in this rule shall be construed as permitting the sale or distribution of bedding products which contain any unsanitary material.

RULE 2 - OTHER DECEPTION THROUGH MISREPRESENTATION OR CONCEALMENT.

(a) It is an unfair trade practice for any industry member to sell, offer for sale, or distribute any mattress or other bedding product, or to promote the sale or distribution thereof, by any method, or under any

circumstance or condition, which has the capacity and tendency or effect of misleading or deceiving purchasers, prospective purchasers, or the consuming public as to the material content, composition, construction, manufacture, design, utility, durability, resilience, sag resistance, or health or therapeutic properties, of any mattress or other bedding product, or which is false, misleading, or deceptive in any other material respect.

(b) The provisions of this rule shall apply to advertising representations, labeling, or selling promotions which are misleading or deceptive to the purchasing or consuming public by reason of the concealment or nondisclosure of a material fact, as well as to representations, advertisements, or sales promotional methods which are false, misleading, or deceptive for any other reason.

(c) The inhibitions of this rule shall apply specifically to the deceptive concealment or nondisclosure of the kind or kinds of materials used in the filling and cover of mattresses or other bedding products.

(d) Nothing in this rule shall be construed as relieving any member of the industry of the necessity of complying with other applicable provisions of laws or regulations relating to mattresses or other bedding products, including fiber content disclosure or identification.

RULE 3 - MISUSE OF THE TERMS "FELT," "FELTING," AND "FELTED."

It is an unfair trade practice to use the term "Felt," "Felting," or "Felted" as descriptive of the filling of a mattress or other bedding product unless such filling is a compact layer of fibers which have been specially processed and interlaced to form a mat of substantially uniform thickness suitable for use as a filling for a mattress or other bedding product; provided, that when the filling is of other than cotton or wool fibers, the term shall be immediately accompanied by the fiber identification (as, for example, "Felted Kapok," "Sisal Felting," etc.)

RULE 4 - MISUSE OF THE TERMS "LATEX," "FOAM RUBBER," "LATEX FOAM RUBBER," ETC.

(a) It is an unfair trade practice to use the term "Latex," "Foam Rubber," "Latex Foam Rubber," or any term of similar import, as descriptive of a bedding product or of any filling thereof, under any circumstance or condition having the capacity and tendency or effect of misleading or deceiving purchasers, prospective purchasers, or the consuming public.

(b) Under the foregoing paragraph (a), the terms "Latex," "Foam Rubber," "Latex Foam Rubber," or other terms of similar import, shall not be used to describe a bedding product unless the filling material thereof is of latex which has been foamed and molded into one homogeneous pad; provided, however, that when the filling of any bedding product is in part a homogeneous layer of latex which is of substantial thickness, such terms may be used as descriptive thereof if in conjunction

therewith nondeceptive disclosure is made of the fact that only a part of such filling consists of latex; and provided further, that when the filling is composed, in whole or in part, of latex which has been shredded flaked, or ground, full and nondeceptive disclosure is made of such fact, irrespective of whether the pieces or shreds are in loose form or are held together by glue or other adhesive agent.

RULE 5 - MISUSE OF TERMS "Rx", "POSTURE," "POSTURIZED," "POSTURITE," "CUSTOM BUILT," "ORTHOPEDIC," "GERMPROOF," AND "WATERPROOF."

In the sale, offering for sale, or distribution of bedding products, it is an unfair trade practice:

(a) To use the term "Rx", or any term of similar import, as descriptive of any bedding product which has not been specially designed and constructed to meet the requirements of a prescription by a member of the medical profession for the use of a particular individual;

(b) To use the term "Posture," "Posturized," or "Posturite," or any term of similar import, as descriptive of any bedding product which has not been specially designed and constructed to afford correct posture during sleep, or which, although so designed and constructed for such purpose, is not in fact capable of affording correct posture during sleep, or which is not capable of preventing or correcting, or of contributing materially to the prevention or correction of, posture defects;

(c) To use the term "Custom Built," or any term of similar import, as descriptive of any bedding-product which has not in fact been made in accordance with specifications furnished prior to manufacture by the individual purchaser and user of such product;

(d) To use the term "Orthopedic," or any term of similar import, as descriptive of any bedding product unless such product has been specially designed and constructed so as to prevent, correct, or afford substantial relief with respect to a specific body deformity or deformities and accords with recommendations of orthopedic authorities respecting design and construction for such deformity or deformities; provided, that the term shall in all cases be accompanied by specification of the kind or kinds of body deformities for which the product has been so designed and constructed;

(e) To use the term "Germproof," or any term of similar import, as descriptive of any bedding product, unless such product is, and will remain throughout its expected life, entirely free of germs; provided, that nothing herein shall be construed as prohibiting a representation that a bedding product is sterile if the product at the time of consumer purchase is completely free of living germs and is packaged in such manner as to assure maintenance of its sterile condition until after delivery of the product to the ultimate consumer-purchaser; and provided further, that the representation is not

supplemented or made in any manner which implies that the sterile condition will continue after removal of the product from its packaging and regardless of its use and exposure;

(f) To use the term "Waterproof," or any term of similar import, as descriptive of any bedding product the outer covering of which is not such as to be impervious to the entry of water or moisture throughout the life of such bedding product; or

(g) To cause any bedding product to be represented, directly or by implication, as being a product which is used in any hospital or clinic or is recommended by members of the medical profession or by a medical organization when such is not the fact, or as having been designed or made so as to afford special health, orthopedic, or therapeutic values, when such is not the fact.

RULE 6 - DECEPTIVE PRICING.

(a) It is an unfair trade practice for any member of the industry to represent, in advertising or otherwise, that the price of any industry product has been reduced from what is in fact a fictitious price, or that such price is a reduced or a special price when it is in fact the regular selling price of such product, or that the regular price thereof is higher when such is not the fact, or otherwise to falsely or deceptively represent the past or current price of an industry product.

(b) It is an unfair trade practice for any member of the industry, directly or indirectly, to use or to supply to dealers, or to aid or assist in the use of, price tags, labels, or similar devices which are false or fictitious, or which such member has reason to believe are intended to be used or will be used by dealers or salesmen for the purpose of misleading or deceiving the purchasing or consuming public in regard to price, or in any other material respect.

(c) It is an unfair trade practice for any member of the industry to falsely represent that the price of any bedding product is a "wholesale price" or a "factory price."

RULE 7 - GUARANTEES, WARRANTIES, ETC.

(a) It is an unfair trade practice to use, or cause to be used, any guarantee or warranty which is false, misleading, deceptive, or unfair to the purchasing or consuming public, whether in respect to the quality, construction, serviceability, wearing quality, method of manufacture, or in any other respect.

(b) The foregoing inhibitions of this rule are to be considered as applicable with respect to any guarantee or warranty in which the terms and conditions relating to the obligation of the guarantor or warrantor are deceptively minimized or stated, or in which the obligations of the guarantor or warrantor are impractical of fulfillment; and as also applicable to the use of any guarantee or warranty in respect of which the guarantor or warrantor fails or refuses to scrupulously observe his obligations thereunder.

(c) It is also an unfair trade practice to represent any bedding product as being "guaranteed" unless the nature and extent of the undertaking, and the identity of the guarantor, are conjunctively disclosed.

RULE 8 - DECEPTION THROUGH FAILURE TO DIFFERENTIATE BETWEEN WHOLESALE AND RETAIL TRANSACTIONS.

Where bedding products are sold at wholesale and at retail in the same establishment of a member of the industry, the commingling of the two types of business in such a manner as to have the capacity and tendency or effect of misleading or deceiving purchasers or prospective purchasers is an unfair trade practice.

RULE 9 - MISUSE OF THE WORD "FREE."

Use of the word "free," or words of similar import, when employed to describe any product which is not in truth and in fact a gift or gratuity, or which is not given to the recipient thereof without requiring the purchase of other merchandise, or requiring the performance of some service inuring, directly or indirectly, to the benefit of the industry member using such term, is an unfair trade practice.

RULE 10 - FALSE INVOICING.

Withholding from or inserting in invoices or sales tickets any statements or information by reason of which omission or insertion a false record is made, wholly or in part, of the transactions represented on the face of such invoices or sales tickets, with the effect of thereby misleading or deceiving purchasers or prospective purchasers, is an unfair trade practice.

RULE 11 - COMMERCIAL BRIBERY.

It is an unfair trade practice for a member of the industry, directly or indirectly, to give, or offer to give, or permit or cause to be given, money or anything of value to agents, employees, or representatives of customers or prospective customers, or to agents, employees, or representatives of competitors' customers or prospective customers, without the knowledge of their employers or principals, as an inducement to influence their employers or principals to purchase or contract to purchase bedding products manufactured or sold by such industry member or the maker of such gift or offer, or to influence such employers or principals to refrain from dealing in the products of competitors or from dealing or contracting to deal with competitors.

RULE 12 - DEFAMATION OF COMPETITORS OR DISPARAGEMENT OF THEIR PRODUCTS.

The defamation of competitors by falsely imputing to them dishonorable conduct, inability to perform contracts, questionable credit standing, or by other false representations, or the false disparagement of the products of competitors in any respect, or of their business methods, selling prices, values, credit terms, policies, or services, is an unfair trade practice.

RULE 13 - USE OF LOTTERY SCHEMES.

The offering or giving of prizes, premiums, or gifts in connection with the sale of industry products, or as an inducement thereto, by any scheme which involves lottery or game of chance, is an unfair trade practice.

RULE 14 - MISREPRESENTATION AS TO CHARACTER OF BUSINESS.

It is an unfair trade practice for any member of the industry, in the course of or in connection with the distribution or sale of bedding products, to misrepresent the character, extent, or type of his business.

RULE 15 - PROHIBITED DISCRIMINATION.

I. Prohibited Discriminatory Prices, or Rebates, Refunds, Discounts, Credits, Etc., Which Effect Unlawful Price Discrimination. It is an unfair trade practice for any member of the industry engaged in commerce,^{1/} in the course of such commerce, to grant or allow, secretly or openly, directly or indirectly, any rebate, refund, discount, credit, or other form of price differential, where such rebate, refund, discount, credit, or other form of price differential, effects a discrimination in price between different purchasers of goods of like grade and quality, where either or any of the purchases involved therein are in commerce,^{1/} and where the effect thereof may be substantially to lessen competition or tend to create a monopoly in any line of commerce,^{1/} or to injure, destroy, or prevent competition with any person who either grants or knowingly receives the benefit of such discrimination, or with customers of either of them: Provided, however -

(a) That the goods involved in any such transaction are sold for use, consumption, or resale within any place under the jurisdiction of the United States;

(b) That nothing herein contained shall prevent differentials which make only due allowance for differences in the cost of manufacture, sale, or delivery resulting from the differing methods or quantities in which such commodities are to such purchasers sold or delivered;

(c) That nothing herein contained shall prevent persons engaged in selling goods, wares, or merchandise in commerce ^{1/} from selecting their own customers in bona fide transactions and not in restraint of trade;

(d) That nothing herein contained shall prevent price changes from time to time where made in response to changing conditions affecting the market for or the marketability of the goods concerned, such as but not limited to obsolescence of seasonal goods, distress sales under court process, or sales in good faith in discontinuance of business in the goods concerned.

^{1/}As here used, the word "commerce" means trade or commerce among the several States and Territories, including the District of Columbia, in accordance with the full scope of the definition of such term found in Section 1 of the Clayton Act (38 Stat. 739; 15 USCA, Sec. 12).

II. Prohibited Brokerage and Commissions. It is an unfair trade practice for any member of the industry engaged in commerce,^{1/} in the course of such commerce, to pay or grant, or to receive or accept, anything of value as a commission, brokerage, or other compensation, or any allowance or discount in lieu thereof, except for services rendered in connection with the sale or purchase of goods, wares, or merchandise, either to the other party to such transaction or to an agent, representative, or other intermediary therein where such intermediary is acting in fact for or in behalf, or is subject to the direct or indirect control, of any party to such transaction other than the person by whom such compensation is so granted or paid.

III. Prohibited Advertising or Promotional Allowances, Etc. It is an unfair trade practice for any member of the industry engaged in commerce ^{1/} to pay or contract for the payment of advertising or promotional allowances or any other thing of value to or for the benefit of a customer of such member in the course of such commerce as compensation or in consideration for any services or facilities furnished by or through such customer in connection with the processing, handling, sale, or offering for sale of any products or commodities manufactured, sold, or offered for sale by such member, unless such payment or consideration is available on proportionally equal terms to all other customers competing in the distribution of such products or commodities.

IV. Prohibited Discriminatory Services or Facilities. It is an unfair trade practice for any member of the industry engaged in commerce ^{1/} to discriminate in favor of one purchaser against another purchaser or purchasers of a commodity bought for resale, with or without processing, by contracting to furnish or furnishing, or by contributing to the furnishing of, any services or facilities connected with the processing, handling, sale, or offering for sale of such commodity so purchased upon terms not accorded to all competing purchasers on proportionally equal terms.

V. Inducing or Receiving an Illegal Discrimination in Price. It is an unfair trade practice for any member of the industry engaged in commerce,^{1/} in the course of such commerce, knowingly to induce or receive a discrimination in price which is prohibited by the foregoing provisions of this Rule 15.

VI. Exemptions. The inhibitions of this Rule 15 shall not apply to purchases of their supplies for their own use by schools, colleges, universities, public libraries, churches, hospitals, and charitable institutions not operated for profit.

VII. Purchases by U. S. Government -- Applicability of Robinson-Patman Antidiscrimination Act to Same. In an opinion submitted to the Secretary of War under date of December 28, 1936, the U. S. Attorney General advised that the Robinson-Patman Antidiscrimination Act "is not applicable to Government contracts for supplies." (39 Opinions, Attorney General 539.)

^{1/}See footnote, page 7.

RULE 16 - DISCRIMINATORY RETURNS.

It is an unfair trade practice for any member of the industry engaged in commerce ^{1/} to discriminate in favor of one customer-purchaser against another customer-purchaser of bedding products, bought from such member of the industry for resale, by contracting to furnish, or furnishing in connection therewith, upon terms not accorded to all competing customer-purchasers on proportionately equal terms, the service or facility whereby such favored purchaser is accorded the privilege of returning bedding products so purchased and receiving therefor credit or refund of purchase price: Provided, however, that nothing in any of the rules herein shall be construed as prohibiting the return of merchandise by purchaser, for credit or refund of purchase price, when and because such merchandise has not been properly tagged, labeled, or marked by the seller in accordance with the requirements of these rules, or has been otherwise falsely or deceptively tagged, labeled, or represented, or when and because such merchandise is defective in material, workmanship, or in any other respect is contrary to guarantee, warranty, or purchase contract.

RULE 17 - COMBINATION OR COERCION TO FIX PRICES, SUPPRESS COMPETITION, OR RESTRAIN TRADE.

It is an unfair trade practice for a member of the industry:

- (a) To use, directly or indirectly, any form of threat, intimidation, or coercion against any member of the industry or other person to unlawfully fix, maintain, or enhance prices, suppress competition, or restrain trade; or
- (b) To enter into or take part in, directly or indirectly, any agreement, understanding, combination, conspiracy, or concerted action with one or more members of the industry, or with one or more persons, to unlawfully fix, maintain, or enhance prices, suppress competition, or restrain trade.

RULE 18 - IMITATION OR SIMULATION OF TRADE-MARKS, TRADE NAMES, ETC.

The imitation or simulation of the trade-marks, trade names, brands, or labels of competitors, with the capacity and tendency or effect of misleading or deceiving purchasers, prospective purchasers, or the consuming public, is an unfair trade practice.

RULE 19 - AIDING OR ABETTING USE OF UNFAIR TRADE PRACTICES.

It is an unfair trade practice for any person, firm, or corporation to aid, abet, coerce, or induce another, directly or indirectly, to use or promote the use of any unfair trade practice specified in these rules.

^{1/}See footnote, page 7.

GROUP II

Compliance with trade practice provisions embraced in Group II rules is considered to be conducive to sound business methods and is to be encouraged and promoted individually or through voluntary cooperation exercised in accordance with existing law. Nonobservance of such rules does not per se constitute violation of law. Where, however, the practice of not complying with any such Group II rules is followed in such manner as to result in unfair methods of competition, or unfair or deceptive acts or practices, corrective proceedings may be instituted by the Commission as in the case of violation of Group I rules.

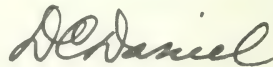
RULE A - PRODUCTS TO BE MANUFACTURED, REPAIRED, RENOVATED, AND SOLD UNDER SANITARY CONDITIONS.

The industry condemns the practice of manufacturing, repairing, renovating, or selling bedding products under unsanitary conditions.

A Committee on Trade Practices is hereby authorized to cooperate with the Federal Trade Commission and to perform such acts as may be legal and proper in the furtherance of fair competitive practices and in promoting the effectiveness of the rules.

Promulgated by the Federal Trade Commission November 14, 1950.

FTC LL 3109



D. C. Daniel,
Secretary.

For Release in MORNING NEWSPAPERS of Friday, January 14, 1955.

FEDERAL TRADE COMMISSION
Washington

AMENDMENT TO TRADE PRACTICE RULES
FOR THE BEDDING MANUFACTURING AND
WHOLESALE DISTRIBUTING INDUSTRY

As Promulgated January 14, 1955

STATEMENT BY THE COMMISSION:

An amendment to the trade practice rules issued November 14, 1950, for the Bedding Manufacturing and Wholesale Distributing Industry, as hereinafter set forth, is promulgated by the Federal Trade Commission under the trade practice conference procedure.

The rules for the industry, as amended by the addition of Rule 20 on "Push Money," are directed to the elimination and prevention of unfair trade practices to the end that the industry, the trade, and the public may be protected from the harmful effects of such competitive methods, and of providing guidance and assistance to business in the maintenance of free and fair competition.

Members of the industry are the persons, firms, corporations, and organizations engaged in manufacturing and selling in commerce mattresses (including baby crib mattresses), bed pads, bedsprings, box springs, metal cots, metal beds, studio couches, sofa beds, or similar sleeping equipment; also, all persons, firms, corporations and organizations engaged in selling in commerce as wholesalers or jobbers any of the products or equipment mentioned.

Proceedings leading to the addition of this rule on "Push Money" were instituted upon application from the National Association of Bedding Manufacturers, made in behalf of industry members. A public hearing was held in Washington, D. C., at which the proposed rule was submitted for discussion by all interested or affected parties. Following such hearing, final action was taken by the Commission whereby it approved Rule 20 on "Push Money" as hereinafter appearing.

Such rule becomes operative thirty (30) days from the date of promulgation.

RULE 20 - PUSH MONEY.

It is an unfair trade practice for any industry member to pay or contract to pay anything of value to a salesperson employed by a customer of the industry member, as compensation for, or as an inducement to obtain, special or greater effort or service on the part of the salesperson in promoting the resale of products supplied by the industry member to the customer -

(a) When the agreement or understanding under which the payment or payments are made or are to be made is without the knowledge and consent of the salesperson's employer; or

(b) When the terms and conditions of the agreement or understanding are such that any benefit to the salesperson or customer is dependent on lottery or chance; or

(c) When any provision of the agreement or understanding requires or contemplates practices or a course of conduct unduly and intentionally hampering sales of products of competitors of an industry member; or

(d) When, because of the terms and conditions of the understanding or agreement, including its duration, or the attendant circumstances, the effect may be to substantially lessen competition or tend to create a monopoly; or

(e) When similar payments are not accorded to salespersons of competing customers on proportionally equal terms in compliance with Sec. 2(d) and (e) of the Clayton Act, as amended.

(Note: Payments made by an industry member to a salesperson of a customer under any agreement or understanding that all or any part of such payments is to be transferred by the salesperson to the customer, or is to result in a corresponding decrease in the salesperson's salary, are not to be considered within the purview of this Rule 20, but are to be considered as subject to the requirements and provisions of Sec. 2(a) of the Clayton Act, as amended.)

Promulgated by the Federal Trade Commission January 14, 1955.

A handwritten signature in dark ink, appearing to read "Robert M. Parrish". The signature is fluid and cursive, with the first name "Robert" being more prominent and the last name "Parrish" following in a similar style.

Robert M. Parrish,
Secretary.

Federal Trade Commission

TRADE PRACTICE RULES

For The

**FEATHER AND DOWN
PRODUCTS INDUSTRY**

As Promulgated April 26, 1951

FEDERAL TRADE COMMISSION

James M. Mead, Chairman,
William A. Ayres,
Lowell B. Mason,
John Carson,
Stephen J. Spingarn.
D. C. Daniel, Secretary

FEDERAL TRADE COMMISSION
Washington

On May 29, 1959 (see page 4327 of the Federal Register publication of that date), the Commission amended Rule 12, entitled "False Invoicing," of the trade practice rules promulgated for the Feather and Down Products Industry on April 26, 1951. The amendment consisted of deletion of the word "dealers" and the comma immediately following such word. So amended the rule reads as follows:

RULE 12 - FALSE INVOICING. Withholding from or inserting in invoices any statements or information by reason of which omission or insertion a false or misleading record is made, wholly or in part, of the transactions represented on the face of such invoices, with the purpose or effect of thereby misleading or deceiving purchasers, prospective purchasers, or the consuming public, is an unfair trade practice.

FEDERAL TRADE COMMISSION
Washington

TRADE PRACTICE RULES

For The

FEATHER AND DOWN PRODUCTS INDUSTRY

As Promulgated April 26, 1951

STATEMENT BY THE COMMISSION:

Trade practice rules for the Feather and Down Products Industry, as hereinafter set forth, are promulgated by the Federal Trade Commission under the trade practice conference procedure. Such rules constitute a revision and supplementation of the rules promulgated by the Commission for the Feather and Down Industry on July 18, 1932, and supersede the 1932 rules.

Members of the industry are the persons, firms, corporations and organizations engaged in the manufacture, processing, distribution and sale in commerce of pillows, cushions, comforters, sleeping bags, and similar products, which are wholly or partially filled with feathers or down.

The rules are directed to the elimination and prevention of various unfair trade practices and are issued in the interest of protecting the purchasing public and maintaining fair competitive conditions in the industry. To this end the rules provide a helpful guide to all concerned.

The industry affected has fully cooperated with the Commission in the formulation and establishment of the rules. During the course of the proceedings a general industry conference was held under Commission auspices in New York City, at which proposals for rules were submitted for the consideration of the Commission. Thereafter, a draft of proposed rules was released by the Commission and public hearing thereon held in Washington, D. C., at which all interested or affected parties were afforded opportunity to present their views, suggestions, or objections regarding the rules.

Following such hearing, and upon consideration of the entire matter, final action was taken by the Commission whereby it approved and received, respectively, the trade practice rules hereinafter appearing in Group I and Group II.

Such rules become operative thirty (30) days from the date of promulgation.

THE RULES

These rules promulgated by the Commission are designed to foster and promote the maintenance of fair competitive conditions in the interest of protecting industry, trade, and the public. It is to this end, and to the exclusion of any act or practice which suppresses competition, restrains trade, fixes or controls price through combination or agreement, or which otherwise injures, destroys, or prevents competition, that the rules are to be applied.

DEFINITIONS

(a) As used in these rules the term "industry products" means and includes all pillows, cushions, comforters, sleeping bags, and similar products, which are wholly or partially filled with feathers or down.

(b) Members of the industry are the persons, firms, corporations and organizations engaged in the business of manufacturing, processing, distributing or marketing in commerce any such industry products.

(Note: Nothing in these rules shall be construed as relieving any member of the industry of the necessity of complying with the requirements of State laws or regulations or other laws or regulations applicable to the products of this industry.)

GROUP I

The unfair trade practices embraced in the Group I rules herein are considered to be unfair methods of competition, unfair or deceptive acts or practices, or other illegal practices, prohibited under laws administered by the Federal Trade Commission; and appropriate proceedings in the public interest will be taken by the Commission to prevent the use, by any person, partnership, corporation, or other organization subject to its jurisdiction, of such unlawful practices in commerce.

RULE 1 - MISREPRESENTATION AND DECEPTION IN GENERAL.

It is an unfair trade practice to use, or cause or promote the use of, any trade promotional literature, advertising matter, guarantee, warranty, mark, brand, label, trade name, picture, design or device, designation, or other type of oral or written representation, however disseminated or published, which has the capacity and tendency or effect of misleading or deceiving purchasers or prospective purchasers -

(a) with respect to the type, kind, grade, quality, quantity, weight, size, color, origin, durability, processing, testing, construction, manufacture, distribution, or customary or regular price, of any industry product, or concerning any component, contents, or covering of such product; or

(b) with respect to the colorfastness, finish, thread count, weight, pattern, material, type of fiber or weave, or feather- or down-resistant qualities, of the sewn, permanent, or removable cover or covering of any industry product; or

(c) which in any other material respect has the capacity and tendency or effect of misleading or deceiving the purchasing or consuming public.

RULE 2 - DECEPTIVE PICTURES OR SYMBOLS.

It is an unfair trade practice, in connection with the offering for sale, sale, or distribution of industry products, to use as part of a label, advertisement, trade name, or other representation, any depiction of a waterfowl or other picture, symbol, or design which, either alone or in conjunction with accompanying words, phrases, or other representations, has the capacity and tendency or effect of misleading or deceiving purchasers or prospective purchasers into the belief that the product is composed (in whole or in part) of feathers or down when such is not the fact, or is composed (in whole or in part) of feathers or down from fowl of the type or color represented by such words, pictures, or other symbols, when such is not the fact.

RULE 3 - IDENTIFICATION AND DISCLOSURE OF KIND AND TYPE OF FILLING MATERIAL IN INDUSTRY PRODUCTS.

I. In the sale, offering for sale, or distribution of industry products, it is an unfair trade practice to misrepresent or deceptively conceal the identity of the kind or type of filling material contained in any of such products, or of the kinds or types, and proportions of each, when the filling material is a mixture of more than one kind or type. Such identification and disclosure shall be made by tag or label securely affixed to the outside covering of each product and in invoices and all advertising and trade promotional literature relating to the product; and when the filling material is a mixture of more than one kind or type, each kind and type shall either be listed in the order of its predominance by weight, or be listed with an accompanying disclosure of the fraction or percentage by weight of the entire mixture which it represents.

II. Identification of the kind and type of feather and down stock by use of any of the terms listed and defined below will be considered proper when in accord with the definition set forth for such term:

DEFINITIONS:

(a) Down: The undercoating of waterfowl, consisting of clusters of the light, fluffy filaments growing from one quill point but without any quill shaft.

(b) Down fiber: The barbs of down plumes separated from the quill points.

(c) Waterfowl feathers: Goose feathers, duck feathers, or any mixture of goose and duck feathers.

(d) Feathers (or Natural Feathers): Bird or fowl plumage having quill shafts and barbs and which has not been processed in any manner other than by washing, dusting, and sterilizing.

(e) Quill feathers (or Quills): Wing feathers or tail feathers or any mixture of wing and tail feathers.

(f) Crushed feathers: Feathers which have been processed by a crushing or curling machine which has changed the original form of the feathers without removing the quill.

(g) Stripped feathers: The barbs of feathers stripped from the quill shaft but not separated into feather fiber.

(h) Feather fiber: The barbs of feathers which have been completely separated from the quill shaft and any aftershaft and which are in no-wise joined or attached to each other.

(i) Chopped feathers: Feathers which have been subjected to a chopping or cutting process and as a result have been chopped or cut into pieces.

(j) Damaged feathers: Feathers, other than crushed, chopped, or stripped, which are broken, damaged by insects, or otherwise materially injured.

III. TOLERANCE:^{1/} (a) Subject to the restrictions and limitations hereinafter set forth, the filling material of an industry product may be represented as being of but one kind or type when 85% of the weight of all filling material contained in the product is of the represented kind or type; or may be represented as being of a mixture of two or more kinds or types with accompanying disclosure of a fraction or percentage of the weight of the entire mixture represented by each if the fraction or percentage shown is not at variance with the actual proportion of the weight of the entire mixture represented by each such kind or type by more than 15% of the stated fraction or percentage.

Limitations and Restrictions

(b) When the filling material of an industry product is represented, directly or indirectly, as being wholly of down, any proportion within the tolerance percentage provided for in (a) above which is not down shall consist principally of down fiber and/or small, light, and fluffy waterfowl feathers, shall contain no quill feathers, crushed feathers, or chopped feathers, and shall not contain damaged feathers, quill pith, quill fragments, trash, or any matter foreign to feather and down stock in excess of 2% by weight of the filling material contained in the product or which in the aggregate exceeds 5% of such weight.

^{1/}The tolerance provided for in this paragraph III is to be understood as being an allowance for error and as not embracing any intentional adulteration.

(c) When the filling material of an industry product is represented, directly or indirectly, as being wholly of waterfowl feathers, any proportion within the tolerance percentage provided for in (a) above which is not waterfowl feathers shall not contain non-waterfowl feathers in excess of 5% by weight of the filling material in the product, nor quill pith, quill fragments, trash, or any matter foreign to feather and down stock in excess of 2% by weight of the filling material in the product or which in the aggregate exceeds 5% of such weight; and, unless non-deceptively disclosed in the representation, not in excess of 5% by weight of the filling material of the product shall consist of waterfowl quill feathers, waterfowl damaged feathers, waterfowl crushed feathers, or waterfowl chopped feathers.

(d) When the filling material of an industry product is represented, directly or indirectly, as being wholly of feathers (or natural feathers), any proportion within the tolerance percentage provided for in (a) above which is not natural feathers shall not contain quill pith, quill fragments, trash, or any matter foreign to feather and down stock in excess of 2% by weight of the filling material in the product or which in the aggregate exceeds 5% of such weight; and, unless nondeceptively disclosed in the representation, not in excess of 5% by weight of the filling material of the product shall consist of crushed feathers, chopped feathers, quill feathers, or damaged feathers.

(e) When the filling material of an industry product is represented, directly or indirectly, as being wholly of a mixture of down and feathers, or of down and more than one kind or type of feathers, or of feathers of more than one kind or type, any proportion, or the aggregate of any proportions, of the filling material of the product at variance with the representation, but within the tolerance percentage provided for in (a) above, shall not contain quill pith, quill fragments, trash, or any matter foreign to feather and down stock in excess of 2% by weight of the filling material in the product or which in the aggregate exceeds 5% of such weight; and, unless nondeceptively disclosed in the representation, not in excess of 5% by weight of the filling material of the product shall consist of crushed feathers, chopped feathers, quill feathers, or damaged feathers.

Note: It is the consensus of the industry that determination as to whether any representation is violative of the provisions of this Rule should be based on an average of the results of tests of at least two products of the same type when same are readily available for testing, and that a proper method of testing such product would be as follows:

Samples of approximately equal weight and size should be drawn from at least three different locations in the product. Such samples should then be thoroughly mixed so as to assure of substantially uniform distribution of each kind and type of component material. From such mixture a test sample of not less than 3 grams weight should be drawn. The kinds and types of materials in said test sample should then be identified and separated and each kind or type then separately weighed and

the percentage by weight of each kind and type computed from such weights. The identification of the various kinds and types of feather and down stock in the test sample should be made by a competent feather and down analyst.

IV. Nothing in this Rule 3 is to be construed as relieving industry members from complying with the requirements of Rule 5 herein when the filling material of any industry product, or any component thereof, is used or second-hand, or from complying with the requirements of Rule 6 herein entitled "Cleanliness of Feathers, Down, and Other Components."

RULE 4 - DISCLOSURE AS TO COVERING MATERIALS.

It is an unfair trade practice to misrepresent or deceptively conceal the type or kind of fabric or other material used in covers and cases of industry products, or the fiber or material content of any inner, outer, permanent, or removable covers or cases.

Note: Products containing rayon, silk, or linen shall be identified as to their fiber and material content in labels, invoices, and advertisements, in accordance with the requirements of trade practice rules heretofore promulgated by the Commission for the Rayon Industry, Silk Industry, and Linen Industry.

Products containing, purporting to contain, or in any way represented as containing, wool, reprocessed wool, or reused wool, shall be labeled in accordance with the requirements of the Wool Products Labeling Act of 1939 and the Rules and Regulations issued thereunder.

RULE 5 - SECOND-HAND FEATHERS, DOWN, AND OTHER COMPONENTS.

To offer for sale, sell, or distribute any industry product containing any component which has previously been used in any product, or used for any purpose, without clearly disclosing that fact in describing, advertising, labeling, invoicing and selling such product, and in all representations concerning the product, is an unfair trade practice. It is likewise an unfair trade practice to misrepresent or deceptively conceal the type, kind, or amount of such components, or to use with reference to said products descriptive words, phrases, labels, or other representations which have the capacity and tendency or effect of misleading or deceiving purchasers or prospective purchasers concerning the effect on said material of such prior use or concerning the type, extent, method, or effect of any reprocessing, renovation, or re-sterilization of such material.

Note: Disclosure that feathers or down have been previously used may be made by clear and conspicuous use of the term "second-hand." Designation of such material as "reworked" or "reprocessed," or use of similar phrases, without further clear and conspicuous statement that such material is not new or has been previously used, is deemed misleading.

RULE 6 - CLEANLINESS OF FEATHERS, DOWN, AND OTHER COMPONENTS.

It is an unfair trade practice to sell or distribute for sale to the ultimate consumer, without full and nondeceptive disclosure concerning the unclean, unsanitary, and unsterilized nature of the contents, any industry product containing feathers, down, or other components which have not been sterilized and properly washed or otherwise properly cleaned, or containing used or second-hand feathers, down, or any other components which have not been re-sterilized and re-cleaned, such practice having the capacity and tendency or effect of causing purchasers or consumers to be misled or deceived by reason of concealment or nondisclosure of the condition of the feathers, down, or other contents of such product.

NOTE: Standard tests, such as the New York State Oxygen Test, should be used to determine whether feathers and down have been properly cleaned. Such a test may be made in the following manner:

Ten grams of feathers and down are transferred to a glass jar or similar container and 1 liter of distilled water at room temperature is added. The material is thoroughly wetted by shaking and placed in an incubator at 25°C. for one hour. It is then filtered through 19-cm. coarse filter paper, and 100 ml. of filtrate are pipetted into a porcelain casserole. The liquid is made just acid to litmus with 6 N sulfuric acid and 1 ml. of acid is added in excess. The solution is titrated in the cold with 0.1 N potassium permanganate by adding 2-drop portions and then stirring until a pink color persists for 60 seconds.

The number of milliliters of potassium permanganate used is noted, and calculated to number of grams of oxygen per 100,000 grams of sample (oxygen number). 1 ml. of 0.1 N KMnO_4 = 0.8 mg. of oxygen = 80, oxygen number.

Material having an oxygen number above 20 shall be deemed to be not properly cleaned.

RULE 7 - DISCLOSURE AS TO SIZE.

(a) In connection with the offering for sale, sale, or distribution of industry products, it is an unfair trade practice to misrepresent or deceptively conceal the size of any product, or to advertise, mark, brand, stamp, tag, label, or otherwise represent or describe, any industry product in a manner having the capacity and tendency or effect of misleading or deceiving purchasers or prospective purchasers as to the size or any dimension of such product.

(b) In the application of this rule, the following standards and tolerances shall be observed to the end that confusion, misunderstanding, deception, and unfair competitive practices may be avoided and prevented.

(1) Representations concerning the size of a product shall set forth or indicate the finished size of the product (that is, the dimensions of the product as offered for sale) in a clear, definite, and unambiguous manner.

EXAMPLE: Either "Finished Size - 21 x 27" or "Size 21 x 27" is a proper label for a product with a finished size 21 inches wide and 27 inches long. A size label stating only "21 x 27" is also deemed a representation that such is the finished size.

(2) In the case of representations concerning the finished size of industry products, a tolerance on each dimension of one-fourth inch for pillows and one inch for comforters will be allowed.

EXAMPLE: A pillow labeled "Finished Size 21 x 27" is within the tolerance if the measurement of its shortest end and side is not less than $20\frac{3}{4}$ x $26\frac{3}{4}$ and the measurement of its longest end and side is not more than $21\frac{1}{4}$ x $27\frac{1}{4}$.

(3) Truthful disclosure of the cut size of a product's cover before sewing and filling may be made in conjunction with, and with no greater conspicuousness than, any disclosure of the finished size of the product, when explanation is made of the meaning of such cut size, and when such disclosure is made in a clear, definite, and unambiguous manner that does not mislead or deceive the purchaser or prospective purchaser concerning the finished size of the product.

EXAMPLE: A finished product size label stating only "Cut Size - 21 x 27" does not comply with the foregoing rule. A proper label could read: "FINISHED SIZE - 20 x 26; Cut Size of Cover Before Sewing and Filling - 21 x 27."

RULE 8 - GUARANTEES, WARRANTIES, ETC.

(a) It is an unfair trade practice to use or cause to be used any guarantee which is false, misleading, deceptive, or unfair to the purchasing or consuming public.

(b) The following types of guarantees are examples of those considered unfair trade practices and in violation of this rule:

(1) Guarantees which are so used, or are of such form, text, or character, as to import, imply, or represent that the guarantee is broader than is in fact true, and guarantees which in themselves or in the manner of their use are otherwise false, misleading, or deceptive.

(2) Guarantees which purportedly extend for indefinite or unlimited periods of time, or for such long periods of years, as to

have the capacity and tendency or effect of thereby misleading or deceiving purchasers or users into the belief that the product has or is definitely known to have a greater degree of serviceability or durability in actual use than is in fact true.

(3) Guarantees which have the capacity and tendency or effect of otherwise misrepresenting the serviceability, durability, or lasting qualities of the product, or of its feather and down content, or of its fabric covering, or of any mothproofing or other special treatment or quality of such product.

(c) This rule shall be applicable not only to guarantees, but also to warranties, to purported warranties and guarantees, and to any promise or representation in the nature of or purporting to be a guarantee or warranty.

RULE 9 - FICTITIOUS PRICE LISTS.

The publishing or circulating by any member of the industry of false or misleading price quotations, price lists, terms or conditions of sale, or reports as to production or sales, with the capacity and tendency or effect of misleading or deceiving purchasers, prospective purchasers, or the consuming public, or the advertising, sale, or offering for sale of industry products at prices purporting to be reduced from what are in fact fictitious prices, or at purported reductions in price when such purported reductions are in fact fictitious or are otherwise misleading or deceptive, is an unfair trade practice.

RULE 10 - USE OF LOTTERY SCHEMES.

The offering or giving of prizes, premiums, or gifts in connection with the sale or distribution of industry products, or as an inducement thereto, by any scheme which involves a lottery or scheme of chance, and the sale or distribution of industry products by any method or plan which involves a lottery or scheme of chance, are unfair trade practices.

RULE 11 - MISREPRESENTATIONS AS TO CHARACTER OF BUSINESS.

It is an unfair trade practice for any member of the industry to represent, directly or indirectly, through the use of any word or term in his corporate or trade name, in his advertising or otherwise, that he is a manufacturer of feather and down products, or that he is the owner or operator of a factory or producing company manufacturing them, or that he owns, maintains, or operates a research laboratory devoted to feather, down, pillow, comforter, or bedding research and development, when such is not the fact, or in any other manner to misrepresent the character, extent, volume, or type of his business.

RULE 12 - FALSE INVOICING.

Withholding from or inserting in invoices any statements or information by reason of which omission or insertion a false or misleading

record is made, wholly or in part, of the transactions represented on the face of such invoices, with the purpose or effect of thereby misleading or deceiving dealers, purchasers, prospective purchasers, or the consuming public, is an unfair trade practice.

RULE 13 - COMBINATION OR COERCION TO FIX PRICES, SUPPRESS COMPETITION, OR RESTRAIN TRADE.

It is an unfair trade practice for a member of the industry:

(a) To use, directly or indirectly, any form of threat, intimidation, or coercion against any member of the industry or other person unlawfully to fix, maintain, or enhance prices, suppress competition, or restrain trade; or

(b) To enter into or take part in, directly or indirectly, any agreement, understanding, combination, conspiracy, or concerted action with one or more members of the industry, or with one or more other persons, unlawfully to fix, maintain, or enhance prices, suppress competition, or restrain trade.

RULE 14 - PROHIBITED DISCRIMINATION.

I. Prohibited Discriminatory Prices, or Rebates, Refunds, Discounts, Credits, Etc., Which Effect Unlawful Price Discrimination. It is an unfair trade practice for any member of the industry engaged in commerce,^{2/} in the course of such commerce, to grant or allow, secretly or openly, directly or indirectly, any rebate, refund, discount, credit, or other form of price differential, where such rebate, refund, discount, credit, or other form of price differential, effects a discrimination in price between different purchasers of goods of like grade and quality, where either or any of the purchases involved therein are in commerce,^{2/} and where the effect thereof may be substantially to lessen competition or tend to create a monopoly in any line of commerce,^{2/} or to injure, destroy, or prevent competition with any person who either grants or knowingly receives the benefit of such discrimination, or with customers of either of them: Provided, however -

(a) That the goods involved in any such transaction are sold for use, consumption, or resale within any place under the jurisdiction of the United States;

(b) That nothing herein contained shall prevent differentials which make only due allowance for differences in the cost of manufacture, sale, or delivery resulting from the differing methods or quantities in which such commodities are to such purchasers sold or delivered;

^{2/}As here used, the word "commerce" means "trade or commerce among the several States and with foreign nations, or between the District of Columbia or any Territory of the United States and any State, Territory, or foreign nation, or between any insular possessions or other places under the jurisdiction of the United States, or between any such possession or place and any State or Territory of the United States or the District of Columbia or any foreign nation, or within the District of Columbia or any Territory or any insular possession or other place under the jurisdiction of the United States."

(c) That nothing herein contained shall prevent persons engaged in selling goods, wares, or merchandise in commerce 2/ from selecting their own customers in bona fide transactions and not in restraint of trade;

(d) That nothing herein contained shall prevent price changes from time to time where made in response to changing conditions affecting the market for or the marketability of the goods concerned, such as but not limited to actual or imminent deterioration of perishable goods, obsolescence of seasonal goods, distress sales under court process, or sales in good faith in discontinuance of business in the goods concerned.

II. Prohibited Brokerage and Commissions. It is an unfair trade practice for any member of the industry engaged in commerce, 2/ in the course of such commerce, to pay or grant, or to receive or accept, anything of value as a commission, brokerage, or other compensation, or any allowance or discount in lieu thereof, except for services rendered in connection with the sale or purchase of goods, wares, or merchandise, either to the other party to such transaction or to an agent, representative, or other intermediary therein, where such intermediary is acting in fact for or in behalf, or is subject to the direct or indirect control, of any party to such transaction other than the person by whom such compensation is so granted or paid.

III. Prohibited Advertising or Promotional Allowances, Etc. It is an unfair trade practice for any member of the industry engaged in commerce 2/ to pay or contract for the payment of advertising or promotional allowances or any other thing of value to or for the benefit of a customer of such member in the course of such commerce as compensation or in consideration for any services or facilities furnished by or through such customer in connection with the processing, handling, sale, or offering for sale of any products or commodities manufactured, sold, or offered for sale by such member, unless such payment or consideration is available on proportionally equal terms to all other customers competing in the distribution of such products or commodities.

IV. Prohibited Discriminatory Services or Facilities. It is an unfair trade practice for any member of the industry engaged in commerce 2/ to discriminate in favor of one purchaser against another purchaser or purchasers of a commodity bought for resale, with or without processing, by contracting to furnish or furnishing, or by contributing to the furnishing of, any services or facilities connected with the processing, handling, sale, or offering for sale of such commodity so purchased upon terms not accorded to all competing purchasers on proportionally equal terms.

V. Inducing or Receiving an Illegal Discrimination in Price. It is an unfair trade practice for any member of the industry engaged in commerce, 2/ in the course of such commerce, knowingly to induce or receive a discrimination in price which is prohibited by the foregoing provisions of this rule 14.

2/See footnote, page 10.

VI. Exemptions. The inhibitions of this Rule 14 shall not apply to purchases of their supplies for their own use by schools, colleges, universities, public libraries, churches, hospitals, and charitable institutions not operated for profit.

(**NOTE:** In complaint proceedings charging discrimination in price or services or facilities furnished, and upon proof having been made of such discrimination, the burden of rebutting the prima facie case thus made by showing justification shall be upon the person charged; and unless justification shall be affirmatively shown, the Commission is authorized to issue an order terminating the discrimination; provided, however, that nothing herein contained shall prevent a seller rebutting the prima facie case thus made by showing that his lower price or the furnishing of services or facilities to any purchaser or purchasers was made in good faith to meet an equally low price of a competitor or the services or facilities furnished by a competitor.)

RULE 15 - DISCRIMINATORY RETURNS.

It is an unfair trade practice for any member of the industry to discriminate in favor of one customer-purchaser against another customer-purchaser of industry products, bought from such member of the industry for resale, by contracting to furnish, or furnishing in connection therewith, upon terms not accorded to all customer-purchasers on proportionately equal terms, the service or facility whereby such favored purchaser is accorded the privilege of returning industry products so purchased and receiving therefor credit or refund of purchase price; provided, however, that nothing in any of the rules herein shall prohibit or be used to prevent the return of merchandise by purchaser, for credit or refund of purchase price, when and because such merchandise has not been properly labeled by the seller in accordance with these rules, or has been otherwise falsely or deceptively labeled or represented, or when and because such merchandise is defective in material, workmanship, or in any other respect is contrary to warranty or purchase contract.

RULE 16 - COMMERCIAL BRIBERY.

It is an unfair trade practice for a member of the industry, directly or indirectly, to give, or offer to give, or permit or cause to be given, money or anything of value to agents, employees, or representatives of customers or prospective customers, or to agents, employees, or representatives of competitors' customers or prospective customers, without the knowledge of their employers or principals, as an inducement to influence their employers or principals to purchase or contract to purchase industry products manufactured or sold by such industry member or the maker of such gift or offer, or to influence such employers or principals to refrain from dealing in the products of competitors or from dealing on contracting to deal with competitors.

RULE 17 - DEFAMATION OF COMPETITORS OR FALSE DISPARAGEMENT OF THEIR PRODUCTS.

The defamation of competitors by falsely imputing to them dishonorable conduct, inability to perform contracts, questionable credit standing, or by other false representations, or the false disparagement of the products of competitors in any respect, or of their business methods, selling prices, values, credit terms, policies, or services, is an unfair trade practice.

RULE 18 - AIDING OR ABETTING USE OF UNFAIR TRADE PRACTICES.

It is an unfair trade practice for any person, firm, or corporation to aid, abet, coerce, or induce another, directly or indirectly, to use or promote the use of any unfair trade practice specified in these rules.

GROUP II

Compliance with trade practice provisions embraced in Group II rules is considered to be conducive to sound business methods and is to be encouraged and promoted individually or through voluntary cooperation exercised in accordance with existing law. Nonobservance of such rules does not per se constitute violation of law. Where, however, the practice of not complying with any Group II rules is followed in such manner as to result in unfair methods of competition or unfair or deceptive acts or practices in commerce, corrective proceedings in respect thereto may be instituted by the Commission as in the case of violation of Group I rules.

RULE A - USE OF SIZE MARKS AND LABELS

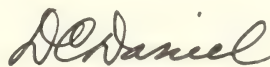
The industry approves the practice of marking and labeling all industry products in a manner which accurately and nondeceptively discloses the size of such products and disapproves the practice of distributing and selling industry products which are not thus marked or labeled with respect to size.

INDUSTRY COMMITTEE

A Committee on Trade Practices is hereby authorized to cooperate with the Federal Trade Commission and to perform such acts as may be legal and proper in the furtherance of fair competitive practices and in promoting the effectiveness of the rules.

Promulgated by the Federal Trade Commission April 26, 1951.

L-3137



D. C. Daniel,
Secretary.



Federal Trade Commission

TRADE PRACTICE RULES
For The
HOUSEHOLD FURNITURE INDUSTRY

Promulgated December 18, 1963

For Release in
Morning Newspapers of
Wednesday, December 18, 1963

FEDERAL TRADE COMMISSION

Paul Rand Dixon, Chairman
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Joseph W. Shea, Secretary

FEDERAL TRADE COMMISSION
Washington

TRADE PRACTICE RULES

For The

HOUSEHOLD FURNITURE INDUSTRY

As Promulgated December 18, 1963

STATEMENT BY THE COMMISSION:

Revised trade practice rules for the Household Furniture Industry, formerly known as the Household Furniture and Furnishings Industry, are promulgated by the Federal Trade Commission as hereinafter set forth.

The industry is composed of persons, firms, corporations and organizations engaged in the manufacture, sale or distribution of articles of utility, convenience or decoration which are suitable for use as furniture in a house, apartment or other dwelling place. Such articles include, but are not limited to, all kinds and types of chairs, tables, cabinets, desks, bedsteads and bureaus.

The rules constitute a revision of, and supersede, the rules promulgated for the Household Furniture and Furnishings Industry on May 10, 1932. Numerous changes embodying clarifications of the applicable provisions of laws administered by the Commission have been made.

Suggested trade practice rules were discussed at trade practice conferences held in Los Angeles, California, Chicago, Illinois and High Point, North Carolina.

Proposed rules were subsequently published by the Commission and made available to all industry members and to all interested and affected parties in a public notice whereby they were afforded opportunity to present their views, including such pertinent information, suggestions, amendments or objections as they desired to offer and to be heard in the premises. Pursuant to such notice, a public hearing was held in Washington on November 28, 1962, and all matters presented or otherwise received in the proceeding were duly considered.

Thereafter, and upon full consideration of the entire matter, final action was taken by the Commission whereby it has approved the rules as hereinafter set forth.

Such rules will not become operative until ninety (90) days from the date of promulgation in order to afford industry members opportunity to bring their practices into conformity with the provisions thereof.

THE RULES

These rules promulgated by the Commission are designed to foster and promote the maintenance of fair competitive conditions in the interest of protecting industry, trade, and the public. It is to this end, and to the exclusion of any act or practice which fixes or controls prices through combination or agreement, or which unreasonably restrains trade or suppresses competition, or otherwise unlawfully injures, destroys, or prevents competition, that the rules are to be applied.

The unfair trade practices embraced in the rules herein are considered to be unfair methods of competition, unfair or deceptive acts or practices, or other illegal practices, prohibited under laws administered by the Federal Trade Commission, and appropriate proceedings in the public interest will be taken by the Commission to prevent the use, by any person, partnership, corporation, or other organization subject to its jurisdiction, of such unlawful practices in commerce.

TABLE OF RULES

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DEFINITIONSINDUSTRY MEMBER:

Any person, firm, corporation or organization engaged in the manufacture, sale or distribution of industry products as such products are hereinafter defined.

INDUSTRY PRODUCTS:

Articles of utility, convenience or decoration which are suitable for use as furniture in a house, apartment, or other dwelling place. Such articles include, but are not limited to, all kinds and types of chairs, tables, cabinets, desks, bedsteads and bureaus.

The following products, covered by sets of trade practice rules heretofore promulgated, are not to be considered as coming within the purview of this definition: bed mattresses, bedsprings, metal cots, cedar chests, mirrors, musical instruments, radio and television receiving sets and venetian blinds. Also excluded from the purview of these rules are pictures, lamps, clocks, rugs, draperies as well as appliances and fixtures such as refrigerators and air conditioners.

RULE 1 - DECEPTION (GENERAL).

Members of the industry shall not distribute any industry product under any representation or circumstance (including failure to adequately disclose relevant facts)^{1/} which has the capacity and tendency or effect of misleading or deceiving purchasers or prospective purchasers with respect to its utility, composition, construction, durability, design, quality, quantity or number of pieces, model, origin, manufacture, price, grade, or in any other material respect.

RULE 2 - WOOD AND WOOD IMITATIONS.

In connection with the sale of furniture having exposed parts or surfaces which are wood, or which are not wood but have the appearance of wood, members of the industry shall not use any direct or indirect representation or sales method which is:

(1) False. Examples would include:

- (a) Describing as "maple," furniture which is constructed of birch wood;
- (b) Use of the term "solid mahogany" or the word "mahogany" unqualifiedly to describe a mahogany veneered table;
- (c) Using the designation "Danish style walnut" to describe a walnut-stained hackberry chair;

^{1/}The Commission, in order to prevent deception, may require affirmative disclosure of material facts concerning merchandise which, if known to prospective purchasers, would influence their decisions of whether or not to purchase. The failure to disclose such information is an unfair trade practice violative of Section 5 of the Federal Trade Commission Act. Unless otherwise specified, any disclosure required by this rule shall be on, or on a tag or label attached to, the industry product and be of such permanency as to remain on or attached to, the product until consummation of its consumer sale. The disclosure shall also appear in any advertising relating to an industry product irrespective of the media used whenever statements, representations or depictions are used in such advertising which, in the absence of such disclosure, serve to create the false impression that the product, or any part thereof, is of a certain kind or composition. In all cases the disclosure required shall be in close conjunction with the representation and shall be of sufficient clarity, conspicuousness and audibility (when spoken) as to be noted by prospective purchasers.

- (d) Describing a non-lumber product as "wood."

(Note: Hardboard, although produced from wood fibers, shall not be unqualifiedly represented as "wood" but may be designated as "hardboard," "fiberboard," "wood product" or by any nondeceptive descriptive word or term), or

- (2) Likely to mislead because of telling a half-truth. Examples would include:
- (a) Describing as "maple," a table consisting of a solid maple top with pecan legs. Such product may be described as "maple top - pecan legs";
 - (b) Designating as "walnut" or "in walnut," a desk top made of walnut veneered plywood. A proper description would be "walnut veneered top";
 - (c) Describing as "solid mahogany" or "mahogany," a product made with laminations of mahogany plies. A proper designation would be "all mahogany plywood";
 - (d) Describing a table top unqualifiedly as "mahogany veneered top" when such product, although mahogany veneered, has been finished by means of decalcomania, printing or otherwise to simulate a different mahogany grain or figure such as crotch mahogany. Such product could be properly described as "mahogany veneer - imitation mahogany crotch figure," or
- (3) Likely to deceive by failure to adequately disclose 1/ facts concerning the composition, of plywood having the appearance of solid wood, or of simulated finishes on wood or wood imitations. Examples would include failure to disclose when an item of furniture or part thereof:
- (a) Has an exposed surface of plastic, metal, hardboard, or other material not possessing a natural wood growth structure but has the appearance of being wood (e. g., "hardboard - mahogany grained" or "walnut finished particle board");
 - (b) Which is wood finished by means of decalcomania, printing or other process so as to have the appearance of a different kind of wood, is not the kind of wood which it resembles (e. g., "mahogany finished gum" or "alder - maple finished");
 - (c) Is veneered so as to have the appearance of solid wood (e. g., "mahogany veneered plywood").

Whenever disclosure is required by this rule it may be accomplished by stating either the true composition (e. g., "mahogany-grained hardboard"), or a disclaimer of composition (e. g., "imitation wood").

1/See footnote, page 3.

RULE 3 - DECEPTIVE USE OF WOOD NAMES.

Industry members shall not use any direct or indirect representation concerning the identity of the wood in items of furniture which is false or which is likely to mislead purchasers as to the actual wood composition of furniture.

The unqualified word "walnut," shall not be used as the name or designation of wood other than genuine walnut (*Juglans*).

The word "mahogany" shall not be used unqualifiedly as the name or designation of wood unless the wood so described is genuine mahogany (*Swietenia*). In naming or designating the Philippine woods Tanguile, Red Lauan, White Lauan, Tiaong, Almon, Mayapis, and Bagtikan, the word "mahogany" may be used but only when prefixed by the word "Philippine" (e. g., "Philippine mahogany table"). Examples of improper use of the word "mahogany" under this rule would include reference to Red Lauan as "Lauan mahogany" or White Lauan as "Blonde Lauan mahogany." Such woods, however, may be described unqualifiedly as "Red Lauan" or "Lauan" or "White Lauan," respectively.

The word "mahogany" may be used to name or designate wood of the genus *Khaya*, but only when prefixed by the word "African" (e. g., "African mahogany desk").

The word "mahogany," with or without qualification, shall not be used to name or designate any wood except as provided above.

(Note: The term "Philippine mahogany" will be accepted as a name or designation of the seven Philippine woods named above. Such term shall not be applied to any other wood, whether or not grown on the Philippine Islands.)

(Note: Nothing in this rule should be construed as prohibiting the nondeceptive use of wood names to describe the color, finish or appearance of items of furniture (e. g., "Plastic-oak grained" or "Mahogany finished gum.")

RULE 4 - LEATHER AND LEATHER IMITATIONS.

Members of the industry shall not make any direct or indirect representation concerning furniture or parts thereof covered with leather or other material which simulates leather, which is false or misleading.

Prohibited by this rule is the use of any trade name, coined name, trade-mark, or other word or term, or any depiction or device, which has the capacity and tendency or effect of misleading prospective purchasers into believing that furniture is covered in whole or in part from the skin or hide of an animal or that the covering of furniture is leather, top grain leather, or split leather, when such is not the case. When a furniture covering is made from bonded, shredded, pulverized or powdered leather, industry members shall conspicuously disclose 1/ such fact.

1/See footnote, page 3.

In the case of non-leather material having the appearance of leather, industry members shall conspicuously disclose facts concerning the composition thereof either by identifying the composition of the product (e. g., "vinyl covering," "upholstered in plastic") or by a disclaimer that the product is not leather (e. g., "imitation leather," "not leather").

RULE 5 - OUTER COVERINGS.^{2/}

In connection with the sale of furniture, members of the industry shall not use any direct or indirect representation concerning the outer covering thereof which:

- (a) is false (e. g., using the term "Mohair" to describe a fabric not produced from fibers derived from the angora goat); or
- (b) has the capacity and tendency or effect of deceiving furniture purchasers by telling a half-truth (e. g., using the unqualified word "Nylon" to describe a blend of nylon and other fibers).

When any identifying reference is made in advertising to an outer covering made of a mixture of different kinds of fibers, each constituent fiber present in substantial quantity (at least 5%) shall be designated ^{1/} in the order of its predominance by weight (e. g., "cotton and nylon"). If a fiber so designated is not present in a substantial quantity (less than 5%) the percentage thereof shall be stated (e. g., "cotton, rayon, 3% nylon").

When any identifying reference is made on a tag or label to an outer covering made of a mixture of different kinds of fibers, each and every kind of fiber present in such outer covering shall be identified by showing the fiber content with percentages of the respective fibers in order of their predominance by weight (e. g., "55% Cotton 45% Rayon"). In the case of pile fabrics, identification of the fiber content shall be made by stating:

- (a) the fiber content of the face or pile and of the back or base, with percentages of the respective fibers in order of their predominance by weight and the respective percentages of the face and back showing the ratio between face and back (e. g., "Face 60% Rayon, 40% Nylon - Back 100% Cotton; Back constitutes 80% of fabric and pile 20%"); or
- (b) the percentages of the fibers of the face or pile and the back or base in relation to the total weight of the fabric, (e. g., "40% Cotton, 40% Rayon, 20% Nylon" to describe a fabric having an

^{2/}Section 12(a)(2) of the Textile Fiber Products Identification Act (72 Stat. 1717; 15 U. S. C. 70) specifically exempts "outer coverings of furniture * * *" from the application of the Act. Section 14 of the same Act provides that the Act "shall be held to be in addition to, and not in substitution for or limitation of, the provisions of any other Act of the United States." Therefore, corrective action involving deceptive practices in the sale of furniture would be initiated under the Authority of Section 5 of the Federal Trade Commission Act which prohibits "unfair methods of competition in commerce, and unfair or deceptive acts or practices in commerce."

^{1/}See footnote, page 3.

all nylon pile constituting 20% of the total weight backed by a 50% - 50% blend of cotton and rayon).

RULE 6 - STUFFING (INCLUDING FILLING, PADDING, ETC.).

Members of the industry shall not make any direct or indirect representation relating to the stuffing of furniture which is:

- (1) false (e. g., describing cotton stuffing as "wool," or urethane foam as "foam rubber"); or
- (2) likely to mislead because of telling a half-truth (e. g., describing shredded or flaked foam rubber stuffing as a "foam rubber" cushion without disclosing ¹/_{that it is shredded or flaked, or describing any non-rubber foam cushion as "foam" without disclosing the kind of foam such as "urethane foam"}).

(Note: The unqualified terms "Latex," "Foam Rubber," "Latex Foam Rubber," or other terms of similar import, shall not be used as descriptive of any part of the filling of an upholstery which does not consist of one or more homogeneous pads of latex.

When the upholstery of an industry product has filling material consisting of a top layer of homogeneous latex which is of substantial thickness, and a lower layer or layers of other material, such terms may be used as descriptive thereof, if in immediate conjunction therewith, nondeceptive disclosure is made of the fact that only a part of such filling is of latex.

When the filling is composed, in whole or in part, of latex which has been shredded, flaked, or ground, full and nondeceptive disclosure shall be made of such fact in immediate conjunction with any such term, irrespective of whether the pieces or shreds of latex are in loose form or are held together by glue or some other adhesive agent.)

(Note: This rule is promulgated under the Federal Trade Commission Act for the purposes of interpreting requirements of such Act and to assist in the general enforcement of the Act. The rule is not to be construed as relieving industry members from full compliance with applicable State and local legal requirements.)

RULE 7 - DECEPTION AS TO ORIGIN.

Industry members shall not make any direct or indirect representation which is false or likely to deceive prospective purchasers of furniture as to the origin, either domestic or foreign, of such furniture. For example, furniture manufactured in the United States shall not be unqualifiedly described as "Danish" or "Scandinavian" or "Swedish Modern." Such furniture may, when appropriate, be described as "Danish Style," "Swedish Modern Style" or by any other word or term which nondeceptively characterizes its style. Also furniture shall not be represented

¹/See footnote, page 3.

by trade name or otherwise as being manufactured in the Grand Rapids, Michigan area or in any other furniture producing area, when such is not the fact.

(Note: Terms such as "French Provincial" or "Chinese Chippendale," because of long usage and general understanding by the furniture buying public, are considered to have acquired a secondary meaning as descriptive of the style of furniture so described. Thus, the unqualified use of such terminology, when appropriate, would not be considered to be violative of this rule.)

In connection with the sale of furniture of foreign manufacture, members of the industry shall clearly and conspicuously disclose the fact that such furniture was manufactured in an identified foreign country, when the failure to make such disclosure has the capacity and tendency or effect of deceiving prospective purchasers of such products. The disclosure of foreign origin, when required under this rule shall be in the form of a legible marking, stamping, or labeling on the furniture, and shall be of such size, conspicuousness and degree of permanency, as to be and remain noticeable and legible upon casual inspection until consumer purchase.

RULE 8 - DECEPTION AS TO BEING NEW.

Industry members shall not make any direct or indirect representation that an industry product is new unless such product is composed entirely of unused materials and parts.

In connection with the sale of furniture which has the appearance of being new but which contains used materials or parts, such as springs, foam rubber stuffing, or hardware, members of the industry shall conspicuously disclose ¹/_{such fact} (e. g., "cushions made from reused shredded foam rubber").

(Note: See also Rule 9.)

RULE 9 - MISUSE OF THE TERMS "FLOOR SAMPLE," "DISCONTINUED MODEL," ETC.

Representations that furniture is a "floor sample," "demonstration piece," etc., shall not be used to describe "trade-in," repossessed, rented or any furniture used other than by prospective purchasers at the place of sale for the purpose of determining their preference and its suitability for their use.

Furniture shall not be described as "discontinued" or "discontinued model" unless the manufacturer has in fact discontinued its manufacture or the industry member offering it for sale will discontinue offering it entirely after clearance of his existing inventories of furniture so described.

¹/See footnote, page 3.

RULE 10 - DECEPTIVE PRICING.

Members of the industry shall not represent directly or indirectly in advertising or otherwise that an industry product may be purchased for a specified price, or at a saving, or at a reduced price, when such is not the fact; or otherwise deceive purchasers or prospective purchasers with respect to the price of any product offered for sale; or furnish any means or instrumentality by which others engaged in the sale of industry products may make any such representation.

(Note: Guides Against Deceptive Pricing adopted by the Commission October 2, 1958, are now in the process of revision. The new guides will supplement this rule by affording additional guidance on the subject. When approved, the new guides will be published in the Federal Register and copies thereof will be furnished upon request.)

RULE 11 - BAIT ADVERTISING.

Industry members shall not offer for sale any industry product when the offer is not a bona fide effort to sell the product so offered as advertised and at the advertised price.

(Note: In determining whether there has been a violation of this rule, consideration will be given to acts or practices indicating that the offer was not made in good faith for the purpose of selling the advertised product, but was made for the purpose of contacting prospective purchasers and selling them a product or products other than the product offered. Among acts or practices which will be considered in making that determination are the following:

- (a) The creation, through the initial offer or advertisement, of a false impression of the grade, quality, make, value, currency of model, size, usability, or origin of the product offered;
- (b) The refusal to show, demonstrate, or sell the product offered in accordance with the terms of the offer;
- (c) The disparagement, by acts or words, of the product offered;
- (d) The showing, demonstrating, and in the event of sale, the delivery, of a product which is unusable or impractical for the purpose represented or implied in the offer;
- (e) The refusal, in the event of sale of the product offered, to deliver such product to the buyer within a reasonable time thereafter;
- (f) The failure to have available a quantity of the advertised product at the advertised price sufficient to meet reasonably anticipated demands;

(g) The use of a sales plan or method of compensation for salesmen or penalizing salesmen designed to prevent or discourage them from selling the advertised product.

It is not necessary that each act or practice set forth above be present in order to establish that a particular offer is violative of this Rule.)

RULE 12 - GUARANTEES, WARRANTIES, ETC.

Industry members shall not represent in advertising or otherwise that a product is "guaranteed" without clear and conspicuous disclosure of:

- (1) the nature and extent of the guarantee, and
- (2) any material conditions or limitations in the guarantee which are imposed by the guarantor, and
- (3) the manner in which the guarantor will perform thereunder, and
- (4) the identity of the guarantor.

Representations that a product is "guaranteed for life" or has a "lifetime guarantee" in addition to meeting the above requirements, shall contain a conspicuous disclosure of the meaning of "life" or "lifetime" as used (whether that of the purchaser, the product or otherwise).

Guarantees shall not be used which under normal conditions are impractical of fulfillment or which are for such a period of time or are otherwise of such nature as to have the capacity and tendency of misleading purchasers or prospective purchasers into the belief that the product so guaranteed has a greater degree of serviceability, durability or performance capability in actual use than is true in fact.

This rule has application not only to "guarantees" but also to "warranties," to purported "guarantees" and "warranties," and to any promise or representation in the nature of a "guarantee" or "warranty."

RULE 13 - PASSING OFF THROUGH IMITATION OR SIMULATION OF TRADE-MARKS, TRADE NAMES, ETC.

Members of the industry shall not mislead or deceive purchasers by passing off the products of one industry member as and for those of another through the imitation or simulation of trade-marks, trade names, brands, or labels. (See also Rule 14.)

RULE 14 - MISREPRESENTATION AS TO CHARACTER OF BUSINESS.

Members of the industry shall not represent, directly or by implication, in advertising or otherwise, that they produce or manufacture products of the industry, or that they own or control a factory making such products, when such is not the fact, or that they are a manufacturer, wholesale distributor or a wholesaler when such is not the fact, or in any

other manner misrepresent the character, extent, or type of their business.

RULE 15 - PUSH MONEY.

Industry members shall not pay or contract to pay anything of value to a salesperson employed by a customer of the industry member, as compensation for, or as an inducement to obtain, special or greater effort or service on the part of the salesperson in promoting the resale of products supplied by the industry member to the customer -

(a) When the agreement or understanding under which the payment or payments are made or are to be made is without the knowledge and consent of the salesperson's employer; or

(b) When the terms and conditions of the agreement or understanding are such that any benefit to the salesperson or customer is dependent on lottery; or

(c) When any provision of the agreement or understanding requires or contemplates practices or a course of conduct unduly and intentionally hampering sales of products of competitors of an industry member; or

(d) When, because of the terms and conditions of the understanding or agreement, including its duration, or the attendant circumstances, the effect may be substantially to lessen competition or tend to create a monopoly; or

(e) When similar payments are not accorded to salespersons of competing customers on proportionally equal terms in compliance with Section 2(d) and (e) of the Clayton Act.

(Note: Payments made by an industry member to a salesperson of a customer under any agreement or understanding that all or any part of such payments is to be transferred by the salesperson to the customer, or is to result in a corresponding decrease in the salesperson's salary, are not to be considered within the purview of this Rule, but are to be considered as subject to the requirements and provisions of Section 2(a) of the Clayton Act.)

RULE 16 - COMMERCIAL BRIBERY.

Members of the industry shall not give, or offer to give, or permit or cause to be given, directly or indirectly, money or anything of value to agents, employees, or representatives of customers or prospective customers, or to agents, employees, or representatives of competitors' customers or prospective customers, without the knowledge of their employers or principals, as an inducement to influence their employers or principals to purchase or contract to purchase products manufactured or sold by such industry member or the maker of such gift or offer, or to influence such employers or principals to refrain from dealing in the products of competitors or from dealing or contracting to deal with competitors.

RULE 17 - EXCLUSIVE DEALING.

Members of the industry shall not contract to sell or sell industry products or fix a price charged therefor, or discount from, or rebate upon, such price, on the condition, agreement, or understanding that the purchaser thereof shall not use or deal in the products of a competitor or competitors of such industry member, where the effect of such sale or contract for sale, or of such condition, agreement, or understanding, may be substantially to lessen competition or tend to create a monopoly in any line of commerce.

RULE 18 - PROHIBITED FORMS OF TRADE RESTRAINTS (UNLAWFUL PRICE FIXING, ETC.).^{3/}

Members of the industry, either directly or indirectly, shall not engage in any planned common course of action, or enter into or take part in any understanding, agreement, combination, or conspiracy, with one or more members of the industry, or with any other person or persons, to fix or maintain the price of any industry products or otherwise unlawfully to restrain trade; or use any form of threat, intimidation, or coercion to induce any member of the industry or other person or persons to engage in any such planned common course of action, or become a party to any such understanding, agreement, combination, or conspiracy.

RULE 19 - PROHIBITED DISCRIMINATION.

Section I. Prohibited Discriminatory Prices, Rebates, Discounts, Etc. No member of the industry engaged in commerce, in the course of such commerce, shall grant or allow, secretly or openly, directly or indirectly, any rebate, refund, discount, credit, or other form of price differential, where such rebate, refund, discount, credit, or other form of price differential, effects a discrimination in price between different purchasers of goods of like grade and quality, where either or any of the purchases involved therein are in commerce, and where the effect thereof may be substantially to lessen competition or tend to create a monopoly in any line of commerce, or to injure, destroy, or prevent competition with any person who either grants or knowingly receives the benefit of such discrimination, or with customers of either of them: Provided, however:

^{3/}The prohibitions of this rule are subject to Public Law 542, approved July 14, 1952 - 66 Stat. 632 (the McGuire Act, commonly referred to as the Fair Trade Amendment) which provides that with respect to a commodity which bears, or the label or container of which bears, the trade-mark, brand, or name of the producer or distributor of such commodity and which is in free and open competition with commodities of the same general class produced or distributed by others, a seller of such a commodity may enter into a contract or agreement with a buyer thereof which establishes a minimum or stipulated price at which such commodity may be resold by such buyer when such contract or agreement is lawful as applied to intrastate transactions under the laws of the State, Territory, or territorial jurisdiction in which the resale is to be made or to which the commodity is to be transported for such resale, and when such contract or agreement is not between manufacturers, or between wholesalers, or between brokers, or between factors, or between retailers, or between persons, firms, or corporations in competition with each other.

(a) That the goods involved in any such transaction are sold for use, consumption, or resale within any place under the jurisdiction of the United States, and are not purchased by schools, colleges, universities, public libraries, churches, hospitals, and charitable institutions not operated for profit, as supplies for their own use;

(b) That nothing contained in Section I of this Rule shall prevent differentials which make only due allowance for differences in the cost of manufacture, sale, or delivery resulting from the differing methods or quantities in which such commodities are to such purchasers sold or delivered;

(Note: Cost justification under the above proviso depends upon net savings in cost based on all facts relevant to the transactions under the terms of proviso (b). For example, if a seller regularly grants a discount based upon the purchase of a specified quantity by a single order for a single delivery, and this discount is justified by cost differences, it does not follow that the same discount can be cost justified if granted to a purchaser of the same quantity by multiple orders or for multiple deliveries.)

(c) That nothing contained in this Rule shall prevent persons engaged in selling goods, wares, or merchandise in commerce from selecting their own customers in bona fide transactions and not in restraint of trade;

(d) That nothing contained in Section I of this Rule shall prevent price changes from time to time where made in response to changing conditions affecting the market for or the marketability of the goods concerned, such as but not limited to obsolescence of seasonal goods, distress sales under court process, or sales in good faith in discontinuance of business in the goods concerned;

(e) That nothing contained in this Rule shall prevent the meeting in good faith of an equally low price of a competitor.

(Note 1: Subsection (b) of Section 2 of the Clayton Act, as amended, reads as follows:

"Upon proof being made, at any hearing on a complaint under this section, that there has been discrimination in price or services or facilities furnished, the burden of rebutting the prima facie case thus made by showing justification shall be upon the person charged with a violation of this section, and unless justification shall be affirmatively shown, the Commission is authorized to issue an order terminating the discrimination: Provided, however, That nothing herein contained shall prevent a seller rebutting the prima facie case thus made by showing that his lower price or the furnishing of services or facilities to any purchaser or purchasers was made in good faith to meet an equally low price of a competitor, or the services or facilities furnished by a competitor.")

(Note 2: Nothing in this Rule should be construed as prohibiting the granting of different prices which are not otherwise violative of the foregoing provisions of this Rule, to customers in different functional categories. For example, a seller may grant a lower price to wholesalers than to retailers to the extent that such wholesalers resell to retailers. If such wholesalers also sell at retail in competition with their customers they may not properly be granted a price lower than the prices granted to competing retailers on that portion of the goods they sell at retail.)

Section II. Prohibited Brokerage and Commissions. No member of the industry engaged in commerce, in the course of such commerce, shall pay or grant, or receive or accept, anything of value as a commission, brokerage, or other compensation, or any allowance or discount in lieu thereof, except for services rendered in connection with the sale or purchase of goods, wares, or merchandise, either to the other party to such transaction or to an agent, representative, or other intermediary therein where such intermediary is acting in fact for or in behalf, or is subject to the direct or indirect control, of any party to such transaction other than the person by whom such compensation is so granted or paid.

Section III. Prohibited Advertising or Promotional Allowances, Etc. No member of the industry engaged in commerce shall pay or contract for the payment of advertising or promotional allowances or any other thing of value to or for the benefit of a customer of such member in the course of such commerce as compensation or in consideration for any services or facilities furnished by or through such customer in connection with the processing, handling, sale, or offering for sale of any products or commodities manufactured, sold, or offered for sale by such member, unless such payment or consideration is made known to and is available on proportionally equal terms to all other customers competing in the distribution of such products or commodities.

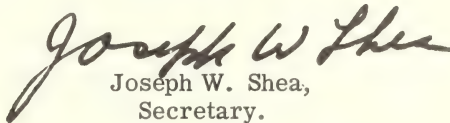
(Note: Subsection (b) of Section 2 of the Clayton Act, as amended, which is set forth in the note concluding Section I of this Rule is applicable to this Section.)

Section IV. Prohibited Discriminatory Services or Facilities. No member of the industry engaged in commerce shall discriminate in favor of one purchaser against another purchaser or purchasers of a commodity bought for resale, with or without processing, by contracting to furnish or furnishing, or by contributing to the furnishing of, any services or facilities including, but not limited to, displays, exhibits, and promotional material connected with the processing, handling, sale, or offering for sale of such commodity so purchased upon terms not accorded to all competing purchasers on proportionally equal terms.

(Note: Subsection (b) of Section 2 of the Clayton Act, as amended, which is set forth in the note concluding Section I of this Rule is applicable to this Section.)

Section V. Inducing or Receiving an Illegal Discrimination in Price, Advertising or Promotional Allowances, or Services or Facilities. No member of the industry engaged in commerce, in the course of such commerce, shall knowingly induce or receive a discrimination in price, advertising or promotional allowances, or services or facilities, which is prohibited by the foregoing provisions of this Rule.

Promulgated by the Federal Trade Commission December 18, 1963.



Joseph W. Shea,
Secretary.



C-F-160a

SEPTEMBER 23, 1959

SUPERSEDING

Int. Fed. Spec. C-F-00160 (GSA-FSS)

August 5, 1959 and

Fed. Spec. C-F-151a (In Part)

July 24, 1940

(See 6.4)

FEDERAL SPECIFICATION

FEATHERS, WATERFOWL AND DOWN, WATERFOWL

This specification was approved by the Commissioner, Federal Supply Service, General Services Administration, for the use of all Federal agencies.

1. SCOPE AND CLASSIFICATION

1.1 Scope.—This specification covers feathers and down from domesticated waterfowl (see 6.1).

1.2 Classification.

1.2.1 Types, classes, and grades.—Waterfowl feathers and down, shall be of the following types, classes, and grades as specified (see 6.2).

Type I.—Feathers.

Class 1.—Goose feathers.

Grade A.

Grade B.

Class 2.—Duck feathers.

Grade A.

Grade B.

Type II.—Down.

Class 1.—Goose down.

Grade A.

Grade B.

Class 2.—Duck down.

Grade A.

Grade B.

Type III.—Feathers and down mixture.

2. APPLICABLE SPECIFICATIONS AND STANDARDS

2.1 The following specifications and standards, of the issues in effect on date of invitation for bids, form a part of this specification:

Federal Specifications:

V-T-276—Thread, Cotton.

QQ-S-781—Strapping, Flat, Steel.

RR-S-366—Sieves, Standard for Testing Purposes.

CCC-C-429—Cloth, Cotton, Osnaburg.

CCC-T-191—Textile Test Methods.

PPP-B-636—Boxes, Fiber.

Federal Standards:

Fed. Std. No. 102—Preservation, Packaging, and Packing Levels.

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Fed. Std. No. 123—Marking for Domestic Shipment (Civilian Agencies).

Fed. Std. No. 751—Stitches; Seams; and Stitching.

(Activities outside the Federal Government may obtain copies of Federal Specifications, Standards, and Handbooks as outlined under General Information in the Index of Federal Specifications, Standards, and Handbooks and at the prices indicated in the Index. The Index, which includes cumulative monthly supplements as issued, is for sale on a subscription basis by the Superintendent of Documents, U. S. Government Printing Office, Washington 25, D. C.)

(Single copies of this specification and other product specifications required by activities outside the Federal Government for bidding purposes are available without charge at the General Services Administration Regional Offices in Boston, New York, Atlanta, Chicago, Kansas City, Mo., Dallas, Denver, San Francisco, Los Angeles, Seattle, and Washington, D. C.)

(Federal Government activities may obtain copies of Federal Specifications, Standards, and Handbooks and the Index of Federal Specifications, Standards, and Handbooks from established distribution points in their agencies.)

Military Specifications:

JAN-C-485—Cloth, Cotton, Sheeting.

MIL-C-3985—Compound, Mothproofing, Emulsifiable Concentrate (for Textiles and Feathers).

Military Standards:

MIL-STD-105 — Sampling Procedures and Tables for Inspection by Attributes.

MIL-STD-129 — Marking for Shipment and Storage.

(Copies of Military Specifications and Standards required by contractors in connection with specific procurement functions should be obtained from the procuring activity or as directed by the contracting officer.)

3. REQUIREMENTS

3.1 Laboratory report approval.—Unless otherwise specified (see 6.2), prior to or upon submission of bids to the contracting officer, the prospective contractor shall furnish the contracting officer a certified copy of a recent laboratory report from any of the following:

- (a) An independent or commercial laboratory report.
- (b) The prospective contractor's own laboratory report.
- (c) A Government laboratory report from a recent contract.

The laboratory report shall contain test data which demonstrates that the feathers, down, or feather and down mixture, of the type which the contractor proposes to deliver, have been previously tested and found to comply with all the requirements of this specification.

3.2 Preproduction sample approval.—Unless otherwise specified (see 6.2), before production is commenced the contractor shall submit for approval to the contracting officer a one-pound sample of feathers, down, or feather and down mixture.

3.3 Materials.—Materials shall be new, not previously used or reclaimed (see 6.2) and shall be well dusted, washed, dried and sterilized.

3.4 Definitions.—The materials covered by this specification are defined as follows:

3.4.1 Feathers (or natural feathers).—Bird or fowl plumage having quill shafts and barbs and which has not been processed in any manner other than by washing, dusting, and sterilizing.

3.4.1.1 Waterfowl feathers.—Goose feathers, duck feathers or any mixture of goose or duck feathers.

3.4.1.1.1 Small waterfowl feathers.—Whole waterfowl feathers, other than quill feathers or damaged feathers, which are less than 2½ inches long.

3.4.1.1.2 Pin feathers (or nestling feathers).—A waterfowl feather not fully developed with no distinguishable quill but with relatively short coarse barbs emanating from the sheath.

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3.4.1.1.3 Waterfowl quill feathers (or quills).—Wing and tail feathers commonly known and referred to as quills.

3.4.1.1.4 Plumules.—Small, downy waterfowl feathers with under-developed quill with barbs or filaments undistinguishable from those of down.

3.4.1.1.5 Damaged feathers.—Waterfowl feathers, which are materially broken, materially damaged by insects or otherwise materially injured.

3.4.1.2 Non-waterfowl feathers.—The feathers of any kind of fowl other than goose or duck.

3.4.2 Feather fiber.—The barbs of feathers which have been completely separated from the quill shaft and any aftershaft, and which are in no wise joined or attached to each other.

3.4.3 Pure down.—The undercoating of waterfowl consisting of clusters of the light, fluffy filaments from one quill point but without any quill shaft.

3.4.4 Down fiber.—The detached barbs from down plumes or detached barbs from the basal end of feather quill shafts which are undistinguishable from the barbs of down plumes.

3.4.5 Residual matter.—Residual matter is defined as quill pith, feather fragments, trash, and foreign matter.

3.4.6 Percentage composition.—The percent composition as stated in the applicable paragraph is based on the total weight of the sample tested when tested as specified in table II.

3.5 Requirements applicable to all types.

3.5.1 Preparation.—The feathers (type I), down (type II), and feather and down mixture (type III) shall be thoroughly cleaned, washed, dried (see 6.3), and sterilized.

3.5.2 Blood removal and scouring.—The finished product shall be entirely free of blood, and a commercial laundry sour of the fluoride type, namely sodium acid or silico fluoride or combinations thereof, shall be utilized in the final rinse (except when DDT treatment is specified as in 3.5.3) of the scouring procedure to bring the acidity (pH) of the finished dry product within the limits of 3.5 to 6.0 when tested as specified in table II.

3.5.2.1 Certification.—The contractor shall certify in writing to the use of the fluoride sour in the final rinse of the washing procedures as specified in 3.5.2, and that the materials have been sterilized.

3.5.3 Insecticide.—When specified in the applicable procurement document (see 6.2), the feathers, down, and feathers and down mixture shall be treated with DDT (dichloro—diphenyl-trichloroethane). The DDT shall be applied during the preparation of the feathers so that when tendered for delivery the feathers, down, or feather and down mixture shall contain not less than 0.50 nor more than 0.75 percent of DDT based on the air-dried weight of the material when tested as specified in table II. The DDT shall be applied from an aqueous emulsion in accordance with "Direction for Use (Feathers)" of Military Specification MIL-C-3985.

3.5.4 Cleanliness.

3.5.4.1 Oxygen number.—When tested as specified in table II the feathers, down, and feather and down mixture shall have an oxygen number of not more than 16.

3.5.4.2 Solvent soluble matter.—Fats, oils, and waxes shall not be added to the feathers, down, and feather and down mixture. Solvent soluble materials, exclusive of DDT content, shall not exceed 2½ percent when tested as specified in table II.

3.5.5 Brittleness.—Feathers shall be sufficiently pliable to permit the ends to be

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brought together in the direction of maximum curvature without any fracture (partial or complete) to the quill or rachis. Not more than four feathers shall fail the test specified in table II.

3.6 Requirements applicable to individual types.

3.6.1 Type I feathers.

3.6.1.1 Composition (see table II).

- (a) Whole waterfowl feathers
 - Minimum 80.0 percent
 - (b) Pure down (and plumules)
 - Minimum 10.0 percent
 - (c) Balance ---- Maximum 10.0 percent
- Composed of any combination of the following:
- (1) Non-waterfowl feathers
 - Maximum 8.0 percent
 - (2) Waterfowl quill-feathers, feather fibers, or damaged waterfowl feathers
 - Maximum 5.0 percent
 - (3) Down fiber--Maximum 1.0 percent
 - (4) Residual matter
 - Maximum 2.0 percent

3.6.1.1.1 Class 1 goose feathers (grade A and grade B).—A minimum of 50 percent of all feathers shall measure less than 3 inches in length. Feathers longer than 4 inches but not exceeding 6 inches shall total not more than 5 percent. The balance shall be composed of feathers not exceeding 4 inches in length.

3.6.1.1.2 Class 2 duck feathers (grade A and grade B).—A minimum of 50 percent of all feathers shall measure less than 2½ inches in length. Feathers longer than 3½ inches but not exceeding 5 inches shall total not more than 5 percent. The balance shall be composed of feathers not exceeding 3½ inches in length.

3.6.1.2 Filling power (type I).—The filling power of type I feathers, when measured as specified in 4.4.5, shall be as follows:

Class of feathers	Grade	Filling power (cms)
Class 1—Goose feathers--	A	6.0 (Minimum)
Class 1—Goose feathers--	B	5.0 (Minimum)
Class 2—Duck feathers---	A	5.0 (Minimum)
Class 2—Duck feathers---	B	4.0 (Minimum)

3.6.2 Type II down.

3.6.2.1 Composition (see table II).

- (a) Pure down (and plumules)
 - Minimum 85 percent
 - (b) Balance ----- Maximum 15 percent
- Composed of any combination of the following:
- (1) Down fiber--Maximum 8.5 percent
 - (2) Feather fiber
 - Maximum 5.0 percent
 - (3) Small waterfowl feathers
 - Maximum 10.0 percent
 - (4) Quill feathers, insect damaged feathers and on-waterfowl feathers --Maximum 1.0 percent
 - (5) Residual matter
 - Maximum 2.0 percent

3.6.2.2 Filling power (type II).—The filling power for type II down, when measured as specified in 4.4.5, shall be as follows:

Class	Grade	Filling power (cms)
1 and 2-----	A	9.0 (Minimum)
1 and 2-----	B	7.5 (Minimum)

3.6.3 Type III feather and down mixture.

3.6.3.1 Composition (see table II).

- (a) Pure down (and plumules)
 - Minimum 40.0 percent

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(b) Extraneous materials

Maximum 12.0 percent

Composed of any combination of the following:

(1) Non-waterfowl feathers

Maximum 4.8 percent

(2) Down fiber.—Maximum 4.0 percent

(3) Waterfowl quill feathers, feather fibers, insect or otherwise damaged waterfowl feathers

Maximum 5.4 percent

(4) Residual matter

Maximum 2.0 percent

(c) Balance to be composed of whole waterfowl feathers.

3.6.3.1.1 A minimum of 50 percent by weight of the feathers (excluding down content) shall measure less than 3 inches. Feathers longer than 4 inches but not exceeding 6 inches shall total not more than 5 percent. The balance of the feathers shall be composed of feathers not exceeding 4 inches in length.

3.6.3.2 *Filling power (type III).*—The filling power of type III feather and down mixture shall not be less than 6.0 cms. when tested as specified in table II.

3.7 Packaging and packing.

3.7.1 *Materials purchased by a contractor.*

—When the feathers, down, or feather and down mixture are purchased by a contractor as a component of an end item, they shall be packaged and packed in clean condition in accordance with the feather and down supplier's commercial practice.

3.7.2 *Materials purchased directly by the Government.*—When the feathers, down, or feather and down mixture are purchased directly by the Government, they shall be packaged and packed in the levels specified in accordance with the requirements of section 5 and inspected in accordance with 4.5 through 4.6.1.4.

4. SAMPLING, INSPECTION, AND TEST PROCEDURES

4.1 Contractors inspection responsibility.

—Unless otherwise specified herein, the supplier is responsible for the performance of all inspection requirements prior to submission for Government inspection and acceptance. Except as otherwise specified, the supplier may utilize his own facilities or any other commercial laboratory acceptable to the Government. Inspection records of the examination and tests shall be kept complete and made available to the Government as specified in the contract or order.

4.2 Pre-acceptance inspection.

4.2.1 *Laboratory report.*—The pre-award laboratory report shall contain actual test results showing that the feathers, down, or feather and down mixture have been tested and comply with all physical and chemical requirements of section 3.

4.2.2 *Preproduction sample inspection.*—The preproduction sample submitted in accordance with 3.2 shall be examined and tested to determine compliance with the requirements of section 3.

4.3 *Inspection for acceptance.*—Unless otherwise indicated, inspection shall be in accordance with Military Standard MIL-STD-105 except as otherwise indicated hereinafter.

4.4 *Testing.*—Testing of the end item shall be performed in accordance with methods specified in table II. The test methods indicated by number apply to Federal Specification CCC-T-191. The sample unit (unit of product) for testing shall be a 12-ounce composite of feathers, down, or feather and down mixture as applicable. The sample shall be obtained by drawing approximately 4 ounces each of the material from the top, center and bottom on two opposite sides of each bag selected for sampling, so that approximately 24 ounces of material will be drawn from each sample bag. Bags shall be cut in the

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specified locations for drawing the sample. The sample size (number of bags to be selected) shall be in accordance with level L-7, table IIIB of Military Standard MIL-STD-105, and the lot size shall be expressed in terms of bags. For civil agencies the sample size and the number of defects acceptable shall be as specified in table I.

TABLE I.—*Sampling for test — civil agencies*

Number of bags in lot	Number of bags in test sample	Acceptance number (defects)	Rejection number (defects)
25 and under--	2	0	1
26 to 65-----	3	0	1
66 to 110-----	5	0	1
111 to 300-----	7	0	1
301 to 500-----	10	1	2
501 to 800-----	15	1	2
801 to 1300-----	25	2	3
1301 to 3200 --	35	3	4
3201 to 8000----	50	4	5
8001 to 22000--	75	6	7
22001 and over--	110	8	9

TABLE II.

Characteristic	Requirement reference	Test method	Determinations per sample unit
<i>Composition:</i>		(see 4.4.4)	1
Type I-----	3.6.1		
Type II-----	3.6.2		
Type III-----	3.6.3		
<i>Filling power:</i>		(see 4.4.5)	3
Type I-----	3.6.1.2		
Type II-----	3.6.2.2		
Type III-----	3.6.3.2		
DDT content--	3.5.3	(see 4.4.3)	2
Acidity (pH)--	3.5.2	2811	2
Oxygen number ----	3.5.4.1	(see 4.4.2.1)	2
Solvent soluble matter----	3.5.4.2	(see 4.4.2.2)	2
Brittleness ----	3.5.5	(see 4.4.1)	1

4.4.1 Brittleness test.—Fifty feathers shall be tested to determine compliance with the requirement specified in 3.5.5. The ends of

each feather shall be brought together in the direction of maximum curvature. Fracture of the quill or rachis shall be evidence of failure.

4.4.2 Cleanliness test.

4.4.2.1 Oxygen number.—Ten grams of feathers, down, or feather and down mixture shall be placed in a tumbler jar as specified in method 5500 of Federal Specification CCC-T-191, or in an equivalent agitating device, with one liter of distilled water and tumbled at room temperature for one hour. The resulting suspension shall be filtered through a 74-micron (standard No. 200) sieve conforming to Federal Specification RR-S-366, and evaluated as specified in 4.4.2.1.1.

4.4.2.1.1 A 100-milliliter aliquot of the above filtrate shall be transferred to a porcelain casserole, neutralized and made acid with 1 to 2 milliliters excess of 6*N* sulfuric acid. The solution shall be titrated with standard 0.1*N* potassium permanganate, adding approximately 0.05 milliliters at a time, until a pink color persists for 60 seconds. Calculate oxygen number to number of grams of oxygen per 100,000 grams of sample as follows: Oxygen number = milliliters of 0.1*N* $\text{KMnO}_4 \times 80$.

4.4.2.2 Solvent soluble matter.—Three grams plus or minus 0.5 gram of feathers, down, or feather and down mixture shall be placed in a fat-free extraction thimble (Whatman single thickness) to prevent escape of sample. Thimble with product shall be extracted in a Soxhlet extractor, using carbon tetrachloride or chloroform for a minimum of 20 cycles. The extract shall then be evaporated on a water bath, dried to constant weight in an oven at $100^\circ \pm 2^\circ \text{C}$, cooled and weighed. Report residue, after deducting DDT as determined in 4.4.3 if present, as the solvent soluble matter.

4.4.3 DDT (dichloro-diphenyl-trichloroethane) content.—A 10 ± 1 -gram quantity of feathers, down, or feather and down

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mixture shall be extracted for two hours in a Soxhlet apparatus with petroleum ether or any other suitable solvent, after which most of the solvent shall be removed by evaporation on a steam bath. Do not evaporate to dryness, since the DDT may decompose. Add 25 ml. of 99 percent isopropyl alcohol and 2.5 grams of metallic sodium cut into small pieces and swirl the flask in order to mix its contents. Connect to a water-cooled reflux condenser and boil gently for a minimum of one half hour. Shake the flask occasionally. Decompose the excess sodium by cautiously adding 10 milliliters of 50 percent isopropyl alcohol through the condenser at a rate of one to two drops per second. Boil for an additional 10 minutes and then add 60 milliliters of distilled water. Cool to room temperature, add two to three drops of phenolphthalein solution, neutralize by adding nitric acid (1 to 1), and add 10 milliliters of the diluted acid in excess. Add dropwise, with stirring of the solution, a measured excess (25 ml.) of 0.1N AgNO_3 solution. Coagulate the precipitate by heating on a steam bath for approximately one half hour. Cool to room temperature and filter through a No. 52 Whatman filter paper and wash thoroughly with distilled water, receiving the filtrate in a 500-ml. Erlenmeyer flask. Add 5 milliliters of ferric ammonium sulfate indicator and titrate the excess AgNO_3 . Compute the net number of milliliters of 0.1N AgNO_3 consumed by the sample. Calculate percent DDT as follows:

$$\begin{aligned} &\text{Percent DDT (dichloro-diphenyl-trichloro-} \\ &\quad \text{ethane)} = \\ &\frac{\text{Milliliters of 0.1N AgNO}_3 \text{ (consumed)}}{\times 7.094} \end{aligned}$$

Weight of sample (grams)

4.4.3.1 A blank determination for the chemicals used shall be made following the exact procedure given above, but limiting the 0.1N AgNO_3 solution to 5 milliliters in order to obtain a chloride correction value. This blank value shall be subtracted from the DDT determination to obtain the exact value of DDT present.

4.4.4 Composition analysis by weight of feathers, down, and feather and down mixture.

4.4.4.1 *Atmospheric conditions.*—The test for composition analysis may be made under prevailing atmospheric conditions except in the settlement of disputes. In the case of dispute the test shall be performed under standard conditions as specified in Federal Specification CCC-T-191.

4.4.4.2 *Preparation of specimen.*—Specimens of the end product shall be prepared as specified in 4.4. Approximately one ounce of the material shall be exposed in the relaxed state (without packing) in a screen container for a period of not less than one day. The material shall be mixed with a rod over the exposure period to insure complete conditioning.

4.4.4.3 *Apparatus.*

4.4.4.3.1 A wooden box of the following approximate dimensions:

Base—18 inches long by 12 inches wide
Front—6 inches high
Back—12 inches high

The box shall have a glass lid hinged to the top edge of the back panel to provide a clear view of its interior and a free and secure closure during examination of the sample. It shall also have two openings, one at each end of the front panel, sufficiently large to permit the examiner's hand to enter the box to separate and examine the particles in the sample, and shall be equipped with a light to provide sufficient illumination of its interior.

4.4.4.3.2 Tared weighing bottles or beakers with covers to be used as containers in the separating process.

4.4.4.3.3 A pair of tweezers suitable for extracting and separating the components.

4.4.4.3.4 *Balance.*—An analytical balance capable of accurately weighing to the nearest 0.001 gram shall be utilized in the weighings.

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4.4.4.4 Procedure.

4.4.4.4.1 The sample consisting of approximately four grams of specimen prepared as in 4.4 and 4.4.4.2 shall be transferred into a weighing container of known weight and shall then be weighed to determine its exact weight.

4.4.4.4.1.1 *Weighing*.—All weights shall be determined to the nearest 0.001 gram.

4.4.4.4.2 The weighing bottle or beaker containing the sample shall be placed on the floor of the separating box along with as many empty containers of known weight as necessary for the separation of the sample. In the event of dispute, prior to their use, all weighing bottles or beakers shall be kept in a conditioned atmosphere as defined in Federal Specification CCC-T-191. The lid of the separating box shall be kept closed.

4.4.4.4.3 Each component of the feathers, down, or feather and down mixture in the sample to be analyzed shall be extracted individually and shall be closely examined to determine its nature. Each particle shall be classified in accordance with the definitions in 3.4 and shall be placed into the appropriate weighed container. The weighing bottles or beakers shall be identified as follows:

(a) For type I—waterfowl feathers:

- Whole waterfowl feathers.
- Pure down (and plumules).
- Non-waterfowl feathers.
- Waterfowl quill feathers, feather fibers, or damaged waterfowl feathers.
- Down fiber.
- Residual matter.

(b) For type II—down:

- Pure down (and plumules).
- Down fiber.
- Feather fiber.
- Small waterfowl feathers.
- Quill feathers, insect damaged feathers and non-waterfowl feathers.
- Residual matter.

(c) For type III—feather and down mixture:

- Pure down (and plumules).
- Whole waterfowl feathers.
- Non-waterfowl feathers.
- Waterfowl quill feathers, feather fiber, insect or otherwise damaged waterfowl feathers.
- Down fiber.
- Residual matter.

4.4.4.5 Evaluation.

4.4.4.5.1 Upon completion of the separating process, the weight of the contents of each weighing bottle or beakers shall be determined by subtracting the tare weight of the containers from the gross weight.

4.4.4.5.2 The percentage of each component shall be determined in accordance with the following formula:

$$\frac{\text{Total weight of material in component}}{\text{Weight of sample}} \times 100 = \text{Percent of component sample.}$$

4.4.4.6 Report.

4.4.4.6.1 The percent of each component of the mixture shall be reported to the nearest 0.1 percent based on the weight of the sample prior to separation.

4.4.4.6.2 In the event that the sum of the weights of all components varies more than one percent from the original sample weight, the test shall be repeated and the original results discarded.

4.4.4.7 Preservation of specimens.

4.4.4.7.1 When test reports indicate failure, each separate portion of the sample shall be kept in a properly identified envelope for ready reference in the event of a dispute. If test results are not questioned within three months from date of the report, these samples may be discarded. If results indicate

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failure, a recheck shall be performed on another specimen obtained in a similar manner from the original sample.

4.4.5 Determination of filling power.

4.4.5.1 Atmospheric conditions.—The filling power test may be conducted under prevailing atmospheric conditions except in the settlement of disputes. In the case of dispute the test shall be performed under standard conditions as specified in Federal Specification CCC-T-191.

4.4.5.2 Preparation of specimen.—Specimens of the end product shall be prepared as specified in 4.4. Approximately three ounces of material shall be fluffed in the filling power apparatus for 2 minutes at 50 ± 10 pounds air-gage pressure. The material shall then be exposed in the unpacked state in a screen container for not less than 3 days nor more than 5 days. The material shall be mixed with a rod once a day to insure complete relaxation and conditioning.

4.4.5.3 Test apparatus.—The apparatus (see figure 1) shall consist of the following:

4.4.5.3.1 Cylinder.—The cylinder shall be a rigid phenolic bonded paper or aluminum tube 12.75 inches \pm 0.01 inch inside diameter, and approximately 20 inches in length. The inner wall shall have a smooth finish. The cylinder shall be set in a vertical position and shall be open at both ends with means of supporting the base end rigidly in a horizontal plane. It is convenient to have the cylinder detachable from the base for facilitating specimen removal. A removable perforated cover with the air-blowing unit attached thereto shall be provided for use in retaining the specimen during air fluffing.

4.4.5.3.2 Piston.—The piston shall be made of a rigid material and shall weigh 118.0 grams \pm 0.5 gram (Balsa wood with a stiff, smooth paper contact surface or expanded rubber has been found satisfactory for this purpose). The piston shall have a diameter

of 12.55 inches \pm 0.01 inch with the edge beveled to $\frac{1}{8}$ inch. The exact center of the piston shall be well defined for measuring purposes. A device for lowering the piston in a horizontal position shall be provided. This may be accomplished by suitably attached strings or other manual or mechanical means.

4.4.5.3.3 Measuring device.—The measuring device shall consist of a smooth thread, with small plumbs as counterweights, one of the plumbs serving in connection with the depth indicator. The thread shall run over two pulleys so that one plumb will drop directly on the center of the piston while the other will run along a vertically fixed centimeter scale.

4.4.5.3.4 Fluffing device.—Means for thoroughly fluffing or loosening the specimen shall be provided. A blower is recommended for this purpose.

4.4.5.3.5 Balance.—An analytical balance capable of weighing accurately to the nearest 0.001 ounce shall be utilized for specimen weighings.

4.4.5.4 Procedure.

4.4.5.4.1 Determination of zero reading.—Slowly lower the piston until it rests on the bottom of the empty cylinder. Lower the plumb until it just touches the top surface of the piston. The depth is read directly from the centimeter scale to the nearest millimeter. This shall be repeated until two consecutive identical readings are obtained. This measurement shall be read to the nearest 0.1 cm and shall be considered as zero depth (depth of empty cylinder).

4.4.5.4.2 Test specimen.—The specimen shall consist of 0.80 ± 0.002 ounce of material prepared as specified in 4.4.5.3.

4.4.5.4.3 Fluffing.—This specimen shall be placed in the cylinder and the piston slowly

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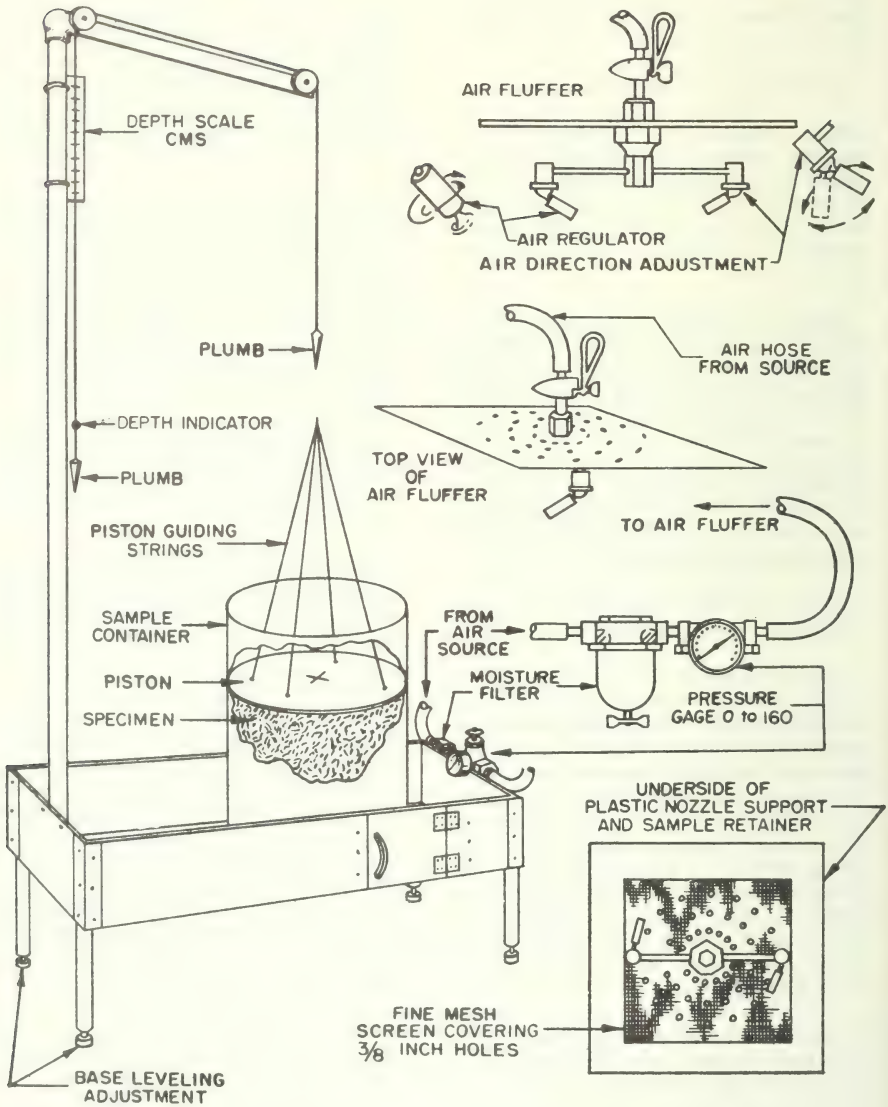


FIGURE 1.

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lowered onto the material, and air blown for approximately 10 seconds at 50 ± 10 pounds air-pressure to thoroughly mix and fluff the specimen. Other means may be used provided results equal to the blower method are obtained.

4.4.5.4.4 Volume measuring.—The piston shall be slowly lowered onto the material. When there is a definite slackening of the supporting strings, a stopwatch shall be started. The plumb shall be lowered so that at the end of a 1-minute interval, it just touches the center of the top surface of the piston. The depth shall be read directly from the centimeter scale to the nearest millimeter. Each specimen shall be refluffed and measured three times for depth.

4.4.5.5 Report.—The report shall be based on the volume at the designated time pressure level. The distance between inside surface of the bottom of the cylinder and the bottom surface of the piston shall be reported. This shall be obtained by subtracting the zero reading obtained in 4.4.5.4.1 from the depth obtained in 4.4.5.4.4. Unless otherwise specified, three specimens shall be tested from each unit of product. A measure of the height of the material under the piston shall be considered its filling power. The filling power of the unit of product shall be the average of the results obtained from the specimens tested and shall be reported to the nearest 0.1 cm.

4.5 Inspection of components.

4.5.1 Inspection of cloth and fiberboard.—Cloth and fiberboard used in the fabrication of fabricated bags and bale boards shall be inspected to determine compliance with the requirements of referenced specifications and applicable supplemental provisions specified in 5.1 and 5.2.

4.5.2 Inspection of fabricated bags and bale boards.—Fabricated bags and bale boards shall be inspected to determine con-

formance with the applicable requirements of 5.1 and 5.2. The acceptable quality level shall be 4.0 defects per hundred units, and the inspection level shall be L-3 of table IIIB of Military Standard MIL-STD-105. For civil agencies the sample size and the number of defects acceptable shall be as specified in table III.

TABLE III.—*Sampling for inspection of fabricated bags and bale boards—civil agencies*

Number of bags or bale boards in lot	Number of bags or bale boards in sample	Acceptance number (defects)	Rejection number (defects)
300 and under	1	0	1
301 to 500----	2	0	1
501 to 800----	3	0	1
801 to 1300----	5	0	1
1301 to 3200----	7	0	1
3201 to 8000----	10	1	2
8001 to 22000----	15	1	2
22001 and over	25	2	3

4.6 Inspection of the end product.

4.6.1 Examination of the end item.—The end item (completely packaged and packed product) shall be inspected in accordance with the examinations and tests specified in 4.6.1.1, 4.6.1.2, 4.6.1.3, 4.6.1.4.

4.6.1.1 Weight.—The lot shall be unacceptable if the total net weight of the bags in the sample is less than the total net weight indicated on the bags.

4.6.1.2 The sample size (number of bags to be selected) for the weight examination shall be in accordance with level L-8, table IIIB of Military Standard MIL-STD-105. For civil agencies the sample size shall be as specified in table IV. The net weight of the material contained in the sample bags shall be obtained by deducting the tare weights from the gross weights of the sample bags.

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TABLE IV.—*Sampling for weight examination—civil agencies*

Number of bags in lot	Number of bags in sample
25 and under -----	2
26 to 40 -----	3
41 to 65 -----	5
66 to 110 -----	7
111 to 300 -----	10
301 to 500 -----	15
501 to 800 -----	25
801 to 1300 -----	35
1301 to 3200 -----	50
3201 to 8000 -----	75
8001 to 22000 -----	110
22001 and over -----	150

4.6.1.3 Packaging examination.—The unit of product shall be one bag of feathers, down, or feather and down mixture.

Defects

Not packaged in accordance with specified packaging level.

Bag not new, or any patch.

Not closed in the specified manner.

Wire tie broken or not tightly turned to accomplish a secure closure.

Any hole, rip, tear or open seam; any weak places in bag that may develop into a hole.

Bag wet.

Marking — missing, incomplete, illegible, incorrect, not accomplished in the specified manner, or not in proper location.

4.6.1.4 Packing examination.—The sample unit shall be one bale or shipping container.

Defects

Not packed in accordance with the specified packing level.

Bags not compressed to specified size.

Does not contain the specified number of bags.

Kraft facing of baling board not on outside.

Any board or strap missing.

Baling board or strap too loose or not placed in proper location to a degree where safe delivery of contents may be impaired.

Marking — missing, incomplete, illegible, incorrect, not accomplished in the specified manner or not in proper location.

4.6.1.5 Acceptable quality levels.—Acceptable quality levels (AQL's) and inspection levels shall be as follows: AQL's are expressed in defects per 100 units.

Examination	Inspection level	AQL
4.6.1.3 (packaging)	I	6.5
4.6.1.4 (packing)	1	6.5

For civil agencies the sample size and the number of defects acceptable shall be as specified in table V.

TABLE V.—*Sampling for packaging and packing examination—civil agencies*

Number of bags or bales in lot	Number of bags or bales in sample	Acceptance number (defects)	Rejection number (defects)
110 and under..	5	0	1
111 to 300-----	7	1	2
301 to 500-----	10	1	2
501 to 800-----	15	2	3
801 to 1300----	25	3	4
1301 to 3200----	35	5	6
3201 to 8000----	50	6	7
8001 to 22000----	75	9	10
22001 and over..	110	12	13

5. PREPARATION FOR DELIVERY

Federal Standard No. 102 should be referred to for definitions and applications of the various levels of packaging and packing protection for supplies and equipment (for civil agencies only).

5.1 Packaging.—Packaging shall be level A or C as specified (see 6.2).

5.1.1 Level A.—Fifty pounds \pm 5 pounds of type I feathers of one class and grade only, or 50 pounds \pm 5 pounds of type III feathers and down mixture, or 25 pounds \pm 3 pounds of type II down of one class and grade only shall be packaged in a new (not used or laundered) plain textile bag fabricated from cotton sheeting conforming to type I, class

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D of Military Specification JAN-C-485 or cloth, cotton, osnaburg conforming to type I, class 2, finish A of Federal Specification CCC-C-429. Fabrics in other widths of equivalent weight and construction will be acceptable. For civil agencies only, the package shall be 25 pounds of down (type II) and 50 pounds of feathers (type I) with a minus tolerance of 4 ounces.

5.1.1.1 Bag construction.—The bags shall have a finished length and width measured flat of approximately 72 by 36 inches and shall be constructed in accordance with the following requirements: The side and bottom shall be seamed with 5 to 6 stitches per inch with either seam and stitching type 401-SSa-2 or 301-SSa-2, conforming to Federal Standard No. 751. The stitching shall be at least $\frac{5}{8}$ inch from the cut edge of the fabric or $\frac{1}{4}$ inch from a selvage edge and shall be at least $\frac{1}{2}$ inch apart. The ends of all seams shall be backstitched at least 1 inch. The thread used for seaming shall be cotton, machine, soft finish, type IIIA, unbleached, ticket no. 10/3, 3 ply, conforming to Federal Specification V-T-276 (table V).

5.1.1.1.1 Type 301 stitching. — Thread breaks in stitching shall be backstitched not less than 1 inch at each break. Thread tension shall be maintained so that there will be no loose stitching and that the lock will be embedded in the center of the materials sewed. Thread ends shall be trimmed.

5.1.1.1.2 Type 401 stitching. — Thread breaks in stitching shall be overstitched not less than $1\frac{1}{2}$ inches at each break. Thread tension shall be maintained so that there will be no loose stitching. The chain portion of the stitching shall not appear on the outside of the bag. Thread ends shall be trimmed.

5.1.1.2 Closure.—The closure of the top of the bag after filling shall be effected by means of two 6-inch, 15-gage, soft-iron or steel-wire ties having a $\frac{1}{2}$ -inch-diameter formed eye at each end. One tie shall be applied at the base of an ear formed by gathering the cloth evenly and the second tie applied at a dis-

tance approximately 1 inch from the first tie with the twisted ends of two ties alternated and facing in opposite directions.

5.1.2 Level C.—Feathers, down, and feathers and down mixed shall be packaged in accordance with good commercial practice.

5.2 Packing.—Packing shall be levels A, B, or C as specified (see 6.2).

5.2.1 Levels A and B.—Three 50-pound bags of type I feathers of one class and grade only, or three 50-pound bags of type III feathers and down mixed or four 25-pound bags of type II down of one class and grade only, packaged, with permissible tolerances as specified in 5.1.1, shall be placed between two baling boards and compressed by machine so as to form a bale approximately one-fifth of the original volume. Bales thus formed shall measure approximately 60 by 24 by 20 inches.

5.2.1.1 Baling boards.—Baling boards shall be not less than 0.075 inch thick solid fiberboard conforming to type II, class 1, of Federal Specification PPP-B-636 except that at least one face of the board shall be not less than 0.010-inch kraft paperboard, and the bursting strength of the combined board shall be not less than 200 p.s.i. Two such baling boards size 58 by 36 inches, each with a score line placed 6 inches from each 58-inch edge in such a manner that the kraft facing is on the outside when in a folded position, shall be used in each bale; one board on top of the bags being baled and one on the bottom. The boards shall be bent at the score lines thereby forming a fiberboard cap 58 inches in length, 24 inches in width, with 6-inch flanges extended down over the side of the bale.

5.2.1.2 Strapping. — Not less than eight straps shall be used on each bale; straps shall be affixed girthwise around the sides, top, and bottom of the bale over the baling boards. The two outside straps shall be placed 4 inches in from each end and the intermediate straps placed equidistant between the end bands. All strapping shall be flat steel not less

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than $\frac{3}{8}$ inch wide by 0.020 inches thick conforming to type I, class A, of Federal Specification QQ-S-781.

5.2.2 Level C.—Feathers, down, and feathers and down mixture packaged as specified in 5.1 shall be packed in a manner to insure carrier acceptance and safe delivery at destination. Containers shall be in accordance with Uniform Freight Classification Rules or Regulations of other carriers applicable to the mode of transportation.

5.3 Marking.

5.3.1 Civil agencies.—In addition to any special marking required by the contract or order, shipping containers shall be marked in accordance with the requirements of Federal Standard No. 123.

5.3.2 Military agencies.—In addition to any special marking required by the contract or order, shipments shall be marked in accordance with the requirements of Military Standard MIL-STD-129. All shipments for level A or level B shall be designated "A/A".

6. NOTES

6.1 Intended use.—The type I feathers and type II down are intended for storage for subsequent use in end items as required. The type III feather and down mixture covered by this specification is intended for immediate use in sleeping bags and similar items.

6.2 Ordering data.—Purchasers should exercise any desired options offered herein, and procurement documents should specify the following:

- (a) Title, number and date of this specification.
- (b) Type, class, and grade required (see 1.2)
- (c) When laboratory report is not required (see 3.1).
- (d) When preproduction sample is not required (see 3.2).

- (e) Whether an affidavit is required to show that the materials supplied are new and not used (see 3.3).
- (f) When treatment with insecticide is required (see 3.5.3).
- (g) Selection of applicable levels of packing and packing (see 5.1 and 5.2).

6.3 With reference to 3.5.1, good results have been obtained when the feathers or down are agitated for 20 minutes in water at $90^{\circ} \pm 5^{\circ}$ F. to which has been added a blood solubilizing agent in the proportion of one ounce of the agent to 10 gallons of water. Following the blood solubilizing treatment, the feathers or down are washed using a non-ionic detergent and then rinsed. The final rinse contains one of the commercial fluoride soaps available as laundry soaps, namely, sodium acid fluoride or sodium silica fluoride or combinations thereof.

6.4 Supersession data.—This specification supersedes those requirements of Federal Specification C-F-151a dated July 24, 1940 pertaining to type II duck feathers and type III goose feathers. This specification also supersedes the requirements of Military Specification MIL-F-5652C dated 29 May 1953 for Feathers and Down, Waterfowl. Federal Specification C-F-158 for Feathers, Land Fowl (Crushed) supersedes those requirements of Federal Specification C-F-151a for type I chicken feathers.

6.5 Filling power test.—The testing equipment may be procured at:

CUSTOM SCIENTIFIC INSTRUMENT,
INCORPORATED
541 Devon Street
Arlington, New Jersey

Other sources of equipment may be used provided that the equipment conforms to the standard design or that test results equal to the standard are obtained. Manufacturers are invited to advise the Military Clothing and Textile Supply Agency, Philadelphia Quartermaster Depot, of their readiness to supply

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such testing equipment in order that prospective bidders under this specification may be advised upon their request.

6.6 Transportation description.—Transportation description applicable to this item is:

Feathers NOIBN (specify machine or not machine pressed).

Carload minimum weight 15,000 pounds, subject to rule 34,

Uniform Freight Classification.

Less than 4 lbs. per cubic foot.

Motor volume minimum weight, any quantity.

4 lbs. per cubic foot but less than 7 lbs.

Truckload minimum weight 5,600 pounds, subject to rule 34, National Motor Freight Classification.

7 lbs. per cubic foot but less than 12 lbs.

Truckload minimum weight 10,000 pounds, subject to rule 34, National Motor Freight Classification.

12 lbs. per cubic foot or over.

Truckload minimum weight 12,900 pounds, subject to rule 34, National Motor Freight Classification.

Notice. — When Government drawings, specifications, or other data are used for any purpose other than in connection with a definitely related Government procurement operation, the United States Government thereby incurs no responsibility nor any obligation whatsoever; and the fact that the Government may have formulated, furnished, or in any way supplied the said drawings, specifications, or other data, is not to be regarded, by implication or otherwise as in any manner licensing the holder or any other person or corporation, or conveying any rights or permission to manufacture, use, or sell any patented invention that may in any way be related thereto.

MILITARY INTEREST:

Army—MQ

Navy—S Md

Air Force.



ARKANSAS

CHAPTER 7. SANITARY AND SAFETY REGULATIONS

SECTION.

82-701. Sanitation bureau created.
82-702-82-713. [Repealed.]
82-714. [Obsolete.]
82-715. [Obsolete.]
82-716. Manufacture, renovation and sale of bedding—Definitions.
82-717. Re-use of material exposed to contagion forbidden.
82-718. Sale of used bedding exposed to contagion forbidden.
82-719. Sterilization of material to be re-used.
82-720. Bedding to be labeled—Form and contents of label.
82-721. Removal or alteration of labels forbidden.
82-722. "Felt" defined.

SECTION.

82-723. Noncompliance with act—Separate offenses defined.
82-724. Removal of label on hotel or rooming house bedding unlawful.
82-725. Re-use of mattresses from hospitals or hotels forbidden—Exception.
82-726. Act does not apply to renovation for domestic use—Use of label.
82-727. Rules for sterilization prescribed by state board of health.
82-728. Offenses under act.
82-729. Penalty for violations.
82-730. Inspection of ice boxes and refrigerators—Dismantling.
82-731. Walk-in refrigerators—Handle requirements.

82-701. Sanitation bureau created.—There is hereby created a Bureau of Sanitation of the State of Arkansas, which shall be under the supervision and jurisdiction of the State Board of Health. The usual facilities for transacting its business shall be furnished as hereinafter provided. [Acts 1917, No. 210, § 1, p. 1139; Pope's Dig., § 7211.]

Compiler's Notes.

Acts 1917, No. 210 (§§ 82-701-82-713, 82-715) was not carried in Crawford and Moses' Digest. This section may be obsolete since the purpose for which the bureau was established, the licensing of hotels, rooming houses and restaurants, was repealed by Acts 1949, No. 299, § 1.

NOTES TO DECISIONS

Authority of Cities.

Municipal corporations were not authorized to regulate hotels since such power formerly given to them was repealed by this statute placing the regulation in the state board of health. *Bragg v. Adams*, 180 Ark. 582, 21 S. W. (2d) 950.

82-702—82-713. Licensing and inspection of hotels, restaurants and rooming houses. [Repealed.]

Repeal.

These sections (Acts 1917, No. 210, §§ 2-13, p. 1139; Pope's Dig., §§ 7212-7222; Acts 1943, No. 227, §§ 1, 2, p. 475), relating to the licensing of and sanitary inspection of hotels, restaurants and rooming houses, were repealed by Acts, 1949, No. 299, §§ 1, 2.

82-714. Disposition of hotel inspection fees. [Obsolete.]

Compiler's Note.

This section (Acts 1945, No. 99, § 4, p. 229) is rendered obsolete by the repeal of §§ 82-702-82-713 relating to the licensing of hotels.

82-715. Rules and regulations of board of health. [Obsolete.]

Compiler's Note.

This section (Acts 1917, No. 210, § 16, p. 1139) is rendered obsolete with the repeal of the remainder of the act by Acts 1949, No. 299, § 1.

82-716. Manufacture, renovation and sale of bedding—Definitions.—That the term "bedding" as used in this act [§§ 82-716—82-729] shall be construed to mean any mattress, upholstered spring, comforter, pad, cushion or pillow designed and made for use in sleeping.

The word "person" as used in this act shall be construed to impart the plural and the singular, as the case demands, and shall include individuals, corporations, partnerships, joint-stock companies, societies and associations.

The word "new" as used in this act shall mean any material which has not been used in the manufacture of another article or used for any other purpose.

The words "previously used" as used in this act shall mean any material which has been used in the manufacturing of another article or used for any other purpose.

When construing and enforcing the provisions of this act, the act, omission or failure of any officer, agent or other person acting for, or employed by any individual, corporation, partnership, joint-stock company, society or association, within

the scope of his employment or office shall in every case be also deemed the act, omission or failure of such individual, corporation, partnership, joint-stock company, society or association as well as that of the person. [Acts 1927, No. 249, § 1, p. 846; Pope's Dig., § 6455.]

Comparative Legislation. Bedding—Manufacture or sale—Regulations:

Ill. Rev. Stat. 1959, ch. 38, §§ 67-74.

Ind. Burns' Stat., §§ 35-3601-35-3613.

Ky. Rev. Stat., §§ 214.280-214.310.

La. Rev. Stat. 1950, 40:1191 et seq.

Mo. Vernon's Stat., §§ 421.010-421.120.

Tenn. Code Ann., §§ 53-2208-53-2221.

82-717. Re-use of material exposed to contagion forbidden.—No person shall use in the making or remaking of any article of bedding as herein defined, any material of any kind that has been used by or about any person having an infectious or contagious disease, or has formed a part of any article of bedding which has been so used. [Acts 1927, No. 249, § 2, p. 846; Pope's Dig., § 6456.]

82-718. Sale of used bedding exposed to contagion forbidden.—No person shall sell, offer for sale, deliver, consign for sale, or have in his possession with intent to sell, deliver or consign for sale, any article of bedding that has been used by or about any person having an infectious or contagious disease. [Acts 1927, No. 249, § 3, p. 846; Pope's Dig., § 6457.]

82-719. Sterilization of material to be re-used.—No person shall re-make or renovate any article of bedding unless all the material to be used in said remade or renovated bedding shall first be thoroughly sterilized and disinfected by a process approved by the State Health Commissioner [Officer].

Any person who receives bedding to be renovated shall attach to each such article of bedding at the time of its receipt, a tag upon which has been legibly written the name and address of the owner of the bedding and the date it was received for renovation.

No person shall use in the making of bedding any previously used material unless such material has been sterilized and disinfected by a process approved by the State Health Commissioner [Officer]. [Acts 1927, No. 249, § 4, p. 846; Pope's Dig., § 6458.]

Compiler's Note.

The bracketed words "Officer" were inserted by the compiler because the present law does not provide for a health commissioner but provides for a state health officer. See § 82-103.

Section to Section Reference.

This section is referred to in § 82-725.

82-720. Bedding to be labeled—Form and contents of label.—No person shall sell, offer for sale, deliver, consign for sale, or have in his possession with intent to sell, offer for sale, deliver or consign for sale, any article of bedding unless the same be labeled as follows:

Upon each of such articles of bedding there shall be securely sewed upon the outside thereof a label upon which shall be legibly written or printed, in the English language, the name of the material or the names of the materials used as the filling of such article of bedding; if all the material used as the filling of such article of bedding shall not have been previously used, the words "manufactured of new material" shall appear upon said label, together with the name and address of the maker of the bedding.

If any of the material used in the making or remaking of such article of bedding shall have been previously used, the words "manufactured of previously used material" or "remade of previously used material" as the case may be, shall appear upon said label, together with the name and address of the maker thereof, and also a description of the material used in the filling of such article of bedding.

On any article of bedding not remade, but which has been used shall be labeled "second-hand."

The label required by this section shall be muslin or linen and not less than two [2] inches by three [3] inches in size. The statement required under this section shall be in form as follows:

Manufactured of new material
Materials used in filling

Made by -----
Address -----

The words "manufactured of new material" or "remade of previously used material," or "second-hand," "materials used in filling not known," together with the description of the material used as the filling of an article of bedding shall be in letters not less than one-eighth [$\frac{1}{8}$] of an inch in height.

The sewing of one edge of the said label securely into an outside seam of any article of bedding shall be deemed a compliance with that portion of the act requiring that the label be "securely sewed" upon the article. This label shall contain all the statements required by this act [§§ 82-716—82-729], and shall be securely sewed to the ticking or cover of every article of bedding to be manufactured, before the filling material has been placed inside the ticking or cover.

No term or description likely to mislead shall be used on any label required by this act, in the description of the materials used in the filling of any article of bedding. [Acts 1927, No. 249, § 5, p. 846; Pope's Dig., § 6459.]

Section to Section Reference.

This section is referred to in § 82-725.

82-721. Removal or alteration of labels forbidden.—Any person, other than a purchaser for his own use, who shall remove, deface, alter or shall cause to be removed, defaced or altered, any label upon any article of bedding so labeled under the provisions of this act [§§ 82-716—82-729] shall be guilty of a violation thereof. [Acts 1927, No. 249, § 6, p. 846; Pope's Dig., § 6460.]

82-722. "Felt" defined.—If the label shall bear the word "Felt," it shall be construed to mean that the materials from which the felt was made, has been carded layer upon layer by a garnett, or felting machine. [Acts 1927, No. 249, § 7, p. 846; Pope's Dig., § 6461.]

82-723. Noncompliance with act—Separate offenses defined.—Any person who shall fail to comply with any of the provisions of this act [§§ 82-716—82-729] shall be guilty of a violation thereof. The unit for a separate and distinct offense in violation of this act shall be each and every article of bedding made, or remade, or sold, or offered for sale, or delivered, or consigned, or possessed with intent to sell, offer for sale, deliver, or consign, contrary to the provisions hereof. [Acts 1927, No. 249, § 8, p. 846; Pope's Dig., § 6462.]

82-724. Removal of label on hotel or rooming house bedding unlawful.—It shall be unlawful for any owner, his employees, or servants, of any hostelry or hotel, rooming or boarding house operated for profit, to remove or cause to be removed from mattress purchased for the use in their place of business after the effective date of this act [§§ 82-716—82-729], or [any] label attached thereto. [Acts 1927, No. 249, § 9, p. 846; Pope's Dig., § 6463.]

Compiler's Note.

The bracketed word "any" was inserted by the compiler.

82-725. Re-use of mattresses from hospitals or hotels forbidden—Exception.—It shall be unlawful, and punishable by provisions of this act [§§ 82-716—82-729], for any person, firm, or corporation, or their agent or agents to use or cause to be used in the manufacture, or renovation of mattresses, materials of any description, in whole or in part, that have been used in or about any public or private hospital or sanitorium [sanatorium] for the treatment of any infectious or contagious disease, or materials obtained from mattresses from hotels, rooming and boarding houses, and other public buildings where mattresses have been used for their original purpose, provided however, that this shall not prevent the use of materials as prohibited in section ----- [§ 82-719], when they have been thoroughly sterilized by a method

of sterilization approved or adopted by the State Board of Health; but in which event the mattress shall be labeled as indicated in section _____ [§ 82-720], as may apply. [Acts 1927, No. 249, § 10, p. 846; Pope's Dig., § 6464.]

Compiler's Notes.

The section numbers were not filled in in the act and what are considered the proper sections have been inserted in brackets.

The bracketed word "sanatorium" was inserted by compiler.

82-726. Act does not apply to renovation for domestic use—Use of label.—There shall be nothing in this act [§§ 82-716—82-729] so construed as to prevent any individual from manufacturing, renovating, or having manufactured or renovated, mattresses for his or her own home or domestic use. Provided, that any individual firm or corporation who shall so manufacture or renovate a mattress for another, as set out in this act, shall be required to label same as provided in section _____ [§ 82-720] hereof. [Acts 1927, No. 249, § 11, p. 846; Pope's Dig., § 6465.]

Compiler's Note.

The section number was not filled in in the act and what is considered the proper section has been inserted in brackets.

82-727. Rules for sterilization prescribed by state board of health.—It is hereby made the duty of the State Board of Health to promulgate and publish rules and regulations prescribing the method of sterilization that may be used by those engaged in the manufacture of mattresses and bedding, or in the renovation thereof. All persons, firms, or corporations who shall conform to the regulations as promulgated by the State Board of Health, as herein directed, shall be deemed as complying with the law. [Acts 1927, No. 249, § 12, p. 846; Pope's Dig., § 6466.]

82-728. Offenses under act.—Any person, firm or corporation who shall fail to comply with any of the provisions of this act [§§ 82-716—82-729] shall be guilty of a violation of this act, and each and every mattress manufactured, remade, or renovated, sold, offered for sale, delivered, consigned or possessed with an intent to sell, offer for sale, deliver, or consign contrary to the provisions of this act shall be deemed a separate offense. [Acts 1927, No. 249, § 13, p. 846; Pope's Dig., § 6467.]

82-729. Penalty for violations.—Every person who shall be found guilty of a violation of the provisions of this act [§§ 82-716—82-729] shall be subject to a fine of not less than twenty-five (\$25.00) dollars, nor more than two hundred fifty (\$250.00) dollars, or not less than thirty [30] days, nor more than ninety [90] days in prison, or both, as the court may deem proper. [Acts 1927, No. 249, § 14, p. 846; Pope's Dig., § 6468.]

Repealing Clause and Effective Date.

Section 15 of Acts 1927, No. 249 repealed all laws and parts of laws in conflict therewith and provided that the act should take effect 60 days after its passage. It was approved March 24, 1927, however, such effective date would be invalid under decisions in *Arkansas Tax Comm. v. Moore*, 103 Ark. 48, 145 S. W. 199 and *Cunningham v. Walker*, 198 Ark. 928, 132 S. W. (2d) 24.

82-730. Inspection of ice boxes and refrigerators—Dismantling.—The Chief Safety Engineer of the State Department of Labor or any of his deputies or inspectors shall have the right to remove the door hinges or to dismantle, if necessary, any refrigerator, ice box or freezer located in a place where said refrigerator, ice box or freezer has become or is likely to become hazardous to the lives of children; provided that this section does not apply to refrigerators, ice boxes or freezers located in a home or any retail or wholesale establishment. The Chief Safety Engineer or any of his deputies or inspectors shall have the right to enter any junkyard, vacant lot, dump, yard, or any other place frequented by children in order to perform the above duties. [Acts 1957, No. 347, § 1, p. 996.]

82-731. Walk-in refrigerators—Handle requirements.—The Chief Safety Engineer of the State Department of Labor or any of his deputies or inspectors may require the installation of inside door handles on any walk-in refrigerator, ice box, freezer or the door of a cold storage room where in his discretion the absence of inside door handles in such freezing unit may endanger the life of any employee or other authorized personnel using such unit. [Acts 1957, No. 347, § 2, p. 996.]

Repealing Clause.

Section 4 of Acts 1957, No. 347, repealed all laws and parts of laws in conflict therewith.

Separability.

Section 3 of Acts 1957, No. 347, read: "If any provision of this act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to this end the provisions of this act are declared to be severable."

COLORADO

CHAPTER 66—ARTICLE 17

MATTRESSES AND BEDDING

66-17-1.	Definitions.	66-17-10.	Disposition of funds.
66-17-2.	Use of infected material.	66-17-11.	Appropriation.
66-17-3.	Sale of bedding exposed to contagion.	66-17-12.	Posting of license.
66-17-4.	Sterilization.	66-17-13.	Enforcement.
66-17-5.	Receiving bedding to be remade.	66-17-14.	Violation—what constitutes.
66-17-6.	Tagging.	66-17-15.	Penalty for violation.
66-17-7.	Removing or defacing tag or stamp.	66-17-16.	Rules and regulations.
66-17-8.	Administered by department.	66-17-17.	Title.
66-17-9.	License.		

66-17-1. Definitions.—(1) The word “bedding” means and includes any quilted pad, packing pad, mattress pad, hammock pad, mattress, comforter, bunk quilt, sleeping bag, box spring, studio couch, pillow, cushion, or any bag or container made of leather, cloth or any other material, or any other device that is stuffed or filled in whole or in part with any concealed material in addition to the structural units and filling material used therein and its container, all of which can be used by any human being for sleeping or reclining purposes. “Bedding” includes pillows which are hereby defined as a bag or case of cloth filled or stuffed with feathers, down, kapok, cotton, hair, wool, or other sanitary filling not prohibited by this article to be used as a rest or support for the head in reclining or sleeping.

(2) The word “person” means any individual, corporation, partnership, or association.

(3) The term “new material” means any material which has not been formerly used in the manufacture of another article or used for any other purpose.

(4) The term “previously used material” means material which has been used in the manufacture of another article, or previously used for any other purpose.

(5) The term “secondhand” means any article of bedding which has been previously used but not remade before it is offered for resale.

(6) The words “sell” and “sold” shall, in the corresponding tense, include: Sell, offer to sell, or deliver or consign in sale, or possess with intent to sell, deliver or consign in sale, including bedding stored in warehouses for ultimate purpose of sale.

66-17-2. Use of infected material.—No person shall knowingly use in manufacturing or remaking bedding any material that has been used by a person having an infectious or contagious disease, or which has formed a part of bedding so used.

66-17-3. Sale of bedding exposed to contagion.—No person shall knowingly sell bedding that has been used by a person having an infectious or contagious disease.

66-17-4. Sterilization.—No person engaged in manufacturing, remaking or renovating bedding for another person, or in manufacturing bedding for sale, shall use any previously used material which since last used is not sterilized by the following process, or its equivalent: bedding materials shall be placed in an enclosed chamber which shall be heated to a temperature of two hundred degrees Fahrenheit, which temperature shall be maintained for a period of two hours. The heat may be generated by electric units or any other satisfactory method of heating approved by the state department of public health.

No person shall knowingly sell any bedding manufactured in whole or in part from previously used material, or secondhand bedding, unless sterilized since last used by the process herein provided.

No person shall engage in the business of sterilizing bedding as provided in this article without first obtaining a license from the state department of public health for which there shall be charged a license fee of five dollars per calendar year, or any portion thereof. Such person shall apply for a license and set forth the place where the sterilizing apparatus will be located, the type and kind of equipment to be used, the name and addresses of true owners of said sterilizing business, and such other data as the state department of public health may require. The state department of

public health shall cause an investigation to be made, and if it is satisfied that the apparatus will comply with the requirements set forth for sterilization, pursuant to this article, the said license shall be issued. Inspection shall be made from time to time to determine whether the said licensee is fully and faithfully complying with all of the provisions and regulations promulgated as to sterilization.

66-17-5. Receiving bedding to be remade.—Any person who receives bedding to be remade or renovated shall attach thereto at the time of receiving said bedding a tag on which is legibly written the date of receipt and the name and address of the owner or an identification number and keep a record thereof.

66-17-6. Tagging.—No person shall sell bedding to which is not securely sewed by at least one edge, a cloth or clothbacked tag at least two inches by three inches in size, to which has been affixed the adhesive stamp provided in section 66-17-8.

Upon said tag shall be legibly stamped or printed in English in letters at least one-eighth inches high:

(1) If the materials used in the manufacture of the article of bedding to which the label or brand is to be attached are entirely new, the brand or label shall be as follows: "The materials used in the manufacture of this mattress (or other article of bedding) are entirely new."

(2) If the materials used in the manufacture of the article to which the label or brand is to be attached are partially or wholly previously used materials, the brand or label shall be as follows: "The materials used in the manufacture of this mattress (or other article of bedding) are previously used materials and have been sterilized," with a specific statement of the kind and character of the previously used materials used.

(3) If the article to which the label or brand is to be attached is secondhanded, the brand or label shall consist of the following: "This mattress (or other article of bedding) is secondhanded and has been sterilized."

(4) In addition to the foregoing every label shall bear the name and address of the manufacture or vendor of the article of bedding to which it is attached and the name of material or materials used to fill such article of bedding.

Nothing likely to mislead shall appear on said tag, and it shall contain all statements required by this article and it shall be sewed to the outside covering of every article of bedding sold, manufactured or remade.

The name "felt" shall not be used unless the material has been carded in layers by a garnett machine.

66-17-7. Removing or defacing tag or stamp.—No person, other than a purchaser for his own use, shall remove from any article of bedding or deface or alter the tag or stamp required by this article.

66-17-8. Administered by department.—The state department of public health is hereby charged with the administration and enforcement of this article and it shall provide specially designed adhesive stamps for use under section 66-17-6. Upon request it shall furnish no less than one thousand of said stamps to any person paying in advance twenty dollars per thousand stamps.

66-17-9. License.—No person, except for his own use, shall manufacture, remake or renovate any article of bedding until he has secured an annual license from the state department of public health, for which he shall pay to said state department of public health the sum of twenty-five dollars for any calendar year, or part thereof, for each place of business conducted by such person. The state department of public health may revoke and void any license so issued to any person guilty of violating this article, and such person shall not manufacture, remake, renovate or sell any article of bedding until he has shown a proper compliance with this article and has paid another license fee, whereupon the state department of public health shall issue a new license to said person. Individuals making seventy-five or less quilts per annum or individuals making ten or less mattresses per annum, charitable organizations engaged in philanthropic enterprises, and manufacturers of caskets and burial receptacles shall be exempt from the provisions of this article.

66-17-10. Disposition of funds.—All funds paid to the department of revenue pursuant to this article shall be deposited with the state treasurer for the state of Colorado.

66-17-11. Appropriation.—There shall be appropriated to the state department of public health out of any fund available in the state treasury a sum equivalent to the revenue derived from the sale of stamps and license fees, herein provided, for the purpose of employing inspectors to enforce this article and to defray any other expense incurred in the enforcement thereof.

66-17-12. Posting of license.—Any license required pursuant to the terms of this article shall be publicly posted upon the premises of the licensee.

66-17-13. Enforcement.—The state department of public health shall employ a bedding law inspector, or inspectors, whose sole duty shall be to enforce this article. Such inspector, or inspectors, as often as practicable, shall inspect every place where bedding is made, remade, renovated, sterilized or sold, or where previously used material and secondhand bedding is sterilized under this article. Any inspector so employed to enforce this article, who has reason to believe that any article of bedding is not tagged as required by this article, shall have the authority to open the same and examine the materials therein to determine if said filling is of the kind stated on said tag, provided that in opening such bedding he shall use reasonable means not to damage the same, or destroy the value thereof. Said inspector shall also have power to examine any purchase records necessary to determine definitely the kind of material used in said bedding, and he shall have power to seize and hold for evidence any article or material therein possessed or offered for sale contrary to this article. Such inspectors shall promptly report any violations of this article to the state department of public health, which in turn shall report the same to the district attorney of the county wherein the violation has been committed for the purpose of prosecution.

66-17-14. Violation—what constitutes.—Any person who fails to comply with any provision of this article, or who counterfeits the stamps provided for in section 66-17-8, shall be guilty of a violation of this article. Every stamp so counterfeited and every article of bedding manufactured, remade, renovated, sold or sterilized contrary to this article shall be a separate offense.

66-17-16. Rules and regulations.—The state department of public health shall have the right to promulgate rules and regulations deemed necessary for the proper enforcement of this article and not inconsistent therewith.

66-17-17. Title.—This article shall be known and designated as "The Bedding Act."

RULES AND REGULATIONS GOVERNING THE ENFORCEMENT OF THE MATTRESSES AND BEDDING LAWS

The following rules and regulations for the enforcement of Chapter 66, Article 17, 1953 Colorado Revised Statutes known as the Bedding Act are hereby adopted by the State Board of Health under the authority contained in Chapter 66, Article 17, 1953 Colorado Revised Statutes.

Regulation 1. All heat sterilizing chambers must be equipped with a recording thermometer. Charts shall be kept on file and available for inspection at all reasonable times. Articles placed in sterilizing chambers shall be so spaced as to allow air circulation around each article.

Regulation 2. The steam pressure process for sterilizing, cleaning and curling feathers, down, hair, wool or any other material derived from an animal or fowl, may be used when approved by the State Department of Public Health.

Regulation 3. The following sterilization process shall be considered as being "equivalent" to the process described in Chapter 66, Article 17, Section 4, 1953 Colorado Revised Statutes: Such process shall subject the material to treatment by live steam for thirty minutes at a pressure of fifteen pounds or for twenty minutes at a pressure of twenty pounds. Chambers must be bled to exhaust cold air before pressure or time is recorded. Chamber must be steam tight, sufficiently strong to stand the pressure applied, be equipped with an accurate visible steam gauge and necessary valves.

Regulation 4. Any chemical process employed in lieu of heat sterilization must be equivalent in efficacy to the prescribed heat treatment and must be approved by the State Department of Public Health.

Regulation 5. All bedding tags provided for in Chapter 66, Article 17, Section 6, 1953 Colorado Revised Statutes shall be as follows:

(a) If the materials used in the manufacture of the article of bedding to which the label or brand is to be attached are entirely new, the brand or label shall be made of white material, with black lettering reading as follows: "The materials used in the manufacture of this mattress (or other article of bedding) are entirely new, consisting of . . . (naming materials)."

(b) If the materials used in the manufacture of the article to which the label or brand is to be attached are partially or wholly previously used materials, the brand or label should be made of yellow material with black lettering reading as follows: "The materials used in the manufacture of this mattress (or other article of bedding) are previously used material and have been sterilized," with a specific statement of the kind and character of the previously used materials used.

(c) If the article to which the label or brand is to be attached is a remake for an individual or company, the brand or label shall be made of green material with black lettering reading as follows: "This article has been sterilized, renovated, and remade and contains the same material received from owner to which has been added (specifically state the kind and character of material added)."

(d) If the article to which the label or brand is to be attached is secondhand, the brand or label shall be made of red material with black lettering, reading as follows: "This mattress (or other articles of bedding) is secondhand and has been sterilized."

(e) In addition to the foregoing, every label shall bear the name and address of the manufacturer or vendor of the article of bedding to which it is attached and the name of material or materials used to fill such article of bedding.

(f) Every tag shall have printed on the top: "DO NOT REMOVE THIS TAG—UNDER PENALTY OF LAW."

REPEAL SECTION: The regulations adopted by the State Board of Health under the authority contained in Chapter 201, Session Laws, Colorado 1941, on April 18, 1941, are hereby repealed.

Adopted by the Colorado State Board of Health, June 13, 1955.

State of Connecticut
Regulations
Bedding and Upholstered Furniture



LABOR DEPARTMENT
Factory Inspection Division
200 Folly Brook Boulevard
Wethersfield

BEDDING AND UPHOLSTERED FURNITURE

Sec. 19-423-1. Application of regulations. The following regulations issued under authority of section 19-423 pertain to the administration and enforcement of sections 19-419 to 19-423, inclusive, of the general statutes. These regulations and the provisions herein set forth apply to the manufacture, repair and renovation of all articles of bedding and upholstered furniture intended for sale and to such articles when offered for sale or resale, or exchange or lease, or consignment or delivery in consignment for sale, resale, exchange or lease, and shall apply to all persons including manufacturing establishments, both wholesale and retail, when such articles are in their possession for such purpose.

Sec. 19-423-2. Definitions. When used in these regulations, "commissioner" means the labor commissioner or his authorized representative; "department" means the labor department; "article of bedding and upholstered furniture and filling material" means and includes such articles and parts thereof as fall within the scope of section 19-419 of the general statutes; "sale," "sell" or "sold" means offering or exposing for sale or resale, or exchange or lease, or consigning or delivering in consignment for sale, resale, exchange or lease, or holding in possession with like intent. The possession of any article of bedding or upholstered furniture or filling material by any maker or dealer or his agent or servant or other person in the course of business shall be presumptive evidence of intent to sell; "manufacture" means the making by hand or machine of an article of bedding or upholstered furniture or part thereof, including the assembling or processing or finishing of articles or parts produced by another and also including the processing or preparation of filling materials intended for use in the manufacture, renovation or repair of articles of bedding or upholstered furniture; "sterilize," "sterilized" or "sterilization" means the cleaning or decontamination of any article of bedding or upholstered furniture or filling material by a process approved by the commissioner, by a person holding an active sterilization permit issued by the commissioner; "person" means an individual, partnership, corporation, firm or association, receiver, agent or other representative of such person; "license" means the formal permission granted by the commissioner to sell or manufacture for sale or remake, renovate or repair articles of bedding or upholstered furniture or filling materials within the state of Connecticut for a period not to exceed twelve calendar months beginning on October first of each year and such permission is conditioned upon the receipt and approval of an application for a license and the receipt of the required license fee; "licensee" means the person in whose name a license is recorded by the department; "valid license" or "active license" means a license which has not expired or been suspended or revoked, or voluntarily returned to the department during an annual license period; "expiration date" means September thirtieth of each year. No license is valid after said date, but licenses may be renewed in advance of the expiration date so as to become effective on October first, assuring a continuous active license; "registry number" means the number assigned by the commissioner to the person to whom a license is issued; "new" means any material or article which has not been previously used for any purpose and includes by-products produced in the processing of cotton or in the manufacture of new fabrics and materials reclaimed from new fabric and from new material, and also includes any article of bedding or upholstered furniture or filling material returned by the purchaser for exchange, alteration or correction within thirty days of the date of delivery of such article or material, provided the tags have not been removed and further provided substantial proof is at hand to determine the original date of delivery. If the article or material has been returned by the purchaser for exchange, such article or material may be sold

as new provided it had not been used for any purpose. If the article or material has been used in any way it is considered as second-hand and shall comply with the provisions for second-hand merchandise. To be considered as having been returned by the purchaser for alteration or correction, the article or material shall be returned with the original tags intact and, when such alterations or corrections of error of manufacture are completed, the article may be returned to the original purchaser without sterilization but no such article may be sold as a new article; "second-hand" means any article or part thereof and any material which has been used in any manner whatsoever, including any article of bedding, upholstered furniture or filling material returned by a purchaser for exchange, alteration or correction after thirty days from the date of delivery of such articles to such person, and any article from which the tag has been removed or for which the date of original delivery to the purchaser cannot be substantiated; "antique furniture" means any article of bedding or upholstered furniture manufactured at least one hundred years prior to the date on which it is offered for sale or exchange as an antique, and such articles shall be exempt from these regulations provided substantial proof of the age of such articles shall be available to the commissioner or an authorized representative of the commissioner; "tag or identifying tag" means the tag of linen, muslin or equally durable material required to be affixed to all articles of bedding, upholstered furniture, filling material or part thereof; "labels," "labeling" or "labeled" means the information printed on tags.

(See G.S. § 19-419.)

Sec. 19-423-3. Inspection stamps. Inspection stamps are required on tags affixed to articles of bedding, upholstered furniture or filling material in the hands of retail furniture dealers or in transit to such dealers, on or before September 30, 1955, where such articles are offered for sale on October 1, 1955, or thereafter. Such articles may then be legally offered for sale by such dealers if in all other respects they conform to the provisions of statutes and regulations issued under the authority thereof, provided evidence can be furnished to substantiate the date of delivery or shipment and such evidence can be verified by the commissioner or his authorized representative.

Sec. 19-423-4. License requirements. (a) **Annual license.** No person shall sell or offer for sale or manufacture for sale, in the state of Connecticut, any article of bedding or upholstered furniture or filling material unless such person is licensed with the department and has been assigned a registry number and such license is valid at the time such article is sold or offered for sale in Connecticut. A license shall be valid, unless suspended or revoked in the interim, for a period of twelve months beginning on October first of one year and ending on September thirtieth of the following year. In the instance of a new licensee or licensees who are changing to a different classification or type of license, a license may be issued and registry number assigned during any quarterly period beginning on January first, April first or July first, and such license shall be valid, unless suspended or revoked, until the thirtieth day of September next following date of issue, and in such cases the fee for the license shall be prorated from the first day of the quarter in which it is issued to September thirtieth next following. All licenses expire on September thirtieth next following the date of issue, and the assigned registry number shall be withdrawn unless the license has been renewed prior to the expiration date. Except as otherwise provided in these regulations, all articles offered for sale by the licensee or in behalf of the licensee subsequent to the expiration date of a license shall be ordered "off sale" and the vendor shall be considered in violation. A license shall be valid only for the period specified on the license certificate and in no case shall

a license become effective prior to the date upon which the application is approved by the department. Annual license fees shall be payable in advance with the application for the full year's period. In the cases of prorated licenses, the fee shall be payable in advance from the beginning of the quarter in which the license is effective to September thirtieth next following the date of issue. License fees cannot be prorated if the licensee has been issued a license for any part of the previous license year. No rebate of license fees shall be made in the event a license is revoked, suspended or voluntarily returned subsequent to its issue, and only in instances of error on the part of the department shall a licensee be entitled to refund of a license fee. The annual fees for licenses shall be as follows: Manufacturer, fifty dollars; supply dealer, fifty dollars; renovator, twenty-five dollars; and second-hand dealer, twenty-five dollars.

(b) **Transferability.** Each license and the registry number assigned thereto by the commissioner is valid for use only by the person to whom it is issued and is not transferable. The misuse of any license or any registration number or the use of such license or registry number by anyone other than the person to whom it was issued shall be considered a violation and, after a hearing, the license may be cancelled and the registry number revoked. It shall be the responsibility of each person to take adequate precautions against the misuse of any license or registry number issued in his behalf.

(c) **Application for license.** Each person who intends to sell or manufacture for sale in Connecticut any article of bedding, upholstered furniture or filling material shall apply to the commissioner for a license on application forms to be provided by the commissioner. The applicant may request that the registry number issued by a cooperating state be issued to him as a Connecticut registry number, for use as a uniform registry number, but the granting of such request shall be at the discretion of the commissioner. Each application for a license shall be complete and shall be signed and the accuracy of the statements in the application attested by the person to whom the license is to be issued, or the principal executive when the license is to be issued in the name of a firm, partnership, corporation, organization or association. The application, when forwarded to the department, shall be accompanied by cash, check or money order, payable to the Connecticut labor department, for the established fee for one full license year, or for the prorated fee, if applicable. Inaccurate or misleading statements on any application shall be sufficient cause to refuse a license, or, if such license has been issued, shall be sufficient cause to suspend such license and withdraw the registry number. If it is determined after a hearing that the misstatements were deliberate, the license and registry number may be revoked for the balance of the license period. The commissioner may refuse to license and issue a registry number to any person when, in his opinion and after a hearing, such license and the issue of a registry number could result in danger to the life, health, comfort or economic well-being of the people with whom such person may have contact.

(d) **Registry number.** Upon approval of any application for a license the commissioner shall assign a Connecticut registry number and such number shall appear on all tags required under the provisions of sections 19-419 to 19-424, inclusive, of the general statutes and regulations issued under authority thereof. The commissioner may issue, as a Connecticut registry number, the number which has been assigned to the person by any other state having similar standards for the inspection, manufacture and sale of bedding and upholstered furniture and filling material where such number is to be used as a uniform registry number, if such state grants to Connecticut manufacturers the same privilege reciprocally. A Con-

necticut registry number is not transferable and its use by any unauthorized person shall be deemed a violation of statute, and such person shall be liable for prosecution. Licensees who intend to continue operations in Connecticut shall apply for a license in advance of the expiration date of each annual license if they desire the same Connecticut registry number.

(e) **Manufacturer's license.** Each person who manufactures for sale in Connecticut or for consignment or delivery in consignment any article of bedding or upholstered furniture or filling material shall first secure a license with the department as a manufacturer and shall have issued to him a manufacturer's license certificate and registry number. The person so licensed may manufacture for sale, at wholesale or retail, articles of bedding and upholstered furniture or filling materials subject to the laws and regulations relating to such manufacture and to such sale during the period for which the license is valid, and shall affix to such articles a tag upon which shall appear the registry number assigned by the commissioner and such other information as may be required. A licensed manufacturer may also sell, at wholesale or retail, articles manufactured by others than himself, including filling material, and may remake or renovate such articles provided each such article shall be properly tagged and such tags shall bear a valid registry number and otherwise conform with the laws and regulations governing the sale of bedding and upholstered furniture and filling materials in Connecticut.

(f) **Supply dealer.** Each person who sells, or offers for sale in Connecticut, or consigns or delivers in consignment for such purpose, filling material, whether processed or unprocessed, or who prepares or processes filling material in bulk intended for sale in the manufacture of articles of bedding and upholstered furniture, shall first apply for a license as a supply dealer and shall have issued to him a supply dealer's license certificate and registry number, provided such person is not actively licensed as a manufacturer. The person issued a supply dealer's license may, while such license is valid, sell, offer for sale or consign for the purpose of sale filling materials for the use in the manufacture of articles of bedding and upholstered furniture subject to the provisions of statutes relating to the sale of bedding and upholstered furniture and filling materials and regulations issued under the authority thereof, and shall affix thereto a tag bearing the registry number assigned to such license. The provisions of this regulation apply to jobbers and agents, unless the principal for whom they act is properly licensed and the material sold or offered for sale is properly tagged and otherwise conforms to all of the provisions of appropriate statutes and regulations.

(g) **Renovator.** Each person who remakes, renovates or repairs any article of bedding or upholstered furniture or a part thereof, unless he holds an active manufacturer's license, shall first apply for a license with the department and have issued to him a renovator's license certificate and a registry number. The person so licensed may then remake, renovate or repair articles of bedding and upholstered furniture for customers requiring such work to be done, provided he shall affix thereto a yellow tag bearing the assigned registry number and such other information as may be required by law or regulation. Licensed renovators may offer for sale second-hand articles of bedding, upholstered furniture or filling materials, provided they shall affix thereto a yellow tag bearing the assigned registry number and other such information as is required by law or regulation relating to the sale of second-hand articles. The registry number assigned to a renovator may not be used on any but yellow tags nor shall such licensed renovator manufacture or offer for sale any article as new unless such article bears an approved tag upon which shall appear the registry number of a properly licensed manufacturer or supply dealer.

(h) **Second-hand dealer.** Each person who sells or offers for sale any second-hand article of bedding, upholstered furniture or filling material or part thereof shall first apply for a license with the department and have issued to him a second-hand dealer's license certificate and registry number unless such person is actively licensed as a manufacturer or renovator. A person so licensed shall affix to second-hand articles of bedding and upholstered furniture, a yellow tag on which shall appear the words "second-hand" and on which shall also appear the registry number assigned to the licensee and such other information as may be required and may offer such articles for sale, provided each shall conform to the laws and regulations relating to the sale of second-hand articles of bedding and upholstered furniture in Connecticut. A second-hand dealer's license shall not authorize the manufacture, renovation or repair of any article of bedding and upholstered furniture nor shall such licensee offer for sale as new any such article unless the articles shall be tagged with a proper tag bearing the registry number of the manufacturer or supply dealer. The registry number assigned to a second-hand dealer shall not be used on any except a yellow tag upon which shall also appear the words "second-hand." This section shall not apply to articles sold at public auction, to the sale of antique furniture as herein defined or to the private sale from the home of the owner direct to the purchaser.

(i) **Suspension or revocation of license.** When, in the opinion of the commissioner, any licensee is in violation of any provision of sections 19-419 to 19-424, inclusive, of the general statutes, or any regulations issued under the authority thereof, he may summon the licensee to a hearing at which such licensee shall show cause why his license shall not be revoked for the balance of the license period. The failure of a licensee to appear at a hearing, after receiving notice of such hearing, shall be considered sufficient cause for revocation of his license and the licensee shall be immediately notified of this action. In any case where a license is suspended or revoked, all articles of bedding or upholstered furniture or filling materials bearing the registry number of such licensee shall be ordered "off sale" pending determination by the commissioner as to which, if any, of such articles may be legally sold and permission given to offer such articles for sale.

(j) **Exceptions.** The foregoing rules regarding licensing shall not apply to retail dealers in articles of bedding and upholstered furniture or to persons acting as agents in the sale of such articles, provided every article sold or offered for sale by such dealer or such agent shall be otherwise in full compliance with the statutes relating to the sale of bedding and upholstered furniture and the regulations issued under the authority thereof. Any dealer or agent offering for sale any articles not properly tagged by a licensed manufacturer, supply dealer, renovator or second-hand dealer shall be deemed in violation of the provisions of statute and subject to prosecution as provided in section 19-424 of the general statutes, except that articles in the hands of dealers or in transit to them before the date on which the license of the manufacturer or supply dealer becomes invalid for any reason may be legally offered for sale after that date, provided evidence can be furnished and verified to substantiate the date of delivery or shipment.

(See G.S. § 19-422.)

Sec. 19-423-5. Tags. Each article of bedding, upholstered furniture or filling material which is sold or offered for sale or exchange, or is in the possession of any manufacturing or mercantile establishment or other person for such purpose, shall have affixed thereto an approved identifying tag upon which shall be imprinted the registration number of the licensed manufacturer, supply dealer, renovator or second-hand dealer, and such other information as may be required by statute or

these regulations. Each manufacturer, supply dealer, renovator or second-hand dealer shall supply his own tags and shall affix an approved tag to each article of bedding, upholstered furniture or package of filling material, sold or offered for sale by him or in his behalf, in such a manner that the information thereon is completely visible and so that the tag cannot be removed without destroying such tag or rendering it unfit for further use. Articles of bedding, upholstered furniture or packages of filling material composed of separable parts shall be tagged as required on each part. Identifying tags shall be of linen, muslin or other durable cloth material which will not flake when abraded and shall be not less than six square inches in area. Paper face tags shall not be allowed, nor shall such be approved for use. Tags shall be printed or stamped on one side only in fast black letters. Tags shall be so located that the information contained thereon is completely visible to the purchaser at all times and shall be securely sewed to the cushions, pillows, mattresses and similar articles where sewing is possible. Otherwise the tags shall be attached to the article by tacking or pasting in such manner that it cannot be removed without destruction of the tag or so that it is not fit for further use. Each piece of upholstered furniture and every piece of bedding shall have a separate tag affixed thereto in the manner described, and any article which is composed of separable parts shall have a separate tag affixed to each such part, and each tag shall contain a statement of the filling materials used in the piece to which it is attached. Only such information as is required by these regulations and by statute shall appear on any tag affixed to any article of bedding, upholstered furniture or filling materials. No advertisement, trade mark, price tag or any matter other than the required statement shall appear on or be affixed to any tag, nor shall any trade names or superfluous or substitute terms be used on such tag. The appearance of any matter other than that required or authorized in these regulations on any tag shall be sufficient cause to order "off sale" the article to which such tag is affixed. Each applicant for a license shall, on the original application or at any subsequent time that a change in tags is necessary, submit, in duplicate, a sample tag or tags, which shall be approved by the commissioner before use. Bulk filling material shall be tagged by the manufacturer or supply dealer who manufactures or processes such material and shall bear the registry number issued to such manufacturer or supply dealer, and such tags shall be affixed to each bale, bag, carton or other package of filling material when sold, exchanged, offered for sale or exchange, or delivered for use in Connecticut, except that cotton rolls, cotton bat and other filling material which are sold at retail to be used and consumed in the home of the purchaser for his personal use shall require tags as herein specified; however, any such materials that are sold for use in any article of bedding or upholstered furniture intended for sale, exchange or offer for sale shall be tagged as herein provided. Any person, including manufacturers, supply dealers or retailers, who sells or offers for sale any untagged article of bedding or upholstered furniture or package of filling materials except as herein provided without an approved and attached tag or who has such article in his possession for such purpose shall be deemed in violation of the provisions of statute and of these regulations.

(See G.S. § 19-421.)

Sec. 19-423-6. Description of tags. Articles of upholstered furniture which have been remade by removing old upholstery and adding new shall be tagged in the following manner:

(a) All cushions or detachable parts which are made entirely of new material shall bear white tags, stating that such articles consist of all new materials.

(b) A second-hand frame-work to which is attached new upholstery materials

shall bear a yellow tag stating that such article consists of a second-hand frame of wood, iron or steel and filling materials, either new or second-hand.

(c) If any second-hand filling material or cover is used in any article or part of an article, a yellow tag shall be attached stating that such article or part of an article is second-hand.

Sec. 19-423-7. Labeling. On each identifying tag affixed to an article of bedding, upholstered furniture or package of filling material the following information shall be printed or stamped, in the English language, on one side only, in fast black ink with letters not less than one-eighth inch in height:

(a) The Connecticut registry number assigned to the licensed manufacturer, supply dealer, renovator or second-hand dealer and the name of such licensee or the name of the vendor.

(b) The name and character of the filling material contained therein which shall be described only in approved terms as hereinafter provided.

(c) When an article of bedding, upholstered furniture or package of filling materials contains two or more different kinds or types of filling material, the name and character and the percentage of each shall appear on the tag or the entire material shall be designated by the approved name of the lowest grade of material therein contained provided: (1) If an article of bedding, upholstered furniture or package of filling material contains two or more different kinds or types of filling material and the percentage of each is so stated on the tag, a tolerance of not more than ten per cent of the percentage of each kind or type of filling material named shall be allowed, and (2) no tolerance shall be allowed when filling material is described as "all," "pure," "100%" or terms of similar import.

(d) On each identifying tag the word "new" or "second-hand" shall also appear, in addition to the approved terms for each filling material, except as otherwise herein provided.

(e) On each identifying tag affixed to any article of bedding or upholstered furniture or package of filling material containing materials which in whole or in part have been subjected to prior use in any form, or containing material of animal or fowl origin, or containing material that is soiled, contaminated, unsanitary or that for any other reason requires sterilization in accordance with law or regulation, there shall also be imprinted thereon the words "contents sterilized" and the Connecticut permit number of the sterilizer.

(f) On each identifying tag affixed to any article of bedding or upholstered furniture or part thereof that has been remade, repaired or renovated and is to be returned to the owner, shall be imprinted, in addition to all other requirements, a statement that the article contains the same material received from the owner and a description of the kind, type and amount of filling material added, if any, and a statement that such is new or second-hand. A statement that the article shall not be sold but shall be returned to the owner, and the words "contents sterilized" and the Connecticut permit number of the sterilizer shall also appear.

(g) Each identifying tag affixed to any article of bedding, upholstered furniture or package of filling materials, except as otherwise provided by law or regulation, shall, in addition to all other requirements, have imprinted thereon a statement certifying that the filling materials contained in such article are described according

to law and such tag, when attached to articles of bedding, upholstered furniture or package of filling material that contain all new material, shall be imprinted with the statement "date of delivery" and a space left following this statement for the insertion of the delivery date by the vendor or retail dealer.

(h) The identifying tag attached to new articles of bedding and upholstered furniture or bales, packages or cartons of filling materials shall, in addition to all other requirements, be white in color. No previously used materials may be contained in articles or packages to which a white tag is attached.

(i) The identifying tag attached to articles of bedding, upholstered furniture or bales, packages or cartons of filling material that contain any previously used material shall, in addition to all other requirements, be yellow in color.

(j) The identifying tag attached to articles of bedding or upholstered furniture that has been remade or renovated shall, in addition to all other requirements, be yellow in color.

Sec. 19-423-8. Use of terms and definitions relating to filling materials. Terms used to describe filling materials shall include only those set forth and defined in these regulations. Filling materials for which there is no term or definition herein may not be used until the term and definition have been approved by the department, and such term shall thereafter be used to describe such material on any tag affixed to an article, bale or package containing such material.

(a) **General terms.** (1) The word "colored" shall precede any terms used to designate a filling material, if such material has been artificially dyed or colored.

(2) In the terms used to describe feathers and/or down, the color of the material shall precede the term. If mixed colors are used, "colored" shall precede the descriptive term.

(3) The term "shredded clippings" means any material that has been made into fabric and subsequently cut up, torn up, broken up or ground up but which has not been run through a garnett machine. The name of the material need not be included in this term but, if included, shall be as stated.

(4) The term "garnetted clippings" means any material that has been shredded and further processed by passing through a garnett machine. The name of the material need not be included in this term but, if included, shall be as stated.

(5) The word "oily" shall precede any term used to designate a filling material, if such material contains more than five per cent oil.

(6) The term "felt" or "batting" means fiber that has been carded in layers or sheets by a garnett or felting machine. The terms "felt" or "batting" by themselves shall not be used but shall be combined with the name of the material from which they are made. If the felt has been repicked, or consists of small pieces of scrap felt, or is not readily distinguishable from unfelted material, the term "felt" or "batting" shall not be included in the descriptive term.

(7) The word "napper" means the lint removed during the process of raising the face of a cloth and shall be preceded by the name of the textile fiber or fibers from which it is made.

(8) The presence of "down fiber" or "feather fiber" in excess of ten per cent shall be set forth on the tag, together with the kind, color and percentage.

(9) The terms "rubberized" or "resin treated" shall be combined with the required descriptive term only when each hair or fiber of the specified filling material has been thoroughly coated with the stated material, rubber or resin. The terms "rubber coated" or "resin coated" shall be combined with the required descriptive term when the surface only of a filling material has been thoroughly coated with the stated material, rubber or resin. If a filling material pad is coated on one side only, the required descriptive term shall include the notation "(one side only)."

(10) The word "pad" shall be included in the descriptive term only when a hair or fiber filling material has been processed into pad forms.

(b) **Cotton.** (1) "Staple cotton" means the staple fibrous growth as removed from the cotton seed in the usual process of ginning (first cut) containing no foreign material. The term "cotton" by itself shall not be used.

(2) The terms "cotton card strips," "cotton comber," "cotton fly," "cotton picker," "cotton noils" and "cotton notes" may be used to describe these cotton by-products removed by the various machine operations necessary in the manufacture of cotton yarn up to, but not including, the process of spinning. If the exact name of the cotton by-product is not used, such material shall be described as "cotton fiber."

(3) "Cotton linters" shall be used to describe the fibrous growth removed from cotton seed subsequent to the usual process of ginning. The term "linters" alone shall not be used.

(4) The terms "blended cotton felt" or "cotton felt" are acceptable for the description of mixture of cotton by-products, up to the process of spinning, that are further processed by a garnett machine.

(c) **Wool.** (1) "Wool" or "virgin wool" means the fleece of sheep or lambs, which has been scoured and carbonized or scoured. It shall not be the by-product of any process of manufacturing nor shall it have sustained prior use. It shall be free from kemp and vegetable matter or other foreign material.

(2) The terms "wool drawing laps," "wool card waste," "wool card strips" and "wool doffer waste," shall be used to designate new wool fibers removed from the various machine operations necessary in the manufacture of wool yarn up to but not including the process of spinning and shall include noils, fulling flocks, wool pills and shank and tag wools. If the appropriate mill term is not used, the material shall be described as "wool fiber wastes."

(3) "Tanners wool" means wool reclaimed from tanned sheepskin.

(4) "Wool felt" or "virgin wool felt" means wool fiber that meets the requirements of the definition of "wool" or "virgin wool" and has been further processed by a garnett machine.

(5) "Blended wool felt" means mill wastes from the various manufacturing operations, up to but not including the process of spinning, that has been further processed by a garnett machine.

(6) All material having the term "wool" in its approved name shall contain not less than ninety-five per cent wool fibers.

(d) **Feathers and down.** (1) "Down" means the soft undercoating of waterfowl consisting of the light fluffy filaments grown from one quill point but without

any quill shaft. This term shall be combined with the name of the water fowl from which obtained, together with the color of the down, e.g. "white goose down," "grey duck down," etc.

(2) "Down fiber" means the barbs of down plumes separated from the quill points and such term shall be combined with the kind and color of the water fowl from which obtained.

(3) "Feathers" means the appendages growing out of the skin of birds. This term shall be combined with the name and color of the bird from which obtained.

(4) "Feather fiber" means the barbs of feathers separated by any process from the quills, but free from quills. The name and color of the bird from which it is obtained shall be combined with this term.

(5) "Stripped feathers" means the feather barbs stripped from the main stem or quill but not to the extent of separating the barbs into feather fiber. The term "stripped feathers" shall also be combined with the name and color of the bird from which obtained.

(6) "Crushed feather" means feathers which have been processed through a so-called curling machine that has changed the original form of the feather, but has not removed the quill. This term shall also be combined with the name and color of the bird from which obtained and the percentage of each kind of crushed feathers shall be given, in the order of predominance, if the crushed feathers are part of a mixture.

(7) "Chopped feathers" means feathers which have been processed through a chopping machine which has cut the feathers into small pieces. The name and color of the bird from which they are obtained shall be combined with this term. If part of a mixture, such chopped feathers shall be indicated in the order of predominance and percentages stated.

(8) "Broken feathers" shall be so described, together with the name and color of bird from which obtained and the percentage, if the amount of broken feathers exceeds ten per cent of the feather content.

(9) The term "quill" means the main shaft or axis of a feather.

(10) The term "quill feather" means a wing feather or tail feather and shall be combined with the name and color of the bird from which obtained.

(11) Feather mixtures shall be designated by name, color, character and percentage of each kind present in the mixture or the entire mixture shall be designated by the name of the lowest grade material used together with the color of the mixture. The grades of material in descending order are as follows: Goose down, duck down, goose feathers, duck feathers, turkey feathers, chicken feathers.

(e) **Hair.** (1) "Hair" means the coarse, filamentous epidermal outgrowth of such animals as horses, cattle, hogs and goats. When used in the manufacture of upholstered furniture, bedding or filling material, hair shall be clean, properly cured, free from epidermin, excreta, or foreign or objectionable substances or odors. In addition to the word "hair," the tags shall also indicate from what kind of animal the hair originates, and its condition or appearance as hereinafter described.

(2) "Horse hair" means the strands of hair from the mane or tail of horses and shall be further described as "horse tail hair" or "horse mane hair."

(3) "Cattle hair" means the strands or filaments of hair from the body or tail of cattle and shall be further described as "cattle tail hair" or "cattle body hair."

(4) "Hog hair" means the bristle or body hair of swine.

(5) "Curled hair" means any hair that has been curled. The appropriate designation shall appear on the tag preceded by the word "curled."

(6) The term "shredded rubberized hair" means new rubberized hair that has been processed through a shredding machine. The term "curled" is not permitted in connection with shredded hair.

(f) **Rubber.** (1) The term "rubber" shall apply to the following synthetic rubberlike materials as well as to natural rubber: Chloroprene, styrene-butadiene copolymers, butadiene-acrylonitrile copolymers, polymerized isobutylene, with or without comonomers present, and thioplasts (any of the polysulfide rubbers consisting of organic radicals linked through sulfur). Use of the term "rubber products" is not permitted on the tag.

(2) "Sponge rubber" means sponge products made from rubber which have previously been coagulated or solidified. "Sponge rubber" shall be indicated on the tag as follows: (a) "Sponge rubber." The use of this term shall be mandatory for a sponge rubber product consisting of not more than two inserts of unlaminated prime material for attaining desired height, nor more than one vertical splice in every three square feet of top surface area excluding those permitted for T's and U's, and not more than one splice in every three linear feet of added side-walls or in lieu thereof in each corner, excepting side-walls that are irregular in contour in which case the number of splices shall be subject to the approval of the labor department. (b) "Molded sponge rubber." The use of this term may be applied to a sponge rubber product which has been molded in the form in which it is intended to be used. (c) "Sponge rubber pieces." This term shall apply to a sponge rubber product which consists of mere pieces or otherwise fails to conform to the requirements for "sponge rubber" but shall not apply to sponge rubber which has been subjected to a shredding process. (d) "Cemented sponge rubber pieces." The use of this term may be applied to sponge rubber pieces which have been cemented together. (e) "Shredded sponge rubber." This term shall be applied to sponge rubber which has been subjected to a shredding process. (f) "Cemented shredded sponge rubber." This term may be applied to shredded sponge rubber which has been cemented together.

(3) "Latex foam rubber" means a foam product made from rubber latex which previously has not been coagulated or solidified. "Latex foam rubber" shall be indicated on the tag as follows: (a) "Latex foam rubber." The use of one of the terms set forth below shall be mandatory for a latex foam rubber product consisting of not more than two inserts of unlaminated prime material for attaining desired height, not more than one vertical splice in every three square feet of top surface area, except for T's and U's, but not more than two vertical splices regardless of top surface area excluding those permitted for T's and U's, and not more than one vertical splice in every three linear feet of vertical side-walls or in lieu thereof in each corner, excepting side-walls that are irregular in contour in which case the number of splices shall be subject to the approval of the labor department. (b) "Molded latex foam rubber." The use of this term may be applied to a latex foam rubber product which has been molded in the form in which it is intended to be used. (c) "Latex foam rubber pieces." This term shall apply to a latex foam rubber product which consists of mere pieces or otherwise fails to conform to the requirements for "foam rubber," but shall not apply to foam rubber which has been sub-

jected to a shredding process. (d) "Cemented latex foam rubber pieces." The use of this term may be applied to latex foam rubber pieces which have been cemented together. (e) "Shredded latex foam rubber." This term shall be applied to latex foam rubber which has been subjected to a shredding process. (f) "Cemented shredded latex foam rubber." This term may be applied to shredded foam rubber which has been cemented together.

(4) The term "foam" without the word "rubber" means a polymerized material consisting of a mass of thin-walled cells produced chemically or physically and such non-rubber shall be designated on the tag as "foam," together with the name of the organic base from which it is made, e.g., "urethane foam," "vinyl foam."

(5) The term "urethane foam" or "polyurethane" may be applied to a cellular urethane product which is created by the interaction of an ether or an ester and a carbamic acid derivative. If the foam is of the ether type, it may be designated as "polyether foam." If the foam is of the ester type, it may be designated as "polyester foam."

(6) The term "polystyrene foam" shall be applied to foam produced during the polymerization of a styrene monomer.

(7) The term "vinyl foam" shall be applied to a foam produced from vinyl.

(8) The term "molded" may precede the terms set forth above whenever such foam product has been made in a mold in the shape in which it is intended to be used.

(9) The term "pieces" follows the terms set forth in subdivision (4) of this subsection whenever the foam product consists of mere pieces or otherwise fails to conform to the requirements set forth in subdivision (3) above, but does not apply to a foam product which has been subjected to a shredding process.

(10) The term "shredded" shall precede or follow the terms set forth above whenever the foam product has been subjected to shredding process.

(11) The term "cemented" shall be applied to a shredded foam which has been cemented together, e.g., "cemented shredded urethane foam."

(12) When a fabric-topped foam product or sponge used as a cover for an article of bedding is in excess of ten per cent of the weight of the entire filling material, it shall be disclosed on the tag and its percentage given.

(13) The term "polyester foam" means a foam produced by a polymerized reaction product of esters (i.e., a compound formed by the replacement of the acid hydrogen of an acid, organic or inorganic, by a hydro-carbon radical).

(14) The term "polyether foam" means a foam produced by a polymerized reaction product of ethers (i.e., hydro-carbons in which one or several hydrogen atoms are replaced by alkoxy groups).

(g) **Synthetic fibers.** (1) "Acetate fiber" is a specific term used for man-made fibers, monofilaments and continuous filament yarns composed of acetylated cellulose, with or without lesser amounts of non-fiber-forming material. The term "acetate fibers" or the term "cellulose acetate fibers" shall be used for filling materials made of acetate.

(2) The term "rayon fiber" is a generic term for man-made fibers, monofilaments and continuous filament yarns composed of regenerated cellulose, with or

without lesser amount of non-fiber-forming materials. The term "rayon fibers" shall be used to designate man-made fibers composed of regenerated cellulose.

(3) Synthetic fibers (other than acetate and rayon). When different long-chain synthetic polymers and/or copolymers are joined either chemically or physically to form a filament or fiber, a disclosure of the polymers and/or copolymers contained therein shall be made in the descending order of their percentage in the fiber by weight, e.g., "polystyrene fibers," "vinyl-acrylic fibers."

(4) The term "acrylic fibers" shall be used for a long-chain synthetic polymer which contains not less than eighty-five per cent acrylonitrile and which is formed into a filament.

(5) "Azlon fiber" is a generic term for fibers or filaments manufactured from modified proteins or derivatives thereof, with or without lesser amounts of non-fiber-forming materials. The term "azlon fiber" or "protein fibers" shall be used to designate fibers manufactured from azlon.

(6) "Nylon fiber" is a generic term for any long-chain synthetic polymeric amide which has recurring amide groups as an integral part of the main polymer chain, and which is capable of being formed into a filament in which the structural elements are oriented in the direction of the axis. The term "nylon fibers" shall be used to designate fibers manufactured from nylon.

(7) The term "polyethylene fibers" shall be used to designate fibers made from polymers and/or copolymers of ethylene.

(8) The term "polyester fiber" means a fiber produced by a polymerized reaction product of esters (i.e., a compound formed by the replacement of the acid hydrogen of an acid, organic or inorganic, by a hydrocarbon radical).

(9) The term "polyether fiber" means a fiber produced by the polymerized reaction product of others (i.e., hydrocarbons in which one or several hydrogen atoms are replaced by alkoxy groups).

(10) The term "polystyrene fiber" shall be applied to the fibers resulting from the polymerization of styrene monomers.

(11) The term "polyvinylidene fiber" means fibers produced by the copolymer of vinylidene chloride and other monomers.

(12) The term "vinyl" shall be applied to homopolymers or copolymers of vinyl chloride.

(13) The term "vinyl fibers" shall be used to designate fibers or filaments manufactured from vinyl.

(h) Miscellaneous filling materials.

(1) "Cat-tail plant fibers" shall be so designated on the tag.

(2) "Cellulose and/or wood fiber" means fibers reduced from wood or other vegetable growth to a cellulose or fibrous state, and shall be described as "cellulose fiber" or "wood fiber."

(3) "Coco husk fiber" means the fibrous growth obtained from the husk of the cocoanut.

(4) "Excelsior" means shredded threadlike wood fibers, and shall not include waste products such as shavings, sawdust or similar waste.

(5) "Flax tow" means the coarse, broken and refuse parts of flax separated from the fine fibrous parts in preparing the fibers for spinning.

- (6) "Fur fiber" means the fine, soft under fur, with or without the usual guard hair, removed from the tanned or untanned pelt of animals of the class of furbearers. The name of the animal may be stated and when so indicated on the label shall be a true statement.
- (7) "Glass fiber" means the very fine filaments or fibers made of glass.
- (8) "Hay" means any grass, properly dried or cured, free from dust, burrs, sticks or other objectionable material.
- (9) "Jute fiber" means the fiber derived from any species of the *Corchorus* plant.
- (10) "Jute tow" means the broken and refuse parts of jute separated from the fibrous parts in preparing the fibers for spinning.
- (11) "Kapok" means the mass of fibers investing the seed of the Kapok trees (*Ceiba Pentandra*). Any additional term descriptive of the geographical origin or of the quality of such fibers shall be a true statement when set forth on the tag.
- (12) "Milkweed fiber" means the surface fiber from the inside of the seed pods of milkweed plants (*Asclepias*).
- (13) "Moss" means the vegetable fibers processed from the moss growth found in swamps and on trees.
- (14) "Palm fiber" means the fibrous material obtained from the leaf of a palm, palmetto or palmyra tree.
- (15) "Silk fiber" means silk filaments or fibers, including the by-products of any manufacturing or preparing operation up to but not including spinning.
- (16) "Sisal fiber" means the leaf fiber derived from the "*Agave Sisalana*" and similar species of Agaves.
- (17) "Sisal fiber tow" means the residual fibers left after the extraction of the spinnable sisal fiber from the leaf. For the purpose of these regulations, this includes the products known as "Bagassi." It shall not contain over three per cent pulp.
- (18) "Fiber pads" means a fiber interwoven or punched on burlap or any other woven material or otherwise fabricated into a pad, and when the term "fiber pad" is used, the name of the fiber as herein defined shall be included.
- (19) "Tula fiber" means the leaf fiber derived from the "*Tula Istle*" and similar species of agaves.
- (20) "Straw" means the stalk or stem of grain, such as wheat, rye, oats, rice, and the like, after threshing. The kind of straw may be stated, but when indicated shall be a true statement. It shall be free from beards, chaff, bristles, husks, glumes, dirt or extraneous matter.
- (21) "Sea grass" means any material obtained from maritime plants or seaweeds.
- (22) "Shoddy" means any material created from the processing of secondhand materials, clothing or used rags.

Sec. 19-423-9. Cleansing and sterilization of materials required. The bedding and upholstered furniture laws require the cleansing and sterilization of all articles and materials that have become soiled or contaminated in any manner or that come from an animal or fowl or that are infested with germs of any kind or that are unsanitary or that are second-hand. This provision includes all mill wastes, scraps, clippings and other wastes of manufacture which have become soiled or contam-

inated by falling upon the floor or in any other manner. All sterilization shall be in full compliance with the specifications regarding sterilization promulgated under the authority of section 19-423 of the general statutes.

(Sec G.S. § 19-420 (a), (b), (f).)

Sec. 19-423-10. Sterilization permit. Each person who undertakes to do sterilizing work shall secure a sterilization permit which requires a detailed description of the processes to be employed and the payment of a twenty-five dollar license fee.

(Sec G.S. § 19-420 (m).)

Sec. 19-423-11. Records of permit holders. Each person to whom a sterilization permit is issued shall keep an accurate record of the name and address of each person other than the holder of such permit for whom sterilization is done, together with the kind and amount of articles and/or materials sterilized and the date of such sterilization. All records shall be open at all times during business hours for examination by the commissioner or by inspectors of the department, and certified copies of such records shall be furnished to the department not later than the fifth of each month, covering the preceding month.

(Sec G.S. § 19-420.)

Sec. 19-423-12. Sterilization in own plant or by permit holder. Cooperative sterilization plants. (a) A maker or vendor of second-hand articles or materials, or new materials that have been contaminated, may sterilize such articles or materials in his own approved plant or have them sterilized by any concern having a sterilization permit. The permit number of the approved process shall be printed or stamped on each tag attached to any sterilized article or material.

(b) Persons who do a small amount of business in remaking, renovating or selling second-hand furniture may not wish to set up a sterilization plant and to pay the twenty-five dollar annual fee for a sterilization permit. Such small operators and dealers may get sterilization done by a commercial plant or may band together to set up a cooperative sterilization plant to take care of their needs.

Sec. 19-423-13. Sterilization of new materials of animal origin. Any process used for cleaning and curing feathers, cleaning and curling hair, cleaning wool, or cleaning or curing any other material derived from an animal or fowl, shall not be deemed to afford proper and thorough sterilization unless such process effectually removes all disease spores, germs and bacilli, all insects and insect nits, all animal matter subject to decay and all manner of dirt and filth.

(a) **New feathers.** Application for a sterilization permit shall show that feathers are thoroughly washed and rinsed and that live steam and dry heat are applied. The product shall pass all tests for cleanness and freedom from nits and germs.

(b) **New hair.** Application for a sterilization permit shall show the entire process used for washing and curling (if curled) and that at some point during the process the hair remains in live steam or boiling water a sufficient period to kill all dangerous spores and germs.

(c) **New wool.** Application for a sterilization permit shall indicate whether raw wool or previously scoured and carbonized wool is to be treated. Processes for raw wool shall be set forth in detail and indicate that the wool has been subjected to steam or boiling water for a sufficient time to kill all dangerous spores and germs.

(See Reg. 19-423-18.)

Sec. 19-423-14. Sterilization of second-hand articles and materials. The law requires that all second-hand articles or materials of bedding or upholstered furniture shall be sterilized and properly labeled before they are offered for sale or returned to the owner to be offered for sale or to be used by him in any way. This provision is necessary for the protection of those who remake and renovate such articles and materials, as well as those who use them. Each such sterilized second-hand article or material shall bear a yellow tag giving the materials, the date of sterilization and the name of the vendor or owner.

(See G.S. § 19-420.)

Sec. 19-423-15. Sterilization before use. All second-hand materials and all new materials which have been exposed to contamination shall be sterilized before being put through a picker or a garnetting machine.

Sec. 19-423-16. Renovation of second-hand furniture.

(a) **Furniture renovated or remade.** Each complete article of furniture shall be sterilized before being renovated or remade. If sterilization by steam or chemical spray would spoil the finish on the frame of an article of upholstered furniture, sterilization may be done by applying the sterilizing agents by hand. The frame, when so sterilized, shall be labeled with a yellow tag stating that the frame is second-hand. New springs and new filling materials attached as a part of the frame shall be designated as new on the yellow tag attached to the frame. Each cushion, pillow or other separate part, made entirely of new materials, shall be labeled with a white tag stating that such part is new and giving the kinds and percentages of all filling materials.

(b) **Coverings or filling materials reused.** All coverings and filling materials which are to be used again in renovating or remaking any article of furniture shall be sterilized by steam, hot air or approved chemical agents. Fine fabrics which would be spoiled by wetting may be sterilized by hot air. All coverings or filling materials, so sterilized, shall be labeled as second-hand when resold.

Sec. 19-423-17. Storage of unsterilized articles. All unsterilized second-hand articles or materials shall be separately stored and completely segregated from new or clean articles or materials. No new or clean materials shall be kept or stored within a room or space used for sterilizing second-hand materials. Sterilizing chambers shall not be used for storage purposes.

Sec. 19-423-18. Sterilization processes. "Sterilization," in reference to chapter 357 of the general statutes, means the destruction of all bacilli and spores of bacilli as well as insects and insect eggs (nits). Only those processes and agencies which destroy all disease germs, insects and insect eggs shall be accepted as effective sterilization processes or agencies under the law. There are five effective sterilization processes recognized: (1) Live steam under pressure; (2) live steam streaming from a boiler carrying not less than fifteen pounds pressure; (3) boiling water; (4) hot air, and (5) caustic solution of standard strength for sterilizing metal articles and parts. The types of apparatus and processes described below are accepted sterilizers and, when shown to be effective, shall be approved by the commissioner.

(a) **Steam pressure.** The most efficient process of sterilization is the steam pressure process when properly applied. Live steam, applied in a steam tight chamber from which the air has been expelled, so as to penetrate to all parts of any article or material treated, and maintained at a pressure of at least fifteen pounds

per square inch and a temperature of at least 250°F. at the point of lowest temperature for a period of not less than thirty minutes is an effective sterilizer. If the pressure is maintained at twenty pounds per square inch, the time of treatment may be reduced to twenty minutes. The articles or materials treated shall be placed on racks so as to allow free access of steam to all surfaces and parts. Materials treated shall not be compacted or compressed to a density greater than that of ordinary cotton felt used for filling material. The sterilizing chamber shall be strong enough to withstand the pressure indicated and shall be equipped with a standard steam gauge plainly visible at all times from the working floor. Temperature control shall be maintained by means of a recording temperature gauge. A Diac sterilizer control or equally effective control may be used until a recording temperature gauge can be installed.

(b) **Streaming steam.** A stream of live steam applied to articles or materials in the condition described above is acceptable as a sterilizing process, provided the steam shall have a temperature of at least 212°F. and shall be applied for a period of not less than three hours. Streaming steam may be used in two applications of one and one-half hours each with an interval of six hours but not more than twenty-four hours between each application. The steam chamber shall be steam tight with outlet valves at top and bottom which shall be kept open to prevent pressure in the chamber. Condensed steam shall be drawn off.

(c) **Boiling water.** Boiling water is acceptable as a sterilizing process if uncompacted materials are immersed in it for a period of not less than two hours.

(d) **Hot air.** Hot air may be accepted as a sterilizer under proper conditions although it is not as effective as steam or boiling water. A hot air sterilizing process to be approved by the commissioner shall safely produce a temperature of 250°F. at the point of lowest temperature in the chamber. Temperature shall be automatically controlled and shall be maintained for a period of at least two and one-half hours. Temperature shall be generated by means of properly guarded electric heating units or by steam pipes carrying live steam. An indirect gas heating system may be used if the material cannot be ignited by the gas flame. Hot air may be used for sterilizing material which is not compressed to a degree in excess of the customary compression of cotton felt. Articles shall be so spaced as to allow free circulation of hot air.

(e) **Caustic soda.** For sterilizing second-hand metal used in springs, cribs, cots, etc., the commissioner will approve a caustic solution of one-half pound of caustic soda (76% sodium hydroxide) to each gallon of water. The solution shall be used in a tank impervious to the action of the solution and of sufficient size to permit the complete submersion of material. Metal shall remain in a cold solution for a period of at least twenty-four hours but, if the solution is kept at the boiling point, this period may be reduced to three hours. In using such caustic process, all plugs and obstructions shall be removed so as to permit free passage of the solution to the inside of all tubing and to all other parts. After sterilization all metal articles shall be thoroughly washed with clean water until all of the caustic solution is removed.

(f) **Chemical sterilization.** An approved chemical germicide may be used under proper conditions.

Sec. 19-423-19. Chemical sterilization: Temperature of sterilization room or chamber. Chemical reactions are hastened and made more complete by high

temperatures. For the most satisfactory sterilizing results, a temperature range of 75° to 110° is desirable. In no case should the temperature be allowed to fall below 75°F. during the period of sterilization.

Sec. 19-423-20. Period of exposure for complete destruction of bacteria, spores, insects and insect eggs. The period of exposure for complete chemical sterilization is arrived at by adding to the time required to destroy germs by formaldehyde one-half the time required by any given insecticide to kill insects and insect eggs. In no instance shall the total time for complete sterilization be less than the time required by the given insecticide to kill all insect life. The periods of exposure required for complete sterilization with formaldehyde and each of the listed insecticides are given below. The temperature in all cases shall be not less than 75°F.

(a) **Ethylene oxide and carbon dioxide ("carboxide").** If three pounds of this chemical mixture per one thousand cubic feet are used, the exposure time shall be one-half of twelve hours exposure to the insecticide, plus ten hours exposure to formaldehyde, a total of sixteen hours. If five pounds per one thousand cubic feet are used, the time of exposure shall be one-half of eight hours for the insecticide plus ten hours for formaldehyde or fourteen hours all told.

(b) **Hydrocyanic acid gas.** To be used only by licensed operatives. Exposure time for hydrocyanic acid gas, six hours plus ten hours for formaldehyde or sixteen hours all told.

(c) **Methyl formate and carbon dioxide ("malium").** Six hours plus ten hours, total sixteen hours.

(d) **Ethylene dichloride and carbon tetrachloride.** Fourteen hours plus ten hours, total twenty-four hours.

(e) **Carbon tetrachloride.** Fourteen hours plus ten hours, total twenty-four hours.

(f) **Sulphur dioxide.** Ten hours plus ten hours, total twenty hours.

(g) **Dichloro-diphenyl-trichloroethane (DDT).** Six hours plus ten hours for formaldehyde treatment, total sixteen hours.

(For quantities of chemicals, see Regs. 19-423-23, 19-423-24.)

Sec. 19-423-21. Steam, water and hot air as sterilizers. Live steam under pressure, live streaming steam, boiling water, and hot air at a temperature of not less than 212°F. are both germicides and insecticides. All articles and materials which are susceptible of treatment by any of these methods need no further treatment to render them free of all germs and insect life. Dry hot air is not so effective as steam or boiling water in killing either germs or insects. Hence, hot air chambers shall be kept at 250°F. for a period of two and one-half hours to insure complete sterilization. Steam at pressure of fifteen pounds per square inch giving a temperature of 250°F. is effective with an exposure of thirty minutes; at pressure of twenty pounds (temperature of about 300°), the time is twenty minutes. Streaming steam at a temperature of not less than 212°F. is fairly effective with an exposure of three hours. Boiling water is effective with two hours of exposure.

Sec. 19-423-22. Maintenance of apparatus. All rooms, chambers, containers, autoclaves, tanks, boilers, ducts, valves, gauges, heaters and all auxiliary equipment necessary or incidental for the proper sterilization of articles, filling materials or

metal shall be clean and maintained at all times in good repair and in proper working condition.

Sec. 19-423-23. Fumigation: Germicides. (a) Formaldehyde is in common use and is accepted as a germicide (not an insecticide). The commissioner shall permit the use of a proper formaldehyde process until further notice, provided this process is used in conjunction with an approved insecticide process. (See section 19-423-20.)

(b) When approved by the commissioner, formaldehyde gas in the presence of moisture may be used for treating either loose materials or complete articles when the filling is not compressed to a degree in excess of the usual compression of cotton felt. Articles shall be so spaced as to allow free circulation of gas. The exhaust from the sterilizing room or cabinet shall be carried by a duct or a chimney flue extending above the roof of the building.

(c) Formaldehyde gas generated from one pint of formaldehyde solution (United States Pharmacopoeia standard) for each one thousand cubic feet of space in the sterilizing chamber is acceptable. Materials shall be treated with formaldehyde gas and moisture for at least ten hours. The minimum quantity of solution permitted is two ounces, regardless of how small the sterilizing chamber is. The solution shall be heated or boiled to release the gas. The safest and most convenient way to do this is to add to the solution one-half its weight of potassium permanganate. This boils the solution and releases the gas. To avoid boiling over, the mixing should be done in a large pail. The gas shall be disseminated throughout the chamber so as to reach all parts of the materials treated. Sufficient moisture in the chamber may be produced by thoroughly sprinkling the floor of the chamber with warm water before commencing to sterilize. The room shall be gas tight and equipped with air inlet and outlet. (An exhaust fan will greatly facilitate the removal of dead gases and fumes after sterilization is completed.) Tight closure gates or valves shall be provided for both inlet and outlet. Shelves shall be of lattice construction. This process is not suitable, and shall not be approved, for complete sterilization of any materials or articles. For complete sterilization, an approved insecticide shall be used in addition to formaldehyde.

Sec. 19-423-24. Fumigation: Insecticides. The following substances and processes are approved as insecticides for use with formaldehyde or any accepted germicide.

(a) **Ethylene oxide and carbon dioxide: "Carboxide."** A mixture of one part ethylene oxide at ordinary temperatures is a colorless gas with a faint odor of ether. At 50°F. it is a mobile colorless liquid. Concentrated vapors of ethylene oxide are inflammable or explosive. To overcome the fire and explosion hazard, carbon dioxide is added. This eliminates these hazards and about doubles the toxicity of the ethylene oxide gas to insects. Ethylene oxide gas penetrates deeply into articles and materials of bedding and upholstery and destroys insects and insect eggs effectively. It is not very toxic to man. "Carboxide" gas is nonexplosive and noninflammable and does not injure fabrics or furniture. The materials to be treated shall be placed in a gas tight chamber on open lattice racks so as to allow the free access of the gas to the materials. The gas should be released into the chamber in the form of a mist or spray. Three pounds of ethylene oxide-carbon dioxide (or "carboxide") per one thousand cubic feet in a gas tight chamber at a temperature of 75°F. will destroy insects and insect eggs in twelve hours; five pounds per one thousand cubic feet is effective in eight hours.

(b) **Hydrocyanic acid gas.** This gas is very dangerous as it is deadly poisonous to man and should be used only by expert operators, licensed by the local health authorities. (See Reg. 19-423-29.)

(c) **Methyl formate and carbon dioxides: "Malium."** This is a noninflammable liquid consisting of fifteen parts methyl formate and eighty-five parts carbon dioxide by weight. Have air tight room, except for vent pipe to go above roof. Release gas by connecting cylinder to a manifold outside the room with a discharge pipe to the inside room. Moisture in the room is undesirable. Keep the temperature in room at not less than 75°F. Means shall be provided for exhausting vapors after fumigation. Outlet should be above roof. Clear the room of gas before opening the door after fumigation.

(d) **Ethylene dichloride and carbon tetrachloride.** This is a noninflammable liquid mixture of seventy-five per cent of the former and twenty-five per cent of the latter by volume. Ethylene dichloride is inflammable, but the mixture with carbon tetrachloride is not. Use a gas tight room. Place liquid in a shallow trough not more than two and one-half inches deep. Hang it about eighteen inches below the ceiling. The gas is heavy and travels downward. Use not less than fourteen pounds (five quarts) per one thousand cubic feet of air space in the room. Keep the temperature of room at not less than 75°F, nor more than 90°F. Moisture in the room is undesirable. Means shall be provided for exhausting vapors after fumigation. Outlet should be above the roof. Clear the room of gas before opening the door after fumigation.

(e) **Carbon tetrachloride.** Carbon tetrachloride is a thin, transparent, colorless, noninflammable liquid with an odor like chloroform. It is used as a fire extinguisher. Use an air-tight room equipped with a ventilating pipe which leads to a point above the roof. Have a gas-tight valve in the vent pipe. Place the tetrachloride in an open shallow pan at the top of the room. The gas is heavy and travels downward. The liquid evaporates on exposure to air. Use eight pounds per one thousand cubic feet of room space. Keep the temperature of the room at not less than 75°F. Clear the room of gas before opening the door after fumigation.

(f) **Sulphur dioxide.** This is sulphur fumes. The cheapest and simplest method of producing these fumes is the "pot" method. Use broad, shallow pots to assure rapid production of fumes. Use enough pots so that sulphur may be spread to a thickness of not more than two inches. Provide alcohol to start the sulphur burning. Provide a gas-tight room with fresh air inlet and exhaust pipe to outer air above the roof. Have tight valves in each pipe. Use one pound of sulphur to each one thousand cubic feet of room space. There is danger of fire from burning sulphur. Set the pots on brick or metal supports in a large pan of water. These fumes have a bleaching effect and also will tarnish metal. To light the sulphur quickly, sprinkle with alcohol and throw a lighted match in the pot. Keep the room dry—moisture is undesirable during fumigation. Clear the room of gas after the fumigation period before opening room door.

Sec. 19-423-25. Application of insecticides and germicides. Approved insecticides and germicides may be applied in either of two ways: (1) They may be applied in the form of a gas generated in a properly constructed gas tight vault or chamber; or (2) they may be applied with an approved spraying device.

Sec. 19-423-26. Temperature of germicides and insecticides. Any chemical germicide or insecticide acts more quickly and effectively at high temperatures. A

temperature range from 75°F. to 110°F. is desirable. In no case shall the temperature be allowed to fall below 70°F.

Sec. 19-423-27. Use of gas. If sterilization or fumigation is to be effected with gas, a properly constructed gas tight vault or chamber shall be installed.

Sec. 19-423-28. Formaldehyde gas. If formaldehyde is applied in gaseous form, the full strength standard U. S. Pharmacopoeia solution shall be used undiluted. The formaldehyde gas is generated by boiling this solution. The most satisfactory way of generating the formaldehyde gas is to add one-half its weight of potassium permanganate.

Sec. 19-423-29. Poisonous gas. Those who desire to use hydrocyanic gas or any other poisonous gas as an insecticide shall secure the approval of the local health officers before installing the chamber or vault for the use of such processes.

Sec. 19-423-30. Spraying. (a) Certain insecticides may be applied by direct spray or mist spray methods. When these insecticides are effective, they may be approved and used. The germicides and insecticides listed in these specifications are intended merely to indicate the properties and types of chemicals and processes requisite for proper sterilization. The list is not intended to be complete. Any germicide or insecticide not on the list which shall be shown to destroy germs or insects effectively under reasonable conditions without involving any serious hazards will be approved by the commissioner and added to the list.

(b) Two methods of applying chemical germicides and insecticides by means of a spray are permissible: (1) Direct spraying. The material or article shall be placed in a separate, closed room or chamber which shall be quite tight, but need not be gas tight. Either a good hand sprayer or a power sprayer may be used to spray the chemicals on the materials or articles. The materials or articles shall be thoroughly wetted with the chemical solution on all surfaces. The amount of chemicals used shall be approximately the same as would be required in the fumigation process for the same materials or articles; (2) The mist spray method. A gas-tight chamber shall be used. The chemicals are released from container tanks and are sprayed into the sterilizing chamber by an atomizer spray in the form of a mist. The amount of chemicals used shall be the same as that required for the same articles to be sterilized by fumigation.

(c) When germicide or insecticide is applied with a spray, a separate room shall be provided and isolated from other parts of the establishment. The material or article shall be thoroughly sprayed over all surfaces and in all crevices and corners.

Sec. 19-423-31. Formaldehyde spray. (a) If formaldehyde is applied with a spray, the standard U. S. Pharmacopoeia solution shall be diluted with three parts of water to one part of solution. This gives a ten per cent formaldehyde solution which is sufficient to kill all active germs which come in contact with the solution. (This ten per cent solution will not injure or fade fabrics.)

(b) If formaldehyde solution is applied with a spray, the operator shall wear rubber gloves and a mask to protect hands and eyes against the irritating effects of this solution.

Sec. 19-423-32. "Off sale" articles. The commissioner or a representative of the commissioner may order "off sale" and so tag any article of bedding, upholstered furniture or material therefor not tagged or labeled as required by these regulations or which in any other respect does not conform with the requirements of statute or regulation issued under the authority thereof, and may take such other action as may be authorized by statute. No article or material so ordered "off sale" shall be sold or used, nor shall such materials or articles or contents thereof be altered or removed in whole or part, until such articles or materials are released by the commissioner or his authorized representative and the "off sale" tag removed. All articles or materials ordered "off sale" are subject to frequent examination and shall be so placed as to be readily accessible at all times for examination upon demand of the commissioner or his authorized representative.

DELAWARE

INFORMATION CONCERNING THE BEDDING LAW OF THE STATE OF DELAWARE

1. The bedding law applies to articles used primarily for sleeping purposes such as mattresses, pillows, sleeping bags, comforters or play pen pads. See Section 2101 of the attached copy of the law.
A Delaware registry number and stamps are not required for articles such as upholstered chairs, chair cushions, car seat cushions, upholstered headboard of hollywood type beds, or decorative pillows.
2. The following information must be submitted to the Division of Sanitary Engineering, State Board of Health, Dover, Delaware:
 - a. A completed copy of Form SE-15 which has been signed by an authorized representative of the company.
 - b. Two copies of the bedding tag which is described in Section 2106 of Chapter 21, Title 16, Delaware Code.
 - c. A check or money order in the amount required for the number of stamps requested.
3. We do accept the uniform registry number from other states providing the number appears on the printed cloth bedding tag.
4. The adhesive stamps are sold in lots of not less than 1,000 at a cost of \$15.00 per 1,000. See Section 2107 of the Bedding Law. The regulations of the State Treasurer's office prohibit the refund of any money for unused stamps.
5. Information, approval of bedding tags, the issuance of stamps and of registry numbers is done by the Division of Sanitary Engineering, State Board of Health, Dover, Delaware.

CHAPTER 21. MATTRESSES, PILLOWS AND BEDDING

Sec.

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§ 2101. Definitions

As used in this chapter, unless the context requires a different meaning—

"Comfortable" means any cover, quilt, or quilted article made of cotton, or other textile material, and stuffed or filled with fiber, cotton, wool, hair, jute, feathers, feather down, kapok or other soft material.

"Mattress" means any quilted pad, mattress, mattress pad, mattress protector, bunk, quilt or box spring, stuffed or filled with excelsior, straw, hay, grass, corn husk, moss, fiber, cotton, wool, hair, jute, kapok or other soft material, to be used on a couch or other bed for sleeping purposes.

"New" means any material or article which has not been previously manufactured or used for any purpose.

"Pillows," "bolster," or "feather-bed," mean any bag, case or covering made of cotton or other textile material, and stuffed or filled with excelsior, straw, hay, grass, corn husks, moss, fiber, cotton, wool, hair, jute, feathers, feather down, kapok or other soft material to be used on a bed or other article for sleeping purposes.

"Second-hand" means any material or article of which prior use has been made.

"Shoddy" means any material which has been spun into yarn, knit or woven into fabric, and subsequently cut up, torn up, broken up or ground up.

HISTORY AND SOURCE OF LAW

Derivation:

Code 1935, § 874.

Code 1915, § 824A, as added 36 Del. Laws, Ch. 102.

Revision Note:

Provision of section 874 of Code 1935, defining "person" as including persons, corporations, copartnerships and associations, was omitted as covered by section 302 of Title 1, General Provisions, which contains a general definition of "persons".

Provision of such section 874, relating to words used in singular number as including the plural and the plural the singular, was omitted as covered by section 304 of Title 1, General Provisions, which contains a general provision to the same effect.

§ 2102. Sterilization and disinfection of materials

No person shall employ or use in the making or renovating of any mattress, pillow, bolster, feather-bed or comfortable (1) any material known as "shoddy" or any fabric or material from which shoddy is constructed; (2) any second-hand material; (3) any new or second-hand feathers, unless such shoddy, second-hand material or new or second-hand feathers have been sterilized and disinfected by a reasonable process approved by the State Board of Health.

HISTORY AND SOURCE OF LAW

Derivation:

Code 1935, § 875.

Code 1915, § 824B, as added 36 Del. Laws, Ch. 102.

§ 2103. Permit for sterilization, disinfection, etc.; requirements for issuance; fee

(a) Any person engaged in the making, remaking or renovating of any mattress, pillow, bolster or comfortable in which second-hand material is used, or in the making of any new or second-hand feather or down-filled article or engaged in sterilizing and disinfecting any material, feathers, or article coming under the provisions of this chapter shall submit to the State Board of Health for approval a reasonable and effective process, together with duplicate plans of apparatus or auxiliary devices, for the sterilization and disinfection of second-hand material, feathers and second-hand articles enumerated in this section.

(b) Upon the approval of the process for sterilization and disinfection, a numbered permit for its use shall be issued to the applicant by the State Board. Such permit shall expire one year from date of approval and issue. Every person to whom a permit has been issued, shall keep such permit conspicuously posted in his office or place of business. Refusal to display such permit in accordance with this chapter shall be sufficient reason to revoke and forfeit the permit.

(c) For all permits issued as required by any provision of this chapter (not including, however, by the term "permits," the "tags" otherwise referred to in this chapter), there shall at time of issue thereof, be paid by the applicant to the State Board a fee of \$50.

(d) Nothing in this section shall prevent any person engaged in the making, remaking, renovating or sale of any article described in this section, which requires sterilizing and disinfecting under the provisions of this section, from having such sterilizing and disinfecting performed by any person to whom a permit for such purposes has been issued, provided the number of the permit shall appear in the statement on the tag attached to the article.

HISTORY AND SOURCE OF LAW

Derivation:

Code 1935, § 876.

Code 1915, § 824C, as added 36 Del. Laws, Ch. 102.

§ 2104. Inspection of premises

All places where any mattress, pillow, bolster, feather-bed or comfortable is made, remade, or renovated, or where materials for articles named in this section are prepared, or establishment where the articles are offered for sale, or are in possession of any person with intent to sell, deliver, or consign them, or establishment where sterilizing and disinfecting is performed, shall be subject to inspection by the State Board of Health to ascertain whether the materials and the finished articles enumerated in this section conform to the requirements of this chapter.

HISTORY AND SOURCE OF LAW

Derivation:

Code 1935, § 877.

Code 1915, § 824D, as added 36 Del. Laws, Ch. 102.

§ 2105. Selling or leasing used mattresses, etc.; sterilization and disinfection

No person shall sell, lease, offer to sell or lease, or deliver or consign in sale or lease, or have in his possession with intent to sell, lease, deliver, or consign in sale or lease, (1) any mattress, pillow, bolster, feather-bed or comfortable, made, remade, or renovated in violation of this chapter, (2) any second-hand mattress, pillow, bolster, feather-bed; or comfortable, unless since last used it has been thoroughly sterilized and disinfected by a reasonable process approved by the State Board of Health.

HISTORY AND SOURCE OF LAW

Derivation:

Code 1935, § 878.

Code 1915, § 824E, as added 36 Del. Laws, Ch. 102.

§ 2106. Tagging; regulations and prohibitions (amended 1953)

(a) Each and every mattress or article covered by this chapter, other than a feather or down-filled pillow, bolster, bed or comfortable, shall bear securely attached thereto and visible on the outside covering a substantial cloth tag, upon which shall be plainly and indelibly stamped or printed, in English, (1) a statement showing the kind of materials used in filling the mattress or article and whether the materials used in filling are wholly new or second-hand or partly second-hand; (2) the word "second-hand" upon any article of which prior use has been made; (3) the number of the permit issued for sterilizing and disinfecting; (4) the registry number used in applying and enforcing the tagging, inspection and adhesive stamp provisions of this chapter.

(b) Each and every pillow or other article covered by this chapter, in which feathers or down are used, shall bear securely attached thereto and visible on the outside covering a substantial cloth tag, upon which shall be plainly and indelibly stamped or printed in English (1) a statement that the feathers or down have been sterilized and disinfected in accordance with this chapter; (2) the number of the permit issued for sterilizing and disinfecting the feathers or down; (3) the word "second-hand" upon a feather or down-filled article of which prior use has been made; the registry number used in applying and enforcing the tagging, inspection and adhesive stamp provisions of this chapter. As amended 49 Del. Laws, Ch. 269, §§ 1, 2, eff. July 6, 1953.

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1953 Amendments. Subsec. (a) amended by 49 Del. Laws, Ch. 269, § 1, which added clause (4).

Subsec. (b) amended by 49 Del. Laws, Ch. 269, § 2, which at the end thereof inserted: " ; the registry number used in applying and enforcing the tagging, inspection and adhesive stamp provisions of this chapter".

(c) No additional information shall be contained in the statements. The statement of materials used in filling must be in plain type not less than one-eighth inch in height. The tag required by this chapter to be attached to any article covered by this chapter shall be not less than six square inches in size.

(d) No person shall imitate, counterfeit, sell, or have in his possession any imitated or counterfeited adhesive stamp required under the provisions of this chapter.

(e) The word "felt," or words of like import, if any other than garnetted materials are used in filling, or the words "curled hair," or words of like import, if other than curled hair is used in filling, shall not be used, exclusively, in the statement concerning any mattress, pillow, bolster or comfortable.

(f) No person shall make any false, untrue or misleading statement, term or designation on the tag, or remove, deface, alter or in any manner attempt to remove, deface or alter the tag, or the adhesive stamp required by this chapter, or cause to be removed, defaced or altered any statement on a tag placed upon any article included in the provisions of this chapter.

HISTORY AND SOURCE OF LAW

Derivation:

Code 1935, § 879.

Code 1915, § 824F, as added 36 Del. Laws, Ch. 102.

§ 2107. Registration and registry numbers; issuance and fee for stamps (amended 1955)

The State Board of Health shall, upon application to it by any person entitled thereto, register such applicant, and assign a registry number by which number the applicant shall thereafter be known and designated in applying and enforcing the tagging, inspection and adhesive stamp provisions of this chapter, and thereupon the State Board shall furnish to such applicant adhesive stamps in quantities of not less than 1,000 for which the applicant shall pay \$15 for each 1,000 stamps, which payment and charge shall constitute an inspection charge for the purpose of enforcing this chapter. As amended 50 Del.Laws, Ch. 251, § 1, eff. June 8, 1955.

1955 Amendment. 50 Del.Laws, Ch. 251, increased fee from \$10 to \$15, for each 1,000 stamps.

§ 2108. Adhesive stamps (amended 1953)

The State Board of Health may prepare and cause to be printed adhesive stamps which shall bear a replica of the seal of the State, and such other matter as the State Board shall direct. As amended 49 Del.Laws, Ch. 269, § 3, eff. July 6, 1953.

1953 Amendment. 49 Del.Laws, Ch. 269, struck out "the registry number of the person applying therefor," which followed "seal of the State,".

§ 2109. Failure to attach adhesive stamps

No person shall sell, lease, offer to sell or lease, deliver or have in his possession with intent to sell, lease, deliver or consign any article covered by this chapter, unless there shall be attached to the tag required by this chapter, by the person manufacturing, renovating, sterilizing or offering for sale the same, an adhesive stamp prepared and issued by the State Board of Health, as provided in this chapter.

HISTORY AND SOURCE OF LAW

Derivation:

Code 1935, § 882.

Code 1915, § 824I, as added 36 Del.Laws, Ch. 102.

§ 2110. Disposition of fees

All fees collected under the provisions of this chapter shall be paid to the State Board of Health and, when so paid shall be turned over by the Board to the State Treasurer and credited to the General Fund of the State.

HISTORY AND SOURCE OF LAW

Derivation:

Code 1935, § 883.

37 Del.Laws, Ch. 59, § 1.

Code 1915, § 824J, as added 36 Del.Laws, Ch. 102.

§ 2111. Inspection of products and plants of non-residents

(a) It is the intent of this chapter to prevent both the manufacture and the sale within this State of any of the articles enumerated in section 2105 of this title, except in conformity to and in compliance with the provisions of this chapter. Inasmuch, however, as some of the articles so enumerated may be made, or the material used in the manufacture or renovation thereof may be processed, outside of the limits of this State, it is expressly provided, that where the person so manufacturing any such article or processing any such material shall have or operate his plant outside of the limits of this State, the State Board of Health may, in its discretion, in lieu of a physical inspection of the plant of such non-resident person, satisfy itself by examination of the product made or possessed by such non-resident or by such other means as the State Board deems adequate, of the propriety of issuing to such non-resident, the permit required by the provisions of this chapter, or of renewing or keeping in force a permit so issued.

(b) In the event that at any time the State Board deems it necessary to make physical inspection of any plant or factory of the non-resident, it may require the payment by such non-resident, of such sum as may cover the reasonable traveling charges entailed by such physical inspection, and refuse to issue, or revoke or suspend any permit, until or unless such charges are so paid.

HISTORY AND SOURCE OF LAW

Derivation:

Code 1935, § 884.

Code 1915, § 842K, as added 36 Del.Laws, Ch. 102.

§ 2112. Enforcement; rules and regulations

The State Board of Health, through its officers and employees is charged with the administration and enforcement of this chapter and may take for evidence, at any trial involving violation of this chapter, any article made or offered for sale in violation of this chapter. The State Board shall make and enforce reasonable rules and regulations for the enforcement of this chapter.

The provisions of this section shall be subject to the provisions of chapter 23 of Title 11. If there is any conflict or inconsistency between this section and such chapter, the latter shall prevail.

HISTORY AND SOURCE OF LAW**Derivation:**

Code 1935, § 885.

Code 1915, § 824L, as added 36 Del.Laws, Ch. 102.

Revision Note:

The last paragraph of this section is new. It was added to resolve any possible conflicts between provisions of this section and those of chapter 23 of Title 11, Crimes and Criminal Procedure, which is based on 48 Del.Laws, Ch. 303, and prescribes the procedure to be followed in cases of searches and seizures generally, and provides for the repeal and superseding of all other laws relating thereto.

§ 2113. Violations and penalties; appeals

(a) Whoever violates the provisions of this chapter or the rules and regulations adopted thereunder, shall be fined, for each offense, not less than \$10 nor more than \$50. In default of the payment of such fine he shall be imprisoned for not less than ten days for each separate offense. The total term of imprisonment at any one time for additional offenses shall not exceed ten months.

(b) Each mattress, pillow, bolster, feather-bed or comfortable made, remade or renovated, sold, offered for sale, delivered, consigned, or possessed with intent to sell, deliver or consign, contrary to the provisions of this chapter, shall constitute a separate offense.

(c) Each imitated or counterfeited adhesive stamp made, used, sold, offered for sale, delivered or consigned contrary to the provisions of this chapter shall constitute a separate offense.

(d) Any person convicted of an offense under this section, before a justice of the peace or in any court other than the Superior Court, may appeal the judgment of conviction to the Superior Court of the county.

HISTORY AND SOURCE OF LAW**Derivation:**

Code 1935, § 886.

37 Del.Laws, Ch. 59, § 2.

Code 1915, § 824M, as added 36 Del.Laws, Ch. 102.

Revision Note:

Section is based on first three paragraphs of section 886 of Code 1935. For remainder of such section 886, see section 2114 of this title.

Reference to any offense under such section 886 as a misdemeanor was omitted from this revised section as covered by the general classification of crimes in section 101 of Title 11, Crimes and Criminal Procedure. The phrase "upon conviction thereof" was omitted as surplusage.

The provisions vesting jurisdiction of offenses in the justices of the peace, and the Municipal Court for the City of Wilmington, was omitted as covered by section 114 of this title, and by section 2701 of Title 11, Crimes and Criminal Procedure. See, also, Revision Note under such section 114.

Section 886 of Code 1935 provided merely for "right of appeal to the defendant, as in other cases". In this revised section, the appeal provision was completely rewritten for the same reasons given in Revision Note under section 2504 of this title for rewriting the appeal provision in that section. Insofar as conviction, of an offense under this section, before a justice of the peace is concerned, the right of appeal is also conferred by section 115 of this title.

§ 2114. Revocation of permit

The State Board of Health may revoke any permit issued under the provisions of this chapter, if the person to whom the permit was issued has violated any provisions of this chapter or the rules or regulations established thereunder.

HISTORY AND SOURCE OF LAW**Derivation:**

Code 1935, § 886.

37 Del.Laws, Ch. 59, § 2.

Code 1915, § 824M, as added 36 Del.Laws, Ch. 102.

Revision Note:

Section is based on last paragraph of section 886 of Code 1935. For remainder of such section 886, see section 2113 of this title.



FLORIDA BEDDING LAW



1959

FLORIDA STATE BOARD OF HEALTH
BUREAU OF SANITARY ENGINEERING
JACKSONVILLE 1, FLORIDA

FLORIDA BEDDING LAW

Chapter 556 — Florida Statutes, 1959 as Amended

556.01 **SHORT TITLE.** — This chapter shall be designated the "Bedding inspection law" and the same shall be deemed an exercise of the police powers of the state for the health and welfare of the people of the state.

556.02 **DEFINITIONS.** —

Definitions as used in this chapter:

(1) "Person" shall include all persons, masculine as well as feminine, corporations, partnerships, limited partnerships, societies, individual proprietorships, and voluntary associations; it shall import the plural and the singular, as the case demands.

(2) "Sale", "sell" or "sold" includes offering or exposing for sale or give away or exchange or lease or consigning or delivering in consignment for sale, exchange or lease or holding in possession with like intent. The possession of any article of bedding, or filling materials, as herein defined, by any maker or dealer, or his agent or servant in the course of business, shall be presumptive evidence of intent to sell.

(3) "Bedding" or "article of bedding" includes any mattress, pillow, cushion, quilt, quilted pad, quilted bedspread, comforter, upholstered spring bed, box spring, davenport, daybed or couch, sleeping bag, auto bed, beach pad, chaise lounge pad, bolster, quilted or padded headboard, or any other item containing filling material used or intended for use for sleeping purposes.

(4) (a) "Filling material" includes any hair, down, feathers, wool, cotton, kapok, excelsior, natural or synthetic rubber, synthetic fiber, or any other soft material used in the manufacture of and for filling articles of bedding.

(b) "Processed filling material" shall mean any filling material manufactured, prepared or fabricated by any process for use in the manufacture or renovating of articles of bedding and shall include cotton felt or batting; shredded or garnetted clippings; willowed fibers; wool felt; prepared hair, curled or uncurled, felted or rubberized; prepared feathers and down; natural or synthetic rubber in any form; jute felt; sisal pads, kapok or any similar materials.

(5) The term "new" shall refer to and mean any article of bedding or filling material which has not been previously used for any purpose; provided, however, that manufacturing processing shall not be considered a previous use.

(6) The term "used" shall refer to and mean any article of bedding or filling material or portion thereof of which a previous use, other than subjecting the same to manufacturing processing has been made.

(7) "Manufacture", "making", "make", or "made" includes altering, repairing, finishing or preparing articles of bedding or fill-

ing materials for sale, including remaking or renovating when done by any person except the owner.

(8) Whenever in this chapter the singular is used the plural shall be included and where the masculine gender is used the feminine and neuter shall be included.

(9) The word "shoddy" shall mean garnetted or shredded clippings when made in whole or in part from old or worn rags, clothing or second-hand fabric.

(10) The term "garnetted clippings" shall refer to and mean any material which has been made into fabric and subsequently cut up, torn up, broken up or ground up and has been run through a garnet machine and thoroughly processed.

(11) The term "shredded clippings" shall refer to and mean any material which has been made into fabric and subsequently cut up, torn up, broken up or ground up, but which has not been run through a garnet machine and thoroughly processed.

(12) The word "felt" shall mean material which has been carded in layers or sheets by a garnet or felting machine.

(13) The word "board" shall mean the state board of health.

(14) The word "composite" refers to and means any article of bedding or filling material containing both new and used materials.

(15) **"Renovator"** shall mean any person who repairs, renovates, makes over, recovers, restores, or renews any article of bedding for the owner only and not for sale.

(16) **"Supply dealer"** shall mean any person who manufactures, makes, or prepares for sale any processed filling materials in bags, bales, or containers, concealed or not concealed, to be used or intended for use in articles of bedding.

556.03 ADMINISTRATION. —

(1) The state board of health through its officers and employees is hereby charged with the administration and enforcement of this law. The board shall appoint one or more inspectors and other necessary personnel who shall be qualified by either experience or training and who shall not be interested in either the manufacture or renovation or sale of bedding. It shall be the duty of the board to enforce and supervise the inspection of all bedding and filling material subject to the provisions of this chapter and to enforce the provisions thereof within this state. All fees collected under the provisions of this chapter shall be paid to the state treasurer and deposited into the agency fund. All expenses certified by the state board of health as properly and necessarily incurred in the discharge of duties under this chapter including salaries and expenses of inspectors, employees and any other necessary expenses incurred under this chapter shall be paid out of said fund.

(2) The state board of health is hereby authorized and empowered to make such reasonable regulations as may be necessary for the administration of this chapter and to amend or appeal such regu-

lations; provided, however, such regulations shall not enlarge the scope of this chapter, and pertain only to the formal procedure.

556.04 PROHIBITIONS. —

(1) No person shall sell as new any article of bedding unless it is made from all new material and is tagged as provided herein.

(2) No person shall sell, representing it to be new material, any old or second-hand hair, down, feathers, wool, cotton, kapok, or other material used for filling articles of bedding.

(3) No person shall sell any articles of bedding made from old, used, or second-hand material unless it shall be tagged as provided herein.

(4) No person shall knowingly sell any article of bedding, or any material used in the making thereof, which has been used by or about any person having an infectious or contagious disease.

(5) No person shall use in the manufacture of any article of bedding for sale any material (a) that comes from an animal or fowl, (b) that contains any bugs, vermin, or filth, (c) that is unsanitary, (d) that contains burlap or other material that has been used for bailing, unless such material has been sterilized by a process approved by the state board of health.

(6) No person shall sell, offer for sale, exchange or lease or deliver or consign for like purpose any article of bedding herein required to be tagged unless there is affixed on the tag an inspection stamp as required by this article.

(7) It shall be unlawful to use any false or misleading statement, term or designation on said tag or to remove, deface or alter, or to attempt to remove, deface or alter such tag or the statement of filling materials made thereon, or the inspection stamp, hereinafter described.

(8) The state board of health shall have the power to take possession of any article of bedding made or offered for sale for inspection and may open any article of bedding at the seams to examine the contents thereof. The state board of health may also inspect the purchase records of the owner of such articles of bedding in order to determine the kind of materials used therein. Such records shall be kept available for inspection for a period of one year. If any article of bedding does not meet the requirements of this chapter the said board of health shall prohibit the sale and shall affix thereto a label to be designed and prescribed by the board, and within fifteen days of such seizure or labeling the owner shall be furnished with the written reason or reasons for such actions by registered mail; such label shall not be removed except by an agent of the board and said article of bedding shall not be sold without the written consent of the board unless on hearing it be determined that the reasons are unfounded. All places where any article of bedding covered by this chapter, is made, re-made, or renovated or where materials for such articles of bedding are manufactured, prepared or stored, or where such articles of bedding are offered for sale or are possessed with intent to sell; or where sterilization or disinfection is performed shall

be subject to inspection by the board during usual business hours. For the purpose of administering or enforcing this chapter it shall be unlawful for any person to interfere with any such inspection. Any person adversely affected may demand a hearing within fifteen days after assignment of reasons, which hearing shall be held by the board within fifteen days thereafter.

556.05 LABELS, TAGGING. —

(1) No person shall sell an article of bedding unless there shall be securely sewed to the outside covering thereof a substantial cloth or cloth-backed label which shall not flake when abraded, at least two inches by three inches in size, upon which shall be indelibly stamped, typed, or printed with ink, in English, the following:

(a) The name of the material or materials used to fill such article of bedding and where two (2) or more different materials are included they shall be described in the order of their predominance stating percentages by weight of each.

(b) The name and address of the manufacturer, jobber, distributor or vendor of the article of bedding.

(c) In letters at least one-fourth inch high in bold, black type the words "all new material" if such article of bedding contains no used material; or in bold, black type of the same size the word "composite" if new and used materials are contained therein; or in bold, black type of the same size the words "made of used material" if such article of bedding contains second-hand material; and in bold, black type of the same size the word "sterilized" if such articles of bedding have been sterilized.

(d) The body of the labels bearing the descriptive words "of new materials" shall be white; the body of the labels bearing the descriptive word "composite" shall be one-half yellow and one-half blue; the body of the labels bearing the descriptive words "made of used material" shall be yellow. The "composite" label shall clearly and legibly show the correct percentage of new and used material.

(2) The label of any article of bedding containing natural or synthetic rubber shall state the form of such rubber; that is, whether such rubber is in mold, sheet, flake, shredded, ground, crushed or other form.

(3) The word "bonded" shall not be used upon the label of any article of bedding in describing the materials therein used.

(4) If any article of bedding shall contain artificially colored filling materials, the label on such article of bedding shall contain the word "colored" immediately preceding the description of such materials.

(5) Any person who renovates or reprocesses any bedding for an owner shall comply with the following:

(a) Any filling material added to the owners' material shall be new unless otherwise specifically agreed to by the owner.

(b) All bedding renovated, re-processed or re-built for the owner shall be labeled as follows:

Color of label shall be green

Statements on label shall be printed or typed in indelible ink as follows:

"Do not remove this label under penalty of law"

"This article not for sale"

"Owners' material"

"Certification is made that this article contains the same material it did when received from its owner and the added material is according to law and consists of the following:"

The label shall then clearly state the following: Name of the repairers or renovators thereon which did repair or renovate the bedding and it shall be not less than three by five inches and both the printed and imprinted portions shall be of such size to be easily and clearly read.

556.06 REGISTRATION; INSPECTION STAMPS. —

(1) No person shall sell or lease or have in his possession with intent to sell or lease in the state, any article of bedding covered by the provisions of this chapter, unless there be affixed to the tag required by this chapter by the person manufacturing, selling or leasing the same, an adhesive inspection stamp prepared and issued by the board; two types of such stamps shall be furnished by the board.

(2) The board shall register all applicants for stamps and assign to every person a registration number which thereafter shall constitute his identification record and said identification shall not be used by any other person.

(3) No person shall manufacture, renovate, sell or offer for sale any article of bedding or any processed filling materials as defined herein unless said manufacturer, renovator, retailer or seller and supply dealer of the item of bedding or processed filling material shall pay to the board for registration and annually thereafter the following fee:

Manufacturers or supply dealers	\$25.00
Distributors, jobbers or wholesalers	25.00
Renovators	10.00
Retailers	5.00

(a) Every bedding retailer, unless he holds a manufacturer's registration, or a wholesale dealer's registration, shall annually obtain a retail dealer's registration.

(b) Every bedding renovator, unless he holds a manufacturer's registration, shall annually obtain a renovator's registration.

(c) Every distributor, jobber or wholesaler of bedding, unless he holds a manufacturer's registration, shall annually obtain a distributor, jobber or wholesaler registration.

(d) Every supply dealer of processed filling materials, unless he holds a manufacturer's registration, shall annually obtain a supply dealer's registration.

(e) Every bedding manufacturer shall annually obtain a manufacturer's registration.

(f) Every person in each classification shall obtain a separate registration for each branch, factory, store or retail outlet.

(4) Adhesive inspection stamps shall be furnished by the state board of health in quantities of not less than five hundred. One type shall be for use on all articles of bedding as defined herein, except pillows, cushions and comforters, for which the applicant shall pay ten dollars for each five hundred stamps. The other type shall be for use only on pillows, cushions, and comforters, for which the applicant shall pay five dollars for each five hundred stamps.

(5) This act shall also apply to and include the manufacture, preparing and sale of any processed filling material sold or offered for sale for use or intended for use in the manufacture or renovating of articles of bedding as defined within this act.

(a) All of the requirements of this act including registration, labeling, tagging, affixing inspection stamps, prohibitions and penalties as applied to items of bedding shall likewise apply to processed filling materials as defined herein.

(b) Each bundle, bale, box, package or container of said filling materials shall have securely attached thereto a label or tag as specified within the act with the two cent (2¢) bedding inspection stamp affixed thereto.

(6) The board may suspend, revoke and void the registration number of any person convicted of violating the provisions of this chapter. Such person shall not thereafter engage in the manufacture, making, remaking, renovating or delivering for sale or selling in this state articles of bedding covered by this chapter until the board has determined that such person is complying with the provisions of this chapter, whereupon the board shall reinstate or reissue the registration number to such person.

556.07 SCOPE.— This chapter shall apply to all bedding or articles of bedding, including any mattresses, pillows, cushions, quilts, bedpads, comforters, upholstered spring beds, box springs, davenports, day beds or couches used or intended for use for sleeping purposes, whether manufactured, renovated or remade within the state or brought within the state for sale, provided, however, that this law shall not apply to a mattress sold by the owner from his home direct to a purchaser, unless such mattress has been exposed to an infectious or contagious disease.

556.08 BEDDING FOR EXPORT ONLY EXCLUDED.—

This chapter shall not apply to bedding manufactured, processed or held within the state solely for export to points outside the state,

provided such bedding is at all times clearly labelled "For Export Only."

556.09 **VIOLATIONS; PENALTIES.** — Any person who fails to comply or who violates any provisions of this chapter or the rules and regulations of the board of health made pursuant hereto, shall be guilty of a misdemeanor and shall, upon conviction thereof, be fined not more than five hundred dollars, or shall be imprisoned in the county jail for not more than ninety days for each offense, or by both such fine and imprisonment.

NOTE: The portions in bold type of the above law constitute amendments passed by the 1959 session of the Florida Legislature.

GEORGIA

CHAPTER 88-8. ARTICLES OF BEDDING SANITATION

88-801. Definitions. Unless the context clearly disclosed a different meaning, the following words, phrases and terms as used in this Chapter shall have the following meanings:

(a) The words "articles of bedding" mean any of the following type of goods which are intended for use by any human being for sleeping purposes: any mattress, mattress pad, mattress protector, upholstered spring, comforter, quilted pad, quilt, cushion or pillow which is stuffed or filled in whole or part with concealed material and which is not smaller than twelve inches in its greatest dimensions.

(b) The word "manufacturer" means a person who either by himself or through employees or agents, makes any article of bedding in whole or in part, or who does the upholstery or covering of any unit thereof, using either new or previously used material.

(c) The word "person" means: any individual, corporation, partnership or association.

(d) The words "new material" means: any material which has not been used in the manufacture of another article or used for any other purpose.

(e) The words "previously used material" means: any material which has been used in the manufacture of another article and subsequently torn, shredded, picked apart, or otherwise disintegrated, including jute and shearings.

(f) The words "renovator" and "reupholsterer" shall mean: any person who repairs, makes over, recovers, restores, or renews any article of bedding for the owner for a consideration.

(g) The word "sell" or "sold" shall, in the corresponding tense, include: sell, offer to sell, barter, trade, rent, or possess with intent to sell, deliver or consign in sale, or dispose of in any other commercial manner.

(h) The word "sweeps" or "oily-sweeps" as used in the cotton waste trade shall be construed to mean "mill floor sweepings" and shall be classed as previously used material.

(i) The word "felt" shall mean: material which has been carded in layers by a garnett machine.

All words shall include plural and singular as the context demands.

88-802. Department of Health to enforce Chapter. The Department of Health is hereby authorized and empowered, through its duly authorized representatives, to enforce all of the provisions of this Chapter.

88-803. Sale or manufacture in violation of Chapter; Rules and Regulations; Revocation of Certificate of Registration. It is the intention of this Chapter to prevent both the manufacture and sale in this state of articles of bedding unless manufactured and sold in conformity with its provisions. The Department of Health may make and enforce reasonable rules and regulations for the enforcement of this Chapter, and may suspend, revoke and void the certificate of registration of any person convicted of violating the provisions of this Chapter. Any person, a non-resident of this State, who has been issued a certificate of registration and who fails or refuses to enter an appearance in any court of record in this State to answer charge or charges of violation within twenty-five days after service upon him of a notice by registered mail so to do, may have his certificate of registration preemptorily revoked by the Department of Health. The articles of bedding manufactured or sold by such person shall not thereafter be sold in this State until such person has paid a special inspection fee of one hundred dollars and the Department of Health has determined that such person is complying with the provisions of this Chapter; whereupon the Department of Health shall reinstate or reissue the Certificate of Registration to such person.

88-804. Certificates of Registration. No person, except for his own use, shall make, reupholster, or renovate articles of bedding, as heretofore defined, for sale

in the State of Georgia without first securing a numbered certificate of registration from the Department of Health and paying the fee established for said certificate of registration as hereinafter set forth. The payment and charge for this certificate of registration shall constitute an inspection charge for the purpose of enforcing this Chapter. Said certificate of registration shall expire one year from date of issue or until voided by a violation of this Chapter, whichever event occurs first in time.

(A) Manufacturers of Articles of Bedding----- \$100.00

(B) Renovators and Reupholsterers of Articles of Bedding---- \$25.00

88-805. Exemptions for blind persons and agencies of state and local governments. Notwithstanding anything contained in this Chapter, a plant or place of business owned solely by blind persons, in which place of business not more than one seeing assistant is employed in the manufacture, renovation or reupholstering of articles of bedding, and state or local governmental agencies manufacturing articles of bedding for any governmental use in this State shall not be required to pay any fee for a certificate of registration as herein provided, but shall be required to conform to all other provisions of this Chapter.

88-806. Approval of sterilizing process. Every person applying for a certificate of registration hereunder shall furnish a detailed drawing and description of any sterilizing apparatus and process to be used, which apparatus and process shall meet with the approval of the Department of Health before the applicant shall be entitled to a certificate of registration.

88-807. Used material to be sterilized. No person subject to this Chapter shall use any previously used material which, since last used, was not sterilized by a process approved by the Department of Health.

88-808. Used articles of bedding to be sterilized. No person shall sell a used article of bedding unless sterilized, since last used, by a process approved by the Department of Health; provided that nothing in this Chapter shall be construed as prohibiting public sales under process of law or sales by an executor or an administrator of an estate.

88-809. Identification of articles of bedding. Any person who receives articles of bedding for renovation, reupholstering or storage shall keep attached thereto, from the time he receives it, a tag on which is legibly written the date of receipt and the name and address of the owner.

88-810. Tags and Details on Tags. No person shall manufacture, renovate, reupholster or sell any article of bedding to which there is not securely sewed a cloth-backed tag at least six square inches upon which there shall be stamped or printed with ink in the English language:

- (a) the name of the material or materials used to fill such articles of bedding;
- (b) the name and address of the manufacturer, renovator, upholsterer or vendor of the article of bedding;
- (c) the manufacturer's, upholsterer's or renovator's Certificate of Registration number issued by the Department of Health; and
- (d) The words "Made of New Materials" if such mattress contains no previously used material; or the words "Made of Previously Used Material" if such mattress contains any material classified as "Previously Used Material", or the words "Second Hand" on any mattress which has been previously used but not remade.

The words so stamped shall be in letters at least one-eighth of an inch high and the tag shall contain nothing of a misleading nature and shall be sewed to the outside cover of every article of bedding being manufactured, renovated or reupholstered before the filling material has been placed therein, and no person, other than a purchaser for his own use, shall remove from articles of bedding or deface or alter the tag required thereunder.

88-811. Inspection of premises. The Department of Health is hereby authorized and empowered to inspect ever place where articles of bedding are manufactured, renovated, reupholstered or sold or where material used in the manufacture, renovating or reupholstering is mixed, worked, sold or stored.

88-812. Opening and inspection of mattresses; Power to seize and hold as evidence. When a duly authorized representative of the Department of Health has reasonable cause to believe that an article of bedding is not tagged or filled as required hereunder, he shall have authority to open a seam of such article of bedding for the purpose of examining the filling and shall likewise have authority and power to examine any purchase records or invoices necessary to determine the kind of material used in such article of bedding. He shall have power to seize and hold for evidence any article of bedding or material made, possessed, or offered for sale contrary to the provisions of this Chapter.

88-813. Invoices of materials. The Department of Health shall have power to require any person supplying material to manufacturer, renovator or reupholsterer to furnish such manufacturer, renovator or reupholsterer an itemized invoice of all materials so supplied, which shall be retained by such manufacturer, renovator or reupholsterer, for one year subject to inspection by the Department of Health.

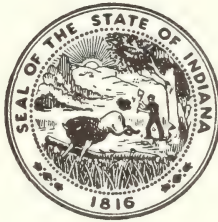
88-814. Disposition of fees. Fees collected by the Department of Health under the provisions of this Chapter shall be deposited in the general fund of the State Treasurer.

88-815. Possession prima facie evidence. The possession of one or more articles covered by this Chapter, when found in any store, warehouse, or place of business other than a private home, hotel, or other place where such articles are ordinarily used, shall constitute prima facie evidence that the article or articles so possessed are possessed with intent to sell or process the same for sale.

88-816. Severability of provisions of this Chapter. If any of the sections or provisions of this Chapter are held to be unconstitutional, the same shall not affect the remaining sections or provisions hereof.

88-817. Violations. Any person who violates the provisions of this Chapter shall, upon conviction thereof, be adjudged guilty of a misdemeanor and upon conviction thereof shall be punished as provided by law. Each article of bedding manufactured, renovated or reupholstered contrary to the provisions of this Chapter shall be a separate and distinct violation and offense.

INDIANA BEDDING LAW AND REGULATIONS



CHAPTER 148, ACTS OF 1949
as amended by
CHAPTER 30, ACTS OF 1951, and
CHAPTER 157, ACTS OF 1963

INDIANA STATE BOARD OF HEALTH
1330 West Michigan Street
Indianapolis, Indiana
46207

INDIANA BEDDING LAW

CHAPTER 148, ACTS OF 1949 AS AMENDED BY CHAPTER 30, ACTS OF 1951, AND CHAPTER 157, ACTS OF 1963

AN ACT concerning bedding to regulate and prohibit the use of insanitary material in the manufacture of bedding; to regulate and prohibit the sale of any bedding, filling material or bedding containing insanitary material; to provide for license, proper labeling and inspection thereof; to provide for the administration and enforcement thereof by the State Board of Health; to provide a penalty for the violation thereof; and to repeal acts and parts of acts in conflict therewith.

Be it enacted by the General Assembly of the State of Indiana:

SECTION 1. That the regulation and inspection of the use of insanitary material in the manufacture, renovation or repair of bedding and the sale of articles of bedding containing insanitary material is necessary for the protection of the health and welfare of the people of this State, and is declared to be a proper exercise of the police powers of the State.

SEC. 2. Definitions. As used in this act unless the context clearly requires otherwise:

(a) "Bedding" shall mean any mattress, mattress pad, mattress protector pad, box spring, upholstered spring, upholstered bed davenport, upholstered day bed, upholstered sofa bed, quilted pad, comforter, bolster, cushion, pillow, feather-bed, sleeping bag, or any other bag, case or covering made of leather, textile or other material and stuffed or filled with any soft material or substance, and which is designed or made for sleeping or reclining purposes; or which is an integral part of a bed or couch or other device used for sleeping or reclining purposes.

(b) "Filling Material" shall mean hair, down, feathers, wool, cotton, kapok, plant fibers or any other soft material used in the manufacture of and for filling or stuffing articles of bedding.

(c) "New" shall mean any article of bedding or filling material which has not been previously used for any purpose. Manufacturing processes shall not be considered a prior use.

(d) "Second hand" shall mean any article of bedding or material, or portion thereof, of which prior use of any kind has been made. Any article of bedding shall be considered secondhand if it contains any secondhand material in whole or in part.

(e) "Manufacture" shall mean making, remaking or renovating, and shall include altering, repairing, finishing, refinishing or preparing articles of bedding for sale or resale, made of either new or secondhand material.

(f) "Renovate" shall mean to restore to former condition or to place in a good state of repair.

(g) "Person" shall mean persons, firms, partnerships, companies, corporations and associations.

(h) "Supply Dealer" shall mean any person manufacturing, processing or selling at wholesale any felt, batting, pads or loose material in bags or containers, concealed or not concealed, to be used in articles of bedding.

(i) "Sell" or any of its variants, includes any of, or any combinations of the following: sell, offer or expose for sale, barter, trade, lend, deliver, give away, rent, consign, lease, possess with intent to sell or dispose of in any other commercial manner. The possession of any article of bedding or filling materials, as herein defined, by any maker, remaker or dealer, in the course of business, shall be presumptive evidence of intent to sell.

(j) "Board" shall mean the State Board of Health of Indiana.

(k) "Wholesaler" shall mean a person located outside the State of Indiana who, on his own account, sells or distributes any articles of bedding or filling material therefor, to another for the purpose of resale, but shall not include an affiliate or subsidiary where the ownership and name are identical and which is the exclusive sales outlet of a manufacturer.

SEC. 3. Administration. (a) In addition to all other duties prescribed by law the Board shall have the duty to administer the provisions of this act, and in addition to all other powers conferred on the Board it shall have the power to adopt, amend or rescind rules and regulations for the proper administration of this act as provided by law, employ such persons as necessary in accordance with the provisions of the State Personnel Act, make such expenditures, require such reports and records, make such investigations and take such other action as it may deem necessary or suitable for the proper administration of this act.

(b) The Board may authorize such persons as it may designate to do any act or acts which could lawfully be done by the Board.

(c) The Board shall have the power to take possession of any article of bedding or filling material therefor made or offered for sale for inspection and may open such article of bedding to examine the contents thereof. The Board may also inspect the purchase records of the owner of such articles of bedding in order to determine the kinds of materials used therein. If any article of bedding does not meet the requirements of this act the Board shall prohibit the sale thereof and shall affix thereto a label to be designed and prescribed by the Board and said article of bedding shall not be sold without the written consent of the Board. Said label shall not be removed except by an agent of the Board. All places where any article of bedding covered by this act is made, remade or renovated; or where material for such articles of

bedding are manufactured, prepared, or stored; or where such articles of bedding are offered for sale, or are possessed with intention to sell; or where sterilization or disinfection is performed, shall be subject to periodical inspection by the Board for the purpose of administering or enforcing this act and it shall be unlawful for any person to interfere with any such inspection.

(d) The State Health Commissioner, if in his judgment he deems such action advisable, is hereby authorized to appoint a "Bedding Advisory Board" to consist of persons who, on account of their vocations, employment or affiliations, represent the bedding manufacturing industry. Upon the appointment of such Bedding Advisory Board, the State Health Commissioner shall designate an employee of the State Board of Health to serve as Secretary of said Bedding Advisory Board. The Bedding Advisory Board shall meet at such times as the State Health Commissioner shall designate. Each member shall serve without salary but shall receive actual and necessary travel and other expenses while engaged upon the work of the Bedding Advisory Board.

The Bedding Advisory Board shall consider all matters submitted to it by the Commissioner of Health and make recommendations relative to such matters.

SEC. 4. Manufacture and Sale. It shall be unlawful for any person in the manufacturing, remaking or renovating of any article of bedding or any person processing or selling any felt, batting, pads or loose material to be used in articles of bedding covered by this act, to use any secondhand material, or any new or secondhand feathers or down, or any material that comes from an animal unless such secondhand material, feathers or down or any material that comes from an animal have been thoroughly sterilized or disinfected by a process approved by the Board and it shall be unlawful for any person to sell any article of bedding covered by this act which is made, remade or renovated in violation of this act or any secondhand article of bedding or filling material covered by this act unless since last used it has been sterilized or disinfected by a process approved by the Board.

SEC. 5. Sterilization. (a) Any person desiring to secure approval of the process by which the articles of bedding or filling materials are sterilized or disinfected, in accordance with Section 4 of this act shall submit to the Board a plan of such apparatus and the process intended to be used for such sterilization or disinfection and after inspection and approval of the process and equipment by the Board, a numbered permit for its use shall be issued. Such permits shall be conspicuously posted on the premises near the sterilizer. Any person holding a sterilization or disinfection permit shall be required to keep an accurate written record of all articles of bedding or materials which have been sterilized or disinfected, including date when sterilization or disinfection was performed and also, in the case of articles of bedding, the name and address

of the buyer or owner of such articles. Such records shall be available for examination at any time by the Board.

(b) Every application for a sterilizing or disinfecting permit to be held in a state, other than the state of Indiana, shall be approved only after personal inspection of said sterilizing or disinfecting process and apparatus by the Board unless such state has an inspection service which is acceptable to the Board. The expenses for such inspection outside the state of Indiana shall be paid by the applicant.

(c) Any person desirous of a permit as required under this Section shall pay an initial fee of twenty-five dollars (\$25.00) to the Board at the time of making application for such permit. Such initial permit shall expire one year from date of issue and shall be subsequently renewed annually upon payment to said Board of an annual renewal fee of ten dollars (\$10.00) and upon the making of application for such renewal to the Board.

(d) Any person who after fair hearing or opportunity to be heard by the Board on complaint that he is not complying with the sterilization or disinfecting provisions of this act and is found guilty thereof by the Board shall have his permit revoked and no new permit shall be issued until he has satisfied the Board that he will abide by all the provisions of this act, any rules and regulations promulgated thereunder, and has posted a five hundred dollar bond in favor of the Board to guarantee compliance.

(e) Nothing herein shall prevent any person engaged in the making, remaking, renovation or sale of any article of bedding or material thereof which requires sterilization or disinfection under the provisions of this act, from having such sterilization or disinfecting performed by any person who has a valid permit for such purposes, provided the number of such permit shall appear on the tag, hereafter described, attached to each article of bedding or filling material therefor.

SEC. 6. Labeling. (a) Each new article of bedding covered by this act shall bear securely attached thereto and visible on the outside covering a substantial white cloth tag which will not flake when abraded, the visible portion of which shall be not less than six square inches in size, upon which shall be indelibly stamped or printed, in the English language a statement showing the kind of materials used in filling such article of bedding, and that the materials are new, the name and address of the manufacturer, distributor or vendor, the registry number of the maker as provided for in Section 7, and in the case of articles of bedding made of feathers or down or material that comes from an animal the number of the permit issued to the processor who sterilized or disinfected such materials. Labels attached to articles of bedding containing mixtures of material from animal or fowl shall also state the percentage by weight of each kind of such material contained in the articles of bedding.

(b) Each article of bedding containing secondhand material, in whole or in part, shall have securely attached to it a similar tag of yellow cloth upon which shall be stamped or printed in the same manner as above required, a statement showing the kind of materials used in filling said article of bedding, and a statement that the article of bedding or materials therein are secondhand, and the number of the permit issued to the processor who sterilized or disinfected such article of bedding or materials therein.

(c) Any shipment or delivery however contained, of material used for filling articles of bedding shall have conspicuously attached thereto a tag upon which shall be stamped or printed as required in this section, a statement showing the kind of material and whether the material is new or secondhand, the name and address of the manufacturer, distributor or vendor, and the registration number of the manufacturer, and in the case of secondhand material or material from animal or fowl, the permit number of the processor who sterilized or disinfected such material.

(d) The terms used on the tag to describe filling materials shall be restricted to those defined in the regulations promulgated hereunder, and no trade or substitute terms shall be used, and no additional information shall be contained in said statement. The description of the filling material, and the statement of whether new or secondhand, shall be in plain type not less than one-eighth inch ($\frac{1}{8}$ ") in height. It shall be unlawful to use any false or misleading statement, term or designation on a bedding label, or to remove, deface or alter, or to attempt to remove, deface or alter such label or deface the statement of filling materials made thereon.

SEC. 7. License. (a) It shall be unlawful for any manufacturer, supply dealer, or renovator located in this state to sell, or have in his possession with intent to sell, in the State of Indiana, any article of bedding or filling material therefor covered by the provisions of this act, unless such person shall have registered with the Board and obtained a license bearing a registry number approved by the Board.

It shall be unlawful for any manufacturer, supply dealer, renovator or wholesaler to sell, in the State of Indiana, any article of bedding or filling material therefor covered by the provisions of this act, unless such person shall have registered with the Board and obtained a license bearing registry number approved by the Board.

(b) Each license shall be issued for an initial fee of twenty-five dollars (\$25.00). Such license shall expire one (1) year from the date of issue, and shall be subsequently renewed annually upon payment to said board of an annual license fee of twenty-five dollars (\$25.00) and upon the making of application for such renewal to said Board.

Each of such licensees shall file with the Board a report within thirty (30) days after the expiration of each three month period covered by the annual license. Such report shall be made under oath, by the owner or official of the licensee, that the information therein is true to his best knowledge and belief, and shall show the exact number of articles of bedding or filling material therefor, sold in the State of Indiana during said three month period. The licensee shall remit with said report an amount of money computed as follows: For all articles of bedding and filling material therefor except pillows, cushions, comforters and bolsters, the sum of one and one-half cents ($1\frac{1}{2}\text{¢}$) for each article reported in said three (3) month report; for pillows, cushions, comforters and bolsters, the sum of three quarters of a cent ($\frac{3}{4}\text{¢}$) for each such article reported in said three (3) month report.

(c) Whenever any licensee fails to make such report and remittance, or the board is of the opinion that the report and remittance are not in accordance with the requirements of this act, the Board shall conduct a hearing on said matter, with sufficient notice having been given to said licensee. In the event that the licensee does not attend said hearing, or is found by the Board not to be complying with the provisions of this act, the Board shall revoke the license of said licensee. No license shall subsequently issue to said licensee unless he satisfies the board that he will abide by all the provisions of this act, any rules and regulations promulgated thereunder, and has posted a five hundred dollar (\$500.00) bond in favor of the Board to guarantee compliance.

SEC. 8. Exclusions. Provisions of this act shall not be applicable to the making, remaking, or renovating of any article of bedding by or for the owner thereof for his own use and not for sale; provided that the same material, new or sterilized other material only is used. Provided further, that if sterilized material is used, it shall be so indicated on a label to be prescribed by the Board. Any person who receives an article of bedding covered by this Act for renovation shall attach thereto at the time received, a red tag on which is legibly written the date of receipt and the name and address for the owner. This Act shall not be applicable to any articles of bedding sold under the order of any court and shall not apply to the sale of bedding by a householder of bedding owned and used by said householder and his family, and which was not acquired for resale: provided, however, that the sale of any such bedding by a householder through an agent shall be within the provisions of this act.

SEC. 9. Sanitation. Any filling material which is used in the manufacture of bedding as covered by this act, shall be free from extraneous foreign matter, dirt or trash. The premises, delivery equipment, machinery, appliances and devices of bedding manufacturers, supply dealers, renovators, sterilizers or disinfectors and retailers shall at all times be kept free from refuse, dirt contamination, insects or vermin.

SEC. 10. Penalties. (a) Any person who shall wilfully make a false statement, misrepresentation, or report to the Board or who knowingly fails to disclose a material fact to avoid liability under this act shall be deemed guilty of a misdemeanor and upon conviction shall be fined not less than ten dollars (\$10.00) nor more than five hundred dollars (\$500.00) for each offense, or by imprisonment not exceeding six (6) months in the County Jail or by both such fine and imprisonment.

(b) Any person who shall wilfully violate or fail to comply with any provision of this act or any rule or regulation promulgated hereunder shall be deemed guilty of a misdemeanor and upon conviction shall be fined not less than ten dollars (\$10.00) nor more than five hundred dollars (\$500.00) for each offense, or by imprisonment not exceeding six (6) months in the County Jail or by both such fine and imprisonment.

(c) Each article herein enumerated, made, or remade, or renovated, sold, offered for sale, delivered, consigned, or possessed with intent to sell, deliver or consign, contrary to the provisions hereof, shall constitute a separate offense.

SEC. 11. Criminal Proceedings. All proceedings for the enforcement of this act or to restrain violations thereof shall be by and in the name of the State of Indiana.

SEC. 12. Duty of Prosecuting Attorney. All criminal actions for violations of any provision of this act or any rule or regulation promulgated thereunder shall be prosecuted by the prosecuting attorney of any county where violation is found.

SEC. 13. Separability Clause. If any provision of this Act is declared unconstitutional or the application thereof to any person or circumstances is held invalid, the constitutionality of the remainder of the act and the application thereof to other persons or circumstances shall not be affected thereby.

SEC. 14. Repeal. All laws or parts of laws in conflict herewith are hereby repealed. Acts 1913, Ch. 224 and Acts 1917, Ch. 136 law without the signature of the Governor are hereby specifically repealed in-so-far as the same may conflict with this act.

SEC. 15. Effective Date. This act shall take effect on and after January 1, 1950. 1951 amendments effective July 1, 1951, 1963 amendments effective January 1, 1964.

REGULATIONS RELATING TO ENFORCEMENT OF THE INDIANA BEDDING LAW

Chap. 148, Acts 1949 as Amended by Chap. 30, Acts of 1951
and Chap. 157, Acts of 1963

Regulations numbered HSB 1 to HSB 4

SCOPE

These regulations and the provisions herein set forth shall be construed to cover and apply to the manufacture, renovation, supply, storage and sterilization or disinfection of all articles of bedding or filling materials thereof which are intended for use or sale as defined in Chap. 148, Acts of 1949 as amended by Chap. 30, Acts of 1951 and Chap. 157, Acts of 1963. They shall apply to all manufacturing and other mercantile establishments, both wholesale and retail, when articles of bedding or filling materials thereof are in their possession for purposes as stated above.

REGULATION HSB 1.

No article of bedding shall be manufactured or sold in the State of Indiana which is unclean or insanitary or which contains filling material which is unclean or insanitary. No material which is unclean or insanitary shall be used in the remaking or renovating of any article of bedding.

REGULATION HSB 1A.

LABEL BULK FILLING MATERIAL

A. Containers of processed filling materials wholesaled in Indiana for use in articles of bedding, shall be labeled by the processor and the label shall bear his registry number.

(A1). The following and similar materials shall be deemed to be processed: Cotton felt, batting, shoddy; scoured and carbonized wool, wool felt, or batting; processed hair, curled or uncurled, felted or rubberized; processed feathers and down; processed foam or sponge rubber; jute felt; sisal pads; curled tampico; processed vegetable and synthetic fibers, and processed synthetic foams.

B. Containers of unprocessed filling material shipped into Indiana by a jobber for use in articles of bedding, or such material held in possession for resale by a jobber in Indiana for like purposes, shall be labeled by the jobber and the label shall bear the registry number of the jobber.

(B1). The following and similar materials shall be deemed to be unprocessed: Staple cotton, cotton and spinning mill prod-

ucts or by-products; unprocessed feathers and down, wool, hair, and foam or sponge rubber; kapok; moss; palm fiber; sisal fiber; tampico fiber (not curled); coconut husk fiber; excelsior; jute tow; flax tow; unprocessed vegetable and synthetic fibers, and unprocessed synthetic foams.

REGULATION HSB 2.

MINIMUM DIMENSIONS

- A. Fancy cushions which do not exceed 10 inches in greatest dimension or which are not designed or intended for use for human sleeping or reclining purposes shall not be deemed to be articles of bedding. Nothing herein contained however, shall be deemed to exempt from the law any stuffed article or pad simply because it is designated as a toy or for animal pets or for dolls.
- B. If any pad used as an insulator over the springs of innerspring mattresses made of sisal fiber, curled hair or any other material is smaller than the entire top and bottom surfaces of the mattress then the size of the pad must be stated on the label.

REGULATION HSB 3.

LABELING

- A. Every new or secondhand article of bedding processed for sale shall be properly labeled in accordance with Chap. 148, Acts of 1949 as amended by Chap. 30, Acts of 1951 and Chap. 157, Acts of 1963 and these regulations. The required secondhand label shall be attached when the article of bedding contains secondhand material in whole or in part, including innerspring unit. Each manufacturer, renovator, sterilizer, and disinfector shall furnish his own labels.
- B. The wording on the required label describing the filling materials shall be stamped or printed in bold-face type not less than $\frac{1}{8}$ inch in height and shall employ only the terms which follow after (J) Basic Definitions of this Regulation.
 - (B1). The kinds and percentages of various filling materials shall be shown on the label. Percentages shall be computed on the basis of weight. Any deviation from percentages stated shall not exceed ten percent (10%) of the smaller component except as otherwise provided in these regulations. When the filling material consists of one kind only, the percentage need not be stated.
- C. No trade, superfluous or substitute terms shall be used on the required label except as authorized in Regulation Q.
 - (C1). Trade marks, insignia or advertisements may be placed on another label and attached to the article of bedding in such

manner that it will not interfere with the required label nor contradict any statement thereon.

- D. The terms "All", "Pure", "100%" or similar terms shall be used only with the understanding that no tolerance whatever is allowed when such terms are used and that the slightest departure from the indicated quality makes the label misleading and therefore unlawful.
- E. Labels shall be of good grade vellum cloth or cloth of comparable quality or better which will not flake out when abraded. Paper or paper-faced labels shall not be used.
- F. Labels shall not be less than six (6) square inches in size, exclusive of the portion required to affix the label to article. Labels may be greater in size as the need demands.
- G. Labels shall be securely attached to articles of bedding so that they may be conveniently examined, and the information thereon is visible. Where possible, they shall be securely sewed, but in instances where sewing is not practicable, application can be made to the Board in writing for authorization to otherwise secure.
- H. Every dual purpose article of bedding having one or more cushions requires but one label when the cushions are a necessary part of that article. This label shall contain a statement of the filling materials used in the article as well as that used in the cushions. Where extra cushions are provided that are not an integral part of the article each cushion shall be labeled separately.
 - (H1). Dual purpose articles of bedding such as bed-davenports, studio couches, hide-a-beds, etc., having loose cushions shall have the labels attached under a cushion on top and near the center of the front edge of the platform.
- I. No person other than a purchaser for his own use, shall remove from any article of bedding or alter or deface the required label except as herein otherwise provided.
- J. BASIC DEFINITIONS. It is the purpose of the following definitions to provide names, terms and nomenclature as are commonly used, and are recognized in the manufacture, sale and distribution of bedding products. The following definitions are also intended to have understandable meaning to the ultimate consumer.
- K. COTTON.
 - K 1. *Cotton, Virgin Cotton or Staple Cotton*: Any of these terms shall mean the staple fibrous growth as removed from cottonseed in the usual process of ginning (first cut from seed), containing no foreign material. The presence of the usual amount of leaves, hull, etc., shall not be considered foreign matter.

- K 2. *Cotton By-Products*: This term shall mean the by-products removed from the various machine operations necessary in the manufacture of cotton yarn up to but not including the process of spinning, and shall include only the following materials commonly known in cotton mill terms as (1) cotton comber, (2) cotton card strips or cotton vacuum strips, (3) cotton fly and (4) cotton picker.
- K 3. *Cotton Linters*: This term shall mean the fibrous growth removed from cottonseed subsequent to the usual process of ginning and shall be so designated on the label.
- K 4. *Cotton Waste*: This term shall be used when any "card", "stripes" or "stripping", "comber", "fly", "noils", "picker", or "motes" contain more than 7 percent hull, leaf, stem or other foreign material. When hull, leaf, stem or other foreign material exceed 10 percent, such material shall be designated as "trash".
- K 5. *Garnetted Clippings*: This term shall mean any new material which has been spun into yarn, knit or woven into fabric and subsequently reduced by a garnetting process into a fibrous state.
- K 6. *Shredded Clippings*: This term shall mean any new material which has been spun into yarn, knit or woven into fabric and subsequently reduced to a fibrous state.
- K 7. *Shoddy*: This term shall mean any garnetted or shredded clippings made of new material containing more than 5 percent of any foreign material.
- K 8. *Blends or Mixtures*: Unfelt blends or mixtures of staple cotton, cotton linters, or cotton by-products shall be described as "Blended Cotton". If the blends or mixtures are felted, they shall be described as "Blended Cotton Felt".
- K 9. *Cotton Felt*: This term shall be used only when fibers are garnetted or carded and used in layer form. It cannot be used when cotton batting or cotton felt scraps or clippings are stuffed or blown in the same manner as unfelted materials.
- (K9a). *Colored Cotton Felt*: This term shall be used when all or any portion of garnetted or carded cotton fibers are colored. This term shall not be used to describe garnetted cotton shoddy.
- K10. *Oil Percentages*: When any filling material contains more than five percent (5%) of oil, it must be described as Oily.

K11. *Dirt or Foreign Material*: When any filling material contains more than five percent (5%) of dirt or any other foreign material, it must be described as Dirty.

K12. *Colored*: This term shall be used when all or any portion of the cotton fibers are colored.

L. FEATHERS AND DOWN.

L 1. *Down*: This term shall mean the soft undercoating of waterfowl, consisting of the light fluffy filaments growing from one quill point but without any quill shaft. This term includes all real downs and it shall not be necessary to indicate the kind of down used, but if indicated on the label as a particular kind of down, such as goose down, duck down or eider down, the material must be as stated.

(L1a). *Down Fiber*: This term shall mean the barbs of down plumes separated by any process from the quill point. Any individual fibers resembling down closely enough to create doubt as to whether they are down fiber or feather fiber may be classed as down.

(L1b). A tolerance of 10 percent by weight of the down content stated on the label is permissible. Articles labeled as containing Down must contain not less than 90 percent pure down.

L 2. *Feathers or Natural Feathers*: This term shall mean the original or natural form and means feathers which have not been processed in any manner other than washing, dusting, sterilizing or disinfecting.

L 3. *Crushed Feathers*: This term shall mean feathers which have been processed by a curling or crushing machine which has changed the original form of the feather without removing the quill. Such stock shall be designated on the label as Crushed followed by the name of the fowl from which it came.

L 4. *Chopped Feathers*: This term shall mean feathers which have been chopped or cut into pieces. Such stock shall be designated on the label as Chopped followed by the name of the fowl from which they came.

L 5. *Stripped Feathers*: This term shall mean the barbs of feathers stripped by any process from the feather shaft, but not separated into feather fiber. Such designation shall include the name of the fowl from which they came.

L 6. *Quill Feathers or Wing and Tail Feathers*: Either of these terms shall mean the wing or tail feathers of any fowl.

L 7. *Waterfowl Feathers*: This term shall mean goose or duck feathers or any mixture thereof.

- L 8. *Damaged Feathers*: This term shall mean feathers which have been broken, injured by insects, or depreciated from the original value in any manner; provided however, that this term shall not apply to crushed feathers as defined in L3. Damaged feathers in excess of 10 percent by weight of the total feathers shall be indicated on the label and the name of the feathers shall be stated.
- L 9. *Blends or Mixtures*: Feather or down mixtures shall be designated by the foregoing definitions, by the name, character and percentage of each material used, or the entire mixture shall be designated by the name of the lowest grade of material used.
- L10. *Color*: The color of feathers or down need not be stated on the label, but if stated the contents shall be as declared. Feathers or down from waterfowl may be designated on the label as White or Gray as the case may be. Chicken or turkey feathers may be designated on the label as White or Colored as the case may be.
- L11. *Tolerance*: A tolerance of 10 percent by weight of the feather content stated on the label is permissible. Feathers of any fowl named on the label must contain not less than 90 percent of such feathers.
- L12. *Cleanliness*: All feather and down stocks shall be thoroughly cleaned prior to use by washing, dusting, sterilizing or disinfecting. Feather and down stocks having an oxygen number above 20 shall be deemed to be "not properly clean".
- L13. *Secondhand Feathers or Down*: Either of these terms means any such material which has been previously used for any purpose and shall be so designated on the required label for secondhand material with the proper classification of such feathers or down.

M. HAIR.

Classifications

Horse Tail Hair
Horse Mane Hair
Cattle Tail Hair
Cattle Hide Hair (Body Hair)
Hog Hair
Goat Hair

- M 1. Hair is the coarse filamentous epidermal outgrowth of such mammals as horses, cattle, hogs and goats. When used in the manufacture of bedding or as filling material thereof, it shall be clean, properly cured, free from epidermis, excreta or other foreign or objectionable substances or odors.

- M 2. *Curled Hair*: This term applies when any hair has been curled. The appropriate designation as to origin shall appear on the label preceded by the word Curled.
- M 3. *Uncurled Hair*: This term applies when any hair has not passed through a curling process. The appropriate designation as to origin shall appear on the label preceded by the word Uncurled.
- M 4. *Rubberized Hair*: This term shall mean any hair treated with liquid latex or synthetic rubber. When hair is rubberized the designation on the label shall state whether the rubber is Latex or Synthetic.
- M 5. *Rubberized Curled Hair Pieces*: This term shall mean trimmings and pieces of rubberized curled hair of indefinite size. The term shall be preceded by the term Latex or Synthetic.
- M 6. *Hair Blends or Mixtures*: When hair of two different origins is used in a blend or mixture, the kind and percentage by weight of each shall be stated on the label.
- M 7. *Hair and Fiber Blends or Mixtures*: When any other filling material of whatever origin is used in a blend or mixture with hair, the kind and percentage by weight of each such material shall be designated on the label.
- M 8. *Hair Pad*: This term shall mean hair which is interwoven or punched on burlap or any other woven material or otherwise fabricated into a pad, including the application of latex or synthetic rubber as a component and as a factor in the fabricating process. Percentages shall be based on the hair and fiber content only. No reference to or inclusion of the burlap or woven material backing is required on the label nor is the quantity or percentage of rubber when the rubber is used solely as a binder element.
- M 9. *Color*: Hair need not be identified as to color on the label, but if it is so identified it shall be as represented in all respects.
- M10. *Tolerance*: A tolerance of 10 percent by weight of the percentages stated on the label shall be permitted.
- M11. *Secondhand Hair*: This term shall mean any hair which has sustained prior use and such hair shall be so designated on the required secondhand label with the proper classification of such hair.
- M12. *Labeling Examples for Hair*:

Curled Hair Pad	{ Cattle Tail ... 15% }	100%
	{ Hog ... 85% }	
Curled Hair and Fiber Pad	{ Hog ... 70% }	100%
	{ Sisal Fiber ... 30% }	

Latex Rubberized Curled		
Hair Pad	{ Horse Mane .. 35% }	100%
	{ Hog 65% }	
Cattle Hide Hair Felt Pad		100%

N. WOOL.

- N 1. *Wool or Virgin Wool*: Either of these terms shall apply to the fleece of the sheep or lamb, which has been scoured or scoured and carbonized. It shall not be the by-product of any process of manufacture nor shall it have sustained prior use. It shall be free from kemp and vegetable matter.
- N 2. *Choice Wool or Choice Virgin Wool*: (Optional for those manufacturers who want to use and get credit for using a finer quality of wool). Either of these terms shall apply to Wool or Virgin Wool as defined above that is "¼ blood" (48s) or finer in grade, according to the United States Standards for grades of wool, and shall be natural or bleached white in color. The fibers shall be reasonably uniform in length, viz., it shall contain no admixture of short wool fibers. The term Choice Wool or Choice Virgin Wool shall not be used in describing the component parts of Wool Blends or Mixtures.
- N 3. *Wool By-Products*: This term shall include noils and fulling flocks from fabrics made entirely of new wool fibers.
- N 4. *Wool Waste*: This term shall embrace all other by-products and wastes of machines in any process of manufacture employing only new wool fibers and shall include wool pills, and shank and tag wools.
- N 5. *Tanners Wool*: This term shall apply to wool reclaimed from tanned sheepskins.
- N 6. *Wool Shoddy*: This term shall apply to any wool fiber which has been spun into yarn, knit or woven into fabric and subsequently cut up, torn up, broken up, ground up or otherwise defabricated and shall be designated on the label as Wool Shoddy. Wool shoddy shall not contain in excess of five percent (5%) of fibers other than wool.
- N 7. *Wool Blends or Mixtures*: When two or more of the above materials are used in a product, they shall be described on the label as required above in the order of their predominance.
- N 8. *Wool Batt or Wool Felt*: Either of these terms shall be used only when wool fibers alone are garnetted or carded and used in layer form. Neither can be used when wool batting or wool felt scraps or clippings are stuffed or blown in the same manner as unfelted materials. Either of these terms must be followed by a listing of the component material as required above.

- N 9. *Oil and Grease Percentages*: When any wool filling material contains more than five percent (5%) oil, wool grease or other free fat, it shall be described as Oily.
- N10. *Damaged Wool*: This term shall be applied to wool, although new, which has been damaged through excessive exposure to the elements, faulty storage, fire, or in any other manner, or has begun to disintegrate.
- N11. *Tolerance*: Materials which contain not less than 95 percent wool shall be considered wool.
- N12. *Secondhand Wool*: This term shall apply to any wool which has been previously used for any purpose.
- O. MISCELLANEOUS FILLING MATERIALS.
- O 1. *Casein Fiber*: This term shall mean the textile filament or fiber made from casein by chemical and mechanical processes.
- O 2. *Casein Fiber Waste*: This term shall mean the by-product of any preparing or spinning machinery through which the casein filaments or fibers pass in any operation prior to the weaving or knitting process and shall include "napper" and "fulling flocks."
- O 3. *Coco Husk Fiber*: This term shall mean the fibrous growth obtained from the husk of the coconut.
- O 4. *Excelsior*: This term shall mean shredded threadlike wood fibers, but shall not include waste products such as shavings, sawdust or similar waste. Terms such as Woodwool shall not be used to described excelsior.
- O 5. *Flax Tow*: This term shall mean the coarse, broken and refuse parts of flax separated from the fine fibrous parts in preparing the fibers for spinning.
- O 6. *Fur Fiber*: This term shall mean the fine soft under fur, with or without the usual guard hair, removed from the tanned or untanned pelts of mammals of the class of furbearers. The name of the animal may be stated on the label, and when so indicated shall be a true statement.
- O 7. *Glass Fiber*: This term shall mean the very fine filaments or fibers made of glass.
- O 8. *Hay*: This term shall mean any grass, properly cured and dried, free from dust, burrs, sticks or other objectionable material.

- O 9. *Jute Fiber*: This term shall mean the bast fiber derived from any species of the corchorus plant.
- O10. *Jute Tow*: This term shall mean the broken and refuse parts of jute separated from the fine fibrous parts in preparing the fibers for spinning.
- O11. *Jute Waste*: This term shall mean the by-product of any machines through which jute fiber passes in spinning into yarn or cordage, but prior to the process of weaving.
- O12. *Kapok*: This term shall mean the mass of fibers investing the seed of the kapok tree (*Ceiba Pentandra*). Any additional statement, descriptive of the geographical origin or of the quality of such fibers, shall be a true statement when designated on a label.
- O13. *Latex Foam Rubber*: This term shall mean natural rubber which has been converted into a stable foamy mass and molded into suitable shapes for use in bedding products.
- A. *Latex Foam Rubber Pieces*: This term shall mean latex foam rubber which has been cut or broken into pieces of indefinite size, but shall not apply to shredded latex foam rubber.
- B. *Shredded Latex Foam Rubber*: This term shall mean latex foam rubber which has been subjected to a shredding process.
- C. *Molded Shredded Latex Foam Rubber*: This term shall mean shredded latex foam rubber molded together by use of an adhesive binder.
- D. *Synthetic Foam Rubber*: This term shall mean any of the various artificial substances closely resembling natural rubber converted into a staple foamy mass and molded into suitable shapes for use in bedding products.
- E. *Cemented Foam Rubber Pieces*: The use of this term may be applied to foam rubber pieces which have been cemented together.
- F. *Cemented Shredded Foam Rubber*: This term may be applied to shredded foam rubber which has been cemented together.
- G. When a fabric-topped foam or sponge rubber product is used as a cover for an article of bedding, its presence shall be disclosed on the tag and its percentage by weight given.

- O14. *Latex Sponge Rubber*: This term shall mean natural rubber expanded into cellular sheets and vulcanized in that state into slabs.
- A. *Latex Sponge Rubber Pieces*: This term shall mean latex sponge rubber cut or broken into pieces of indefinite size, but shall not apply to shredded latex sponge rubber.
 - B. *Shredded Latex Sponge Rubber*: This term shall mean latex sponge rubber which has been subjected to a shredding process.
 - C. *Molded Shredded Latex Sponge Rubber*: This term shall mean shredded latex sponge rubber molded together by use of an adhesive binder.
 - D. *Synthetic Sponge Rubber*: This term shall mean any of the various artificial substances closely resembling natural rubber expanded into cellular sheets and vulcanized in that state into slabs.
 - E. *Cemented Sponge Rubber Pieces*: The use of this term may be applied to sponge rubber pieces which have been cemented together.
 - F. *Cemented Shredded Sponge Rubber*: This term may be applied to shredded sponge rubber which has been cemented together.
- O15. *Milkweed Fiber*: This term shall mean the surface fiber from the inside of the seed pods of milkweed plants (*Asclepias*).
- O16. *Moss*: This term shall mean the processed material derived from the moss growth found in swamps and on trees.
- O17. *Nylon*: This term applies to a synthetic protein-like filament or textile fiber (Polymide).
- O18. *Nylon Waste*: This term shall mean the by-product of any preparing or spinning machinery through which the nylon filaments or fibers pass in any operation prior to the weaving or knitting process.
- O19. *Palm Fiber*: This term shall mean the fibrous material obtained from the leaf of the palm, palmetto or palmyra tree.
- O20. *Rayon*: This term shall mean the synthetic filament or fiber made from modified cellulose.
- O21. *Rayon Waste*: This term shall mean the by-product of any preparing or spinning machinery through which the rayon fibers pass in any operation prior to the weaving or knitting process and shall include "napper" and "fulling flocks."

- O22. *Sea Grass*: This term shall mean any of the material obtained from maritime plants or seaweeds.
- O23. *Silk Waste*: This term shall mean the by-product of any preparing or spinning machinery through which the silk filaments or fibers pass.
- O24. *Sisal Fiber*: This term shall mean the leaf fiber derived from the Agave Sisalana and similar species of Agaves.
- O25. *Sisal Fiber Tow*: This term shall mean the residual fibers left after the extraction of the spinnable sisal fiber from the leaf. For the purpose of these regulations, this includes the product known as Bagassi. It shall not contain over 3 percent (3%) pulp.
- O26. *Sisal Fiber Waste*: This term applies to the sisal fiber waste of cordage mills including rope and cordage ends, but shall not contain knots and refuse.
- O27. *Straw*: This term shall mean the stalk or stem of grain, such as wheat, rye, oats, rice and the like, after threshing. The kind of straw need not be stated on the label, but if so indicated, shall be a true statement. It shall be free from chaff, beards, bristles, husks, glumes, dirt or other extraneous matter.
- O28. *Tula Fiber*: This term shall mean the leaf fiber derived from the Tula istle and similar species of Agaves; sometimes called Tulatex. The term Tulatex is a trade name and shall not be used.
- O29. *Vinyon Fiber*: This term shall apply to a synthetic filament or fiber which is a vinyl resin product prepared by the conjoint polymerization of vinyl chloride and vinyl acetate.
- O30. *Vinyon Fiber Waste*: This term shall apply to the by-product of any preparing or spinning machinery through which the vinyon filaments or fibers pass in any operation prior to the weaving or knitting process, and shall include "napper" and "fulling flocks."
- O31. *Wood Fiber Pad*: This term shall apply to wood which has been reduced to a fibrous state and subsequently fabricated into a flat resilient mass.
- O32. *Cleanliness*: All miscellaneous filling materials used in the manufacture of bedding products shall be clean and free from trash, pith, pulp, extraneous matter, oil and grease.
- O33. *Fiber*: This term shall mean any threadlike tissue. The term shall be preceded by a designation which will disclose the true source from which the fiber was obtained. Labeling examples for fiber would be Hemp Fiber, Flax Tow Fiber, etc.

- O34. *Secondhand*: This term shall be applied to any of the above materials which have been previously used for any purpose.
- O35. Tolerances are allowed only where specifically designated for the purpose of adjusting errors due to difficulties in arriving at exact percentages. Tolerances are not intended to permit deliberate admixture of inferior materials.
- P. VEGETABLE AND SYNTHETIC FIBERS AND SYNTHETIC FOAMS
- P 1. *Acetate Fibers or Cellulose Acetate Fibers*: These terms shall be used for filling materials made of acetate.
- P 2. *Acrylic Fibers*: This term shall be used for a long-chain synthetic polymer which contains not less than 85 percent acrylonitrile and which is formed into a filament.
- P 3. *Azlon*: A generic term for fibers or filaments manufactured from modified proteins or derivatives thereof, with or without lesser amounts of nonfiber-forming materials. The term "Azlon" shall be used to designate fibers manufactured from azlon.
- P 4. *Dacron*: This term shall not be used. See Polyester Fibers.
- P 5. *Polyester Fibers*: This term shall be used to designate long-chain synthetic polymers which contain 85 percent or more of the polymeric esters.
- P 6. *Polyethylene Fibers*: This term shall be used to designate fibers made from polymers and/or copolymers of ethylene.
- P 7. *Vinyl Fibers*: This term shall be used to designate fibers or filaments manufactured from vinyl.
- P 8. A foam product means a polymerized material consisting of a mass of thin-walled cells produced chemically or physically and shall be designated on the tag as Foam together with the name of the organic base from which it is made.
- P 9. *Polyurethane Foam*: This term applies to a cellular urethane product which is created by the interaction of an ester and a carbamic acid derivative.
- P10. *Polystyrene Foam*: This term shall be applied to foam produced during the polymerization of a styrene monomer.
- P11. *Vinyl Foam*: This term shall be applied to a foam produced from vinyl.
- P12. The term "pieces" shall follow the terms set forth in P9, P10, and P11 above, whenever the foam product consists of mere pieces.
- P13. The term "shredded" shall precede the terms set forth above whenever the foam product has been subjected to shredding process.
- P14. The term "cemented" shall be applied to a shredded foam which has been cemented together; e. g., cemented shredded urethane foam.

P15. When a fabric-topped foam or sponge product is used as a cover for an article of bedding, its presence shall be disclosed on the tag and its percentage given.

Q. FACSIMILES OF LABELS APPROVED FOR USE IN INDIANA

NO. 1

LABEL FOR ALL NEW MATERIAL

For Filling Materials *NOT* Requiring Sterilization or Disinfection

<p>Space to Attach</p> <hr/> <p>DO NOT REMOVE THIS TAG</p> <p>Under Penalty of Law</p> <hr/> <p>ALL NEW MATERIAL</p> <p>Consisting of</p> <hr/> <p>REG. NO.</p> <hr/> <table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 50%; padding: 5px;"> <p>(SPACE FOR STAMP)</p> <p>District of Col. Kansas Minnesota New Jersey</p> </td> <td style="width: 50%; padding: 5px;"> <p>Certification is made that the materials in this article are described in accordance with law.</p> </td> </tr> </table> <hr/> <p>(NAME OF MANUFACTURER OR VENDOR)</p> <p>(ADDRESS OF MANUFACTURER OR VENDOR)</p> <hr/> <p>(ADDITIONAL INFORMATION)</p>	<p>(SPACE FOR STAMP)</p> <p>District of Col. Kansas Minnesota New Jersey</p>	<p>Certification is made that the materials in this article are described in accordance with law.</p>	<p>In bold type. Minimum type size $\frac{1}{8}$ inch in height. Preferably black ink.</p> <hr/> <p>Space for description of filling material. Printing to be in English using capital letters not less than $\frac{1}{8}$ inch in height.</p> <hr/> <p>Required in Indiana</p>
<p>(SPACE FOR STAMP)</p> <p>District of Col. Kansas Minnesota New Jersey</p>	<p>Certification is made that the materials in this article are described in accordance with law.</p>		

See Note (3) at bottom of page. →

States referred to here do not use stamps so inspection stamp may cover this printing when articles are not to be shipped to these States. →

“Date of Delivery” line or Manufacturer’s stock information, etc., here. →

Note: (1) All above printing preferably in black ink on white vellum cloth or a cloth of comparable quality, which shall not flake out when abraded.

(2) Size of label: Exclusive of the portion required to affix the tag to the article, the minimum size of the tag shall be not less than six (6) square inches, but may be greater as the need demands.

(3) Indiana approves and recognizes the uniform registry number and will accept the registration number issued by another State if registrant so desires, providing such registration follows the policy of uniform registration.

This policy is intended to benefit the registrant by requiring but one registration to be imprinted on the law labels used, regardless of where merchandise may be shipped.

The registration number shall be preceded by name of state (may be abbreviated) issuing REG. NO. and if factory is located in another state than that issuing REG. NO. then name of state in which factory is located shall follow the registration number in parenthesis.

NO. 2

LABEL FOR ALL NEW MATERIAL

ARTICLES WITH EXTRA CUSHIONS AS AN INTEGRAL PART
OF UNITFor Filling Materials *NOT* Requiring Sterilization or Disinfection

Space to Attach	
DO NOT REMOVE THIS TAG Under Penalty of Law	
ALL NEW MATERIAL Consisting of BODY CUSHIONS	
REG. NO.	
(SPACE FOR STAMP) District of Col. Kansas Minnesota New Jersey	Certification is made that the materials in this article are described in accord- dance with law.
(NAME OF MANUFACTURER OR VENDOR) (ADDRESS OF MANUFACTURER OR VENDOR)	
ADDITIONAL INFORMATION	

See Note (3) at
bottom of page.
 →

States referred to
here do not use
stamps so inspection
stamp may cover this
printing when articles
are not to be shipped
to these States.
 →

"Date of Delivery"
line or Manufactur-
er's stock informa-
tion, etc., here.
 →

In bold type. Mini-
mum type size 1/8
inch in height. Pref-
erably black ink.
 ←

Space for description
of filling material.
Printing to be in
English using capital
letters not less than
1/8 inch in height.
 ←

Required in Indiana
 ←

Note: (1) All above printing preferably in black ink on white vellum or a cloth of comparable quality, which shall not flake out when abraded.

(2) Size of label: Exclusive of the portion required to affix the tag to the article, the minimum size of the tag shall be not less than six (6) square inches, but may be greater as the need demands.

(3) Indiana approves and recognizes the uniform registry number and will accept the registration number issued by another State if registrant so desires, providing such registration follows the policy of uniform registration.

This policy is intended to benefit the registrant by requiring but one registration to be imprinted on the law labels used, regardless of where merchandise may be shipped.

The registration number shall be preceded by name of state (may be abbreviated) issuing REG. NO. and if factory is located in another state than that issuing REG. NO. then name of state in which factory is located shall follow the registration number in parenthesis.

NO. 3

LABEL FOR ALL NEW MATERIAL

For Animal and Fowl and Any Other Filling Material Requiring
Sterilization or Disinfection

See Note (3) at
bottom of page.

States referred to
here do not use
stamps so inspection
stamp may cover this
printing when articles
are not to be shipped
to these States.

"Date of Delivery"
line or manufactur-
er's stock informa-
tion, etc., here.

Space to Attach	
DO NOT REMOVE THIS TAG Under Penalty of Law	
ALL NEW MATERIAL Consisting of	
REG. NO.	PERMIT NO.
<p>(SPACE FOR STAMP)</p> <p>District of Col. Kansas Minnesota New Jersey</p>	<p>Certification is made that the materials in this article are described in accord- ance with law.</p> <p style="text-align: center;">CONTENTS STERILIZED OR DISINFECTED</p>
(NAME OF MANUFACTURER OR VENDOR)	
(ADDRESS OF MANUFACTURER OR VENDOR)	
(ADDITIONAL INFORMATION)	

In bold type. Mini-
mum type size $\frac{1}{8}$
inch in height. Pref-
erably black ink.

Space for description
of filling material.
Printing to be in
English using capital
letters not less than
 $\frac{1}{8}$ inch in height.

Sterilization or disin-
fection permit number
of person or firm per-
forming sterilization
or disinfection. See
Note (4) at bottom
of page.

Required in Indiana

Note: (1) All above printing preferably in black ink on white vellum cloth or a cloth of comparable quality, which shall not flake out when abraded.

(2) Size of label: Exclusive of the portion required to affix the tag to the article, the minimum size of the tag shall be not less than six (6) square inches, but may be greater as the need demands.

(3) Indiana approves and recognizes the uniform registry number and will accept the registration number issued by another State if registrant so desires, providing such registration follows the policy of uniform registration.

This policy is intended to benefit the registrant by requiring but one registration to be imprinted on the law labels used, regardless of where merchandise may be shipped.

The registration number shall be preceded by name of state (may be abbreviated) issuing REG. NO. and if factory is located in another state than that issuing REG. NO. then name of state in which factory is located shall follow the registration number in parenthesis.

(4) Indiana will accept the PERMIT NO. issued by another State if applicant so desires, providing approval is granted and an Indiana Sterilization or Disinfection Permit is issued to applicant bearing such number.

NO. 4

YELLOW LABEL FOR ARTICLES CONTAINING ALL
SECONDHAND MATERIAL OFFERED FOR SALE BY
SECONDHAND DEALERS "AS IS."

REQUIRED TO BE STERILIZED OR DISINFECTED

Space to Attach	
DO NOT REMOVE THIS TAG Under Penalty of Law	
This Article Contains ALL SECONDHAND MATERIAL CONTENTS UNKNOWN	
Permit No.	
	Certification is made that the materials in this article are described in accordance with law.
CONTENTS STERILIZED OR DISINFECTED	
(NAME OF VENDOR) (ADDRESS OF VENDOR)	

In bold type. Minimum type size $\frac{1}{8}$ inch in height. Preferably black ink.

Permit number of person or firm who sterilized or disinfected article.

Note: (1) All above printing preferably in black ink on yellow vellum cloth or a cloth of comparable quality, which shall not flake out when abraded.

(2) Size of label: Exclusive of the portion required to affix the tag to the article, the minimum size of the tag shall be not less than six (6) square inches, but may be greater as the need demands.

NO. 5

YELLOW LABEL FOR ARTICLES WHICH HAVE BEEN
RENOVATED FOR RESALE AND WHICH CONTAIN
SECONDHAND MATERIAL IN WHOLE OR IN PART.

REQUIRED TO BE STERILIZED OR DISINFECTED

Space to Attach	
DO NOT REMOVE THIS TAG Under Penalty of Law	
This Article Contains SECONDHAND MATERIAL To Which Has Been Added	
List Additions In This Space	
<p>Registration number of person or firm who renovated arti- cle.</p> <p>→</p> <p>REG. NO.</p>	<p>Permit number of person or firm who sterilized or disinfect- ed article.</p> <p>←</p> <p>Permit No.</p>
<div style="display: flex; justify-content: space-between;"> <div style="width: 45%;"></div> <div style="width: 50%; text-align: center;"> <p>Certification is made that the materials in this article are described in accord- ance with law.</p> <hr/> <p>CONTENTS STERILIZED OR DISINFECTED</p> </div> </div>	
<p>Renovator or Vendor Name</p> <p>Renovator or Vendor Address</p>	

Note: (1) All above printing preferably in black ink on yellow vellum cloth or a cloth of comparable quality, which shall not flake out when abraded.

(2) Size of label: Exclusive of the portion required to affix the tag to the article, the minimum size of the tag shall be not less than six (6) square inches, but may be greater as the need demands.

NO. 6

**RED TAGS REQUIRED TO BE ATTACHED BY RENOVATORS
OR REPAIRERS TO EVERY ARTICLE OF BEDDING
IMMEDIATELY UPON RECEIPT OF SAME, WHETHER
ARTICLE IS TO BE RENOVATED OR REPAIRED
FOR OWNER OR FOR RESALE.**

**DO NOT REMOVE THIS TAG
Under Penalty of Law**

This article Was Received—Date:.....19..



From—Owner's Name:

Owner's Address:

Work to Be Done:

FIRM NAME

Note (1) All above printing preferably in black ink on red manila paper stock.
(2) Size of Tag: Minimum dimensions shall be 2½ inches wide, 5¼ inches long.

Regulation HSB 4.

STERILIZATION OR DISINFECTION

- A. Each establishment using, or selling secondhand articles of bedding or filling materials therefor shall either have a permit for its own sterilization or disinfection equipment, or have its sterilization or disinfection performed by anyone having such a permit.
- B. Every applicant for permission to operate a sterilizing or disinfecting process shall furnish with such application, detailed plans and specifications in duplicate (2 copies) of the proposed equipment. A permit is valid for one year from date of issue and is renewable prior to expiration date on payment of \$10. If renewed after expiration date, it is renewable only upon payment of the initial permit fee of \$25.
- C. All unsterilized or undisinfected secondhand articles of bedding or materials therefor shall be separately stored and carefully segregated from new or clean articles of bedding or materials therefor. No new or clean materials shall be stored within a room or space used for sterilizing or disinfecting secondhand materials. Sterilizing or disinfecting chambers shall not be used for storage purposes.

- D. A sterilization or disinfection permit number shall not be misused.
- E. All sterilization or disinfection processes shall follow the method approved for that type process.
- F. All sterilization or disinfection equipment shall be maintained in good condition, no leaky joints, faulty construction, etc.
- G. All sterilization or disinfection permits must be kept posted conspicuously, preferably, on the outside wall of the sterilization or disinfection chamber.
- H. The required written record of sterilization or disinfection performed shall be kept in a bound ledger, and such records shall be available for examination at any time by the Board. The record shall show the date on which sterilization or disinfection was performed, and the articles of bedding or materials that were sterilized or disinfected and the name and address of the owner. EXAMPLE:

DATE	ARTICLE	OWNERS NAME AND ADDRESS
3-24-50	4 mattresses	Acme Furn. Store, 919 First Ave., Indianapolis.
	1 bed davenport with three loose cushions	John Doe, 6120 Evans St., Indianapolis.

- I. The Board shall approve or disapprove an application for each separate installation and shall approve or disapprove each process. Processes to be approved shall either thoroughly sterilize or disinfect the article of bedding or materials thereof, to be processed. Such process shall not be placed in commercial operation until a numbered permit has been issued by the Board. Processes which comply with the following requirements will be approved upon application and inspection.

- I. 1. *Steam Pressure:* A Steam pressure process, when approved by the Board, may be used to sterilize or disinfect any article of bedding or filling material.

Satisfactory Compliance: Articles of bedding or filling materials therefor sterilized or disinfected by this process shall be subjected to treatment by live steam for thirty (30) minutes at a pressure of fifteen (15) pounds and at a temperature of 250 degrees Fahr., or for twenty (20) minutes at a pressure of twenty (20) pounds and at a temperature of 260 degrees Fahr. Chamber must be steam tight, sufficiently strong to withstand the pressure applied, be equipped with visible pressure and temperature gauges and necessary safety devices. Chamber must be provided with wire or lattice work shelving which provides a minimum clearance of one (1)

inch from bottom, top, sides and between articles of bedding being sterilized or disinfected.

- I. 2. *Dry Heat.* Dry hot air, when approved by the Board, may be used to sterilize or disinfect articles of bedding or filling materials thereof.

Satisfactory Compliance: Sterilization or disinfection by the dry heat method requires developing and holding a temperature of 230 degrees Fahr. for a minimum period of two (2) hours after the temperature of 230 degrees Fahr. plus or minus 5 degrees is attained in an approved chamber. Steam, electricity or flue gases may be used to produce the heat but gas will not be approved for heating unless an indirect system is used where there could be no possibility of igniting the materials being sterilized or disinfected. A thermostat shall be connected with the heating device to provide and maintain a reasonably uniform temperature of 230 degrees Fahr. plus or minus 5 degrees Fahr. A recording thermometer shall be used to automatically record the temperature and time of each sterilization or disinfection period. The operator shall initial and date each sterilization or disinfection period on the recording thermometer charts and such charts shall be kept carefully filed for examination at any time by the Board.

- I. 3. *Formaldehyde and Moisture.* Formaldehyde gas in the presence of moisture, when approved by the Board, may be used to sterilize or disinfect articles of bedding or filling materials thereof which is not compressed to a degree in excess of the usual compression of cotton felt. Articles of bedding or filling materials shall be so spaced in approved sterilizing or disinfecting chamber as to allow free circulation of gas; not less than 4 inches on all sides and between articles. The exhaust from the sterilization or disinfection chamber shall discharge above the roof of building in such manner as will not create a health hazard. Formaldehyde being a toxic gas, provisions must be made to preclude any danger to employees in workroom. A minimum temperature shall be maintained in sterilization or disinfection chamber of not less than 70 degrees Fahr.

Satisfactory Compliance: Articles of bedding or filling materials thereof to be sterilized or disinfected by this method shall be treated with formaldehyde in a moist atmosphere not less than 70 degrees Fahr. for a period of at least ten (10) hours. Formaldehyde gas shall be generated from the use of one (1) pint of formaldehyde solution (37%) to each

1,000 cubic feet of air space in sterilizing or disinfecting chamber or through the use of any commercial fumigators which generate an equivalent quantity of gas. The minimum quantity of solution permitted is two (2) ounces regardless of how small the sterilizing or disinfecting chamber is. The solution must be heated or boiled to release the gas. Chamber must be gas tight and equipped with air inlet and outlet. Tight closure gate valves shall be provided on both air inlet and outlet. Shelving shall be of wire or lattice type construction or mattresses may be suspended from suitable hangers with proper spacing. Formaldehyde will not sterilize or disinfect unless moisture is present and the gas is used for the full period required, a minimum of ten (10) hours. Care must be taken that no fire hazard is present if a flame is used to vaporize the formaldehyde. This process is a germicidal treatment only and is not recommended as an insecticide.

NOTE 1. The safest and most convenient way to release the gas from the formaldehyde solution is to add to the solution one-half ($\frac{1}{2}$) the amount of potassium permanganate. This boils the solution and releases the gas. The moist atmosphere in the sterilization or disinfection chamber may be obtained by thoroughly sprinkling the floor of the chamber with warm water just before beginning the sterilization or disinfection process.

NOTE 2. There are several types of commercial "fumigators" on the market. Any of these which uses formaldehyde of the proper quantity and quality will be acceptable but those which contain but 2 ounces of "active ingredient" and yet purport to be able to sterilize or disinfect the contents of a room having 1,000 cubic feet of space will not be accepted unless a sufficient number are used to supply gas in the quantity required herein, i.e., the equivalent of gas generated from 1 pint of formaldehyde solution (37%) to each 1,000 cubic feet of space.

NOTE 3. The specific gravity of formaldehyde solution is such that 1 pint equals approximately 15 ounces. To figure the necessary amount of formaldehyde to use, based upon the size of the sterilizing or disinfecting chamber, multiply the length, height and width in feet to obtain the cubical area. Then multiply the cubical area by 15 and point off the three right hand figures. The result will be the number of ounces or "fifteenths of a pint" required. *Example:* Chamber is 8'x7'x6' equals 364 cubic feet \times 15 equals 5.460 or 6 ounces (next higher unit). Use 6 ounces of formaldehyde solution or 6/15 of a pint for a chamber containing 364 cubic feet of space.

- I. 4. *Carbon Dioxide and Ethylene Oxide*: A mixture of carbon dioxide and ethylene oxide gas in proper ratio, when approved by the Board, may be used to sterilize or disinfect articles of bedding, or filling materials therefor which is not compressed to a degree in excess of the usual compression of cotton felt. Approved ratio of gas mixture is 9 parts Carbon Dioxide to 1 part Ethylene Oxide. The two gases are obtainable commercially in the above ratio ready mixed in cylinders.

Satisfactory Compliance: Articles of bedding or filling material therefor, when sterilized or disinfected by this method shall, for each 100 cubic feet of chamber capacity, use a minimum of 1.65 (one and sixty-five hundredths) pounds of commercially mixed carbon dioxide and ethylene oxide in above ratio. *Example*: A 330 cubic foot chamber would require 3.3×1.65 equals 5.44 or $5\frac{1}{2}$ pounds of gas mixture.

Exposure period is 24 hours at a temperature inside chamber of 70°F, or 6 hours at a temperature of 100°F. If the quantity of gas is doubled, the exposure period is 10 hours at 70°F or $2\frac{1}{2}$ hours at 100°F.

The introduction of gas into chamber shall be through gas-tight connections between gas cylinder and chamber. After introduction of gas into chamber, the circulating system shall remain in full operation during the entire processing period. Gas cylinders when not in use shall be stored in a reasonably cool place 70°F or less and where direct sunlight does not increase this temperature appreciably.

Sterilization or disinfection chamber shall be completely gas-tight and able to withstand an internal pressure of 1 to 2 pounds per square inch. An adequate and approved system, which will include the use of a centrifugal type fan, shall be provided for circulating the gas during the processing period and for exhausting the gas at the end of processing period. The exhaust fan shall have a rated capacity three times the cubical content of chamber. *Example*: A 300 cubic foot chamber shall have an exhaust fan with a rated capacity of not less than 900 C.F.M. Motors to operate the circulating and exhaust system shall be Underwriters approved whether located inside or outside chamber. The chamber shall be provided with an exhaust duct of adequate capacity to the outside air discharging above roof of building housing chamber.

Top of exhaust stack shall be provided with an approved weather cap and shall not discharge nearer to a residence than 100 feet. Exhaust duct shall have sealed joints inside building and rivet or friction joints outside building. Positive locking type exhaust valve shall be provided in exhaust

duct and positive locking type air inlet port shall be provided in door or wall opposite exhaust opening. Air inlet port shall not be less than 6 inches in diameter. A thermostat shall be connected with the heating device to provide and maintain a reasonably uniform temperature plus or minus 5 degrees Fahr. of temperature inside chamber. A recording thermometer shall be provided to automatically record the temperature and time of each sterilization or disinfection period. The operator shall initial and date each sterilization or disinfection period on the recording thermometer charts and such charts shall be kept carefully filed for examination at any time by the Board. Room in which chamber is located shall be separated from other work areas and provided with mechanical ventilation.

All equipment and its installation shall be approved in each instance before being placed in commercial operation and tests to demonstrate that chamber is gas-tight shall be made at any time as required by the Board.

The mass temperature of articles or material to be processed shall not be less than 70°F and room in which chamber is located shall be maintained at a minimum temperature of 70°F. Articles in chamber shall be separated from each other by a space of not less than 1 inch in such manner that the largest surfaces are exposed. Chamber shall be loaded to permit free circulation throughout. An open area approximately 30" x 30" x 36" shall be allowed at point of entry of gas into chamber to permit vaporization. At the end of required exposure period the exhaust system shall be operated continuously not less than 20 minutes before entering chamber.

- I. 5. *Dry Cleaning*: Dry cleaning, when approved by the Board, may be used to sterilize or disinfect articles of bedding or filling material thereof.

Satisfactory Compliance: Sterilization or disinfection by dry cleaning shall be deemed to have been met when bedding articles or materials have been subjected to a commercial dry cleaning process.

- I. 6. FEATHERS OR DOWN.

- (1). *New Feathers or Down*: Sterilization or disinfection application must indicate that feathers or down are thoroughly washed and rinsed, that live steam and dry heat are applied and that feathers or down are free of dust or dirt on completion of the process.

- (2). *Secondhand Feathers or Down*: Secondhand feathers or down articles of bedding will be considered as having been sterilized or disinfected when the contents and ticking are kept intact without opening and washed by a commercial laundry method with subsequent drying to remove moisture; or when processed by a method for which approval has been obtained from the Board.

I. 7. HAIR.

- (1). *New Hair*: Sterilization or disinfection application must indicate the entire process used for washing and curling (if curled), and that at some point during the process the hair remains in boiling water a sufficient period (not less than 1 hour) to kill all pathogenic organisms.
- (2). *Secondhand Hair*: Secondhand articles of bedding will be considered as having been sterilized or disinfected when the hair is removed from the ticking and washed by a commercial laundry method and subsequently dried to remove all moisture, and when the ticking is also washed and subsequently dried; or when processed by a method for which approval has been obtained from the Board.

I. 8. WOOL.

- (1). *New Wool*: Sterilization or disinfection application must indicate whether raw wool or previously scoured and carbonized wool is to be treated. The processing of raw wool must be set forth in detail and indicate that at some point during the scouring and carbonizing, the wool is subjected to wet or dry heat or acid treatment sufficient to kill all pathogenic spores and microorganisms. Wool fibers reclaimed from new fabric need not be re-sterilized or re-disinfected.
- (2). *Secondhand Wool*: Secondhand wool articles of bedding will be considered as having been sterilized or disinfected when the contents and cover are kept intact without opening and washed or dry cleaned by a commercial laundering or drycleaning method; or when processed by a method for which approval has been obtained from the Board.

- I. 9. *Other Method*: Articles of bedding or filling materials thereof may be sterilized or disinfected by any other method which is safe to use, and is adequately proficient to thoroughly sterilize or disinfect the product or material to be processed, and for which approval has been given by the Board.

State of Iowa

1962

Law Relating to

**Manufacture and Sale of
Mattresses and
Comforts**

Issued by

Iowa Department of Agriculture

L. B. LIDDY

Secretary

BULLETIN NO. 90-C

Published by
THE STATE OF IOWA
Des Moines

**LAW OF IOWA RELATING TO MANU-
CHAPTER 209, CODE OF IOWA, 1958
FACTURE AND SALE OF MATTRESSES
AND COMFORTS**

209.1. **Definitions.** For the purpose of this chapter:

1. A mattress shall include what is commonly known as a bed mattress, and also any other article for use as a bed pad, consisting of an outer covering of cloth, ticking, or other fabric, and stuffed or filled with hair, wool, moss, cotton, excelsior, or any other material.

2. A comfort shall include what is commonly known as a bed comfort and also any other article for use as a bed cover, consisting of an outer covering of cloth, or any other fabric, with wool, cotton or other material between.

209.2. **Materials used.** No person shall knowingly manufacture, introduce into the state, solicit orders for, sell, deliver, transport, have in possession with the intent to sell, or offer or expose for sale, any mattress or comfort which is made from any infectious, insanitary, or unhealthful material, or any material which has been previously used, except sterilized feathers.

209.3. **Labeling.** Every mattress and comfort offered or exposed for sale shall have attached upon the outside thereof, a cloth, or cloth-lined label not less than two by three inches in size, upon which shall be legibly written or printed, in the English language, in letters not less than one-eighth of an inch in height, a description of the materials used in the filling, with the name and address of the maker of such mattress or comfort. The sewing of one edge of said label securely to said article shall be sufficient.

209.4. **Form of label.** The label provided in section 209.3 shall be in substantially the following form, but may contain thereon, additional statements or information:

OFFICIAL STATEMENT

Manufactured of New Material

(Here describe kind and character of filling)

This article is made in compliance with chapter
209 of the Code of Iowa.

(Here state manufacturer's name and address.)

Factory Number

209.5 **Registration of manufacturers.** Every manufacturer of mattresses or comforts shall register with the department of agriculture and be assigned by it a factory number, which shall show on each label as required by section 209.4.

209.6. **Factory inspection—fees.** Each factory in the state, where mattresses or comforts are made, shall be inspected at least once each year, for which inspection a fee of ten dollars shall be paid to the state by the owner of the factory inspected, but no owner shall be required to pay fees in excess of twenty dollars for any one calendar year.

209.7. **Prima-facie evidence.** The finding of any infectious, insanitary, unhealthful, or second-hand material in that part of any factory devoted to the manufacture of mattresses or comforts, shall be prima-facie evidence that such material has been and is being used in violation of this chapter.

209.8. **Exception—remade mattresses.** This chapter shall not apply to any mattress or comfort made by any person for his individual or family use, nor to the remaking of any mattress or comfort not thereafter to be sold or offered for sale.

A remade mattress or comfort shall have attached thereto a label of the kind hereinbefore provided, except that such label shall bear the words "Remade from Used Material" in lieu of the words "Manufactured of New Material".

GENERAL PROVISIONS

CHAPTER 189

189.1. **Definitions.** For the purpose of this title:

1. "Article" shall include food, commercial feed, agricultural seed, commercial fertilizer, drug, insecticide, fungicide, paint, linseed oil, turpentine, and illuminating oil, in the sense in which they are defined in the various provisions of this title.

2. "Department" shall mean the department of agriculture and, wherever said department is required or authorized to do an act, it shall be construed as authorizing performance by a regular assistant or a duly authorized agent of said department.

3. "Secretary" shall mean the secretary of agriculture.

4. "Package" or "container," unless otherwise defined, shall include wrapper, box, carton, case, basket, hamper, can, bottle, jar, tube, cask, vessel, tub, firkin, keg, jug, barrel, tank, tank car, and other receptacles of a like nature; and wherever the expression "offered or exposed for sale or sold in package or wrapped form" is used it shall mean the offering or exposing for sale or selling of an article which is contained in a package or container as herein defined.

5. "Person" shall include a corporation, company, firm, society, or association; and the act, omission, or conduct of any officer, agent, or other person acting in a representative capacity shall be imputed to the organization or person represented, and the person acting in said capacity shall also be liable for violations of this title.

6. "Rules" shall include regulations and orders by the department of agriculture.

7. "United States Pharmacopoeia" or "National Formulary" shall mean the latest revision of said publications official at the time of any transaction which may be in question.

189.2 Duties. The department of agriculture shall:

1. Execute and enforce the provisions of this title, except chapters 203, 204 and 205, which shall be executed and enforced by the Pharmacy Examiners.

2. Make and publish all necessary rules, not inconsistent with law, for enforcing the provisions of this title.

3. Provide such educational measures and exhibits, and conduct such educational campaigns as are deemed advisable in fostering and promoting the production and sale of the articles dealt with in this title in accordance with the regulations herein prescribed.

4. Issue from time to time, bulletins showing the results of inspections, analyses, and prosecutions under this title. These bulletins shall be printed in such numbers as may be approved by the state printing board and shall be distributed to the newspapers of the state and to all interested persons.

189.3. Procuring samples. The department shall, for the purpose of examination or analysis, procure from time to time, or whenever said department has occasion to believe any of the provisions of this title are being violated, samples of the articles dealt with in this title which have been shipped into this state, offered or exposed for sale, or sold in the state.

189.4. Access to factories and buildings. The department shall have full access to all places, factories, buildings, stands, or premises and to all wagons, auto trucks, vehicles, or cars used in the preparation, production, distribution, transportation, offering or exposing for sale, or sale of any article dealt with in this title.

189.5. Dealer to furnish samples. Upon request and tender of the selling price by the department any person who prepares, manufactures, offers or exposes for sale, or delivers to a purchaser any article dealt with in this title shall furnish, within business hours, a sample of the same, sufficient in quantity for a proper analysis or examination as shall be provided by the rules of the department.

189.6. Taking of samples. The department may, without the consent of the owner, examine or open any package containing, or believed to contain, any article or product which it suspects may be prepared, manufactured, offered, or exposed for sale, sold, or held in possession in violation of the pro-

visions of this title, in order to secure a sample for analysis or examination, and said sample and damage to container shall be paid for at the current market price out of the contingent fund of the department.

189.7. **Preservation of sample.** After the sample is taken it shall be carefully sealed with a seal of the department and labeled with the name or brand of the article, the name of the party from whose stock it was taken, and the date and place of taking such sample. Upon request, a duplicate sample, sealed and labeled in the same manner, shall be delivered to the person from whose stock the sample was taken. The label and duplicate shall be signed by the person taking the same. The method of taking samples of particular articles may be prescribed by the rules of the department.

189.8. **Witnesses.** In the enforcement of the provisions of this title the department shall have power to issue subpoenas for witnesses, enforce their attendance, and examine them under oath. Such witnesses shall be allowed the same fees as witnesses in justice of the peace courts. Said fees shall be paid out of the contingent fund of the department.

* * * *

189.14. **Mislabeled articles.** No person shall knowingly introduce into this state, solicit orders for, deliver, transport, or have in his possession with intent to sell, any article which is labeled in any other manner than that prescribed by this title for the label of said article when offered or exposed for sale, or sold in package or wrapped form in this state.

189.15. **Adulterated articles.** No person shall knowingly manufacture, introduce into the state, solicit orders for, sell, deliver, transport, have in his possession with intent to sell, or offer or expose for sale, any article which is adulterated according to the provisions of this title.

189.16. **Possession.** Any person having in his possession or under his control any article which is adulterated or which is improperly labeled according to the provisions of this title shall be presumed to know its true character and name, and such possession shall be prima-facie evidence of having the same in possession with intent to violate the provisions of this title.

189.19. **Penalty.** Unless otherwise provided, any person violating any provision of this title, or any rule made by the department and promulgated under the authority of said department, shall be punished by a fine of not less than ten dollars nor more than one hundred dollars or by imprisonment in the county jail not to exceed thirty days, and on a third conviction for the same offense may be restrained by injunction from operating such place of business.

189.20. **May charge more than one offense.** In any criminal proceeding brought for violation of this title an information or indictment may charge as many offenses as it appears have been committed and the defendant may be convicted of any or all of said offenses.

189.21. **Common carrier.** None of the penalties provided in this title shall be imposed upon any common carrier for introducing into the state, or having in its possession, any article which is adulterated or improperly labeled according to the provisions of this title when the same was received by said carrier for transportation in the ordinary course of its business and without actual knowledge of its true character.

189.22 **Report of violations.** When it shall appear that any of the provisions of this title have been violated, the department shall at once certify the facts to the proper county attorney with a copy of the results of any analysis, examination, or inspection said department may have made, duly authenticated by the proper person under oath, and with any additional evidence which may be in possession of said department.

189.23. **County attorney.** The county attorney may at once institute the proper proceedings for the enforcement of the penalties provided in this title for such violations.

189.24. **Refusal to act.** If the county attorney refuses to act, the governor may, in his discretion, appoint an attorney to represent the state.

189.25. **Institution of proceedings.** In any case when it appears that any of the provisions of this title have been violated, the inspector having the investigation in charge shall, when instructed by the department, file an information against the suspected party.

✓ 189.26. **Goods for sale in other states.** Any person may keep articles specifically set apart in his stock for sale in other states which do not comply with the provisions of this title as to standards, purity, or labeling.

189.27. **Reports by dealers.** Every person who deals in or manufactures any of the articles dealt with in this title shall make upon blanks furnished by the department such reports and furnish such statistics as may be required by said department and certify to the correctness of the same.

189.28 **Contracts invalid.** No action shall be maintained in any of the courts of the state upon any contract or sale made in violation of or with the intent to violate any provision of this title by one who was knowingly a party thereto.

189.29. **Fees paid into state treasury.** All fees collected under the provision of this title shall be paid into the state treasury.

MAINE

Sections 155-162, Chap. 30, R.S. 1954
(amended 1955, c. 151; 1963, c. 49, § 1 & 2)



Department of Labor and Industry

State of Maine

Augusta

1963

Bedding and Upholstered Furniture

Sec. 155. Definitions. 1955, c. 151, §§ 1 and 2. 1963, c. 49, § 1.

I. Article of bedding. "Article of bedding" in sections 155 to 162 shall mean any mattress, upholstered box spring, pillow, comforter, cushion, muff, bed quilt or similar article designed for use for sleeping purposes.

"Article of bedding" in sections 155 to 162 shall also mean any glider, hammock, chaise longue or other substantially similar article which is wholly or partly upholstered.

II. Article of upholstered furniture. "Article of upholstered furniture" in sections 155 to 162 shall mean chairs, sofas, studio couches and all furniture in which upholstery or so-called filling or stuffing is used whether attached or not.

II-A. Cushion. "Cushion" in sections 155 to 162 shall mean any bag or case made of leather, cotton or other textile or plastic material, which is filled in whole or in part with concealed material, capable of use for sitting, sleeping, resting or reclining purposes but does not include any seat or cushion which is used as an integral part of any automobile, truck, bus, airplane, railroad equipment or on any mechanized equipment used generally in the construction industry or in agriculture.

III. New. The word "new" as used in sections 155 to 162 shall mean any article or material which has not been previously used for any other purpose. Manufacturing processes shall not be considered prior use.

IV. Secondhand. The term "secondhand" as used in sections 155 to 162 shall mean any article or material, or portion thereof, of which prior use has been made in any manner whatsoever.

V. Person. The term "person" as used in sections 155 to 162 shall include individuals, partnerships, companies, corporations and associations.

VI. Department. The term "department" where used in sections 155 to 162 shall mean the Department of Labor and Industry.

VII. Stuffed Toy. "Stuffed toy" shall mean any article intended for use by infants or children as a plaything which is filled with or contains any fiber, chemical or other stuffing.

Sec. 156. Secondhand materials. 1963, c. 49, § 2. No person shall manufacture for sale, sell, lease, offer to sell or lease, or deliver or consign in sale or lease, or have in his possession with intent to sell, lease, deliver or consign in sale or lease any article of bedding, upholstered furniture or stuffed toy, covered in sections 155 to 162, in which in the making, remaking or renovation thereof, any secondhand material has been used, unless such material, before such reuse, has been ef-

fectively cleansed and sterilized or disinfected by a process approved by the department and in accordance with the regulations of the department.

Sec. 157. Permits. Any person desiring to secure a permit qualifying them to apply an acceptable sterilizing or disinfecting process, as required by sections 155 to 162 shall submit to the department a plan of such apparatus and the process intended to be used for such sterilization and disinfection, and upon approval a numbered permit shall then be issued by the department. Such permit shall expire one year from date of issue and shall thereafter be annually renewed at the option of permit holder, upon submission of proof of continued compliance with the provisions of sections 155 to 162 and the regulations of the department.

For all initial permits issued there shall, at the time of issue thereof, be paid by the applicant to the department a fee of \$50, and an annual renewal charge of \$5 shall be paid to the same department.

A sterilization or disinfection permit may be revoked by the department upon proof of violation of any of the provisions of sections 155 to 162. A reissue of said permit shall be subject to the provisions as set forth for an initial permit.

Sec. 158. Articles to be tagged. Each article containing new material covered by sections 155 to 162 shall bear securely attached thereto and plainly visible a substantial white cloth tag, upon which shall be indelibly stamped or printed, in English, a statement showing the kind of materials used in filling such article, with approximate percentages when mixed, and with the word "new" clearly printed thereon.

Each article covered by sections 155 to 162 containing secondhand material, or a portion thereof, shall bear securely attached thereto and plainly visible a substantial yellow cloth tag, upon which shall be indelibly stamped or printed, in English, a statement showing the kind of materials used in filling such articles, with approximate percentages when mixed, and shall state "Sterilized and Disinfected."

The size of the tag required by this section shall be not less than 6 square inches, and the lettering thereon covering the statement of filling materials and whether new or secondhand, shall be in plain type not less than $\frac{1}{8}$ inch in height.

It shall be unlawful to use any false or misleading statement, term or designation on said tag or to remove, deface or alter, or to attempt to remove, deface or alter such tag or any statements thereon, or the adhesive stamp hereinafter described.

Sec. 159. Registration. No person shall sell or lease, or have in his possession with intent to sell or lease, in this State, any article covered by the provisions of sections 155 to 162, unless there be affixed to the tag required by said sections by the person manufacturing, selling or leasing the same, an adhesive stamp prepared and issued by the de-

partment. For the purposes of affixing adhesive stamps required by this section, pillows or cushions to be used with or part of an article of upholstered furniture shall be considered as one unit with said article.

The department shall register all applicants for stamps and assign to every such person a registration number, said registration number not to be used by any other person, and furnish to such applicant adhesive stamps in quantities of not less than 500, for which the applicant shall pay \$5 for each 500 stamps.

The department is hereby authorized to prepare and cause to be printed adhesive stamps, which shall contain a replica of the seal of the State, the registry number of the person to whom issued and such other matter as the department shall direct.

Sec. 160. Administration and enforcement. 1955, c. 151, § 3. The department is charged with the administration and enforcement of the provisions of sections 155 to 162; and may make and enforce reasonable rules and regulations for the enforcement of said sections, and shall have the power through its officers or agents to inspect the manufacture and sale or delivery of all articles or materials subject to the provisions of sections 155 to 162, to open and examine the contents thereof and to seize and hold for evidence any article in whole or in part which he has reason to believe is made or offered for sale in violation of the provisions of sections 155 to 162, or the rules and regulations of the department; and any places where any articles covered by said sections are made, remade or offered for sale, or where sterilization or disinfecting is performed under the provisions of said sections, shall be subject to inspection by the department through its officers or agents.

Sec. 161. Proceeds payable into the General Fund. All fees and other moneys collected in the administration of sections 155 to 162 shall be credited to the General Fund. Provided, however, that there shall always be available for the administration of the provisions of sections 155 to 162 state moneys in an amount not less than the revenue derived from the fees collected under the provisions of sections 155 to 162, except that any unexpended balance shall remain in the General Fund.

Sec. 162. Penalty. Any person violating any provision of sections 155 to 162, or the rules and regulations of the department established thereunder shall be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not less than \$10, nor more than \$100, for each offense; and, in default of the payment of such fine, by imprisonment for not more than 10 days for each such offense.

Each article manufactured for sale, sold, leased, offered for sale or leased or possessed with intent to sell or lease, contrary to the provisions of sections 155 to 162, or of the rules and regulations established thereunder shall constitute a separate offense and shall be punishable as provided in this section.

MINNESOTA

ATTORNEY GENERAL, STATE OF MINNESOTA

St. Paul, April 6, 1964

THE HONORABLE ALAN SHORT, *Chairman*
Senate Fact Finding Committee on
Business and Commerce
California Legislature
State Capitol
Sacramento, California

Dear Senator Short:

Governor Karl F. Rolvaag has referred your request for information concerning the furniture and bedding industry to my office for attention and reply.

Please be advised that Minnesota currently has no laws governing the conduct of the furniture industry other than our false advertising, consumer fraud, and sales below cost statutes, copies of which are enclosed.

Insofar as the bedding industry is concerned, please be advised that Minn. Stat., 1961, Ch. 325 regulates that industry as follows:

1. No used material may be used in the manufacture of bedding, §325.25.
2. No bedding used in hospitals may be re-sold, §325.26.
3. All materials used in remaking or renovating bedding must be thoroughly sterilized, §325.27, by devices approved by Minnesota's Industrial Commission, §325.28; 325.30.
4. Industrial Commission has power to inspect places where bedding is manufactured or sold, §325.29.
5. Shoddy material must be so labeled, §325.31.
6. All bedding must be labeled according to statutory form before being sold, §325.32.
7. All feathers used in bedding must be thoroughly cured, sterilized or disinfected, §325.33.
8. Violation of the foregoing provisions constitutes a gross misdemeanor with a penalty of \$25-\$100 fine or imprisonment for 30-90 days.

When your senate fact finding committee has issued its final report on the furniture and bedding industry, would it be possible to have a copy of that report forwarded to our office?

Thank you for your cooperation in this matter.

Sincerely,

WALTER F. MONDALE
Attorney General

LAWS RELATING TO TRADE

The State Department of Business Development has prepared copies of the laws of Minnesota which relate to the conduct of trade. Any individual who desires a copy of the full text of any act should address the Department of Business Development and indicate the specific act or acts desired.

FALSE STATEMENT IN ADVERTISEMENT

(Minnesota Statutes, Section 620.52)

620.52. False Statement in Advertisement. Any person, firm, corporation, or association who, with intent to sell or in anywise dispose of merchandise, securities, service, or anything offered by such person, firm, corporation, or association, directly or indirectly, to the public, for sale or distribution, or with intent to increase the consumption thereof, or to induce the public in any manner to enter into any obligation relating thereto, or to acquire title thereto, or any interest therein, makes, publishes, disseminates, circulates, or places before the public, or causes, directly or indirectly, to be made, published, disseminated, circulated, or placed before the public, in this state, in a newspaper or other publication, or in the form of a book, notice, handbill, poster, bill, label, price tag, circular, pamphlet, program, or letter, or over any radio or television station, or in any other way, an advertisement of any sort regarding merchandise, securities, service, or anything so offered to the public, for use, consumption, purchase, or sale, which advertisement contains any material assertion, representation, or statement of fact which is untrue, deceptive, or misleading, shall, whether or not pecuniary or other specific damage to any person occurs as a direct result thereof, be guilty of a misdemeanor, and any such act is declared to be a public nuisance and may be enjoined as such.

The duty of a strict observance and enforcement of this law and prosecution for any violation thereof is hereby expressly imposed upon the commissioner of business research and development, and it shall be the duty of the county attorney of any county wherein a violation of this section shall have occurred, upon complaint being made to him, to prosecute any person violating any of the provisions of this section.

Section 1. [325.78] [Prevention of consumer fraud, definitions.] Subdivision 1. The following words and terms where used in this act shall have the meanings ascribed to them in this section.

Subd. 2. "Merchandise" means any objects, wares, goods, commodities, intangibles, real estate, or services.

Subd. 3. "Person" means any natural person or his legal representative, partnership, corporation (domestic and foreign), company, trust, business entity, or association, and any agent, employee, salesman, partner, officer, director, member, stockholder, associate, trustee, or cestui que trust thereof.

Subd. 4. "Sale" means any sale, offer for sale, or attempt to sell any merchandise for any consideration.

Sec. 2. [325.79] [Unlawful practices.] Subdivision 1. [Fraud, misrepresentation.] The act, use, or employment by any person of any fraud, false pretense, false promise, or misrepresentation, with the intent that others rely thereon in connection with the sale of any merchandise, whether or not any person has in fact been misled, deceived, or damaged thereby, is enjoined as provided herein.

Subd. 2. [Advertising media excluded.] Nothing herein contained shall apply to the owner or publisher of newspapers, magazines, or other printed matter wherein an advertisement appears, or to the owner or operator of a radio or television station which disseminates an advertisement.

Sec. 3. [325.80] [Remedies.] Subdivision 1. [Injunction.] The commissioner of business development or any county attorney may institute a civil action in the name of the state in the district court for an injunction prohibiting any violation of this act. The court, upon proper proof that defendant has engaged in a practice made enjoined by section 2 hereof, may enjoin the future commission of such practice. It shall be no defense to such an action that the state may have adequate remedies at law.

Subd. 2. [Service of process.] Service of process shall be as in any other civil suit, except that where a defendant in such action is a natural person or firm residing outside the state, or is a foreign corporation, service of process may also be made

by personal service outside the state, or in the manner provided by Minnesota Statutes, Section 303.13, Subdivision 1 (3), or in such manner as the court may direct. Process is valid if it satisfies the requirements of due process of law, whether or not defendant is doing business in Minnesota regularly or habitually.

325.02. Application. Section 325.03 shall apply only to the manufacture, production, or distribution of any commodity, article, goods, wares, or merchandise in general use or consumption. Sections 325.04 to 325.06 shall apply only to the selling, offering, or advertising for sale, giving away or offering or advertising the intent to give away of any commodity, article, goods, wares, or merchandise, in wholesale or retail trade.

325.03. Discrimination Unlawful. Any person, partnership, firm, or corporation, foreign or domestic, doing business in the state and engaged in the production, manufacture, or distribution of any printed or mimeograph matter, commodity, article, goods, wares, or merchandise in general use or consumption, who for the purpose or with the effect of injuring a competitor or destroying competition, shall discriminate between different sections, communities, or cities of this state by selling or furnishing such commodity, article, goods, wares or merchandise at a lower price, or rate in one section, community, or city, or any portion thereof, than such person, firm, or corporation, foreign or domestic, charges for such commodity, article, goods, wares, or merchandise in another section, community, or city, or any portion thereof, after making allowance for difference, if any, in the grade, quality, or quantity after equalizing the distance from the point of production, manufacture, or distribution and freight rates therefrom, shall be guilty of unfair discrimination; provided, that sections 325.01 to 325.07 shall not prevent any person, firm, or corporation from, in good faith, meeting local competition within any one section, community, village, or city. The inhibition hereof against locality discrimination shall embrace any scheme of special rebates, collateral contracts, or any device of any nature whereby such discrimination is, in substance or fact, effected in violation of the spirit and intent of sections 325.01 to 325.07.

325.04. Selling Below Cost Forbidden. Any retailer, wholesaler, sub-jobber or vending machines operator engaged in business within this state, who sells, offers for sale or advertises for sale, any commodity, article, goods, wares, or merchandise at less than the cost thereof to such vendor, or gives, offers to give or advertises the intent to give away any commodity, article, goods, wares, or merchandise for the purpose or with the effect of injuring a competitor or destroying competition, shall be guilty of unfair discrimination; and, upon conviction, subject to the penalty therefor provided in section 325.48, subdivision 2.

Any retailer, wholesaler, sub-jobber or vending machines operator who sells goods in any part of this state at prices lower than those exacted by the person elsewhere in the state for like qualities and grades and where the effect of such lower prices may be substantially to lessen competition or tend to create a monopoly in any line of business, or to injure, destroy, or prevent competition with the person selling at such lower prices, shall be guilty of unfair competition and subject to the penalties of section 325.48, subdivision 2; provided, that nothing shall prevent differentials in prices in different localities which make only due allowances for differences in "cost of doing business" or "overhead expense" and in costs of delivery for such goods to different localities; nor differences in prices in an endeavor made in good faith to meet the legal prices of a competitor selling the same commodity, articles, goods, wares or merchandise in the same locality or trade area.

The inhibition against sales below cost or locality discrimination shall embrace any scheme of special rebates, collateral contracts, or any device of any nature whereby such discrimination is, in substance or fact, effected in violation of the spirit and intent of sections 325.01 to 325.07.

325.05. Bankrupt Sales Not to Be Considered in Fixing Costs. In establishing the cost of a given article, goods, wares, or merchandise to the vendor, the invoice cost of the article, goods, wares, or merchandise purchased at a forced, bankrupt, close-out, or other sale outside of the ordinary channels of trade may not be used as a basis for justifying a price lower than one based upon the replacement cost as of date of the sale of the article, goods, wares, or merchandise replaced through the ordinary channels of trade, unless the article, goods, wares, or merchandise is kept separate from goods purchased in the ordinary channels of trade and unless the article, goods, wares, or merchandise is advertised and sold as mer-

chandise purchased at a forced, bankrupt, or close-out sale, or by means other than through the ordinary channels of trade, and the advertising shall state the conditions under which the goods were so purchased and the quantity of such merchandise to be sold or offered for sale.

325.06. Inapplicable Sales. The provisions of section 325.01, subdivisions 2 to 6, and sections 325.04 and 325.05 shall not apply to any sale made:

(1) In closing out in good faith the owner's stock, or any part thereof, for the purpose of discontinuing his trade in any such stock or commodity, and in case of the sale of seasonal goods or merchandise where style is the paramount feature or to the bona fide sale of perishable goods to prevent loss to the vendor by spoilage or depreciation, provided notice is given to the public thereof;

(2) When the goods are damaged or deteriorated in quality, and notice is given to the public thereof;

(3) By an officer acting under the orders of any court;

(4) In an endeavor made in good faith to meet the legal prices of a competitor selling the same commodity, articles, goods, wares, or merchandise in the same locality or trade area.

The price of a retail competitor which is less than eight percent above the manufacturer's published list price less his published trade discounts where the manufacturer publishes a list price, or in the absence of such a list price less than eight percent above the actual current delivered invoice or replacement cost without deducting customary cash discounts plus the amount of any excise or sales tax shall be prima facie evidence that it is not a legal price, within the meaning of this section.

The price of a wholesale or sub-jobbing competitor to a retailer, which is less than two percent above the manufacturer's published list price less his published trade discounts where the manufacturer publishes a list price, or in the absence of such a list price less than two percent above the actual current delivered invoice or replacement cost without deducting customary cash discounts plus the amount of any excise or sales tax shall be prima facie evidence that it is not a legal price, within the meaning of this section.

Any retailer, wholesaler, sub-jobber or vending machines operator may request the commissioner of the department of business development to ascertain and disclose to him, the current manufacturer's published list price less published trade discounts on any commodity, article, goods, wares, or merchandise, and it shall then be the duty of the commissioner of the department of business development, within 48 hours of such request, to ascertain and disclose to the person making such request, the current manufacturer's published list price less published trade discounts.

Failure to make such request by any person before reducing his price on any commodity, article, goods, wares, or merchandise below his cost shall be prima facie evidence of not acting in good faith within the meaning of this paragraph.

MINNESOTA MATTRESS LAW

Relating to Manufacture, Sale and Disinfection of Bed Mattresses and Other Bedding Materials, and Providing for Inspection Thereof

CHAPTER 358—G. L. 1929

AN ACT relating to manufacture, sale and disinfection of bed mattresses and other bedding materials, and providing for inspection thereof, with penalties for the violation of the provisions of said act and repealing Chapter 490, General Laws 1913.

Be it enacted by the Legislature of the State of Minnesota:

Section 1. That the term "bedding" as used in this act shall be construed to mean any mattress, upholstered spring, comforter, pad, cushion or pillow designed and made for use in sleeping or reclining purposes. The word "person" as used in this act shall be construed to impart the plural and the singular, as the case demands, and shall included individuals, corporations, partnerships, joint-stock companies, or other business associations who are manufacturers or dealers in bedding. The word "new" as used in this act, shall mean any material or article that has not

previously been used in the manufacture of bedding articles, or for any other purpose. The term "second hand" shall mean any material or article that has been previously used in the manufacture of bedding or for any other purpose. The word "shoddy" shall mean any material that has been spun into yard, knit or woven into fabric, and subsequently cut up, torn up, broken up or ground up.

Sec. 2. No person shall use in the making or remaking of any article of bedding as herein defined any material that has been used in any private or public hospital, or any material of any kind that has been used by or about any person having an infectious or contagious disease, or has formed a part of any article of bedding which has so been used. This section shall not prevent the renovating of bedding used in any private or public hospital.

Sec. 3. No person shall sell, offer for sale, consign for sale, or have in his possession with intent to sell, or consign for sale, any bedding used in a private or public hospital or any article of bedding that has been used by or about any person having an infectious or contagious disease.

Sec. 4. No person shall remake or renovate any article of bedding unless all the material to be used in said remake or renovated bedding shall first be thoroughly sterilized and disinfected by the methods set out herein, or by any other approved sterilization method:

(a) Dry heat of a temperature of not less than 160 degrees centigrade temperature for not less than one hour. A thermometer for registering the temperature visible from the outside of the room shall be provided where dry heat is used.

(b) Live steam with subsequent drying of the material over steam coils with a pressure of not less than twenty pounds of steam for twenty minutes. A gauge for registering steam pressure visible from the outside of the room shall be provided where steam under pressure is used and valved outlets shall be provided near the bottom and also the top of the room in cases where streaming steam is used.

(c) Formaldehyde and sulphur concurrently in a moist atmosphere for a period of not less than ten hours. Formaldehyde gas shall be generated from the use of one pint of formaldehyde solution, 37 per cent to each 1,000 cubic feet of air space, or through the use of any of the high class commercial fumigators which generate an equivalent quantity of gas. Sulphur shall be from the burning of three pounds of sulphur for each 1,000 cubic feet of air space. The moist atmosphere shall be produced by thorough sprinkling of the floor of the room with warm water just prior to the process of disinfection. The room shall be provided with a separate air inlet and also an exhaust connection, and shall be equipped with tight dampers or closure gates which can be operated from the outside of the room. Rooms for disinfection of bedding materials shall be made gas or steam tight. Shelving for loose bedding materials shall be of lattice or other open construction.

Solid shelves of a type to prevent passage of gas through the materials shall not be permitted.

Sec. 5. All devices and equipment before being used as a process for sterilization and disinfection shall be approved by the Industrial Commission of Minnesota, upon written application of the person desiring to use the same, and, when so approved, a numbered permit for such use shall be issued to the applicant by the Industrial Commission of Minnesota. Such permit shall expire one year from date thereof. Such system of sterilization and disinfection shall be kept in good condition and repair. Every person to whom a permit has been issued shall keep such permit conspicuously posted under glass near such sterilization or disinfection chamber. Refusal to display such permit in accordance with this act shall be sufficient reason to revoke the same. Nothing in this act shall prevent any person engaged in the making or remaking, renovating or sale of any article herein described which requires sterilizing and disinfecting under the provision hereof from having such sterilizing and disinfecting performed by any person to whom a permit for such purposes has been issued, providing the number of the permit, with date of sterilization, shall be printed on the tag or label attached to the article, and a copy of such kept by person doing such sterilization for reference.

Sec. 6. All places where bedding is made, remake, or renovated, or where materials for bedding are prepared, or establishments where said articles are offered for sale, or are in possession of any person with intent to sell, deliver, lease, or to consign them to an establishment where sterilizing and disinfecting is performed, shall be subject to inspection by duly appointed inspector for the Industrial Commission of Minnesota to ascertain whether the materials used or sold or the finished article enumerated conform to the requirements of this act. Inspector shall have authority to open such bedding to examine the material used in filling.

Sec. 7. No person shall sell, lease, offer to sell or lease, or deliver or consign for sale or lease, or have in his possession with intent to sell, lease, deliver or consign for sale or lease, any bedding made, remade, or renovated in violation of this act; or any second hand bedding unless since last used it has been thoroughly sterilized and disinfected by an approved method of sterilization.

Sec. 8. No person, firm or corporation, by himself or his agents, servants or employees, shall make or sell, or offer to sell, deliver or consign for sale, or have in his or their possession with intent to sell, deliver or consign for sale any bedding made of material that has theretofore been used as a container for or in contact with any animal or vegetable matter or any material hereinbefore designated as shoddy, unless the bedding shall be labeled as such, or any material that has theretofore been used unless the same shall have been cleaned and sterilized.

Sec. 9. No person shall make or remake, or sell, offer for sale, consign for sale, or have in his possession with intent to sell, offer for sale, or consign for sale any article of bedding as herein defined unless the same is labeled as follows:

Upon each of such articles of bedding there shall be securely sewed upon the outside thereof a muslin or linen label not less than three by four and one-half inches in size, upon which shall be in plain print, in the English language, a description of the material used as filling of such article of bedding; and if such material or any portion thereof shall not have been previously used, the words "manufactured of new material" shall appear upon said label, together with the name and address of the maker or vendor thereof. If any of the material used in the making or remaking of such article of bedding shall have been previously used, the words "manufactured of second hand material" or "remade a second hand material", as the case may be, shall appear upon said label, together with the name and address of the maker or vendor thereof, and also a description of the material used in the filling of such article of bedding. On any article of bedding, not remade, but which has been previously used, the word "second hand materials used in filling not known" shall appear upon said label, together with the name and address of the vendor thereof. The statement required under the section shall be in form as follows:

OFFICIAL STATEMENT

Materials used in filling-----

Made by -----

Vendor -----

Address -----

This article is made in compliance with an act of the State of Minnesota approved the 24th day of April, 1929.

The statement of compliance required in the foregoing "official statement" shall not be construed to imply that it is prohibited to state also that the article of bedding is made in compliance with act or acts of other states.

The words "manufactured of new material" or "manufactured of second hand material" or any article of bedding not remade, "second hand materials used in filling not known" together with the description of the material used as filling of an article of bedding shall be in letters not less than one-eighth ($\frac{1}{8}$) of an inch in height. Statement of filling shall conform to rules regulating the manufacture and sale of bedding as approved by the Industrial Commission of Minnesota. No term or description likely to mislead shall be used on any label required by this regulation in the description of the material used in the filling of any article of bedding. The label shall be attached to each mattress, pad, or upholstered spring by sewing all four edges of label.

Any person who shall remove, deface, alter, or shall cause to be removed, defaced or altered any label or tag upon any article of bedding so labeled or tagged under the provisions of this act, shall be guilty of a violation thereof.

Sec. 10. Feathers used in making, remodeling or renovating new or second hand bedding shall be thoroughly cured, sterilized or disinfected.

Sec. 11. Any person violating any of the provisions of this act shall be guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not more than \$100.00, nor less than \$25.00, or by imprisonment for not more than 90 days, nor less than 30 days, or by both such fine and imprisonment for each offense.

Sec. 12. Chapter 490, General Laws 1913, and all acts or parts of acts inconsistent herewith hereby are repealed.

Approved April 24, 1929.

MISSOURI

Chapter 421—RSMo 1949

MATTRESSES

Sec.		Sec.	
421.010	Definitions	421.070	Used bedding to be sterilized and disinfected before sale
421.020	Permit to manufacture mattresses—fee—period of permit	421.080	Owner's name to be attached to renovated bedding
421.030	Permit issued, when—to be posted	421.090	Director to prosecute for violations
421.040	Inspection and supervision of manufacturers — revocation of permit—prosecutions	421.100	Right to purchase and hold for evidence
421.050	What not to be used in making mattresses	421.110	Offenses
421.060	Article of bedding offered for sale must be labeled	421.120	Misdemeanor

421.010. Definitions.—1. The term, “**bedding**,” as used in this chapter shall be construed to mean any mattress, upholstered spring, comforter, pad, cushion or pillow designed and made for use in sleeping or reclining purposes, except where the filling consists exclusively of sterilized feathers.

2. The word, “**person**,” as used in this chapter shall be construed to impart the plural and the singular, as the case demands, and shall include individuals, corporations, partnerships, joint stock companies, societies and associations.

3. The word, “**new**,” as used in this chapter shall mean any material which has not been used in the manufacture of another article or used for any other purpose.

4. The words, “**previously used**,” as used in this chapter shall mean any material which has been previously used in the manufacture of another article or used for any other purpose. (10253)

421.020. Permit to manufacture mattresses—fee—period of permit.—No person shall make, remake or renovate bedding, except a person, making, remaking or renovating bedding for his own use, until he has secured a permit from the director of the division of industrial inspection of the state department of labor and industrial relations, and has paid to the state collector of revenue an inspection and permit fee of twenty dollars, which such payment or charge shall constitute a factory inspection charge for the purpose of enforcing this chapter. The permit so issued by the director of the division of industrial inspection shall remain in force and effect until the end of the calendar year in which it was issued or until voided by the said director of the division of industrial inspection for failure to maintain the required sanitary con-

ditions in and around a factory in which bedding is made, remade or renovated or for failure to sterilize and disinfect properly all previously used materials used in making, remaking or renovating bedding. (10261, A. 1949 H. B. 2114)

421.030. Permit issued, when—to be posted.—When the director of the division of industrial inspection of the state department of labor and industrial relations has inspected any factory in the state of Missouri where bedding is being made or is to be made, remade or renovated, and has found that the factory conforms to the sanitary conditions prescribed by the director of the division of industrial inspection, then it shall be the duty of said director to issue to the person operating such factory a permit showing that it has been inspected and declared a proper place in which to make, remake or renovate bedding; and assign it a registry number by which said factory shall thereafter be known and designated in applying and enforcing the labeling and inspection provisions of this chapter. Said permit shall be posted by the person to whom it is so issued in a conspicuous place in said factory or office thereof. (10260)

421.040. Inspection and supervision of manufacturers—revocation of permit—prosecutions.—Every place where bedding is made, remade, or renovated, or held for sale, consignment or delivery shall be subject to supervision and inspection of the director of the division of industrial inspection of the state department of labor and industrial relations. Should said director find bedding being made, remade, renovated, or held for sale, consignment or delivery, in other than a sanitary condition, then the said director of the division of industrial inspection shall give the person responsible for this insanitary condition a reasonable length of time within the discretion of said director, said time, however, not to exceed sixty days, in which to remedy the said insanitary conditions. If the person responsible therefor fails to remedy the said insanitary condition, the said failure shall become a violation of this chapter, and the said director of the division of industrial inspection shall revoke and void the permit specified in section 421.030. Should said director have reason to believe that any person is violating or has violated any provision of this chapter, it shall be the duty of said director of the division of industrial inspection to prosecute or to cause prosecution of such person therefor. (10259)

421.050. What not to be used in making mattresses.—No person shall use in the making of bedding any material known as "shoddy" and made in whole or in part from any old or worn clothing, carpets, burlap or other fabric or material from which shoddy is constructed; any material not otherwise prohibited by this chapter of which prior use has been made; unless any and

all of said materials have been thoroughly sterilized, and disinfected by a reasonable process, approved by the division of health of the state department of public health and welfare. (10254)

421.060. Article of bedding offered for sale must be labeled.

—No person shall sell, offer for sale, consign for sale, or have in his possession with intent to sell, offer for sale, or consign for sale any article of bedding as herein defined unless the same be labeled as follows:

(1) Upon each of such articles of bedding, whether new, used or renovated there shall be securely sewed upon the outside thereof a cloth label, upon which shall be legibly written in ink or printed in the English language, in type of not less than one-eighth inch in size, the name of the material, or materials used as the filling of such article of bedding. If all the material used as the filling of such article of bedding shall not have been previously used, the words, "manufactured of new material," shall appear upon said label, together with the name and address of the maker or vendor thereof; if any of the materials used in the making or remaking of such article of bedding shall have been previously used, the words "manufactured of previously used material," shall appear upon said label together with the name and address of the maker or vendor thereof and also a description of the materials used in the filling of such article of bedding; on any article of bedding not remade, but which has been used, the words, "second-hand, materials used in filling not known," shall appear upon said tag or label, together with the name and address of the vendor thereof.

(2) The statement required under this section shall in form be as follows:

"OFFICIAL STATEMENT."

Manufactured of new material
 Manufactured of previously used material
 Second-hand materials used in filling not known
 Materials used in filling
 Maker or vendor
 Address

(3) If cotton lintens is used in the filling of any article of bedding the same shall be specifically designated as "cotton lintens" on any label required under this chapter; if what is known in the trade as "sweeps" or "oily sweepings" is used in the filling of any article of bedding such material shall be specifically designated as "mill sweepings" on any label required by this article.

(4) Wherever the word "felt" is used it shall be interpreted to mean that the material has been carded in layers by a garnett or felting machine.

(5) It shall be unlawful to use on any label concerning any bedding filling the word, "floss" or words of like import, if there has been used in filling said bedding any materials which are not termed as "kapok."

(6) It shall be unlawful to use in such statement on said label concerning any bedding filling the word, "hair" unless such bedding is manufactured of animal hair. If materials other than hair are used in combination with hair, the percentages of hair and such other material shall be stated.

(7) It shall be unlawful to use in the description on the label concerning any bedding any misleading term or designation, or any term or designation to mislead. (10257)

421.070. Used bedding to be sterilized and disinfected before sale.—No person shall sell, offer for sale, deliver, consign for sale, or have in his possession with intent to sell, deliver or consign for sale, any article of bedding which has been used unless the said article of bedding shall first be thoroughly sterilized and disinfected by a process approved by the division of health. (10256)

421.080. Owner's name to be attached to renovated bedding.—Any person who receives bedding to be renovated shall attach to each such article of bedding, at the time of its receipt, a tag upon which has been legibly written the name and address of the owner of the bedding and the date it was received for renovation. (10255)

421.090. Director to prosecute for violations.—If and when the director of the division of industrial inspection of the state department of labor and industrial relations finds that any article of bedding sold, or offered for sale, or delivered, or consigned or possessed with intent to sell, offer for sale, deliver or consign, that is not truthfully and correctly labeled as required by the provisions of this chapter, it shall be the duty of the director of the division of industrial inspection to prosecute said violation of this chapter and upon conviction to revoke the permit, the registry number and the rights conferred thereunder, heretofore mentioned, and the person whose permit has been so revoked and voided shall not make, remake or renovate or sell, or offer for sale or consign any article of bedding until he has secured another permit from the director of the division of industrial inspection. (10262)

421.100. Right to purchase and hold for evidence.—The director of the division of industrial inspection, his employees and assistants are hereby charged with the administration and enforcement of this chapter and shall have the right to purchase and hold for evidence at a trial for the violation of this chapter any article of bedding offered for sale or made in violation of this chapter. The director of the division of industrial inspection shall make reasonable rules and regulations for the enforcement of this chapter. (10263)

421.110. Offenses.—Any person who shall fail to comply with any of the provisions of this chapter shall be guilty of a violation thereof. The unit for separate and distinct offense in violation of this chapter shall be each and every article of bedding made, remade, sold, offered for sale, delivery, consigned or possessed with intent to sell, offer for sale, deliver or consign contrary to the provisions hereof. (10258)

421.120. Misdemeanor.—Any person or corporation violating the provisions of this chapter shall be guilty of a misdemeanor. (10264)

STATE OF NEBRASKA

LAW RELATING TO BEDDING

1943 Revised Statutes

71-507. Terms, Defined. In sections 71-507 to 71-515, the term "bedding" shall be construed to mean any mattress, mattress pad, bed comforter or quilted pad, designed and made for use in sleeping. The word "person" shall be construed to impart the plural and singular, as the case demands, and shall include corporations, companies, societies and associations.

71-508. Bedding; Act; Scope; How Construed. When construing and enforcing the provisions of sections 71-507 to 71-515, the act, omission or failure of any officer, agent or other person, acting for, or employed by, any corporation, company, society or association, within the scope of his employment or office, shall in every case be also deemed to be the act, omission or failure of such corporation, company, society, or association, as well as that of the person. The provisions of said sections shall not apply in the case of renovation of articles of bedding by or for the owner thereof for his own use.

71-509. Bedding; Renovation; Tag Indication Source Required. Any person who receives bedding to be renovated shall attach to each article of bedding at the time of its receipt, a tag upon which has been legibly written the name and address of the owner of the bedding, and the date it was received for renovation.

71-510. Bedding; Manufacture; Material Exposed to Disease; Use Prohibited; Exception. No person shall use in the making or remaking of any article of bedding as defined in section 71-507, any material of any kind that has been used by or about any person having an infectious or contagious disease, or has formed a part of any article of bedding which has been so used, unless such material has been disinfected by a process approved by the Department of Health.

71-511. Bedding; Use by Diseased Person; Sale Prohibited. No person shall sell, offer for sale, deliver, consign in sale, or have in his possession with intent to sell, deliver or consign in sale, any article of bedding that has been used by or about any person having an infectious or contagious disease.

71-512. Bedding; Sale; Labels Required. No person shall sell, offer for sale, consign in sale, or have in his possession with intent to sell, or consign in sale, any article of bedding as defined in section 71-507, unless the same be labeled and tagged as follows: (1) Upon each of such articles of bedding, there shall be securely sewed upon the outside thereof a muslin or linen label or tag, not less than two inches by three inches in size, upon which shall be legibly written or printed, in the English language, the materials used in the filling of such article of bedding; (2) if all the material used in the manufacture of such articles of bedding shall not have been previously used, the words "Manufactured of New Material" shall appear upon such label or tag, together with the name and address of the maker or his registered factory number; (3) if any of the material used in the making or remaking of such article of bedding shall have been previously used, the words "Manufactured of Used Material" or "Remade of Used Material," as the case may be, shall appear upon such tag or label, together with the name and address of the maker or his registered factory number, and also a description of the material used in the filling of such article of bedding; (4) the words "Manufactured of New Material" or "Manufactured of Used Material" or "Remade of Used Material," together with a description of the materials used as a filling for articles of bedding, shall be of letters not less than one eighth of an inch in height; and (5) in the description of material used on such label or tag, it shall be unlawful to use in the description of such material, used as the filling of any article of bedding, any term or designation likely to mislead. Any person who shall remove, deface or alter, or shall cause to be removed, defaced or altered, any label or tag upon any article of bedding so labeled or tagged under the provisions of this section, shall be guilty of the violation thereof.

71-513. Bedding Factories; Registration Required; Inspection; Duty of Department of Health; Fee. Every manufacturer of bedding in the State of Nebraska shall register with the Department of Health, and be assigned by it a factory number, which shall show on the label attached to each article of bedding. Each factory in the state, where bedding is made, shall be inspected at least once a year, for which inspection a fee of ten dollars shall be paid to the state by the owner of the factory inspected, but no owner shall be required to pay fees in excess of twenty dollars for any one calendar year.

71-514. Bedding; Act; Enforcement. The unit for a separate and distinct offense in violation of sections 71-507 to 71-515 shall be each and every article of bedding made, remade, sold, offered for sale, delivered, consigned or possessed with intent to sell, deliver or consign, contrary to the provisions of said sections. It shall be the duty of the Department of Health, when it has reason to believe that any of the provisions of said sections are being or have been violated, to make an immediate investigation, and, if it finds the facts warrant, it shall present the same to the county attorney for the county in which the supposed violation has occurred, and it shall thereupon be the duty of the county attorney to cause appropriate proceedings to be begun and prosecuted in the proper court for the enforcement of the penalties herein provided for.

71-515. Violations; Penalty. Any person violating the provisions of sections 71-507 to 71-515 shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined not less than twenty-five dollars nor more than five hundred dollars, or be imprisoned for not more than six months, or both.

STATE OF NEVADA
LAW REGULATING THE SALE OF
USED BEDDING

1945

STATE HEALTH DEPARTMENT
DIVISION OF PUBLIC HEALTH ENGINEERING
36 EAST SECOND STREET
RENO, NEVADA



CARSON CITY, NEVADA
STATE PRINTING OFFICE - - JACK MCCARTHY, SUPERINTENDENT
1945

LAW REGULATING SALE OF USED BEDDING

An Act regulating the sale of used bedding and other material, designating the agency for the enforcement hereof, defining the duties of certain persons in relation hereto, providing a penalty for the violation hereof, and other matters properly relating thereto.

(Approved March 21, 1935, p. 173)

Sale of Used Bedding and Other Material Must Be Labeled.

SECTION 1. From and after the passage and approval of this act it shall be unlawful for any person, firm, association or corporation, engaged in the operation of the business of manufacturing, making, renovating and selling mattresses, bed coverings, sheets, pillows and other similar bedding used for sleeping purposes, in this state, to sell or to offer to sell, or to dispose of any used or second-hand bedding as described in this act, directly or indirectly, without first having the same thoroughly sterilized and securely labeled with a tag sewed on each article marked thereon "Sterilized, Second-hand" which said tag shall show name of manufacturer, renovator, or dealer.

Duty of State Board of Health.

SEC. 2. It shall be the duty of the state board of health to prescribe rules, regulations, method and process of sterilization as mentioned in this act.

Who To Enforce Act.

SEC. 3. It shall be the duty of the state health officer and his duly authorized agents to enforce all the provisions of this act and the rules, regulations, method, and process authorized by this act.

Penalty for Violation.

SEC. 4. Every person violating any of the provisions of this act shall be guilty of a misdemeanor and punished accordingly.

Repeal.

SEC. 5. All acts and parts of acts in conflict herewith are hereby repealed.

In Effect.

SEC. 6. This act shall become effective from and after its passage and approval.

NEVADA STATE BOARD OF HEALTH

Regulations Governing the Sterilization of Second-hand Mattresses,
Pillows and any Other Kind of Bedding

Under and by virtue of the authority vested in the Nevada State Board of Health by "An Act Regulating the Sale of Used Bedding, * * *" approved March 21, 1935, as amended, and "An Act to Create a State Board of Health, * * *" as amended March 25, 1939, the State Board of Health does hereby adopt and promulgate the following rules and regulations governing the sterilization or disinfection of used or second-hand mattresses, bed coverings, sheets, pillows, and other similar bedding used for sleeping purposes.

REGULATION 1. Used or second-hand articles of bedding requiring sterilization or disinfection are:

Quilted pads.	Sheets.
Bunk quilts.	Blankets.
Comforters.	Any other contaminated or
Mattresses.	soiled article of bedding.
Mattress pads.	Materials used in the fill-
Cushions.	ing of any of the above or
Pillows.	similar articles.

REGULATION. 2. Sterilization or disinfection of used or second-hand articles listed in Regulation 1 shall be by one of the following methods, and under the conditions outlined in such methods:

I

WASHING AND BOILING

By thorough washing and sterilization by prolonged boiling for at least one hour.

II

STEAM UNDER PRESSURE

By steam under 15 pounds pressure for at least thirty minutes. A gauge for registering steam pressure, visible from the outside of the room shall be provided where steam under pressure is used.

III

STREAMING STEAM PROCESS

Two applications of streaming steam maintained for a period of one hour each to be applied at intervals of not less than six hours nor more than twenty-four hours will be accepted as an alternate for steam under pressure for disinfection of mattress materials or made-up mattresses.

When streaming steam is employed, valved outlets shall be provided near the bottom and top of room used for this purpose.

IV

FORMALDEHYDE AND SULPHUR PROCESS

By treating with formaldehyde and sulphur concurrently in a moist atmosphere for a period of at least twelve hours.

Formaldehyde gas shall be generated from the use of one pint of formaldehyde solution (37%) to each thousand cubic feet of air space, or through the use of any of the high-class commercial fumigators which generate an equivalent quantity of gas.

Formaldehyde gas can be made by mixing eight ounces potassium permanganate with one pint of formaldehyde.

Directions—Place potassium permanganate in large galvanized pail and place pail in room to be fumigated and, when everything is in readiness, add the formaldehyde and quickly close the door.

Sulphur shall be from the burning of four pounds of sulphur for each thousand cubic feet of air space.

The moist atmosphere is provided by thoroughly sprinkling the floor of the room with warm water just prior to undertaking disinfection.

V

LETHAL GAS METHOD

This method embraces the use of hydrocyanic acid gas generated by the action of sulphuric acid on sodium cyanide. The gas generated is very effective, extremely poisonous, and if this method is chosen, the room for sterilization must be apart from any living or working quarters and installed under strict approval of the State Health Officer or his duly authorized agents.

REGULATION 3. Before engaging in any of the above-mentioned processes, application must be made to the State Health Officer or his duly authorized agents, designating the process which will be employed and the fumigating room must be approved by the State Health Officer or his duly authorized agents.

REGULATION 4. In making application for approval of a sterilization plant, complete statement shall be made of the method to be employed for disinfection and such statement shall be accompanied by a plan in duplicate (2) drawn to scale showing details of the installation. This plan shall bear a title indicating clearly where the installation is to be made, the scale of the drawing, and be signed by the applicant.

REGULATION 5. No approval will be issued for a period longer than one year and may be revocable at any time without notice, providing it is found that the manufacturer is not carrying on the disinfection process in accordance with the spirit and purpose of the law.

REGULATION 6. Filthy or soiled articles of bedding shall not be considered properly sterilized or disinfected unless the fabric covering such articles be laundered or replaced by a clean or new covering and the filling material be subjected to one of the sterilizing methods outlined in Regulation 2.

REGULATION 7. All premises, rooms, chambers, and devices used for the purpose of sterilization or disinfection shall be kept in a clean and orderly condition, free from accumulated dust, dirt and other filth, and shall be kept free of vermin.

REGULATION 8. No articles or materials obtained from public dump grounds, junk yards or hospitals may be reused in the manufacturing, making or renovating of mattresses, bed coverings, pillows, cushions, or any other similar bedding that may be used for sleeping purposes unless a special permit is obtained from the State Health Officer or his duly authorized agents.

Now, THEREFORE, At a regular meeting of the State Board of Health, a majority of the members do vote to adopt the above rules and regulations.

APPROVED :

EDWARD E. HAMER, M. D.,
Secretary, State Board of Health.

JOHN J. SULLIVAN, M. D.
Chairman.

E. P. CARVILLE

STEPHEN W. COMISH, D. D. S.

SALLIE R. SPRINGMEYER.

Dated July 16, 1945.

NEW HAMPSHIRE

MANUFACTURE, SALE, ETC., OF BEDDING

339:56 Labels; Use of Undisinfected Second Hand Materials Prohibited. No person shall manufacture for purposes of sale, sell, offer or expose for sale, or have in possession with intent to sell, any mattress, pillow, cushion, muf bed, quilt, upholstered furniture or similar article having a filling of hair, down, feathers, wool, cotton, kapok or other material, unless there is plainly marked upon each such article, or upon a tag of some durable substance sewed thereon, or otherwise securely attached thereto, a statement of the kind of material used for filling in the manufacture of such article, the name of the manufacturer or vendor, and also, if the material has been previously used, the words, second hand. Provided, that no second hand materials, the use of which is not prohibited under section 59 hereof and which may be deemed by the state board of health suitable for re-use, shall be used unless the same have been disinfected by a method or methods approved by the said board.

Sources: 1925, 157:1. PL 162:58. 1941, 162:1. RL 193:58.

339:57 Bales, etc. If any such article is enclosed in a bale, box, crate or other receptacle, there shall be plainly marked upon such receptacle, or upon a durable tag securely attached thereto, a statement that the contents of the package are marked as herein required.

Sources: 1925, 157:1. PL 162:59. RL 193:59.

339:58 Renovated Mattresses. Whoever renovates or remakes any mattress shall attach a tag thereto bearing the word remade and a statement of the kind of material used for filling.

Sources: 1925, 157:1. PL 162:60. RL 193:60.

339:59 Prohibited Materials. No person shall use, in the manufacture of any such article for purposes of sale, or sell, offer or expose for sale, or have in possession for the purpose of such use or for sale or for use in remaking or renovating any such article, any material which has previously been used in or about a hospital, or on or about the person of anyone having an infectious or contagious disease, nor shall any person sell, or offer or expose for sale, any such article containing materials which have been previously so used.

Sources: 1925, 157:2. PL 162:61. RL 193:61.

339:60 Labeling Material. No person engaged in the business of selling any hair, down, feathers, wool, cotton, kapok or other materials commonly used for filling such articles, shall ship any box, crate, package or other container in which is placed any such hair or other such material unless there is attached thereto a tag containing a statement of the contents of the package together with the name of the vendor, and, if the material has been used before, with the words, second hand. Provided, that no person shall ship, sell or use for the purposes named in this subdivision any second hand materials, not being prohibited under section 59 hereof and deemed by the state board of health suitable for re-use, which have not been disinfected by a method or methods approved by the said board.

Sources: 1925, 157:3. PL 162:62. 1941, 162:2. RL 193:62.

339:61 False Representation. No person shall sell or offer for sale any such material which has been used before, representing the same to be new material.

Sources: 1925, 157:3. PL 162:63. RL 193:63.

339:62 Penalty. Whoever violates any of the foregoing provisions of this subdivision shall be fined not more than five hundred dollars or imprisoned not more than six months, or both.

Sources: 1925, 157:3, 8. PL 162:64. RL 193:64.

339:63 Removing Label. Whoever, except a purchaser at retail, removes or effaces any marking upon any article or receptacle or any tag or label attached thereto as above provided, shall be fined not more than fifty dollars.

Sources: 1925, 157:7. PL 162:65. RL 193:65.

339:64 Evidence. Possession of any such article, not marked as herein provided, by any person engaged in the business of manufacturing, selling or offering the same for sale shall be *prima facie* evidence that such article is being manufactured, remade or renovated, or is offered or exposed for sale, in violation of the provisions of this subdivision.

Sources: 1925, 157:1. PL 162:66. RL 193:66.

339:65 Duty, Police, etc. Any police officer, member of any local board of health, or other town official, who has reason to believe that any provision hereof has been or is being violated shall give notice thereof to the state board of health.

Sources: 1925, 157:6. PL 162:67. RL 193:67.

339:66 Duty, State Board of Health. The state board of health, whenever there is reason to believe that any provision hereof is being violated in any factory, shop, warehouse, store or other place, shall cause an investigation of such place to be made, and for this purpose any member or duly authorized employee of said board may enter such building or other place at all reasonable times. If, upon investigation, mattresses, pillows, cushions, muff beds, quilts or similar articles, or materials for use in the manufacture, remaking or renovating of the same, shall there be found, which have been previously used in or about a hospital or on or about the person of any one having an infectious or contagious disease, such materials or articles, whether manufactured, remade or renovated or in process thereof, shall be marked by the department with labels bearing the word *unclean* in conspicuous letters, and the board, with or without notice to the owner or supposed owner, may order the removal and destruction of the said materials or articles or make such other order relating thereto as the circumstances of the case require.

Sources: 1925, 157:4. PL 162:68. RL 193:68.

339:67 Posting Premises. The board or its duly authorized employee, whenever it is deemed necessary to safeguard the public health, may post upon any building or part thereof containing such materials or articles, or from which the same have been removed, a notice or warning of the danger of contagion or infection resulting from violation of the provisions hereof, and may continue such notice upon the said premises until the same have been properly cleaned and disinfected. Whoever removes or effaces such notice or warning except by order of the board shall be fined not more than fifty dollars.

Sources: 1925, 157:5. PL 162:69. RL 193:69.

339:68 Limitation. The provisions of this subdivision, except sections 66 and 67, shall not apply to persons who sell or offer for sale goods of the kinds herein mentioned which are owned by them and have been in good faith used by them in their own houses or hotels, or to administrators, executors, guardians or trustees in bankruptcy.

Sources: 1925, 157:9. PL 162:70. RL 193:70.



STATE OF NEW YORK
DEPARTMENT OF STATE

UPHOLSTERY AND BEDDING

Law and Rules Applicable to the Manufacture
and Sale of Articles of Bedding, Articles
of Upholstered Household Furniture
and Materials Used Therein

JOHN P. LOMENZO

Secretary of State

DIVISION OF UPHOLSTERY & BEDDING

270 Broadway
New York 7, N. Y.

As last amended
March, 1959

ARTICLE 25-A
GENERAL BUSINESS LAW

added by L. 1933, C. 408, eff. July 1, 1933.

Section	383.	Definitions.
	384.	Prohibitions; sterilization; permits.
	385.	Tagging; tags.
	386.	License and application; fees; reclassification; reissuances; payments.
	387.	Enforcement; division of bedding; advisory board.
	388.	Rules; violations.
	389.	Repealed.
	389-a.	Repealed.
	389-b.	Repealed.

§ 383. Definitions. Whenever used herein "commissioner" means the industrial commissioner;

"Department" means the department of labor;

"Bedding" or "article of bedding" includes upholstered furniture and filling material (as herein defined) and any mattress, pillow, cushion, quilt, bed pad, comforter, upholstered spring bed, box-spring davenport or day-bed, bedspring metal couch, metal bed, metal cot, metal cradle, metal bassinet, used or intended for use for sleeping, resting or reclining purposes and any glider, hammock or other substantially similar article which is wholly or partly upholstered;

"Upholstered furniture" means any article of household furniture wholly or partly stuffed or filled with soft material and which is used or intended for use for sitting, resting or reclining purposes;

"Filling material" includes any hair, down, feathers, wool, cotton, kapok or other soft material used in the manufacture of and for filling articles of bedding or upholstered furniture but shall not include any new filling material sold at retail, which is open to inspection at the time of sale, and which is prepared and intended for use in the home of the owner. As amended L1958, C139, eff. July 1, 1958

"New" means any material or article which has not been previously used for any purpose, including by-products produced in the manufacture of new fabric, and material reclaimed from new fabric; except that an article of bedding returned by the purchaser for exchange, alteration, or correction, within thirty days after date of delivery after original sale at retail, shall be deemed to be a new article, but thirty days after date of such delivery such article shall be deemed to be second-hand;

"Second-hand" means any material or article of which prior use has been made except as otherwise provided in this article;

"Old" means material which cannot be defined as "new" or "second-hand" but which, through age, has become stale or brittle and has lost its natural quality of resilience;

"Garnetted clippings" means any material which has been made

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into fabric and subsequently cut up, torn up, broken up or ground up and has been run through a garnett machine and thoroughly processed;

"Shredded clippings" means any material which has been made into fabric and subsequently cut up, torn up, broken up or ground up but which has not been run through a garnett machine and thoroughly processed;

"Shoddy" means garnetted or shredded clippings when made in whole or in part from old or worn rags, clothing or second-hand fabrics;

As amended L1958, C139, eff. July 1, 1958

"Felt" means material that has all been carded in layers or sheets by a garnett or felting machine;

"Manufacture," "making," "make," or "made" includes altering, repairing, finishing or preparing articles of bedding or upholstered furniture or filling materials for sale, including remaking or renovating, when done away from the home of the owner;

"Sale," "sell," "sold" includes offering or exposing for sale or exchange or lease or consigning or delivering in consignment for sale, exchange or lease or holding possession with like intent. The possession of any article of bedding, as herein defined, by any maker or dealer, or his agent or servant in the course of business, shall be presumptive evidence of intent to sell.

"Person" means an individual, partnership, corporation or an association.

"Retail sale" or "sale at retail" means a sale to a consumer or to any person for any purpose other than for resale.

"Wholesale" or "sale at wholesale" means a sale to any person for purposes of resale.

"Manufacturer of articles of bedding for sale at wholesale" means any person who makes, reupholsters, renovates, repairs, recovers, in whole or in part, any article of bedding, or imports any such article wholly or partly stuffed or filled with filling material, for sale other than at retail, or performs any of such services for a person other than an ultimate consumer. Such term includes (a) any person who manufactures or processes any filling material loose or in batting, pads, or other prefabricated form, to be used or which could be used in articles of bedding for sale other than at retail; and (b) any junk dealer who purchases and sells articles of bedding at other than retail.

"Supply dealer" means any person who breaks bulk, packages or repackages, or otherwise prepares or tags any filling material or articles of bedding, for sale other than at retail.

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"Repairer-renovator" means any person who repairs, makes over, re-covers, restores, renovates, or otherwise prepares or tags articles of bedding, directly for the consumer, or for direct sale by such person at retail.

"Manufacturer of articles of bedding for sale at retail" means any person who makes, or prepares for sale by tagging or retagging, or imports, articles of bedding, in whole or in part, for direct sale by such person at retail.

"Retailer of second-hand articles of bedding" means any person who prepares for sale by tagging or retagging any second-hand article of bedding for sale at retail, and shall include any junk dealer who purchases or otherwise acquires any article of bedding from the home of the owner.

§ 383 as last amended by L1954, C394, eff. Jan. 1, 1954.

§ 384. Prohibitions; sterilization; permits. 1. Prohibitions. No person shall sell as new any article of bedding unless it is made from all new material and is tagged as provided herein.

No person shall sell, representing it to be new material, any old or second-hand hair, down, feathers, wool, cotton, kapok or other material used for filling articles of bedding.

No person shall sell any article of bedding made from old or second-hand material unless it shall be tagged as provided herein.

The presence on the premises of any maker or vendor of any old or second-hand material or article, shall be presumptive evidence of the sale or use.

No person shall sell any article of bedding, or any material used in the making thereof, which has been used by or about any person having an infectious or contagious disease, unless such article or material shall have been sterilized and is tagged as provided herein.

No person shall use any material to make any article of bedding for sale that is made from material (a) that comes from an animal or fowl, (b) that contains any bugs, vermin, insects or filth, (c) that is unsanitary, (d) that contains burlap or other material that has been used for baling, (e) that is second-hand, unless such material has been thoroughly sterilized by a process approved by the commissioner.

No person shall sell, offer for sale, exchange or lease or deliver or consign for like purpose any article or material herein required to be tagged unless there appears on the tag a license num-

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ber assigned by the commissioner as required by this article. Nor shall any person sell or offer for sale, exchange, lease, deliver or consign for like purpose any such article upon which appears the number of a license which has expired or has been suspended or revoked by the commissioner, provided such person has notice constructive or otherwise that such license has expired, been suspended or revoked, and provided further that such person received such article after receiving such notice. The commissioner may make rules with respect to what shall constitute constructive notice.

No person other than a purchaser at retail for his own use, or except as herein otherwise provided, shall remove, deface, alter or cause to be removed, defaced or altered, any tag attached to an article of bedding; but immediately after material used for filling has been removed from its container the tag shall be removed and destroyed by the person removing such material.

No manufacturer or vendor shall deliver to any person any tag required by this article unless it is affixed or attached to an article as required herein; except that the commissioner may, on application, permit the delivery of unattached tags.

No person shall have in his possession or shall make, use or sell any counterfeit or colorable imitation of the license or permit required by this article. Each counterfeited or imitated license or permit made, used, sold, offered for sale, delivered or consigned for sale contrary to the provisions of this article shall constitute a separate offense.

No person shall appropriate for his own use or for use of another or for sale, any article of bedding, as herein defined, which has been abandoned by the owner. It shall be the duty of local authorities to collect and remove all articles of bedding which have been abandoned by the owner and to destroy them.

No person shall insert or cause to be inserted upon any tag any license number other than the one assigned to him by the commissioner.

No person shall insert or cause to be inserted upon any tag any license number nor shall he affix or cause to be affixed to any article of bedding any tag bearing any license number after such license has expired or been revoked or during a period when it is suspended by the commissioner.

Subd 1 as last amended by L1953, C687, eff. Jan. 1, 1954.

2. Sterilization. Any sterilization process used in connection herewith shall be approved by the commissioner.

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3. Permits. Every person, firm or corporation desiring to operate such sterilization process shall first obtain a numbered permit from the commissioner and shall not operate such process unless such permit is kept conspicuously posted in the establishment. Fee for original permit shall be fifty dollars. Application for such permit shall be accompanied by specifications in duplicate, in such form as the commissioner shall require. Each permit shall expire one year from date of issue. Fee for annual renewal of a sterilizing permit shall be one-half the original fee. The commissioner may revoke or suspend any permit for violation of the provisions of this article. Upon notification of such revocation or suspension, the person to whom the permit was issued or his successor, shall forthwith return such permit to the commissioner. For reissuing a revoked or expired permit the fee shall be the same as for an original permit.

Subd 3 as last amended by L1936, C799, eff. May 29, 1936.

§ 385. Tagging; tags. 1. Tagging. Every article of bedding made for sale, sold, or offered for sale shall have attached thereto a tag which shall state (a) the name of the material used in such article; (b) that such material used is new, or old, or second-hand; (c) the license number of the manufacturer or supply dealer, except in the case of a second-hand article of bedding for sale "as is"; (d) the name and address of the manufacturer, supply dealer or vendor; and (e) that such material has been sterilized and the number of the sterilizing permit, unless sterilization was not required.

A complete second-hand article of bedding, which has not been remade or renovated, may be sold "as is" without being sterilized but the tag if any which is attached to it shall be removed by the manufacturer, supply dealer or retail vendor who purchases it from the immediately prior user, and such purchaser shall attach a tag (a) bearing his license number, and (b) stating that the article is "second-hand—contents unknown" but this requirement shall not apply (1) to sales at public auction, (2) to the sale of antique furniture, or (3) to a private sale from the home of the owner direct to the consumer.

All tags attached to new articles shall be legibly stamped or marked by the retail vendor with the date of delivery to the customer. Every remade or renovated article of bedding not for sale but for return to the owner for his own use shall have attached thereto a tag which, in addition to the statements hereinbefore required, shall state the name and address of the owner, the name and address of the remaker or renovator, or the statement "Remade

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and renovated for" followed by the name and address of the person for whom the article of bedding is remade or renovated, provided that such person is not the owner of the article of bedding, the date of the sterilization, that the article is not for sale and that such article contains the same material received from the owner and the name and amount of any material added during remaking. Any shipment or delivery, however contained, of material used for filling articles of bedding shall have firmly and conspicuously attached thereto a tag which shall state the name, the license number and the address of the manufacturer, preparer or vendor, the name of the material and whether such material is new or old or second-hand and, if sterilized, the number of the sterilization permit. In the description of material used on any tag attached to an article of bedding no term or designation intended or likely to mislead shall be used; but where such article contains more than one material and rules adopted hereunder require the amount of such materials to be stated on the tag, a variance not in excess of ten per centum from the amount stated on the tag shall not be deemed misleading. No variance shall be allowed for material which is described as "all," "pure," "one hundred per centum," or terms of similar import. The commissioner may order off sale and may so tag, any article of bedding or material therefor, which is not tagged as herein required or which is tagged with a tag bearing a misleading term, description, designation or statement and no articles or materials placed off sale or seized by the commissioner shall be sold nor shall the contents thereof be altered, interfered with or removed in whole or in part, nor shall the articles or contents thereof be removed from the premises where placed off sale or seized, until such articles or materials are released by the commissioner. All articles or materials placed off sale or seized shall be subject to frequent examination by inspectors of the division of bedding and must be so placed or stored as to be readily accessible at all times and shall be produced for examination upon demand of any such inspector made upon the person or persons in charge of the establishment or premises where such articles or materials were placed off sale or were seized. Nothing in this article shall authorize the sale of an article of bedding that has been exposed to infectious or contagious disease and which, after such exposure, has not been sterilized and approved for use. If the commissioner shall find any article of bedding or filling material which has been used by or about any person having an infectious or contagious disease he shall tag such article of bedding or material with a tag bearing the word "unclean" in conspicuous letters. Such tag shall not be removed except

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by the commissioner. Tags shall be prominently and securely attached to articles of bedding in such manner as the commissioner may require.

Subd 1 as last amended by L1954, C394, eff. Jan. 1, 1954.

2. Tags. Whenever a tag is required by this article it shall be approved by the commissioner and shall be made of muslin, linen or other material of like durability and shall be the same color stock throughout. Paper faced tags shall not be used. For designating all new material the tag shall be white; for designating old or second-hand or renovated material or articles the tag shall be yellow; for designating articles or materials placed off sale by the commissioner the tag shall be blue; and for designating articles or materials exposed to infectious or contagious disease and declared "unclean" by the commissioner, the tag shall be red. Statements required on tags shall be legibly printed or stamped on one side only, in the English language and in letters at least one-eighth of an inch in height. Tags attached to mattresses or pillows shall be at least six square inches in area. The commissioner may permit smaller tags and may require larger tags for other articles. On each tag there shall be a certification that such article complies with the requirements of law but such tag also may state that the article complies with the law of any other state.

Subd 2 as last amended by L1936, C799, eff. May 29, 1936.

§ 386. License and application; fees; reclassification; reissuances; payments. 1. License and application. No person shall be engaged (a) as a manufacturer of articles of bedding for sale at wholesale; (b) as a manufacturer of articles of bedding for sale at retail; (c) as a supply dealer; (d) as a repairer-renovator; or (e) as a retailer of second-hand articles of bedding, unless he has obtained the appropriate numbered license therefor from the commissioner, who is hereby empowered to issue such license. Application for such license shall be made on forms provided by the commissioner and shall contain such information as he may deem material and necessary. Based on the information furnished in such application and on any investigation deemed necessary by the commissioner the applicant's classification shall be determined. Each license issued by the commissioner pursuant to this article shall be conspicuously posted in the establishment of the person to whom issued and it shall expire one year from date of issue. The commissioner may withhold

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the issuance of a license to any person who shall make any false statement in the application for a license under this article.

Subd 1 as last amended by L1954, C394, eff. Jan. 1, 1954.

2. Fees. The annual fees imposed for licenses issued pursuant to this article shall be as follows:

(a) Every applicant classified as a manufacturer of articles of bedding for sale at wholesale or as a supply dealer shall pay, prior to the issuance of a general license, an annual fee of fifty dollars, and the licensee may be engaged in any or all of the following: (1) manufacturer of articles of bedding for sale at wholesale; (2) manufacturer of articles of bedding for sale at retail; (3) supply dealer; (4) repairer-renovator; (5) retailer of second-hand articles of bedding.

(b) Every applicant classified as a manufacturer of articles of bedding for sale at retail, repairer-renovator, or retailer of second-hand articles of bedding shall pay, prior to the issuance of a limited license, an annual fee of ten dollars, and the licensee may be engaged in any or all of the following: (1) manufacturer of articles of bedding for sale at retail; (2) repairer-renovator; (3) retailer of second-hand articles of bedding.

Subd 2 as last amended by L1954, C394, eff. Jan. 1, 1954.

3. Reclassification. If a licensee is reclassified from one category to another which calls for a higher license fee he shall pay a license fee of fifty dollars, and the license issued to him shall be for a one year period from the date of issue of such license.

If, through error, a licensee has been improperly classified as of the date of issue of his current license the proper fee for the entire period shall be payable. Any overpayment shall be refunded to the licensee. No refunds shall be allowed to any licensee who has discontinued business, or whose license has been revoked or suspended or who has been reclassified to a category calling for a greater or lesser license fee, except as provided herein.

Subd 3 as last amended by L1954, C394, eff. Jan. 1, 1954.

4. Reissuances. For reissuing a revoked or expired license the fee shall be the same as for an original license.

Subd 4 as last amended by L1954, C394, eff. Jan. 1, 1954.

5. Payment of moneys. All fees, fines, penalties and other moneys derived from the operation of this article shall be paid to

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the department of labor. Any license fee paid prior to the date upon which such license becomes effective shall be returnable to the applicant of such license, or to his heirs, or creditors, upon submission of proof to the commissioner that such applicant was deceased or that such applicant's business was liquidated prior to the date upon which such license becomes effective.

Subd. 5 as last amended by L1958, C226, eff. March 18, 1958

§ 387. Enforcement; division of bedding; advisory board. 1. Enforcement. Every place where articles of bedding are made, re-made or renovated, or materials therefor are prepared or sterilized, or where such articles or materials are sold, shall be subject to inspection by the commissioner who shall have power to inspect the manufacture and sale or delivery of all articles or materials covered by this article, to open and examine the contents thereof and power to seize and hold for evidence any article of bedding, in whole or in part, which he has reason to believe is made or sold or held in possession in violation of this article or of section four hundred forty-six of the penal law. For the purpose of administering and enforcing the provisions of this article the commissioner shall have and may use the powers conferred on him by the labor law in addition to the powers conferred herein. No person shall interfere with, obstruct or otherwise hinder, any inspector, officer or employee of the division of bedding in the performance of his duties.

Subd. 1 as last amended by L1939, C112, eff. March 23, 1939.

2. Division of bedding. There is hereby created in the department of labor a division of bedding which shall have jurisdiction of such matters, exercise such powers and perform such duties as may be assigned to it by the commissioner. The bedding division shall be in immediate charge of a director and shall have such employees as may be designated by the commissioner who shall fix their salaries within the amount appropriated therefor.

3. Advisory board. There is hereby created for the bedding division an advisory board, to consist of not more than nine representatives of interests affected by this article, to be appointed for a term of two years by the commissioner. Members of the board shall meet at the call of the commissioner and the members, except the commissioner, shall each receive twenty-five dollars per diem for each meeting called by the commissioner attended by them and reasonable and necessary traveling and other expenses. The commissioner may remove any member when he ceases to

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represent the interests in whose behalf he was appointed. The commissioner may designate a member of the board to act as chairman and shall designate an employee of the department to be secretary.

The board shall:

(a) Consider all matters submitted to it by the commissioner.

(b) On its own initiative recommend to the commissioner such changes of rules or of administration of bedding division as, after consideration, may be deemed important and necessary.

(c) Co-operate in the preparation of rules and regulations supplemental to the provisions of this article.

(d) Co-operate with the civil service commission in conducting examinations and in preparing lists of eligibles for positions in the division of bedding the duties of which require special knowledge or training, and advise the commissioner in the selection and appointment of employees to such positions in such division.

Subd. 3 as last amended by L1954, C393, eff. July 1, 1954.

§ 388. Rules; violations. 1. Rules. Rules supplemental to, but not in conflict with, the provisions of this article may be made by the advisory board and shall be subject to approval by the commissioner. When approved they, and any amendments or repeal thereof, shall be filed with the secretary of state and become effective thirty days after filing and shall have all the force and effect of law. If there shall be practical difficulty or unnecessary hardship in carrying out a provision of this article or of a rule made thereunder affecting the manufacture and sale of articles of bedding, as herein defined, the board shall have power to make a variation from such provision or rule if the spirit of the provision or rule shall be observed. If the board makes a variation it shall be in the form of a resolution adopted by at least five votes and shall apply to all places or conditions where the facts are substantially the same as set forth in the record of the board as being the basis of the variation. Such variation shall be effective for a period not in excess of sixty days during which period the board may adopt a new rule or repeal or amend an existing rule, to cover the condition affected by the variation. Such rule, amendment or repeal shall be filed with the secretary of state at least thirty days prior to the expiration of the period for which the variation was granted. If the board does not adopt such new rule or repeal or amend an existing rule, the variation shall automatically become null and void at the expiration of thirty days after the date the variation was made.

Subd. 1 as last amended by L1946, C671, eff. April 10, 1946

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2. Violations. Violation of any provision of this article is a misdemeanor. Each article of bedding made, remade, or renovated, sold or exposed for sale, exchange or lease, delivered, re-delivered or consigned for sale, exchange or lease, contrary to the provisions of this article, shall constitute a separate violation.

3. Analysis as presumptive evidence. A certified copy of the analysis made by the department shall be received in evidence without the presence in court of the person making such analysis.

Subd 3 as added by L1936, C799, eff. May 29, 1936.

4. Suspension or revocation of license. Any license issued pursuant to this article may be suspended or revoked by the commissioner for violation of the provisions of this article, or if the applicant has made any false statement in his application for an annual license. Upon notification of such suspension or revocation the person to whom the license was issued shall forthwith return such license to the commissioner.

Subd. 4 as added by L1954, C394, eff. Jan. 1, 1954.

5. Hearing. No license shall be denied, suspended or revoked unless the applicant or licensee shall be given an opportunity to be heard.

Subd. 5 as added by L1954, C394, eff. Jan. 1, 1954.

6. Appeal. A determination by the commissioner revoking or suspending a license, or denying a license shall be subject to review by the supreme court in the manner provided in article seventy-eight of the civil practice act.

Subd. 6 as added by L1954, C394, eff. Jan. 1, 1954

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§ 446. Articles of bedding, upholstered furniture and filling materials.

Any person who 1. Makes, remakes, renovates, sterilizes, prepares, sells, offers for sale, exchange or lease any article of bedding, article of upholstered furniture or filling material for either, not properly tagged, as required by article twenty-five-A of the general business law, or

2. Uses in the making, remaking, renovating or preparing of any article of bedding or article of upholstered furniture or in preparing cotton or other material therefor which has been used as a mattress, pillow or bedding in any public or private hospital, or which has been used by or about any person having an infectious or contagious disease, and which after such use has not been sterilized and approved for use, by the industrial commissioner, or

3. Violates any provision of article twenty-five-A of the general business law or any rule or regulation supplemental thereto, or

4. Counterfeits or imitates any license, license number, permit, permit number or tag issued under such article, shall be guilty of a misdemeanor, punishable by a fine of not more than five hundred dollars or by imprisonment for not more than six months or by both.

Subd 4 as last amended by L1954, C394, eff. Jan. 1, 1954.

RULE 1

PRIOR RULES REPEALED

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RULES MADE BY THE ADVISORY BOARD OF THE DIVISION OF BEDDING, DEPARTMENT OF LABOR, AND APPROVED BY THE INDUSTRIAL COMMISSIONER PURSUANT TO SECTION 388 OF ARTICLE 25-A OF THE GENERAL BUSINESS LAW, EFFECTIVE AND OPERATIVE AUGUST 11, 1957.

RULE 1. Prior Rules Repealed

1.1 Each and every rule made by the Advisory Board, Division of Bedding, and approved by the Industrial Commissioner and effective and operative before August 11, 1957 is hereby repealed.

1.2 Rules which were in effect and operative before August 11, 1957 and which are repealed in accordance with 1.1 hereof shall continue to govern with respect to the duties and obligations of any person, as defined in Article 25-A of the General Business Law, for the period preceding such date.

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RULE 2. Definitions and Designations of Filling Materials

2.1 "Filling material" includes any hair, down, feathers, wool, cotton, kapok, or other filling material used in the manufacture of and for filling articles of bedding or upholstered furniture but shall not include any new filling material sold at retail, which is open to inspection at the time of sale, and which is prepared and intended for use in the home of the owner. When contained in durable material, such combination of filling material and outer covering or container shall be considered to be an article of bedding, other than filling material, and shall be tagged.

2.2 The following and similar materials shall be deemed to be processed: wool (sterilized), hair (sterilized), feathers and down (sterilized), defabricated fibers, shredded clippings, pads, batts or felt, curled fibers, foam and sponge materials, and all second-hand materials.

2.3 Unprocessed material may be tagged either by the jobber or by the preparer, but in each case, whether processed or unprocessed, the person having his license number on the tag shall be responsible for all statements on the tag and for violations in case the material is not as represented on the tag.

2.4 The following and similar materials shall be deemed to be unprocessed: vegetable and synthetic fibers, excelsior, glass fiber, metal fiber, wood fiber.

2.5 Unprocessed material shipped from out of the state directly to a manufacturer of articles of bedding or upholstered furniture need not be tagged during shipment and delivery. When held by the manufacturer for resale it must be tagged. If the material is held solely for use in the products of the factory to which it was shipped, it need not be tagged.

2.6 Unprocessed material shipped from out of the state to a jobber and held for resale must be tagged either by the original shipper or by the jobber; however, such material need not be tagged while it is at a warehouse, depot, or pier, but it must be tagged before the material is shipped from any such place.

2.7 Processed materials must be tagged by the processor and must bear his license number.

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2. 8 All filling material shipped from any point in the State of New York shall be tagged before it leaves the point of shipment.

2. 10 Any new stiffening material, such as fiberboard, corrugated fiberboard, wood or paper when present in an amount exceeding 10% by weight of the entire filling material of an article of bedding or upholstered furniture shall be designated on the tag and its percentage given. When made of secondhand material, regardless of the amount in which it is present, it shall be designated on the tag. When coming from any animal or fowl, regardless of the amount in which it is present, it shall be designated on the tag.

2. 11 Filling material in pre-built border constructions need not be stated on the tag, providing the filling material is new and does not exceed 10% of the filling material in the article to which the border construction is affixed.

2. 12 When the filling material contained in a quilted ticking, glazed wadding, or trapunto embroidery affixed to the cover of an article of bedding is in excess of 10% of the weight of the entire filling material, or consists of the product of an animal or fowl, or consists of secondhand material, such material shall be designated on the tag and its percentage given.

2. 13 Burlap, muslin, tape, webbing, etc., when new, need not be specifically mentioned. When made of old or secondhand material it shall be so designated on the tag.

2. 20 Filling material which has been artificially dyed or colored shall be designated as "colored". The natural color of filling material need not be stated.

2. 21 Any filling material containing more than 5% oil shall be designated on the tag as "oily".

2. 22 The presence of non-fibrous mineral matter in excess of 5% in any filling material shall be designated on the bedding law tag as "dirt" and the actual percentage thereof contained in the filling material shall be stated on the tag.

Rule 2. 22 as amended, eff. February 4, 1958

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2. 23 If an article of bedding contains more than one kind of material, the percentages of all filling materials shall be clearly designated on the tag except as otherwise provided in these rules.

2. 30 "Staple cotton" shall mean the staple fibrous growth as removed from the cotton seed in the usual process of ginning (first cut) containing no foreign material. The term "cotton" by itself shall not be used.

2. 31 The term "Cotton linters" shall be used to designate the fibrous growth removed from cottonseed subsequent to the usual process of ginning. The term "linters" alone shall not be used.

2. 32 The term "Cotton by-products" shall be used to designate the by-products removed from the various machine operations necessary in the manufacture of cotton yarn up to but not including the process of spinning, and shall include only the following materials commonly known in cotton-mill terms as (1) cotton card strips or cotton vacuum strips, (2) cotton comber, (3) cotton fly and (4) cotton picker; or the by-product may be designated by the particular mill term applicable to it, e. g., "cotton card", "cotton comber", "cotton fly", "cotton picker".

2. 33 The term "card", "strips" or "stripping" preceded by the name of the textile fiber from which it is produced, may be used to designate a tangled or matted mass of fibers produced by or removed from the carding cloth following the carding process.

2. 34 The term "comber", preceded by the name of the textile fiber or fibers from which it is produced, may be used to designate tangled fibers removed during the combing process of textile fibers.

2. 35 The term "fly" preceded by the textile fiber or fibers from which it is produced, may be used to designate fibers which come off the machines during carding, drawing, or similar textile operations.

2. 36 The term "picker", "picker mote", or "mote", preceded by the textile fiber or fibers from which it is produced may be used to designate matted or tangled masses of fiber resulting from the opening and cleaning of fibers in the opener room of the textile mill.

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2. 37 Whenever any "card", "strips" or "stripping", "comber", "fly", "noils", "picker", "motes" or "sweepings" contain more than 7% but not more than 10% of trash, hull, leaf, stem, pulp, etc., it shall be designated as "waste".

2. 38 When the hull, leaf, stem, pulp, etc., exceeds 10% such filling material shall be designated on the tag as "trash".

2. 39 The term "sweepings" preceded by the name of the textile fiber or fibers shall be used to designate the fibrous sweepings from the floors of the textile mill.

2. 40 The term "noils" preceded by the textile fiber or fibers from which it is produced, may be used to designate the short fibers removed during the combing process.

2. 41 The term "napper" preceded by the textile fiber or fibers from which it is made shall be used to designate the lint removed during the process of raising the face of a cloth.

2. 51 "Cat-tail plant fibers" shall be so designated on the tag.

2. 52 The term "Coconut husk fiber" or "coir" shall be used to designate the fibrous material obtained from the husk or the outer shell of the coconut.

2. 53 The term "jute" by itself shall not be used.

2. 54 The term "jute fibers" shall be used to designate jute of which no prior use has been made.

2. 55 The term "jute pad" may be used to designate a pad made from jute fibers.

2. 56 The term "jute shoddy" shall be used to designate reclaimed used cordage or other used jute material which has been fabricated and used for baling or other purposes.

2. 57 The term, "kapok", shall be used to designate the fibres obtained from the seeds of the kapok tree. The use of the term "silk floss" is prohibited.

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2.58 The term "sisal fibers" shall be used to designate sisal of which no prior use has been made.

2.59 The term "sisal pad" may be used to designate a pad made from sisal fibers.

2.60 The term "sisal shoddy" shall be used to designate reclaimed used cordage or other sisal material which has been fabricated and used for baling or other purposes.

2.61 The term "palm fibers" shall be used to designate the fibrous material obtained from the leaf of the palm, palmetto, or palmyra tree.

2.62 The term "sea grass" shall be used to designate any of the material obtained from maritime plants or sea-weeds.

2.63 Tampico fibers when curled shall be designated as "curled tampico fibers".

2.64 The term "cellulose", "cellulose fiber" or "cellulosic" shall be used to designate cellulosic products containing not more than 4% lignin and 12% pentosans.

2.65 The term "wood fiber pad" shall be used to designate a pad made of cellulose fiber containing more than 4% lignin or 12% pentosans.

2.66 Pads made from "cellulose" may be designated as "cellulose fiber pads".

2.67 The term "steel wool pads" is not permitted. When passed through some form of garnetting machine and carded in layers or sheets, steel fibers may be designated as "steel batting", or "steel fiber pads". When not garnetted they shall be designated as "steel fibers".

2.68 The presence of paper in an article of bedding in lieu of other filling material shall be designated on the tag.

2.69 New paper sheets used for separating or covering felt or wadding, when present in an amount not exceeding 10% by weight of the entire filling material, need not be designated on the tag and the percentage need not be given.

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2. 70 Paper by-products which have been used in the manufacture or processing of other products and subsequently used for the manufacture of edging or other articles of bedding or upholstered furniture shall be classified as "new" and shall be designated on the tag as "all new material consisting of paper by-products".

2. 71 The use of the term "excelsior" is permitted to designate curled wood shreds. The term "wood wool" is prohibited.

2. 72 A pad made of curled wood shreds shall be designated "excelsior pad".

2. 80 When different long-chain synthetic polymers and/or copolymers are joined either chemically or physically to form a filament or fiber (other than acetate and rayon) a disclosure of the polymers and/or copolymers contained therein shall be made in the descending order of their percentage in the fiber by weight, e. g., "polystyrene fibers", "vinylacrylic fibers", or the fibers may be designated as "synthetic fibers".

2. 81 Acetate is a specific term used for man-made fibers, monofilaments and continuous filament yarns composed of acetylated cellulose, with or without lesser amounts of non fiber-forming material.

2. 82 The term "acetate fibers" or the term "cellulose acetate fibers" shall be used to designate filling materials made of acetate.

2. 83 The term "triacetate fibers" may be used to designate man-made fibers and continuous filaments composed of cellulose acetylated to a degree of not less than 95%.

2. 84 The term "acrylic fibers" or the term "synthetic fibers" shall be used to designate a long-chain synthetic polymer which contains not less than 85% acrylonitrile and which is formed into a filament.

2. 85 Azlon is a generic term for fibers or filaments manufactured from modified proteins or derivatives thereof, with or without lesser amounts of non-fiber-forming materials. The term "azlon", "protein fibers" or "synthetic fibers" shall be used to designate azlon fibers.

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2.86 Nylon is a generic term for any long-chain synthetic polymeric amide which has recurring amide groups as an integral part of the main polymer chain, and which is capable of being formed into a filament in which the structural elements are oriented in the direction of the axis.

2.87 The term "nylon fibers" or the term "synthetic fibers" shall be used to designate fibers manufactured from nylon.

2.88 "Polyester" means polymerized reaction product of esters (i. e., a compound formed by the replacement of the acid hydrogen of an acid, organic or inorganic, by a hydrocarbon radical).

2.89 The term "polyester fibers" may be applied to a long-chain synthetic polymer which contains 85% or more of the polymeric esters produced from the reaction of ethylene glycol and terephthalic acid or its derivatives and which is formed into a filament, or the fibers may be designated as "synthetic fibers".

2.90 "Polyether" means a polymerized reaction product of ethers (i. e., hydrocarbons in which one or several hydrogen atoms are replaced by alkoxy groups).

2.91 The term "polyethylene fibers" or the term "synthetic fibers" shall be used to designate fibers made from polymers and/or copolymers of ethylene.

2.92 The term "polystyrene" shall be applied to the product resulting from the polymerization of styrene monomers, or the product may be designated as "synthetic", i. e., "synthetic foam".

2.93 "Polyvinylidene" means a copolymer of vinylidene chloride and other monomers.

2.94 Polyvinylidene fibers manufactured from polyvinylidene shall be designated as "polyvinylidene fibers" or as "synthetic fibers".

2.95 "Rayon" is a generic term for man-made fibers, monofilaments and continuous filament yarns composed of regenerated cellulose, with or without lesser amounts of non fiber-forming materials.

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2.96 The term "rayon fibers" shall be used to designate man-made fibers composed of regenerated cellulose.

2.97 "Urethane" means any ester of carbamic acid.

2.98 The term "vinyl" shall be applied to homopolymers or copolymers of vinyl chloride.

2.99 The term "vinyl fibers" or "synthetic fibers" shall be used to designate fibers or filaments manufactured from vinyl.

2.101 "Glass fibers" shall be so designated. When resin-treated they shall be designated as "resin-treated glass fibers".

2.201 The term "curled hair" may not be used by itself. It shall be designated in conjunction with the name of hair used, e. g., "curled horse hair", or "curled cattle hair".

2.202 When hair is rubberized or resin-treated it shall be so designated. The percentage of rubber or resin need not be stated on the tag. When hair is shredded, it shall be so designated. The kind of hair used shall be stated and the percentages if there are more than one. The use of the term "curled" is not permitted in connection with shredded hair.

2.203 "Tanners wool" shall be so designated. It is classed as "new material" but shall be sterilized by an approved process. The percentage of tanners wool in batting shall be designated on the tag.

2.204 The term "virgin" is permitted only in connection with wool which has never before been used in any manufacturing or other process.

2.205 "Goat hair" shall be so designated.

2.206 "Rubberized curled hair pads" shall be so designated and the kind and percentage of hair used shall be stated.

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2. 207 The kind and percentage of hair shall be designated. It is not necessary to mention whether horse hair is mane or tail hair, but hair from different animals shall be designated. When designated as "curled" it shall be in fact curled hair.

2. 300 "Garnetted Clippings" means any material which has been made into thread, yarn or fabric and subsequently reduced to a fibrous state. When yarns, threads and/or fabric shreds are present in an amount of less than 5%, the material may be designated as "Defabricated Fibers". When fabric or fabric shreds are present in an amount of more than 10%, they shall be designated on the tag as "Shredded Clippings" and the percentages thereof together with the percentage of garnetted clippings shall be stated on the tag; when thread or yarns are present in an amount of more than 10%, their presence shall be designated on the tag as "yarns or threads" and the percentage thereof together with the percentage of garnetted clippings shall be stated on the tag, or the entire material may be designated as "Shredded Clippings". When made in whole or in part of Secondhand material, it shall be designated as "Shoddy".

"Shredded Clippings" means any material which has been made into thread, yarn or fabric and subsequently cut up, torn up, broken up or ground up. When made in whole or in part of secondhand material it shall be designated as "Shoddy".

Rule 2. 300 as amended, eff. March 20, 1959

2. 301 The term "textile by-products" or the name of the specific by-product, unless otherwise provided for in these rules, may be used to designate any of the fibrous by-products produced during the processing of textile fibers up to but not including the spinning of yarns.

2. 302 The kind of fiber contained in "shoddy" as defined by Section 383 of the General Business Law need not be designated, but if designated on the tag the fiber shall be as indicated. If the shoddy is made from more than one kind of fiber, any one kind of fiber is designated on the tag, the name of each fiber and its percentage shall be designated. The term "shoddy" may also be used to designate mixed secondhand material taken from old articles of bedding. Sterilization is required.

2. 303 The term "age" does not necessarily refer to a long period of time. Filling material which has aged rapidly as a result of deterioration or other damage due to heat, moisture, irradiation, fire damage, mildew, etc., shall be designated as "old".

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2.400 The term "down" by itself may be used for the soft undercoating of water-fowl, consisting of the light fluffy filaments grown from one quill-point but without any quill-shaft. It is permitted however, to set forth on the tag the name of the fowl from which the down is obtained, such as, "goose down", "duck down", etc. The presence of loose down fibers in excess of 10% shall be designated as "down fibers".

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2.401 The term "goose feathers" shall be used to designate feathers of any kind of goose, which are whole in physical structure, with the natural form and curvature of the feather.

2.402 The term "duck feathers" shall be used to designate feathers of any kind of duck, which are whole in physical structure, with the natural form and curvature of the feather.

2.403 The term "waterfowl feathers" may be used to designate any mixture of goose and duck feathers.

2.404 The term "turkey feathers" shall be used to designate feathers of any kind of turkey, which are whole in physical structure.

2.405 The term "chicken feathers" shall be used to designate feathers of any kind of chicken, which are whole in physical structure.

2.406 The term "feathers" shall not be used alone.

2.407 The term "feathers", by itself, does not include crushed or chopped quill feathers, or stripped, chopped, crushed or broken feathers, or feather fibers.

2.408 Broken feathers in excess of the amount allowed as tolerance by Rule 6.1 shall be designated on the tag and the name of the feathers shall be stated, e. g., "broken chicken feathers".

2.409 The term "Chopped feathers" in conjunction with the name of the fowl from which the feathers came shall be used to designate feathers which have been processed through a chopping machine which has cut the feathers into small pieces, e. g., "chopped duck feathers". The term "chopped feathers" shall not be used alone.

2.410 The term "crushed feathers" in conjunction with the name of the fowl from which the feathers came shall be used to designate feathers which have been processed through a so-called curling machine which has changed the original form of the feathers, but has not removed the quill, e. g., "crushed duck feathers". The term "crushed feathers" shall not be used alone.

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2.411 The term "stripped feathers" in conjunction with the name of the fowl from which the feathers came shall be used to designate feather barbs stripped from the main stem or quill but not to the extent of separating the barbs into feather fiber, e. g., "stripped goose feathers". The term "stripped feathers" shall not be used alone.

2.412 The term "feather fibers" in conjunction with the name of the fowl from which the fibers came shall be used to designate any barbs of feathers separated by any process from the quills, but free from the quills, e. g., "chicken feather fibers".

2.413 "Quill" shall mean the main shaft or axis of a feather and "quill feather" shall mean a flight feather or tail feather.

2.414 Feather mixtures shall be designated by the name, character and percentage of each material used or the entire mixture shall be designated by the name of the lowest grade of material used. The grades of materials in descending order are as follows: goose down, duck down, goose feathers, duck feathers, turkey feathers, chicken feathers.

2.500 "Foam" means a polymerized material consisting of a mass of thin-walled cells produced chemically or physically. The term "foam" by itself shall not be used.

2.501 A foam product shall be designated on the tag as "foam" together with the name of the organic base from which it is made, e. g., "latex foam rubber", "urethane foam", "vinyl foam"; or, when made from "urethane", "vinyl" or any other synthetic organic base, it may be designated on the tag as "synthetic foam".

2.502 The term "polystyrene foam" shall be used to designate foam produced during the polymerization of a styrene monomer or the product may be designated as "synthetic foam".

2.503 The term "urethane foam" shall be used to designate a cellular urethane product which is created by the interaction of an ester or an ether and a carbamic acid derivative, or the product may be designated as "synthetic foam". However, below the "date of delivery" line on the tag, the term "polyether foam", or "polyester foam" or "polyurethane foam" may also appear.

Rule 2.503 as amended, eff. February 4, 1958

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2.504 The term "vinyl foam" shall be used to designate a foam produced from vinyl or the product may be designated as "synthetic foam".

2.505 The term "rubber" shall apply to the following synthetic rubber-like materials as well as to natural rubber: chloroprene, styrene-butadiene copolymers, butadiene-acrylonitrile copolymers, polymerized isobutylene, with or without comonomers present, and thioplasts (any of the polysulfide rubbers consisting of organic radicals linked through sulfur). The term "rubber products" is not permitted on the tag.

2.506 "Latex foam rubber product" means a foam product made from rubber latex which previously has not been coagulated or solidified.

2.507 The use of one of the terms set forth in Rule 2.501 above without further modification shall be used to designate a foam product consisting of not more than two inserts of unlaminated prime material for attaining desired height, not more than one vertical splice in every three square feet of top surface area, except for T's and U's, but not more than two vertical splices regardless of top surface area excluding those permitted for T's and U's, and not more than one vertical splice in every three linear feet of vertical side-walls or in lieu thereof in each corner, excepting side-walls that are irregular in contour in which case the number of splices shall be subject to the approval of the Commissioner.

2.508 The term "molded" may precede the terms set forth above whenever all of the foam product has been made in the mold in the shape in which it is intended to be used.

2.509 The term "pieces" shall follow the terms set forth above whenever the foam product consists of more pieces or otherwise fails to conform to the requirements set forth in Rule 2.507 above but shall not apply to a foam product which has been subjected to a shredding process.

2.510 The term "shredded" shall precede or follow the terms set forth above whenever the foam product has been subjected to a shredding process.

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2.511 When cement is used to put together shreds or pieces of a foam product whether or not this is done in a mold, the term "cemented" may be used, e. g., "cemented shredded latex foam rubber", "cemented urethane foam pieces". The term "molded" shall not be used.

2.512 A covering made of latex foam rubber, or of any foam product, not exceeding one-eighth inch in thickness shall not be stated on the tag. Below the "date of delivery" line it is permissive to carry a statement, such as "covered with latex foam rubber". This provision shall apply only to an article that is not encased in another covering regardless of the composition of that covering unless it shall be a transparent wrapper which may be opened for the examination of the article. The contents of the article, however, shall be stated on the tag regardless of whether it is or is not encased in another covering.

2.513 When a fabric-topped foam product or sponge used as a cover for an article of bedding is in excess of 10% of the weight of the entire filling material, it shall be stated on the tag and its percentage given.

2.514 "Sponge rubber products" means sponge products made from rubber which has previously been coagulated or solidified.

2.515 "Sponge rubber products" shall be designated on the tag as follows: (a) "Sponge rubber" - The use of this term shall be mandatory for a sponge rubber product consisting of not more than two inserts of unlaminated prime material for attaining desired height, not more than one vertical splice in every three square feet of top surface area excluding those permitted for T's and U's, and not more than one splice in every three linear feet of added side-walls or in lieu thereof in each corner, excepting side-walls that are irregular in contour in which case the number of splices shall be subject to the approval of the Commissioner.

2.516 The term "molded sponge rubber" may be used to designate a sponge rubber product which has been molded into a form in which it has been intended to be used.

2.517 The term "pieces" shall follow the term "sponge rubber" whenever a sponge rubber product consists of pieces, or otherwise fails to conform to the requirements set forth in Rule 2.515 but shall not apply to a sponge rubber product which has been

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subjected to a shredding process.

2.518 The term "shredded" shall precede or follow the term "sponge rubber" whenever a sponge rubber product has been subjected to a shredding process.

2.519 When cement is used to put together shreds or pieces of a sponge rubber product whether or not this is done in a mold, the term "cemented", may be used, e. g., "cemented sponge rubber pieces", "cemented shredded sponge rubber". The term "molded" shall not be used.

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FELT

RULE 3

RULE 3 - Felt

3.1 Felt means material that has all been carded in layers or sheets by a garnett or felting machine.

3.2 "Felt" does not include felt scraps or repicked felt.

3.3 Even though material has previously been carded in layers or sheets, if it is not readily distinguishable from unfelted material, it shall not be designated as "felt".

3.4 The term "felt" or "felted" by itself shall not be used but shall be combined with the name of the material from which it is made, e. g., "blended cotton felt", "wool felt", "jute felt", etc. The use of the term "batting" instead of "felt" is permissible.

3.5 The terms "felted textile by-products", "felted textile wastes", "felted blended fibers", "felted defabricated fibers" may be used. The kind of fibers need not be designated, but if designated on the tag, the fibers shall be as indicated. If the material is made of more than one kind of fiber and one fiber is designated on the tag, the name of each fiber and its percentage shall be designated.

3.6 Felt made of mixtures of any of the following: staple cotton, cotton linters, or cotton by-products, shall be designated on the tag as "blended cotton felt".

3.7 Felt made entirely of staple cotton shall be designated on the tag as "staple cotton felt".

3.8 Felt impregnated with vinyl or any other resin shall be designated as "resin-treated felt", e. g., "resin-treated blended cotton felt".

RULE 4 TAGS, GENERAL REQUIREMENTS

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RULE 4. Tags, General Requirements

4.1 The term "tag", "tags", "tagged", or other similar term, unless otherwise specified in these rules, refers to the tag required by Article 25-A of the General Business Law to be affixed to every article of bedding as set forth in Section 385 of the Law.

4.2 A tag made of cloth or other material of like durability from which the filling flakes out when the tag is abraded shall not be used.

4.3 Tags shall be at least six square inches in area, exclusive of the portion required to attach these tags to the articles, unless the Commissioner otherwise permits.

4.4 A tag shall be firmly and conspicuously attached to the outside of the article.

4.5 All mandatory information required by law or by these rules to appear on the tag shall be in capital letters at least 1/8 inch high.

4.6 Tags shall be printed, typed or stamped with black ink only.

4.7 Nothing shall be printed or written on the back of the tag. Nothing shall be affixed to the tag.

4.8 No advertisement or insignia shall appear on the tag.

4.9 It is permitted to use two lines below the "date of delivery line" on the tag to indicate size, grade, quality, brand, catalogue number, price, etc.

4.10 Information appearing below the date of delivery line on the tag or elsewhere on the article to which the tag is attached, or on any container, wrapper, label, labeling or tag other than the bedding law tag accompanying the article, shall not contradict any statement required by law to appear on the tag.

4.11 No term, designation, or pictorial device which is false or which might tend to mislead or deceive the public as to the material content, composition, or construction of an article of bedding or which is deceptive in any other material respect, shall be used on any tag, including tags not required by Section 385 of the

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TAGS, GENERAL REQUIREMENTS

RULE 4

General Business Law, or on any label or labeling affixed to or accompanying such article.

4. 12 No handwriting is permitted on any tag except on yellow tags for renovated articles and on white tags to show date of delivery of new articles.

4. 13 Responsibility for properly designating the filling material used in an article is upon the manufacturer of the finished article and upon any person who tags or retags such article.

4. 14 Advertising tags on second-hand articles shall be colored.

4. 15 A person having establishments at more than one location in one city or at more than one city in the state may designate on the tag as the "address of the person", the address of the establishment or office within the state, at which such person, in writing, shall agree to accept service of legal processes issued by any court within the state for a violation of any provision of Article 25-A of the General Business Law or any rule supplemental thereto.

4. 16 Tags, in addition to conforming to Subdivision 2 of Section 385 of the Law, shall also have a minimum thread count of 68 X 72.

Rule 4. 16 as added June 30, 1958

RULE 5 ARTICLES OF BEDDING, TAGGING OF

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RULE 5. Articles of Bedding, Tagging Of

5.1 If an article of upholstered furniture would not be complete without cushions, a tag shall be attached to the body of the article. The tag shall designate the number of cushions and the names of the materials used for filling the cushions as well as the materials used in the body of the article.

5.2 Mattresses made in more than one part shall have a tag attached to each part, unless fastened together by a slide fastener or other means to comprise one unit. The tag on such unit shall designate the number of component parts and the mattress shall be shipped as one unit. If the articles are shipped in separate parts, each part shall be tagged.

5.3 Rubber mattress cores and quilted mattress tops and side walls, contained in a carton, need not be tagged providing a tag is attached to the carton.

5.4 Bed pads or mattress protectors containing filling material shall be tagged.

5.5 Tags may be attached to the bottoms of slip seats or other lightweight articles. They may also be attached to the backs or bottoms of upholstered dining room or bedroom chairs but they shall not be attached to the bottoms or backs of divans, sofas, love seats, day-beds, davenports or studio couches.

5.6 Upholstered wood furniture stripped to the frame and rebuilt of all new material including new springs, webbing, etc., may be tagged as a new article. The law does not apply to the wood frame and it does not have to be sterilized. If, however, the wood frame contains vermin it shall not be used unless first treated to kill the vermin.

5.7 If articles of furniture and cushions are recovered only or merely require repairs to the frame without the addition of or the disturbance or exposure of any filling material, they may be repaired or re-covered without the article being sterilized. However, they shall be tagged with a yellow tag and they shall be marked "Repaired only - Filling Not Disturbed or Exposed" and after "Date Sterilized" the word "Not" shall be inserted.

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ARTICLES OF BEDDING, TAGGING OF

RULE 5

5.8 Wood furniture which is not upholstered except for detachable cushions which are a part of the complete article, shall have a tag attached to the body of the article, which tag shall designate the number of cushions and the names of the filling materials used therein.

5.9 Upholstered furniture with a detachable cushion shall have the tag securely attached to the top at the front of the platform where it may be clearly visible when the front of the cushion is raised.

5.10 Upholstered furniture without a detachable cushion shall have the top of the tag securely attached to the front of the bottom of the article in such position that the tag is clearly visible.

5.11 Any cushion and chair back, when securely attached to each other, require only one tag which shall read "2 pieces". If not so attached, each cushion shall be tagged.

5.12 Electric comforters when filled with soft filling material shall be tagged.

5.13 In addition to the usual and customary meanings of the terms "quilt" and "comforter" as used in section 383 of the General Business Law, such terms shall be deemed to include any sleeping bag, baby carriage cover, beach roll or article of similar character, when containing filling material.

5.14 Miniature upholstered furniture, if for display only, need not be tagged.

5.15 Upholstered headboards shall be tagged. Headboards when not upholstered need not be tagged.

Rule 5.15 as amended, eff. March 20, 1959

5.16 Upholstered headboards with metal frame attached, when sold as one unit, need bear only one tag; however, when sold separately each part shall be tagged.

5.17 Upholstered slip seats shall be tagged.

5.18 Upholstered beach chairs or beach rolls shall be tagged.

5.19 Upholstered dividers (e. g. a wall-like partition separating the head regions of a bed) shall be tagged.

5.20 Upholstered box springs shall be tagged.

RULE 5 ARTICLES OF BEDDING, TAGGING OF

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5.21 Wickerwork furniture with detachable cushions as part of a complete article shall be tagged by attaching the tag to the body of the article. The tag shall designate the number of cushions and the name of the material used for filling the cushions. If seat cushions and back cushions are filled with different materials, the tag shall designate the number of each such cushion and the materials used for filling them.

5.22 Twin studio couches require two tags: One tag designating the contents of the body, the number of cushions and their filling; the other tag to be placed on the separate mattresses.

5.23 A studio couch, consisting of a metal construction with attached spring and a separate mattress, must bear two tags, one for the spring and one for the mattress.

5.24 Single studio couches require only one tag.

5.25 Metal articles of upholstered furniture rebuilt with all new filling material may be tagged as new.

5.26 A metal bed consisting of one or more pieces shall require but one tag. The tag shall designate the number of pieces unless otherwise provided for in these rules and it shall be attached by wire and lead seal.

5.27 Metal bed frames shall be tagged. An imprint of the license number and the legend "All New Material" on the frame shall be deemed to be a tag.

5.28 Metal chair frames which are not upholstered do not have to be tagged. However, if a detachable cushion is part of the chair or bench, the filling contents of the cushion shall be designated on a tag affixed to the cushion.

5.29 Metal gliders, metal couches and substantially similar articles with detachable cushions as part of the complete article shall be tagged by attaching the tag to the body of the article. The tag shall designate the number of cushions and shall designate the names of the materials used for filling the cushions. The tag shall also designate the metal, if new, as "new metal". If the cushions are filled with different materials, the tag shall indicate the number of each type of cushion and shall designate the materials used for filling it.

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5.30 Metal cradles shall be tagged.

5.31 Second-hand spring units shall be tagged with a yellow tag.

5.32 New spring units need not be tagged unless the springs are covered with filling material.

5.33 The presence of an innerspring unit in an article of bedding or upholstered furniture shall be designated on the tag.

5.34 Wooden frames, beds, sofas, divans, or couches, with metal spring assemblies shall be tagged.

5.35 Office furniture which is upholstered in whole or in part, excepting swivel chairs, shall be tagged.

5.36 Pillows, cushions, comforters, bed pads, etc. made of all new material and used in doll cradle sets need not be tagged (1) if they do not exceed 6 inches in their greatest dimension, or (2) if they have permanently affixed to them a figure, statuette, or doll and do not exceed 10 inches in their greatest dimension. When sold as a set, only one tag is required, provided the tag designates the number of pieces in the set. If a tag is required and the items are sold separately, each item shall be tagged.

5.37 Cushions or pads of kitchen chair sets shall be tagged separately unless they are affixed to each other in which case each set may carry but one tag.

5.38 All extra cushions not an essential part of the complete article, shall be tagged separately.

5.39 Fancy cushions which do not exceed 10 inches in greatest dimension and which are not intended for use for sleeping, resting or reclining purposes shall not be deemed to be "articles of bedding". The term "fancy cushions" is construed to mean cushions to which "figures", "statuettes", "dolls" and so forth, are permanently affixed in such manner as to preclude them from being used for resting, sleeping or reclining purposes.

5.40 Cushions or pillows used with any other article shall be separately tagged unless otherwise provided for in these rules.

RULE 5	ARTICLES OF BEDDING, TAGGING OF	1957
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5.41 Cushion life preservers shall be tagged.

5.42 Auto seat cushions with soft filling material shall be tagged.

5.43 High chair sets consisting of seat and back cushion or pad may be sold together with only one tag, but the tag shall designate the number of cushions and pads. If seat and back cushions are sold separately, each cushion shall be tagged.

5.44 Cushions measuring more than 6 inches in any dimension shall be tagged unless otherwise provided for in these rules.

5.45 Back rests containing filling material shall be tagged.

5.46 Safety seats for children's use in automobiles, when containing filling material and of such design that they may be used in the home or elsewhere shall be tagged.

5.47 Chair pads, sanitary chair pads, and babies' quilted pads shall be tagged. The presence of a wooden board separating two layers of filling material need not be designated.

5.48 Quilted toilet seat covers shall be tagged.

5.49 Hammocks when filled in whole or in part with filling material shall be tagged.

5.50 Hassocks shall be tagged.

5.51 Massage tables that are wholly or partly upholstered shall be tagged.

5.52 Baby bottle holders that contain filling material shall be tagged, unless exempted by the Commissioner.

5.53 Doll pillows and pads measuring more than 6 inches in any dimension used in doll sets shall be tagged.

5.54 Metal toy beds, metal toy bed springs and upholstered doll carriages with one or more inside dimension of more than 24 inches shall be tagged.

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5.55 Only one tag is required to designate the contents of a pillow and mattress set used in doll beds, providing the number of pieces is designated on the tag and the pieces are not sold separately.

5.56 Toy chests with padded tops, which can also be used as benches, shall be tagged.

5.57 Edging shall be tagged by the manufacturer of the edging.

5.58 The law is fully applicable to the rental of beds, mattresses, adjustable beds, invalid chairs, cushions, etc., customarily used by invalids. It is not intended to and it does not apply to renting out for a few hours of folding chairs used by caterers and undertakers, etc.

5.59 Trapunto embroidery need not be tagged, but if used to cover a filled article, the article shall be tagged.

5.60 Whenever an article is sterilized, the tag affixed to that article must read "contents sterilized" or "material sterilized" and it must also bear the sterilization permit number assigned to the sterilizer by the Commissioner.

5.61 Articles of bedding or upholstered furniture which are rented out must bear a tag stating "~~SECOND-HAND~~CONTENTS UNKNOWN-NOT STERILIZED".

5.62 Imported articles should be tagged by the foreign person or firm licensed by the Division of Bedding. If not so tagged, the importer shall tag the article in compliance with the Law. If the importer does not know the contents of the article, or whether the article is new or second-hand, he shall attach a yellow tag reading "ALL SECOND-HAND MATERIAL-CONTENTS UNKNOWN-NOT STERILIZED". If he sterilizes the article by a process approved by the Industrial Commissioner, he may strike out the word "NOT" and after the word "STERILIZED", he shall insert the date of sterilization. He shall also state the sterilization permit number.

5.63 Any new article which has not been used for any purpose and which has the original tag attached thereto may be returned within 30 days and shall be deemed to be a new article and may be sold at any time thereafter as a new article, but if such article has actually been used or has the tag removed, it can be

RULE 5 ARTICLES OF BEDDING, TAGGING OF

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re-sold only as a second-hand article and shall be tagged "SECOND-HAND-CONTENTS UNKNOWN". The term "alteration or correction" as used in the definition of "new" in Section 383 of the General Business Law, means that articles with the original tags attached thereto may be returned for alteration or correction of errors of manufacture within 30 days and when such alterations or corrections are completed the article may be returned to the original purchaser without sterilization but such article may not be sold as a new article.

5.64 Every remade or renovated article not for sale but for return to the owner for his own use shall have a tag approved by the Commissioner affixed to it. This tag shall be attached to the article upon its receipt and the name and address of the owner shall immediately be entered on the tag. Any such article wherein the filling material(s) is disturbed or exposed during making or renovating shall be sterilized by a process approved by the Commissioner. The presence of added material and whether it is new or second-hand and the amount used in pounds shall be designated on the tag. Immediately after the article has been remade or renovated, if no additional material has been used, the word "none" shall be entered on the tag. There shall also be entered the date of sterilization of the material, the sterilizing permit number and the license number of the remaker or renovator.

5.65 Second-hand feathers and down, when sold by junk dealers directly for export, or to other dealers for export, or to feather processors, shall be tagged with a number 8 tag which shall read "Second-hand, Contents Unknown, Not Sterilized." When sold to a feather processor they shall be sterilized by such processor by a process approved by the Commissioner.

Rule 5.15, new rule, eff. February 4, 1958

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TOLERANCE

RULE 6

RULE 6. Tolerance

6.1 To allow for unintentional variations, a variation not in excess of ten (10%) percent by weight from the amount stated on the tag shall not be considered as misleading.

6.2 No tolerance shall be allowed to diminish the amount of any filling material in an article of bedding by more than 10% of the amount stated on the tag.

6.3 The 10% tolerance is allowed only where specifically permitted in these rules and also for the purpose of adjusting unintentional errors due to processing difficulties in arriving at exact percentages. Tolerance is not intended to permit deliberate admixture of inferior materials.

6.4 The terms "all", "pure", "100%", or terms of similar import are permitted only if the material is as stated. No tolerance is allowed where such terms are used.

RULE 7

STERILIZATION

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RULE 7. Sterilization

7.1 Sterilizing processes are subject to inspection by the Commissioner.

7.2 A permit must be obtained for each separate sterilizing process approved.

7.3 All approvals of sterilizing processes shall be conditioned upon the person or firm to whom the certificate of approval is issued, keeping an accurate record of the name and amount of material and the date of sterilization of the materials sterilized for any person or firm other than the one to whom the certificate of approval was granted. Such record shall be open to examination by, and a copy of such record shall be furnished on demand of, the Commissioner.

7.4 It is not mandatory that each establishment have its own sterilizer. It is permissive to have material sterilized by any concern having a certificate of approval for a sterilizing process. In every case the permit number of the approved process used must be designated on the tag.

7.5 Sterilizing processes are approved as germicides only. Processes described below which are preceded by an asterisk (*) are both germicides and insecticides.

7.6 Any process used for cleaning and curing feathers, cleaning and curling hair, cleaning wool, or cleaning or curling any other material derived from an animal or fowl, shall not be deemed to afford proper and thorough sterilization unless such process effectually removes all disease bearing spores or disease breeding germs or bacilli and all dirt, filth, vermin and extraneous organic matter.

7.7 *Steam Pressure - A steam pressure process, when approved by the Commissioner, may be used to sterilize any article of bedding or filling material. Material subjected to treatment by live steam for 30 minutes at a pressure of 15 pounds or for 20 minutes at a pressure of 20 pounds. Chamber must be steam tight, sufficiently strong to stand the pressure applied, be equipped with a visible steam gauge and necessary valves.

7.8 *Streaming Steam - The streaming steam process, when approved by the Commissioner, may be used to sterilize any article of bedding or material which is not compressed to a degree in excess of the usual compression of cotton felt. Two applications of streaming steam maintained for one hour each with an interval of at least 6 hours and not more than 24 hours between each application. Chamber must have outlet valves at top and bottom but room should otherwise be steam-tight and provision made for draining off condensed steam. Outlet valves must be kept open to prevent pressure in chamber.

7.9 Formaldehyde and Moisture - Formaldehyde gas in the presence of moisture, when approved by the commissioner, may be used to sterilize either loose materials or completed articles when the filling is not compressed to a degree in excess of the usual compression of cotton felt. Completed articles shall be so spaced as to allow free circulation of gas; not less than 4 inches on all sides. Formaldehyde gas to be generated from 1 pint of formaldehyde solution (U. S. P.) for each 1,000 cubic feet of space in the sterilizing chamber. Materials or articles shall be exposed to formaldehyde gas and moisture for at least 10 hours. The minimum quantity of formaldehyde permitted is 2 ounces regardless of how small the room is. The chamber must be gas tight and equipped with air inlet and outlet and with other means, if necessary, to facilitate the removal of gases and fumes after sterilization is completed. Tight closure gates or valves must be provided for both inlet and outlet. Shelves shall be of lattice construction. The exhaust from the sterilizing room or cabinet shall be carried by a duct to a chimney flue extending above the roof of the building or the exhaust duct shall be extended to a point above the roof. This process is the one most generally used for sterilizing secondhand material. It is not suitable, and will not be approved, for sterilizing raw feathers, hair or wool.

7.10 *Hot Air - A hot air sterilizing method, when approved by the Commissioner, may be used for sterilizing material which is not compressed to a degree in excess of the customary compression of cotton felt. Completed articles shall be so spaced as to allow free circulation of hot air; not less than 4 inches on all sides. The air in the chamber must be heated to at least 250 degrees Fahrenheit for a period of at least 2 1/2 hours. The department may approve a shorter period (not less than 1 hour) at a like temperature when the material is loose and opened, so as to permit easy penetration of hot air. Temperature shall be generated by means of properly guarded electric heating units or by steam pipes

RULE 7

STERILIZATION

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carrying live, dry steam of sufficient heating capacity. An indirect gas heating system may be used when so arranged that the material cannot be ignited by the gas flame.

7. 11 *Caustic Process - A caustic solution process, when approved by the Commissioner, may be used for sterilizing second-hand metal (other than aluminum or magnesium) used in springs, cribs, cots, etc. A caustic solution of 1/2 lb. of caustic soda to each gallon of water shall be used. The metal must be completely submerged in a cold solution for a period of at least 24 hours but if the solution is brought to the boiling point this period may be reduced to 3 hours. After sterilization, all metal articles shall be thoroughly washed with clean water to remove all caustic solution. The process shall be so located and guarded as to prevent any person from unintentionally coming into contact with the caustic solution. The solution must be used in a tank impervious to the action of the solution. In using this process, all plugs or obstructions shall be removed so as to permit free passage of the solution to the inside of all tubing or other hollow or concealed spaces.

7. 12 Second-hand Latex foam rubber may be sterilized by the formaldehyde method.

7. 13 All second-hand material shall be sterilized before going through a picker or a garnetting machine.

7. 14 All unsterilized second-hand articles or materials shall be separately stored and completely segregated from new or clean articles or materials. No new or clean materials shall be kept or stored within a room or space used for sterilizing second-hand materials. Sterilizing chambers shall not be used for storage purposes.

7. 15 Any other method of sterilization not herein mentioned may be used only if approved by the Commissioner.

7. 16 All rooms, chambers, containers, auto-claves, tanks, boilers, ducts, valves, gauges, heaters and all auxiliary equipment necessary or incidental to properly sterilizing filling material or metal by an approved sterilizing process shall be maintained at all times in good repair and in proper working condition.

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STERILIZATION

RULE 7

7.17 Renovation of Secondhand Feather Pillows - An ultraviolet irradiation process together with ozone gas, when approved by the Commissioner, may be used to sterilize the contents of second-hand feather pillows for renovation only, i. e. not for sale but for return to the owner. The feathers must be removed from the old ticking and sterilized in the loose state. The loose feathers must be agitated, dusted and exposed to an effective concentration and intensity of ultraviolet rays for at least 4 minutes with an additional exposure to ozone gas of at least 2 minutes. The contents of each renovated pillow must be sterilized separately. After sterilization the feathers should be enclosed in a new ticking unless the old ticking has been laundered. The ultraviolet tubes should be kept clean and should be replaced periodically in order to maintain effective radiation intensities. This process shall not be approved for use in establishments where there is a possibility of formation of poisonous phosgene gas by the interaction of ozone with carbon tetrachloride or other chemical compounds, unless adequate mechanical exhaust ventilation is provided so that these vapors will be vented to the outside air.

RULE 8

TESTS AND SAMPLINGS

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RULE 8. Tests and Samplings

8. 1 For the purpose of obtaining a sample of material other than feathers or down, for test or analysis preliminary to prosecution, the inspector shall take a representative sample at random. If the sample is of feathers or down, or feather and down mixture, he shall take material from at least 3 different parts of the article, thoroughly mix the material and then take a representative sample at random from such mixture. All samples shall be divided into 2 parts. Each part shall be placed in a clean envelope and sealed in the presence of the person in whose possession the material was found. If an analysis is deemed necessary, 1 part shall be transmitted to the laboratory maintained by the Department of Labor for examination, test or analysis. Day and hour of its receipt at the laboratory shall be indicated on the envelope by the person receiving it. One part shall be given to the maker or preparer of the material, if found on his premises or if he is present when the sample is taken, but if found off the premises of the maker or preparer or if he was not present when the sample was taken, such part shall be promptly transmitted to the bedding division and shall there be held subject to call of the maker or preparer but need not be held more than 60 days; or the inspector may deliver 1 part to the maker or preparer.

The part of the sample transmitted to the laboratory shall be kept sealed until the analyst is ready to test it, at which time he shall note on the envelope the day and hour when the seal was broken. If the sample is feathers, or down and feathers, the analyst shall again thoroughly mix the sample and quarter it. One such quarter, or as much thereof as can be accurately separated in 3 hours, shall be analyzed. An analysis made in accordance with the foregoing shall be deemed an analysis of the entire article or material used therein. After analysis the remainder of the sample shall be sealed by the analyst who shall put on the envelope his name and the day and hour of sealing. Such seal shall not again be opened except in court or until the matter has been otherwise disposed of.

8. 2 Doubtful feathers shall be proportioned to the ratio of identifiable feathers.

8. 3 Broken feathers when present in excess of 10% shall be separately named in the report of analysis. When present but not in excess of 10% they shall be treated in the same manner as doubtful feathers.

8.4 Feathers and Downs - The cleanliness of feathers and down, shall for the purposes of administering article 25-A of the General Business Law, be determined by either of the following tests or their reasonable equivalents:

A. The oxygen test shall be made by the following procedure: "Ten grams of feathers and down are transferred to a large Mason jar and 1 liter of distilled water at room temperature is added. The material is thoroughly wetted by shaking and placed in an incubator at 25°C. for 1 hour. It is then filtered through 19-cm. coarse filter paper, and 100ml. of filtrate are pipetted into a porcelain casserole. The liquid is made just acid to litmus with 6 N sulfuric acid and 1 ml. of acid is added in excess. The solution is titrated in the cold with 0.1 N potassium permanganate by adding 2-drop portions and then stirring until a pink color persists for 60 seconds.

The number of milliliters of potassium permanganate used is noted, and calculated to number of grams of oxygen per 100,000 grams of sample (oxygen number). 1 ml. of 0.1 N KMnO_4 = 0.8 mg. of oxygen = 80 oxygen number."

B. The water-soluble ammonia content shall be determined by the following procedure: "Five grams of feathers and down are boiled 20 minutes in 200 ml. of distilled water containing 1 ml. of 0.1 N hydrochloric acid, then filtered and washed with hot water. The combined filtrate and washings are evaporated on a hot plate to a volume of 4 to 6 ml. The residue is washed into a graduated Kramer-Gittelmantube, cooled, and diluted with water to 12.5 ml. A 5-ml. aliquot is pipetted into a large culture tube, 250 x 25 mm. in diameter, 5 drops of caprylic alcohol are added to prevent foaming, and then 7 ml. of saturated borax solution. The culture tube is immediately inserted into the steam-distilling apparatus (figure 1), and the liberated ammonia is distilled over through a water-cooled block-tin condenser into a 50 ml. Erlenmeyer flask containing 10 ml. of 2 per cent boric acid and 5 drops of methyl red indicator (0.05 per cent methyl red in 95 per cent ethyl alcohol). The culture tube is kept in the apparatus for 5 minutes after the top of the tin condenser has become too hot to touch. During

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TESTS AND SAMPLINGS

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the last 2 minutes the Erlenmeyer flask is lowered so that the end of the condenser is above the boric acid solution.

The solution is titrated with 0.01 N sulfuric acid, using a microburet, until the color is a deep pink. It is then heated to boiling, and the titration is continued until a full red color is reached. The number of milliliters of sulfuric acid used is noted.

A blank determination is made using water and the reagents alone. The milliliters of sulfuric acid obtained with the blank are subtracted to get the corrected volume of sulfuric acid. Calculations: $\text{Ml. of } \text{H}_2\text{SO}_4 \text{ (corrected)} \times 0.0085 = \% \text{ of } \text{NH}_3 \text{ in sample.}$

C. Conclusion: Material having either an oxygen number above 20 or a water-soluble ammonia content above .020% shall be deemed to be "not properly clean".

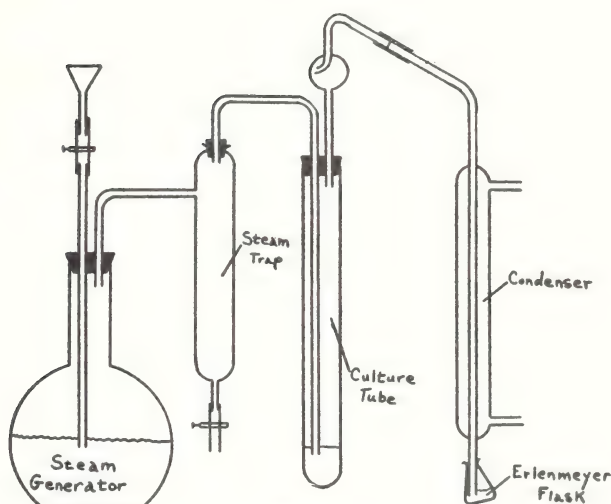


Figure 1

8.5 Hair and Wool - The cleanliness of hair and wool, shall for the purpose of administering article 25-A of the General Business Law be determined by the following test or its reasonable equivalent:

Allow 1/2 ounce sample of the material to stand in 1 quart of freshly boiled but cold water for at least 2 hours and then thoroughly agitate the material. Strain off the water through clean muslin into a clean container. There shall be no visible sediment nor cloudiness and no cloudiness or offensive odor shall develop in the wash water when allowed to stand for 72 hours in an unsealed container at room temperature not below 70 degrees Fahrenheit. (Reasonably equivalent tests may be used only if approved by the Commissioner).

8.6 Tests for spores, disease germs or harmful bacteria shall be by means of bacteriological examination at the discretion of the Division of Bedding.

RULE 9	RECORDS OF SECOND-HAND SALES	1959
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RULE 9. Records of Second-Hand Sales

9.1 All dealers in and users of, second-hand filling materials, as defined in Section 383 of the General Business Law shall establish, maintain and preserve for not less than 1 year a separate record with respect to all sales of such materials. Such record shall be open to inspection by the Commissioner and a copy thereof shall be furnished on his

Such record shall show:

- (1) Date of sale.
- (2) Name and amount of material included in each sale.
- (3) Name and address of person or concern to whom material was sold.
- (4) Whether material was sold in bulk or in a re-made article. If the latter, the name of the article is to be stated.

Rule 9.1 as amended, eff. February 4, 1958

No. 1

**White Tag for Articles Made of All New Material Derived
from an Animal or Fowl, Sterilization Required.**

Space to Attach				
DO NOT REMOVE THIS TAG UNDER PENALTY OF LAW.				
May Be Set Forth in 1 or 2 Lines.	ALL NEW MATERIAL CONSISTING OF WOOL BATTING			
Uniform License or Registry Number	<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 50%; text-align: center; padding: 5px;">LIC. NO.</td> <td style="width: 50%; text-align: center; padding: 5px;">PER. NO.</td> </tr> </table>	LIC. NO.	PER. NO.	Permit Number
LIC. NO.	PER. NO.			
States Re- ferred to Here Do Not Use Stamps So Stamp May Cover This Im- printing When Articles Are Not Shipped to These States.	<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 50%; vertical-align: top; padding: 5px;"> (Space for Stamp when required) This article is made in compliance with an act of: Dist. of Col. approved July 3, 1926; Kansas, ap- proved March 1923; Minn., approved April 24, 1929; New Jersey Revised Stat- utes 26: 10-6 to 18. </td> <td style="width: 50%; vertical-align: top; padding: 5px;"> Certification is made that the materials in this article are de- scribed in accord- ance with law. </td> </tr> </table>		(Space for Stamp when required) This article is made in compliance with an act of: Dist. of Col. approved July 3, 1926; Kansas, ap- proved March 1923; Minn., approved April 24, 1929; New Jersey Revised Stat- utes 26: 10-6 to 18.	Certification is made that the materials in this article are de- scribed in accord- ance with law.
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	CONTENTS STERILIZED			
	Sold by JOHN DOE CO., INC. No. 567 Greene St. New York City Date of Delivery.....			

or

Made by
Name..... Address..... Date of Delivery.....

Two lines may be used *below* the "Date of Delivery" line for number, brand, size, price, etc., on all white Tags but such space shall not be used for advertising purposes.

No. 2

**White Tag for Articles Made of All New Material which Is Not
Required to Be Sterilized.**

May Be Set
Forth in 1 or
2 Lines.

Uniform
License or
Registry
Number

States Re-
ferred to
Here Do Not
Use Stamps So
Stamp May
Cover This Im-
printing When
Articles Are Not
Shipped to
These States.

Space to Attach <hr/> DO NOT REMOVE THIS TAG UNDER PENALTY OF LAW. <hr/> ALL NEW MATERIAL CONSISTING OF BLENDED COTTON FELT . - 60% EXCELSIOR 40% <hr/> LIC. NO. <hr/>	
(Space for Stamp when required) This article is made in compliance with an act of: Dist. of Col. approved July 3, 1926; Kansas, ap- proved March 1923; Minn., approved April 24, 1929; New Jersey Revised Stat- utes 26: 10-6 to 18.	Certification is made that the materials in this article are de- scribed in accord- ance with law.
Sold by JOHN DOE CO., INC. No. 567 Greene St. New York City Date of Delivery.....	

or

Made by Name..... Address..... Date of Delivery.....

No. 3

White Tag for Mattresses Made of All New Materials with an Inner Spring Unit Covered with Filling Material Not Required to Be Sterilized Before Use.

Important—If inner spring is covered with hair or wool, space for permit number and statement "CONTENTS STERILIZED" must be provided as in No. 1 tag.

May Be Set
Forth in 1 or
2 Lines.

Uniform
License or
Registry
Number

States Re-
ferred to
Here Do Not
Use Stamps So
Stamp May
Cover This Im-
printing When
Articles Are Not
Shipped to
These States.

Space to Attach	
DO NOT REMOVE THIS TAG UNDER PENALTY OF LAW.	
ALL NEW MATERIAL CONSISTING OF INNERSPRING UNIT COVERED WITH BLENDED COTTON FELT	
LIC. NO.	
(Space for Stamp when required) This article is made in compliance with an act of: Dist. of Col. approved July 3, 1926; Kansas, ap- proved March 1923; Minn., approved April 24, 1929; New Jersey Revised Stat- utes 26: 10-6 to 18.	Certification is made that the materials in this article are de- scribed in accord- ance with law.
Sold by JOHN DOE CO., INC. No. 567 Greene St. New York City Date of Delivery	


or

Made by Name of Manufacturer..... Address..... Date of Delivery.....

No. 4

White Tag for Articles Made of All New Metal Not Required to Be Sterilized. No Filling Material Used.

In place of the word "Spring" substitute "Bassinet," "Cot," "Bed," etc., as may be necessary. When attached to a bed state number of pieces.

	 Space to Attach			
	DO NOT REMOVE THIS TAG UNDER PENALTY OF LAW.			
May Be Set Forth in 1 or 2 Lines.	➤	ALL NEW MATERIAL CONSISTING OF METAL SPRING		
Uniform License or Registry Number	➤	LIC. NO. _____		
States Re- ferred to Here Do Not Use Stamps So Stamp May Cover This Im- printing When Articles Are Not Shipped to These States.	➤	<table border="1" style="width: 100%;"> <tr> <td style="width: 50%; vertical-align: top;"> (Space for Stamp when required) This article is made in compliance with an act of: Dist. of Col. approved July 3, 1926; Kansas, ap- proved March 1923; Minn., approved April 24, 1929; New Jersey Revised Stat- utes 26: 10-6 to 18. </td> <td style="width: 50%; vertical-align: top;"> Certification is made that the materials in this article are de- scribed in accord- ance with law. </td> </tr> </table>	(Space for Stamp when required) This article is made in compliance with an act of: Dist. of Col. approved July 3, 1926; Kansas, ap- proved March 1923; Minn., approved April 24, 1929; New Jersey Revised Stat- utes 26: 10-6 to 18.	Certification is made that the materials in this article are de- scribed in accord- ance with law.
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	Sold by JOHN DOE CO., INC. No. 567 Greene St. New York City Date of Delivery			

or

Made by Name of Manufacturer..... Address..... Date of Delivery
--

No. 5

Yellow Tag for Articles Made of Second-hand Metal. No Filling Material Used. Sterilization Required.

In place of "Spring" use "Bed," "Cot," "Bassinet," etc., as may be necessary. When used on a bed state number of pieces.

<div style="display: flex; justify-content: center; align-items: center; margin-bottom: 10px;"> <div style="width: 20px; height: 20px; border: 1px solid black; border-radius: 50%; margin-right: 10px;"></div> <div>Space to Attach</div> </div>	
DO NOT REMOVE THIS TAG under penalty of law	
ALL SECOND-HAND MATERIAL CONSISTING OF METAL SPRING	
LIC. NO.	PER. NO.
(Space for Stamp when required) This article is made in compliance with an act of: Dist. of Col. approved July 3, 1926; Kansas, approved March 1923; Minn., approved April 24, 1929; New Jersey Revised Statutes 26: 10-6 to 18.	Certification is made that the materials in this article are described in accordance with law. <div style="text-align: center; border: 1px solid black; padding: 5px; margin-top: 10px;"> MATERIAL STERILIZED </div>
Sold by JOHN DOE CO., INC. No. 567 Greene St. New York City Date of Delivery.....	

or

Made by
Name.....
Address.....
Date of Delivery.....

No. 6

Yellow Tag for Articles Made in Whole or in Part of Second-hand Material. Sterilization Required.

May Be Set
Forth in 1 or
2 Lines.

Uniform
License or
Registry
Number

States Re-
ferred to
Here Do Not
Use Stamps So
Stamp May
Cover This Im-
printing When
Articles Are Not
Shipped to
These States.

Space to Attach	
DO NOT REMOVE THIS TAG under penalty of law	
ALL SECOND-HAND MATERIAL	
CONSISTING OF	
SHODDY 75%	
BLENDED COTTON FELT . . 25%	
LIC. NO.	PER. NO.
(Space for Stamp when required) This article is made in compliance with an act of: Dist. of Col. approved July 3, 1926; Kansas, ap- proved March 1923; Minn., approved April 24, 1929; New Jersey Revised Stat- utes 26: 10-6 to 18.	Certification is made that the materials in this article are de- scribed in accord- ance with law. <div style="text-align: center; border: 1px solid black; padding: 5px;">CONTENTS STERILIZED</div>
Sold by JOHN DOE CO., INC. No. 567 Greene St. New York City	

← Permit
Number

or

Name of Manufacturer.....

Address.....

No. 7

**Yellow Tag for Article Remade and Renovated for Customer.
Not For Sale. Date of Sterilization Shall Be Indicated.
When printing the tag the words in parentheses should be
left out.**

Space to Attach	
DO NOT REMOVE THIS TAG	
UNDER PENALTY OF LAW	
<p>This article contains the same material received from the owner, to which has been added* (here state the name and amount of all material added in the re-making.)</p>	
Lic. No. NY-	Per. No. NY
<div style="border: 1px solid black; padding: 5px; text-align: center;"> Space for Stamp when required </div>	<p>This article must not be sold, it is the property of and must be returned to</p>
<p>(Insert here the name and address of owner of article.)</p>	
<p>(REMADE AND RENOVATED BY OR REMADE AND RENOVATED FOR)</p>	
<p>Name</p> <p>Address</p> <p>Date Sterilized</p>	

*If only repairs are made which do not require removal or disturbance of filling material, state here "Repaired only—Filling not disturbed" and after "Date Sterilized," state "Not."

No. 8

Yellow Tag for Articles Sold "As Is" Not Remade nor Renovated.* Sterilization Not Required Unless Exposed to Infectious or Contagious Disease. When used on a second-hand bed sold "as is" the number of pieces need not be stated. .

Space to Attach <hr/> DO NOT REMOVE THIS TAG under penalty of law <hr/> ALL SECOND-HAND MATERIAL CONTENTS UNKNOWN <hr/> * NOT STERILIZED <hr/> Lic. No. NY- **	
Space for Stamp when required	Certification is made that the materials in this article are de- scribed in accord- ance with law.
<hr/> Sold by JOHN DOE CO., INC. No. 567 Greene St. New York City	

*May be sterilized if desired, in which case strike out the word "Not" and after the word "Sterilized" insert the date of sterilization. Article SHALL be sterilized if exposed to contagious or infectious disease.

**Permit number shall be shown if article is sterilized.

No. 9

COMBINATION TAG

For articles made with detachable cushions use the following form and omit reference to Sterilizing when not filled with Down, Feathers, Hair or Wool.

If body of article is not filled, omit reference to body except when the body is made of metal in which case state "BODY—ALL NEW METAL."

For articles made without detachable cushions use tag No. 1 or No. 2 according to the filling material used.

If "SECOND-HAND MATERIAL" is used this form shall be changed to so indicate and a Yellow tag shall be used.

May Be Set
Forth in 1 or
2 Lines.

Uniform
License or
Registry
Number

States Re-
ferred to
Here Do Not
Use Stamps So
Stamp May
Cover This Im-
printing When
Articles Are Not
Shipped to
These States.

Space to Attach	
DO NOT REMOVE THIS TAG UNDER PENALTY OF LAW.	
ALL NEW MATERIAL CONSISTING OF	
BODY	{ CURLED HORSE HAIR 12½% HOG HAIR - - 87½% BLENDED COTTON FELT - 60% CUSHIONS-(2) { DOWN - - - 50% DUCK FEATHERS - 50%
LIC. NO.	PER. NO.
(Space for Stamp when required)	PER. NO.
This article is made in compliance with an act of: Dist. of Col. approved July 3, 1926; Kansas, ap- proved March 1923; Minn., approved April 24, 1929; New Jersey Revised Stat- utes 26: 10-6 to 18.	Certification is made that the materials in this article are de- scribed in accordance with law.
CONTENTS STERILIZED	
Sold by (or made by) JOHN DOE CO., INC. No. 567 Greene St. New York City	
Date of Delivery.....	

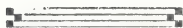
Permit
Number

No. 10

Space to Attach								
DO NOT REMOVE THIS TAG UNDER PENALTY OF LAW.								
May Be Set Forth in 1 or 2 Lines.	ALL NEW MATERIAL CONSISTING OF							
See #9 Tag for Manner of Indicating Fill- ing Materials When Detach- able Cushions Are Included.	WOOD FIBRE PAD							
Uniform License or Registry Number	<table border="1" style="width: 100%;"> <tr> <td style="width: 50%; text-align: center;">Lic. No.</td> <td style="width: 50%; text-align: center;">Per. No.</td> </tr> <tr> <td style="vertical-align: top;"> (Space for Stamp when required) This article is made in compliance with an act of: Dist. of Col. approved July 3, 1926; Kansas, ap- proved March 1923; Minn., approved April 24, 1929; New Jersey Revised Stat- utes 26: 10-6 to 18. </td> <td style="vertical-align: top;"> <table border="1" style="width: 100%;"> <tr> <td style="text-align: center;">Per. No.</td> </tr> <tr> <td> Certification is made that the materials in this article are de- scribed in accord- ance with law. </td> </tr> <tr> <td style="text-align: center;"> CONTENTS STERILIZED </td> </tr> </table> </td> </tr> </table>	Lic. No.	Per. No.	(Space for Stamp when required) This article is made in compliance with an act of: Dist. of Col. approved July 3, 1926; Kansas, ap- proved March 1923; Minn., approved April 24, 1929; New Jersey Revised Stat- utes 26: 10-6 to 18.	<table border="1" style="width: 100%;"> <tr> <td style="text-align: center;">Per. No.</td> </tr> <tr> <td> Certification is made that the materials in this article are de- scribed in accord- ance with law. </td> </tr> <tr> <td style="text-align: center;"> CONTENTS STERILIZED </td> </tr> </table>	Per. No.	Certification is made that the materials in this article are de- scribed in accord- ance with law.	CONTENTS STERILIZED
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Per. No.								
Certification is made that the materials in this article are de- scribed in accord- ance with law.								
CONTENTS STERILIZED								
States Re- ferred to Here Do Not Use Stamps So Stamp May Cover This Im- printing When Articles Are Not Shipped to These States.	Change to Show Actual Contents.							
Cut here	When Necessary Permit Number							
Sold by								
Name.....								
Address.....								
Date of Delivery.....								
.....								
Made by								
Name.....								
Address.....								

The foregoing applies only to white tags. If only the vendor's name is desired the tag may be cut off at the heavy black line and not elsewhere.

BEDDING LAW
OF
NORTH CAROLINA



North Carolina State Board of Health

BEDDING LAW

(ARTICLE 16 OF THE GENERAL STATUTES OF NORTH CAROLINA, SECTION 130-171 to 130-179 AS AMENDED BY THE 1959 GENERAL ASSEMBLY)

Regulation of the Manufacture of Bedding.

Section 130-171. Definitions. In addition to the definitions set out in Article one of this Chapter, as used in this Article, or on the tags required by this Article:

The word 'bedding' means: Any mattress, upholstered spring, quilt, comforter, pad of a thickness of more than one inch, cushion or pillow used principally for sleeping, or like item of a thickness of more than one inch used principally for sleeping. Dual purpose furniture such as sofa beds and studio couches shall be included within this definition.

The term 'second hand bedding' means: Any bedding of which prior use has been made.

The term 'new material' means: Any material or article that has not been used in the manufacture of another article or used for any other purpose: Provided this shall not exclude by-products of industry that have not been in human use, unless otherwise excluded in this Article.

The term 'previously used material' means: (a) Any material which has been used in the manufacture of another article or used for any other purpose, (b) any material made into thread, yarn, or fabric, and subsequently torn, shredded, picked apart, or otherwise disintegrated, including jute.

The word 'renovate' means: The reworking or remaking of used bedding and returning it to the owner for his personal use or the use of his immediate family.

The word 'manufacture' means: Any making or remaking of bedding out of new or previously used materials, except for the maker's own personal use or the use of his immediate family, other than renovating.

The word 'sanitize' means: Treatment of bedding or materials to be used in bedding for the destruction of pathogenic microorganisms and arthropods and the removal of dirt and filth.

The word 'sell' or 'sold' shall, in the corresponding tense, include: Sell, have to sell, give away in connection with a sale, deliver or consign in sale, or rent,⁴ or, possess with intent to sell, deliver, consign in sale, or rent.

The term 'itinerant bedding vendor' means: Any person who sells bedding from a movable conveyance.

The terms 'cotton', 'virgin cotton' and 'staple cotton' mean: The staple fibrous growth as removed from cottonseed in the usual process of ginning.

The term 'cotton by-products' means: Any by-products removed from cotton by the various machine operations necessary in the manufacture of cotton yarn.

The term 'cotton linters' means: The fibrous growth removed from cottonseed subsequent to the usual process of ginning.

The word 'felt' means: Material that has been carded in layers by a garnett machine and is inserted into the bedding in layers.

Section 130-172. Sanitizing. No person shall renovate any mattress without first sanitizing it in accordance with rules and regulations adopted by the State Board of Health.

Any sanitizing apparatus or process used under this Article must conform to rules and regulations adopted by the State Board of Health, and shall be inspected and approved by a representative of the State Board of Health according to the rules and regulations of the State Board of Health. If, in the opinion of such representative, the apparatus or process does not meet the standards established by said rules and regulations, such apparatus or process may be condemned by the representative of the State Board of Health, in which event such apparatus or process shall not be used for sanitizing any bedding or material required to be sanitized under this Article until the defects have been remedied and the apparatus or process complies with the rules and regulations of the State Board of Health.

Any person sanitizing bedding must attach to said bedding a yellow tag containing such information as the State Board of Health may require, and affix thereto the adhesive stamp prescribed by G. S. 130-177.

Any person sanitizing material or bedding for another person shall keep a complete record of the kind of material and bedding so sanitized, such record to be open to inspection by any representative of the State Board of Health.

Any person who receives bedding for renovation or storage shall keep attached thereto, from the time received, a tag on which is legibly written the date of receipt and the name and address of the owner.

Section 130-173. Manufacture Regulated. No person shall manufacture in this State any bedding containing previously used materials without first sanitizing the previously used materials in accordance with rules and regulations adopted by the State Board of Health.

No manufacturing establishment shall store any unsanitized previously used materials in the same room with bedding or

materials that are new or have been sanitized unless the new or sanitized bedding or materials are completely segregated from the unsanitized materials in a manner approved by regulations of the State Board of Health.

All materials used in the manufacture of bedding in this State shall be reasonably clean and free from trash, oil, grease, or other extraneous matter. No material known as 'sweeps' or 'oily sweeps' may be used unless washed by a process approved by the State Health Director.

No person shall manufacture any bedding to which is not securely sewed a tag of durable material approved by the State Board of Health, which tag shall be at least two inches by three inches in size, and to which is affixed the adhesive stamp provided for in G. S. 130-177. Such stamp shall be so affixed as not to interfere with the wording on the tag.

Upon said tag shall be plainly stamped or printed with ink in English: (a) the name and kind of material or materials (as defined by this Article or by the regulations of the State Board of Health) used to fill such bedding; (b) the name and address of the maker or vendor of the bedding; (c) a registration number designated by the State Health Director; (d) in letters at least one-eighth inch high the words 'made of new material', if such bedding contains no previously used material; or the words 'made of previously used materials', if such bedding contains any previously used material; or the word 'second hand' on any bedding which has been used but not remade.

A white tag shall be used for new materials and a yellow tag for previously used materials or second hand bedding.

Nothing false or misleading shall appear on said tag, and it shall contain all statements and the adhesive stamp required by this Article, and shall be sewed to the outside covering of every piece of bedding being manufactured. Except in the case of dual purpose furniture, said tag must be sewed to the outside covering before the filling material has been inserted. No trade name or advertisement will be permitted on said tag.

Section 130-174. Altering, etc., Tags Prohibited. No person, other than one purchasing bedding for his own use, or a representative of the State of Board of Health, shall remove, deface, or alter the tag required by this Article.

Section 130-175. Selling Regulated. No person shall sell any bedding in this State (whether manufactured within or without this State) which has not been manufactured, tagged, labeled, and stamped in the manner required by this Article, and which does not otherwise comply with the provisions of this Article.

No person shall sell any second hand bedding or bedding containing any previously used material unless sanitized, since last used, in accordance with rules and regulations adopted by the State Board of Health: Provided, this Article shall not apply to a mattress sold by the owner and previous user from his home directly to a purchaser for his own personal use unless such mattress has been exposed to an infectious or contagious disease.

Possession of any item covered by this Article in any store, warehouse, itinerant vendor's conveyance, or place of business, other than a private home, hotel, or other place where such articles are ordinarily used, shall constitute prima facie evidence that the item so possessed is possessed with intent to sell. No second hand bedding shall be so possessed for a period exceeding 60 days until sanitized.

Section 130-176. Registration Numbers, Licenses. All persons manufacturing or sanitizing bedding in North Carolina, or manufacturing bedding to be sold in North Carolina, shall make an application, in such form as the State Health Director shall prescribe, for a registration number. Upon receipt of such application, the State Board of Health shall issue to the applicant a certificate of registration showing such person's name and address, registration number, and such other pertinent information as the State Board of Health may require.

For the purpose of defraying expenses incurred in the enforcement of the provisions of this Article, the following license fees are to be paid to the State Board of Health, deposited in the 'bedding law fund,' and expended in accordance with the provisions of G. S. 130-177. No person shall sanitize any bedding, as required by this Article, unless he is exempted by other provisions of this Article, until he has secured a 'Sanitizer's License' from the State Board of Health upon the payment of twenty-five dollars (\$25.00) for each calendar year. No person shall manufacture any bedding in this State, unless he is exempted by other provisions of this Article, until he has secured a 'Manufacturer's License' from the State Board of Health upon the payment of twenty-five dollars (\$25.00) for each calendar year.

The regular license period shall be from January 1 to December 31 of each year. However, any license bought after July 1 of any year shall be valid for the remaining part of that calendar year and shall be furnished at half the regular license fee. If any establishment owned by the holder of any such license or licenses should be sold, the license or licenses may be transferred with the business, such transfer to be accomplished under rules prescribed by the State Board of Health.

All licenses required by this Article shall, at all times, be kept conspicuously posted in the place of business of the licensee.

The State Health Director may revoke and void any of the aforesaid licenses of any person convicted twice within a twelve months' period for violating this Article; provided, that the State Board of Health shall have authority, after 30 days from the date of revocation, to reinstate any revoked license upon the payment of the required fees.

Section 130-177. Enforcement Funds. The State Board of Health is hereby charged with the administration and enforcement of this Article, and the Board shall provide specially designated adhesive stamps for use under the provisions of this Article. Upon request the Board shall furnish no less than five hundred such stamps to any person paying in advance eight dollars (\$8.00) per five hundred stamps.

Any person who manufactures bedding in North Carolina or any person who manufactures bedding to be sold in North Carolina may, in lieu of purchasing and affixing the adhesive stamps provided for by this Article, annually secure from the State Board of Health a 'Stamp Exemption Permit' upon compliance with the provisions of this Section and the rules and regulations of the State Board of Health. The holder of a stamp exemption permit shall not be required to purchase or affix adhesive stamps to bedding manufactured or sold in North Carolina. The cost of a stamp exemption permit is to be determined annually by the total number of bedding items manufactured or sold in North Carolina by the applicant during the calendar year immediately preceding the issuance of the permit, at the rate of eight dollars (\$8.00) for each five hundred (500) pieces of bedding or fraction thereof. A maximum charge of four hundred dollars (\$400.00) shall be made for pieces of bedding manufactured in North Carolina but not sold in North Carolina.

Applications for stamp exemption permits must be submitted in such form as the State Board of Health shall prescribe. No stamp exemption permit may be issued to any person unless he has done business in North Carolina throughout the preceding calendar year in compliance with the provisions of this Article, and unless he complies with the rules and regulations of the State Board of Health governing the granting of stamp exemption permits.

The State Board of Health is hereby authorized and directed to prepare rules and regulations for the proper enforcement of this Section. The rules and regulations shall include provisions governing the type and amount of proof which must be submitted

by the applicant to the State Board of Health in order to establish the number of bedding items that were, during the preceding calendar year: (a) Manufactured in North Carolina and sold in North Carolina; (b) manufactured outside of North Carolina and sold in North Carolina; and (c) manufactured in North Carolina but not sold in North Carolina. Because of the greater difficulty involved in auditing the records of out-of-State manufacturers, the State Board of Health is authorized to require a greater amount of proof from out-of-State manufacturers than from in-State manufacturers. The State Board of Health may provide in its regulations for additional proof of the number of bedding items sold during the preceding calendar year when it has reason to believe that the proof submitted by the manufacturer (whether in-State or out-of-State) is incomplete, misleading, or incorrect.

All money collected under this Article shall be paid to the State Health Director, who shall place all such money in a special 'bedding law fund', which is hereby created and specifically appropriated to the State Board of Health, solely for expenses in furtherance of the enforcement of this Article. The State Health Director shall semiannually render to the State Auditor a true statement of all receipts and disbursements under said fund, and the State Auditor shall furnish a true copy of said statement to any person requesting it.

All money in the 'bedding law fund' shall be expended solely for: (a) Salaries and expenses of inspectors and other employees who devote their time to the enforcement of this Article, or (b) expenses directly connected with the enforcement of this Article, including attorney's fees, which are expressly authorized to be incurred by the State Health Director without authority from any other source when in his opinion it is advisable to employ an attorney to prosecute any persons: Provided, however, that a sum not exceeding twenty per cent (20%) of such salaries and expenses above enumerated may be used for supervision and general expenses of the State Board of Health.

Section 130-178. Enforcement by State Board of Health. The State Board of Health, through its duly authorized representatives, is hereby authorized and empowered to enforce the provisions of this Article. Any person who shall hinder any representative of the State Board of Health in the performance of his duty under the provisions of this Article shall be guilty of a violation of this Article.

Every place where bedding is made, remade, renovated, or sold, or where material which is to be used in the manufacture of bed-

ding is mixed, worked, or stored, shall be inspected by duly authorized representatives of the State Board of Health.

Any representative of the State Board of Health may order off sale, and so tag, any bedding which is not made, sanitized, tagged, or stamped as required by this Article, or which is tagged with a tag containing a statement false or misleading, and such bedding shall not be sold or otherwise removed except with the consent of a representative of the State Board of Health, until such defect is remedied and a representative of the State Board of Health has re-inspected same and removed the 'off-sale' tag.

Any person supplying material to a bedding manufacturer shall furnish therewith an itemized invoice of all material so furnished. Each material entering into willowed or other mixtures shall be shown on such invoice. The bedding manufacturer shall keep such invoice on file for one year subject to inspection by any representative of the State Board of Health.

When an authorized representative of the State Board of Health has reason to believe that bedding is not tagged or filled as required by this Article, he shall have authority to open a seam of such bedding to examine the filling; and if unable after such examination to determine if the filling is of the kind stated on the tag, he shall have the power to examine any purchase or other records necessary to determine definitely the kind of material used in such bedding, and he shall have power to seize and hold for evidence any such records and any bedding or bedding material which in his opinion is made, possessed, or offered for sale contrary to this Article, and shall have power to take a sample of any bedding or bedding material for the purpose of examination or for evidence.

Section 130-179. Exemptions for Blind Persons and State Institutions. In the cases where bedding is manufactured, sanitized, or renovated in a plant or place of business owned or operated by blind persons in which place of business not more than one sewing assistant who is not blind is employed in the manufacture or renovation of mattresses, the bedding shall be inspected pursuant to this Article, but it shall not be required that stamps be affixed or that a license tax be paid, and bedding made by such blind persons may be sold by any dealer without the stamps being affixed.

State institutions engaged in the manufacture, renovation, or sanitization of bedding for their own use or that of another State institution are exempted from all provisions of this Article.

RULES AND REGULATIONS

RULES AND REGULATIONS GOVERNING THE SANITIZING OF MATTRESSES, PREVIOUSLY-USED MATERIALS, SECOND-HAND BEDDING, AND BEDDING CONTAINING PREVIOUSLY-USED MATERIALS; THE STORAGE OF PREVIOUSLY-USED MATERIALS; THE ISSUANCE OF STAMP EXEMPTION PERMITS; AND, THE TRANSFER OF MANUFACTURERS' LICENSES AND SANITIZERS' LICENSES.

For the purpose of carrying out the provisions of Article 16 of Chapter 1357 of the 1957 Session Laws of North Carolina, the North Carolina State Board of Health hereby adopts the following rules and regulations governing: the sanitizing of mattresses, previously-used materials, second-hand bedding, and bedding containing previously-used materials; the storage of previously-used materials; the issuance of stamp exemption permits; and, the transfer of manufacturers' licenses and sanitizers' licenses.

SECTION I. SANITIZING

a. No person shall renovate any mattress without first sanitizing it in accordance with one of the processes authorized in subsection (e) below.

b. Any sanitizing apparatus or process used to sanitize articles as required by Article 16 of Chapter 1357 of the 1957 Session Laws of North Carolina, or by these rules and regulations, must comply with the provisions of these rules and regulations.

c. No person shall manufacture or sell in this State any bedding containing previously-used materials without first sanitizing the previously-used materials in accordance with one of the processes authorized in subsection (e) below.

d. No person shall sell any second-hand bedding or bedding containing any previously-used material unless it is sanitized, since last used, in accordance with one of the processes authorized in subsection (e) below; provided, however, that this requirement shall not apply to a mattress sold by the owner and previous user from his home directly to a purchaser for his own personal use, unless such mattress has been exposed to an infectious or contagious disease.

e. Authorized sanitizing processes

(1) Process Number 1—Dry Heat

In this process, the bedding must be heated at a temperature of 230°F. for a period of one hour.

The chamber in which this process is performed must be insulated sufficiently to insure maintenance of a uniform temperature of 230°F. Articles to be sanitized must be placed on racks, or other devices provided therein, in such a manner that a minimum space of 6" is left around each item being sanitized, and between such item and the walls, floor, ceiling, and other items. Loose materials to be sanitized must be placed in tiers on slats, or in other arrangements that permit an even distribution of heat throughout the material. A thermometer that has been checked for accuracy within 1°F. must be placed within the chamber at a point where it can be easily read at all times through a window for that purpose.

(2) Process Number 2—Formaldehyde and Sulfur

In this process, the bedding must be exposed to formaldehyde and sulfur dioxide gas in a moist and warm atmosphere for at least 10 hours, using one pint of .37% formalin and three pounds of sulfur to 1,000 cubic feet. Formaldehyde is generated from the formalin by adding potassium permanganate.

Commercial fumigators which generate an equivalent quantity of gas may be used.

The chamber in which this process is performed shall be sealed in such a manner as to make it gas tight. The placing of bedding within the chamber shall conform with the requirements set out for process Number 1 above.

(3) Process Number 3—Washing

In this process, the bedding is boiled for fifteen minutes, and washed with an approved soap or detergent. After drying, the bedding shall be clean to touch, sight, and smell.

(4) Notwithstanding the provisions of subsections (e) (1) through (e) (3) of this section, other methods of sanitizing may be used after receiving the approval of the State Board of Health in writing, if it is demonstrated that they destroy pathogenic microorganisms and arthropods, and remove dirt and filth.

(5) Notwithstanding the provisions of subsections (e) (1) through (e) (4) of this section, second-hand bedding and previously-used materials that show evidence of contamination with feces, urine, pus, vomit, blood, mucus, or other filth, or are not reasonably clean, must be sanitized by process Number 3 only.

SECTION II. STORAGE OF PREVIOUSLY-USED MATERIALS

When previously-used materials that have not been sanitized are stored in a bedding manufacturing establishment in the same room with new, or sanitized bedding or bedding materials, such previously-used materials must be segregated from the new, or sanitized bedding or bedding materials, by partitions that are free of holes, cracks, or other openings. The top of the partitions must be at least one foot higher than the level of the unsanitized materials.

SECTION III. STAMP EXEMPTION PERMITS

(a) Any person who manufactures bedding in North Carolina or any person who manufactures bedding to be sold in North Carolina may, in lieu of purchasing and affixing the adhesive stamps provided for by Article 16 of Chapter 1357 of the 1957 Session Laws, annually secure from the State Board of Health a stamp exemption permit upon compliance with the provisions of said Article and these rules and regulations. The holder of the stamp exemption permit shall not be required to purchase or affix adhesive stamps to bedding manufactured or sold in North Carolina. The cost of a stamp exemption permit is to be determined annually by the total number of bedding items manufactured or sold in North Carolina by the applicant during the calendar year immediately preceding the issuance of the permit, at the rate of Eight Dollars (\$8.00) for each five hundred pieces of bedding or fraction thereof. A maximum charge of Four Hundred Dollars (\$400.00) shall be made for pieces of bedding manufactured in North Carolina but not sold in North Carolina.

(b) Applications for stamp exemption permits must be submitted on forms supplied by the State Board of Health. No stamp exemption permit may be issued to any person unless he has done business in North Carolina throughout the preceding calendar year in compliance with the provisions of Article 16 of Chapter 1357 of the 1957 Session Laws, and unless he complies with these regulations.

(c) Any person applying for a stamp exemption permit must include on the application form furnished by the State Board of Health a statement in writing showing the number of bedding items that were, during the preceding calendar year: (1) manufactured in North Carolina and sold in North Carolina; (2) manufactured outside of North Carolina and sold in North Carolina; and, (3) manufactured in North Carolina but not sold in North Carolina. Provided, however, that if the applicant's statement sets out the total number of bedding items which such manufacturer

produced during the preceding calendar year, it shall not be necessary for the applicant to set out what proportion of that total was manufactured inside or outside of North Carolina, or sold inside or outside of North Carolina, in which case the cost of the stamp exemption permit will be determined as if the total production were manufactured in North Carolina and sold in North Carolina. The statement of the applicant required by this subsection must contain a certification by a certified public accountant that he has examined the records of the applicant and finds that the statement correctly reflects the information contained in the records of the applicant.

(d) The State Board of Health may require additional proof of the number of bedding items sold during the preceding calendar year when it has reason to believe that the proof submitted by the manufacturer (whether in-state or out-of-state) is incomplete, misleading, or incorrect.

(e) The stamp exemption permits issued pursuant to these rules and regulations shall be valid from the first day of March of any calendar year through the last day of February of the following calendar year.

SECTION IV. TRANSFER OF MANUFACTURERS' LICENSES AND SANITIZERS' LICENSES

(a) If any person to whom a manufacturer's license or sanitizer's license has been issued shall sell his manufacturing or sanitizing establishment, he may transfer the license with the business, if such transfer is accomplished in accordance with the provisions of these rules and regulations.

(b) In order to make such transfer, and before the purchaser may use such license of the seller, the purchaser must submit to the State Board of Health the following: (1) the name and address of the seller; (2) the location of the establishment being purchased; (3) the name of the establishment being purchased; (4) the name and address of the purchaser; (5) the effective date of sale; and (6) whether the name of the establishment being purchased is to be changed, and if so, the name under which it is to be operated by the purchaser.

SECTION V. VIOLATIONS

If any person shall wilfully violate any rule or regulation adopted by the State Board of Health pursuant to Chapter 1357 of the 1957 Session Laws, or shall wilfully fail to perform any act required by, or shall wilfully do any act prohibited by such

rules and regulations, he shall be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine not to exceed Fifty Dollars (\$50.00), or by imprisonment for a period not to exceed thirty days (30), as provided in Article 22 of Chapter 1357 of the 1957 Session Laws.

SECTION VI. CONFLICTING RULES AND REGULATIONS REPEALED

All rules and regulations heretofore adopted by the State Board of Health which are in conflict with the provisions of these rules and regulations are hereby repealed.

SECTION VII. SEVERABILITY

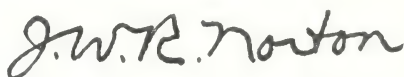
If any provision of these rules and regulations, or the application thereof to any person or circumstance, is held invalid, the remainder of the rules and regulations, or the application of such provision to other persons or circumstances, shall not be affected thereby.

SECTION VIII. EFFECTIVE DATE

These rules and regulations shall be in full force and effect from and after February 15, 1958.

The foregoing rules and regulations governing the sanitizing of mattresses, previously-used materials, second-hand bedding, bedding containing previously-used materials; storage of previously-used materials; the issuance of stamp exemption permits; and, the transfer of manufacturers' licenses and sanitizers' licenses were adopted at a meeting of the State Board of Health on February 7, 1958, at Raleigh, North Carolina.

Certified as a true copy

A handwritten signature in dark ink, appearing to read "J. W. R. Norton". The signature is written in a cursive, flowing style.

State Health Director

OHIO

Sec. 3713.01. Definitions. As used in sections 3713.01 to 3713.11, inclusive, of the Revised Code:

(A) "Person" means an individual, group of individuals, partnership, corporation, or association.

(B) "Bedding" means any upholstered furniture filled with material, any mattress, upholstered spring, comforter, bolster, pad, cushion, pillow, mattress protector, quilt, and any other upholstered article, to be used for sleeping, resting, or reclining purposes, and any glider, hammock, or other substantially similar article which is wholly or partly upholstered.

(C) "Material" means any article, substance, or portions thereof used in the manufacture, repair, or renovation of bedding.

(D) "New material" means any material which has not been used in the manufacture of another article, or used for any other purpose, and includes by-products of machines at mills using only new raw material.

(E) "Secondhand material" means any material which is not "new."

(F) "Shoddy material" means any material which has been spun into yarn, knit or woven into fabric and subsequently cut up, torn up, broken up, ground up or otherwise defabricated and shall be so designated on the label as "shoddy."

(G) "Secondhand article of bedding" means any article of bedding which has been put to bodily use by, on, or about any person or animal and is sold or offered for sale "as is."

(H) "Remade, repaired, or renovated articles of bedding not for sale" means any article of bedding that is remade, repaired, or renovated for and is returned to the owner for his own use.

(I) "Sale," "sell," or "sold" shall, in the corresponding tense, mean sell, offer to sell, or deliver or consign in sale, or possess with intent to sell, or deliver in sale.

(J) "Upholstered furniture" means any article of household furniture wholly or partly stuffed or filled with material and which is used or intended for use for sitting, resting, or reclining purposes.

Sec. 3713.02. Administration and enforcement; license. The department of industrial relations shall administer and enforce sections 3713.01 to 3713.11, inclusive, of the Revised Code. All persons manufacturing or making bedding which is sold, consigned or delivered for sale, or offered for sale, or remaking, repairing, or renovating bedding, in the state shall make application for, in such form as the director of industrial relations shall prescribe, and obtain from the director a registration number which shall be printed on each tag or label required to be attached to all bedding articles manufactured, made, remade, repaired, or renovated by such person for sale or use

in this state. Upon receipt of any such application the director shall issue to the applicant a certificate of registration showing such person's name and address, registration number, and such other pertinent information as the director deems necessary. The director shall prescribe and make available to any registered person manufacturing, making, remaking, repairing, or renovating bedding for sale or use in this state, or any person selling or offering for sale "secondhand articles of bedding," specially designed adhesive stamps, if the registrant is not licensed, one of which shall be securely affixed to one of the tags or labels required to be sewed or attached to each article of bedding. The stamps, provided for in this section, shall be sold by the department in amounts of not less than one thousand, or multiples thereof, at the rate of ten dollars per thousand stamps for all stamps required on pillows, comforters, cushions, headboards, mattress pads, and infant accessories; all other articles of bedding shall require stamps costing twenty dollars per thousand stamps.

The director may issue a license, in lieu of requiring the use of adhesive stamps, to any registrant who makes application pursuant to appropriate regulations of the department and complies and agrees with the following conditions:

(A) Submission with the application payment of an annual license privilege fee at a time and in an amount determined by the bedding advisory board, and under the terms and conditions such board prescribes;

(B) Any annual license fee and any other payments, accepted under division (A) of this section, are "funds" and "fees" under this section, and shall not be refundable, in whole or in part, to any registrant.

The funds derived from the sale of said stamps and all fees, fines, and penalties collected under this section and sections 3713.06, 3713.07, and 3713.09 of the Revised Code, shall be paid into the state treasury to the credit of a rotary fund to be used and appropriated for the administration and enforcement of sections 3713.01 to 3713.11, inclusive, of the Revised Code. Whenever the funds accumulated in said fund in any biennial period, exceed the amount required for the enforcement of such sections and after there has first been accumulated a reserve operating fund of fifty thousand dollars for emergencies, such excess funds shall be transferred to the general revenue fund.

Sec. 3713.021. Exceptions. The provisions of section 3713.02 relating to upholstered furniture do not apply to any such articles of upholstered furniture which are in any of the following categories:

(A) In the hands of retail merchants on October 6, 1955;

(B) In transit or in warehouses between the manufacturer and the retailer on October 6, 1955;

(C) In the process of manufacture on October 6, 1955 which process of manufacture is completed within thirty days after such date.

Sec. 3713.03. Appointment of chief of division of bedding inspection; appointment of inspectors. The director of industrial relations may appoint a chief of the division of bedding inspection as created under section 121.04 of the Revised Code. The chief, with the consent and approval of the director may appoint two inspectors. The director, with the advice of the bedding advisory board, shall determine the qualifications of inspectors. The director, with the advice and consent of the board, may appoint such additional inspectors, as the work requires.

The inspectors shall inspect periodically every establishment where bedding is manufactured, made, remade, renovated, repaired, sterilized, sold, or offered for sale, or where previously used material is processed for use in the manufacture of bedding.

Such inspector shall have the authority to place "off sale" any article of bedding which is offered for sale, or found in the possession of any person with intent to sell, in violation of sections 3713.01 to 3713.11, inclusive, of the Revised Code. When articles are removed from sale, they shall be so tagged, and such tags shall not be removed except by an authorized representative of the division, after satisfactory proof of compliance with all requirements of such sections, and of the rules and regulations of the division.

When an inspector has cause to believe that any bedding is not tagged or labeled as required by sections 3713.01 to 3713.11, inclusive, of the Revised Code, he may open seams of such bedding to examine the material used or contained therein and take a reasonable amount of such materials for testing and analysis and, if necessary, examine any and all purchase records in order to determine the contents thereof or the kind of material used in such bedding. Such inspector may seize and hold for evidence any article of bedding or material manufactured, made, possessed, renovated, remade, or repaired, sold, or offered for sale contrary to such sections, and shall immediately report such fact to the director who shall forthwith conduct a hearing or make a ruling in the matter, and upon finding that such article of bedding or material is not in violation of such sections shall order the same returned to the owner.

Any inspector who, after examination and inspection of any article of bedding, material used in bedding, or of any establishment where bedding is manufactured, made, remade, repaired, renovated, sterilized, sold, or offered for sale, has found that there has been a violation of such sections shall immediately make a complete report to the director of his findings and recommendations. The director, after consideration of such report, may order a further examination and inspection, and in either event when he has cause to believe that such a person has violated any of sections 3713.01 to 3713.11, inclusive, of the Revised Code, shall cause prosecution of such person.

Each inspector shall make a written report to the department of each examination and inspection and of his findings and recommendations. Such inspectors shall perform such other duties relating to the inspection and examination of such establishments as the director prescribes.

Sec. 3713.04. Bedding advisory board. There is hereby created in the department of industrial relations a "bedding advisory board" which shall consist of eight members. The director of industrial relations shall be a member of said board and its chairman. The other seven members shall be appointed by the governor with the advice and consent of the senate. Five of such members so appointed shall be persons who on account of their vocations, employment, or affiliations represent the manufacturing interests of the various products or branches of the bedding industry. The other two members shall be persons qualified to represent the retail business and the public. The term of office of each member shall be seven years. Each member of the board shall serve without salary, but shall receive actual and necessary travel and other expenses while engaged upon the work of the board. Such board shall meet quarterly and at other necessary times at the call of the chairman. The governor may remove any member of the board when such member ceases to represent the interest in whose behalf he was appointed.

The board may:

- (A) Consider all matters submitted to it by the director;
- (B) Propose and promulgate such rules and regulations pertaining to the definition, name, and description of materials necessary to carry out sections 3713.01 to 3713.11, inclusive, of the Revised Code;
- (C) Make recommendations to the state civil service commission relative to the qualifications and duties of the inspectors provided for in such sections;
- (D) Exercise such other powers and duties as are necessary to carry out the purpose and intent of such sections.

If there is practical difficulty or undue hardship in carrying out such sections or any rule or regulation adopted by the board, the director may make a variation of such rule or regulation if the spirit of such rule or regulation is being observed. Whenever the director makes any such variation, he shall forthwith notify the members of the board of such variation and set a date for the board to meet and consider the reasons and causes necessary for making such variation in the rules or regulations.

Such variation shall be effective for a period not to exceed thirty days during which time the board shall meet and approve, amend, modify, or rescind the rule or regulation governing the condition requiring the variation.

Sec. 3713.05. Tag or label to be attached to bedding. Every article of bedding manufactured for sale, delivered, consigned, or possessed for sale, sold or offered for sale, remade, repaired or renovated for return to the owner, in this state, shall have securely attached thereto a cloth tag or label, or a tag or label made of such other material as the director of industrial relations, with the advice of the bedding advisory board, may prescribe, bearing the adhesive stamp provided for in section 3713.02 of the Revised Code, or in lieu

thereof, such information as shall be prescribed by the Advisory Board. Such tag or label shall contain in plain print in the English language such information and data as the director, with the advice and consent of the board prescribes.

Any person selling, offering for sale, or having in his possession for sale any "secondhand article of bedding," shall, immediately upon receiving such secondhand article of bedding, remove the original tag or label and securely attach thereto a red tag or label, not less than four by eight inches in size, on which shall be legibly written or printed in black the words:

"SECONDHAND
PREVIOUSLY USED
CONTENTS UNKNOWN"

Such tag or label shall have affixed thereto the stamp required under section 3713.02 of the Revised Code. This section shall not apply to the sale of antique furniture or to the sale from the home of the owner directly to the purchaser.

Nothing likely to mislead shall be used on any tag or label. Every tag or label shall contain all statements required by sections 3713.01 to 3713.11, inclusive, of the Revised Code, and shall be securely sewed to the outside covering of such bedding before the filling material has been inserted. On pillows, mattress protectors, quilts, bolsters, and comforters such tag or label may be attached thereto after the filling material has been inserted.

When an article of bedding is manufactured or made of "second-hand material," each such article shall have the tag or label required by such sections securely sewed by each of its four edges to each sleeping surface of the bedding article, except that on comforters, mattress protectors, quilts, cushions, and pillows, only one such tag shall be used which shall be sewed by one of its ends to an outside seam thereof.

Material known in the cotton waste trade as "sweeps," "oily sweeps," or "oily card" shall be designated as "mill sweepings" on such tag or label.

The name "felt" shall not be used unless the material has been carded in layers by a garnett or card machine.

Any person who receives an article of bedding for remaking, repairing, or renovation shall, while such article is in his possession for remaking, repairing, or renovation, keep attached thereto a tag or label showing the date of receipt and the name and address of the owner.

No person, other than a purchaser for his own use, shall remove from any article of bedding or alter or deface the tag, label, or stamp.

Sec. 3713.06. Registration number required. No person, except for his own use, shall manufacture, make, remake, renovate, repair, or deliver for sale any article of bedding until he has applied for and received from the director of industrial relations a registration num-

ber as provided for in section 3713.02 of the Revised Code. Such registration number shall be valid until revoked or voided by the director for violation of sections 3713.01 to 3713.11, inclusive, of the Revised Code.

The director may suspend, revoke, and void the registration number of any person convicted of violating such sections. Any person, a resident or non-resident of this state, who has been issued a certificate of registration, and who fails or refuses to enter an appearance in any court of record in this state to answer a charge of violation of section 3713.09 of the Revised Code within twenty-five days after service upon such person of a notice by registered mail to enter such appearance, shall have his certificate of registration forthwith revoked by the director. Such person shall not thereafter engage in the manufacture, making, remaking, renovating, repairing, or delivering for sale in this state of articles of bedding until he has paid a special investigation fee of five hundred dollars and the director has determined that such person is complying with sections 3713.01 to 3713.11, inclusive, of the Revised Code; whereupon he shall reinstate or reissue the registration number to such person.

Sec. 3713.07. Designation of laboratories for tests and analyses; fees to be charged. The director of industrial relations, with the advice of the bedding advisory board, shall designate established laboratories in various sections of the state that are qualified to make tests and analyses of articles of material used in the manufacture of bedding. When any inspector finds it necessary to have a test or analysis of material used in the manufacture of bedding, he shall have such test or analysis made at the most conveniently located approved laboratory. The director, with the advice of the board, shall determine the fees and charges to be paid for making any such test or analysis.

If the director determines that it is advisable to establish and maintain facilities within the department of industrial relations to make such tests and analyses of materials used in the manufacture of bedding, he may establish such facilities.

Sec. 3713.08. Prohibited material. No person shall use, in the manufacture, making, remaking, renovating, or repairing of any article of bedding for sale or offered for sale in this state, any material that has been used by a person having an infectious or contagious disease or any material which has been a part of a bedding article so used.

No person shall sell or offer for sale any article of bedding that has been used by a person having an infectious or contagious disease.

Sec. 3713.09. Prohibitions. No person shall manufacture, offer for sale, sell, deliver, or have in his possession, for such purpose, an article of bedding which is not tagged or labeled as provided for in section 3713.05 of the Revised Code, or which does not have the stamp, provided for in section 3713.02 of the Revised Code, affixed

to said tag or label, if the registrant is not licensed, or which is falsely tagged or labeled. No person shall use, in the making, manufacture, remaking, repairing, or renovating of any article of bedding material which has been used or formed a part of any article of bedding, that has been used by or about any person having an infectious or contagious disease. No person shall deal in bedding articles or have such an article in his possession for the purpose of sale or offer it for sale without the tag or label required by section 3713.05 of the Revised Code. No person shall remove, conceal, alter, or deface the tag, label, or other device thereon or cause such tag, label, or other device to be removed, concealed, altered, or defaced. No person shall counterfeit the stamps provided for in section 3713.02 of the Revised Code. Each stamp counterfeited and each article of bedding manufactured, made, remade, repaired, renovated, delivered for sale, offered for sale, or sold in violation of sections 3713.01 to 3713.11, inclusive, of the Revised Code, constitutes a separate offense.

Sec. 3713.10. Applicability of sections. Sections 3713.01 to 3713.11, inclusive, of the Revised Code shall be governed by and be in accordance with sections 119.01 to 119.13, inclusive, of the Revised Code.

Sec. 3713.11. Prosecution of violations. Any city prosecutor, city attorney, or the prosecuting attorney, in the city or county where the alleged violation occurred, upon affidavit filed by the department of industrial relations, or upon affidavit and complaint of any person submitting reasonable proof of a violation of sections 3713.01 to 3713.11, inclusive, of the Revised Code, shall prosecute the person against whom such affidavit or complaint has been filed.

Sec. 3713.99. Penalty. (A) Whoever violates section 3713.09 of the Revised Code shall be fined not less than twenty-five nor more than five hundred dollars or imprisoned not more than six months, or both.

RULES AND REGULATIONS

FOREWORD

Chapter 3713 of the Ohio Revised Code, Inspection of Bedding and Upholstered Furniture Materials, provides for the inspection and regulation of the manufacture and sale of articles of bedding and upholstered furniture in the state. Chapter 3713, as amended by the 101st session of the Ohio General Assembly, became effective on October 6, 1955.

Ohio's first bedding law was signed by Governor Harmon on June 6, 1911, "An act to provide for the branding and labeling of mattresses, and to provide against the use of insanitary and unhealthy materials in the manufacture of mattresses, and to provide against the sale of mattresses containing such insanitary or unhealthy materials." The purposes and principles for the protection of the public have been continued undiminished since that date. Subsequent legislation was required to expand the protection of the law to users of other types of bedding and to protect the reputable manufacturers against unfair competition.

In May, 1943, our modern bedding law was signed into law. The methods of safety inspection and the administrative organization under that law are substantially the same today. Administration and enforcement was placed within the Department of Industrial Relations, and all manufacturers of bedding to be sold in the state were required to register with the Department. This law was amended in 1955 to include upholstered furniture.

A Bedding Advisory Board of eight members was given power to:

Consider all matters submitted to it by the Director;

Propose and promulgate such rules and regulations pertaining to the definition, name, and description of materials necessary to carry out the provisions of the act;

Make recommendations to the civil service commission relative to the qualifications and duties of the inspectors provided for in the act;

Exercise such other powers and duties as are necessary to carry out the purposes and intent of the act.

The members of the Board represent the manufacturing, renovating, retailing, and public interests, and both the Board and the Director were given broad powers to amend the rules and regulations if there is any practical difficulty or undue hardship in carrying out the provisions of the law.

The law authorizes an inspector to seize and hold for evidence any article of bedding or upholstered furniture which he has cause to believe is in violation of any provision of this act. Violations are punishable by a fine of not less than \$25.00 nor more than \$500.00, or by imprisonment for not more than six (6) months, or both such fine and imprisonment. Each stamp counterfeited and each article made, remade, renovated, repaired, delivered for sale, offered for sale, or sold in violation of the provisions of the act constitutes a separate offense so punishable.

It is provided further that the registration number of any person convicted of violating this act may be voided by the Director. Only after the payment of a special investigation fee of \$500.00 and the determination by the Director that such person is complying with the provisions of this act, may it be reissued.

DIVISION A

STAMP AND LICENSE REQUIREMENTS

Every article of bedding or upholstered furniture manufactured for sale, offered for sale, or sold, remade, repaired, or renovated for return to the owner, in this state, shall have securely affixed to one of the required tags or labels an Ohio bedding and upholstered furniture stamp, if the registrant is not licensed. These special adhesive stamps for bedding and upholstered furniture are sold by the Department in amounts of not less than one thousand, or multiples thereof, at the rate of ten dollars per thousand for all stamps required on pillows, comforters, cushions, headboards, mattress pads, and infant accessories; all other articles of bedding and upholstered furniture require stamps costing twenty dollars per thousand stamps. A registrant is a person either manufacturing bedding or upholstered furniture to be sold or offered for sale in this state, or renovating, repairing or remaking bedding or upholstered furniture for return to the owner in this state. Any registrant desiring to do so may make application to the Director for a license, and the Director may issue said license, which will relieve the holder of the requirement that a bedding and upholstered furniture stamp be attached to every tag or label. Every such application for a license shall be accompanied by an annual license privilege fee of twenty-five dollars, payable in one amount prior to annual issuance. A license will not be issued for a period of less than one year and no refunds will be made for unused portions thereof. Licenses are not transferable. Each license shall expire one year from the date of issuance, renewable annually, unless sooner revoked.

Every holder of a license shall make a report to the Director every three months. Such reports shall show the exact number of articles manufactured for sale, consigned or delivered for sale, offered for sale, or renovated for return to the owner in the State of Ohio by such licensee, which are included within the provisions of sections 3713.01 to 3713.11, inclusive, and section 3713.99 of the Revised Code, and within the Rules and Regulations for the Bedding and Upholstered Furniture Industry during the period covered by the report, and such licensee shall at the same time pay to the Director one cent each on pillows, comforters, cushions, headboards, mattress pads, and infant accessories, and two cents on all other articles of bedding and upholstered furniture manufactured for sale, consigned or delivered for sale, offered for sale, or renovated for return to the owner in the State of Ohio. Such reports shall be made under oath that they are true to the best of the knowledge and belief of the person making the affidavit, within thirty days of the expiration of the three month period, unless such time is extended by the Director. Whenever any licensee fails to make such report and payment or whenever it is advisable at the discretion of the Director, the Director or his agents shall examine the books and records of such licensee for the purpose of determining the correct amount due from such licensee. In case of default in the payment of the amount so found to be due or in default of the payment of the reasonable expenses incurred in making such examination, the license shall be forfeited.

DIVISION B

DEFINITIONS

As used in the regulations of the Division of Bedding and Upholstered Furniture Inspection: The words, terms, and phrases as used in these regulations have the following meaning and include the singular and plural, masculine and feminine as the case demands.

1. "DEPARTMENT" means the Department of Industrial Relations.
2. "DIRECTOR" means the Director of the Department of Industrial Relations.
3. "DIVISION" mean the Division of Bedding and Upholstered Furniture Inspection.
4. "PERSON" means an individual, group of individuals, partnership, corporation, or association.
5. "BEDDING" means any upholstered furniture filled with material, any mattress, upholstered spring, comforter, bolster, pad, cushion, pillow, mattress protector, quilt, and any other upholstered article to be used for sleeping, sitting, resting, or reclining purposes, and any glider, hammock, or other substantially similar article which is wholly or partly upholstered.
6. "COMFORTER" or "QUILT" means any covering, stuffed or filled, to be used for sleeping, sitting, resting, or reclining purposes.
7. "MATTRESS", "MATTRESS PAD", "MATTRESS PROTECTOR", or "PAD" means any mattress, mattress pad, mattress protector, chair pad, pad, or quilted pad to be used for sleeping, sitting, resting, or reclining purposes.
8. "PILLOW", "BOLSTER", "FEATHER BED", "CUSHION", "SLEEPING BAG", or "UPHOLSTERED HEADBOARD" means any bag, case, or covering that has been stuffed or filled, to be used for sleeping, sitting, resting, or reclining purposes.
9. "UPHOLSTERED SPRING" means any box spring, hollywood bed, studio couch, sofa bed, or bed davenport, to be used for sleeping, sitting, resting, or reclining purposes.
10. "UPHOLSTERED FURNITURE" means any furniture, including children's furniture, movable or stationary, which is made or sold with cushions or pillows, loose or attached, or is itself stuffed or filled in whole or in part with any material, hidden or concealed by fabric or any other covering, including cushions or pillows belonging to or forming a part thereof, together with the structural units, the filling material and its container and its covering which can be used as a support for the body of a human being, or his limbs and feet when sitting or resting in an upright or reclining position.

11. "MATERIAL" means any article, substance, or portions thereof used in the manufacture, repair, remaking, or renovation of bedding and upholstered furniture.
12. "NEW MATERIAL" means any material which has not been used in the manufacture of another article, or used for any other purpose, and includes by-products of machines at mills using only new raw material.
13. "SECONDHAND MATERIAL" means any material which is not new.
14. "SHODDY MATERIAL" means any material which has been spun into yarn, knit or woven into fabric, and subsequently cut up, torn up, broken up, ground up, or otherwise defabricated and shall be so designated on the label as "Shoddy".
15. "SECONDHAND ARTICLE OF BEDDING AND UPHOLSTERED FURNITURE" means any article put to bodily use by, on, or about any person or animal and then sold or offered for sale.
16. "REMADE, REPAIRED, OR RENOVATED ARTICLES OF BEDDING AND UPHOLSTERED FURNITURE NOT FOR SALE" means any article that is remade, repaired, or renovated for, and is returned to the owner for his own use.
17. "SALE", "SELL", or "SOLD" shall, in the corresponding tense, mean sell, offer to sell, or deliver or consign in sale, or possess with intent to sell, or deliver in sale.
18. "LABEL" means any tag or label used for identification of an article of bedding or upholstered furniture.

DIVISION C

GENERAL REQUIREMENTS

1. Every article of bedding or upholstered furniture manufactured for sale, delivered, consigned, or possessed for sale, sold or offered for sale, remade, repaired, or renovated for return to the owner, in this state, shall have sewed or otherwise securely attached thereto a tag or label. Said label shall be of the material, size, and color, and shall contain such information and data as prescribed in these requirements.
2. All persons manufacturing, making, remaking, renovating, or repairing except for their own use, or delivering for sale any article of bedding or upholstered furniture shall apply for a registration number. Application shall be made to the Director of the Department of Industrial Relations, Ohio Departments of State Building, Columbus, Ohio.
3. No person shall make any false, untrue, or misleading statement, term, or designation on any tag or label.
4. Each tag or label attached to an article of bedding or upholstered furniture shall state the kind of materials used in filling said article, using terms defined by these regulations.
5. Every tag or label shall contain all information required by Chapter 3713 of the Revised Code and by these regulations.
6. No person, other than a purchaser for his own use and except as herein otherwise provided, shall remove, alter, or deface the tag or label, or the stamp required by these regulations, nor shall he alter any statement on such tag or label.
7. Responsibility for properly designating the filling material used in a finished article is upon the manufacturer of the finished article.
8. "ALL", "PURE", "100%", and "VIRGIN" are definitive and the slightest departure from the indicated quality makes the tag or label misleading and unlawful. No tolerance is allowed where such terms are used.
9. When more than one type of filler is used in an article of bedding or upholstered furniture, such fillers must be shown on the label in the order of their predominance. Where down, silk, latex products, or synthetic materials such as nylon are used in conjunction with other materials, the percentages by weight shall be shown on the label. A maximum tolerance of ten percent (10%) of the stated percentages may be allowed.

DIVISION D

LABEL REQUIREMENTS FOR ARTICLES OF BEDDING AND UPHOLSTERED FURNITURE MANUFACTURED OF ALL NEW MATERIAL

1. MATERIAL: Shall be of white vellum cloth or a cloth of comparable quality which will not flake out when abraded, or such other material as prescribed or authorized by the Director.
2. SIZE. Not less than two by three inches, exclusive of the portion required to affix the label to the article.
3. COLOR OF MATERIAL: White is required.
4. COLOR OF PRINTING: Black is required.
5. Each article shall have one label.
6. Each label shall state in the English language in black type not less than $\frac{1}{8}$ inch high:
 - a. The words

ALL NEW MATERIAL

- b. The filling contents used in the article, employing the terms and provisions set forth in these regulations. When fillings other than those defined are used, a true description of such fillings shall be stated.
 - 1) An article consisting of a main body and one or more accompanying cushions requires the filling contained in the the body and in the cushions be separately stated and identified on one or more attached labels. The number of cushions must also be stated.
 - 2) An upholstered article made with the back separate from the seat requires that the fillings of each be separately stated and identified on the label.
 - c. The manufacturer's registration number, preceded by the name of the state issuing the registration number and followed by the abbreviated name of the state in which the plant is located.
 - d. The name and address of the manufacturer, maker, distributor, or vendor of the article.
7. An Ohio bedding and upholstered furniture stamp shall be affixed to each label if the registrant is not licensed.
8. The label shall be securely fastened and clearly visible. Mattresses, boxsprings, pillows, pads, comforters, bolsters, quilts, mattress protectors, and other such articles shall have the tag sewed into one of the outside seams thereof. Upholstered furniture with detachable cushions should have the tag attached to the front of the platform supporting the cushions where it may be seen when the cushions are raised. Upholstered furniture that does not have detachable cushions should have the tag attached to the front of

the bottom in such a manner that it is in plain view and may be seen when the article is in normal position, except that on such items where this would place the label next to the floor, it may be attached to the outside back at the top of the item. Chairs, benches, and other articles that may be readily lifted for inspection may have the tag attached to the bottom of the seat.

9. Illustration I shows the arrangement and form of the label suggested for use on articles containing ALL NEW MATERIALS, as defined in these regulations.

ILLUSTRATION I

INSERT DESCRIPTION OF FILLING MATERIALS ➡➡ BY CLEARLY IMPRINTING IN BOLD BLACK TYPE USING CAPITAL LETTERS NOT LESS THAN 1/8" IN HEIGHT.

THIS INFORMATION IS MANDATORY IN OHIO ➡➡

Space to attach	
DO NOT REMOVE THIS TAG Under Penalty of Law	
ALL NEW MATERIAL Consisting of	
Reg. No. Ohio 71061 (Ind.)	
(Space for Ohio Stamp)	Certification is made that the materials in this article are described in accordance with law.
(NAME OF MANUFACTURER, DISTRIBUTOR, OR VENDOR) (ADDRESS OF MANUFACTURER, DISTRIBUTOR, OR VENDOR)	
(ADDITIONAL INFORMATION)	

N.B. See preceding page for regulations governing cloth, size, printing, etc, for this label.

DIVISION E**LABEL REQUIREMENTS FOR ARTICLES OF BEDDING AND UPHOLSTERED FURNITURE MANUFACTURED OF SECONDHAND MATERIAL**

1. **MATERIAL:** Shall be of white vellum cloth or a cloth of comparable quality which will not flake out when abraded, or such other material as prescribed or authorized by the Director.
2. **SIZE:** Not less than four by eight inches, except on pillows, where size shall be not less than three by four inches.
3. **COLOR OF MATERIAL:** White is required.
4. **COLOR OF PRINTING:** Red is required. Each label shall have a red colored border at least $\frac{3}{8}$ inches wide.
5. Each article shall have two labels, except on comforters, mattress protectors, quilts, cushions, and pillows only one label is required.
6. Each label shall state in the English language:
 - a. In bold red type of not less than $\frac{1}{4}$ inch high the words

MADE OF SECONDHAND MATERIAL

- b. The filling contents used in the article employing the terms and provisions set forth in these regulations. When fillings other than those defined are used, a true description of such fillings shall be stated.
 - 1) An article consisting of a main body and one or more accompanying cushions requires the filling contained in the body and in the cushions be separately stated and identified on one or more attached labels. The number of cushions must also be stated.
 - 2) An upholstered article made with the back separate from the seat requires that the fillings of each be separately stated and identified on the label.
 - c. The manufacturer's registration number, preceded by the name of the state issuing the registration number and followed by the abbreviated name of the state in which the plant is located.
 - d. The name and address of the manufacturer, maker, distributor, or vendor of the article.
7. An Ohio bedding and upholstered furniture stamp shall be affixed to one of the required labels if the registrant is not licensed.
 8. The label shall be securely fastened by each of its four edges to each sleeping, sitting, resting, or reclining surface, except as otherwise herein provided. Pillows, comforters, bolsters, quilts, mattress protectors, and other such articles shall have the tag sewed into one of the outside seams thereof. Upholstered furniture with detachable cushions should have the tag attached to the

front of the platform supporting the cushions where it may be seen when the cushions are raised. Upholstered furniture that does not have detachable cushions should have the tag attached to the front of the bottom in such a manner that it is in plain view and may be seen when the article is in normal position, except that on such items where this would place the label next to the floor, it may be attached to the outside back at the top of the item. Chairs, benches, and other articles that may be readily lifted for inspection may have the tag attached to the bottom of the seat.

9. The required secondhand label shall be attached when the article contains secondhand material in whole or in part, including the innerspring unit.
10. Illustration II shows the arrangement and form of the label suggested for use on articles containing SECONDHAND MATERIAL, as defined in these regulations.
11. No person shall use, in the manufacturing, making, remaking, repairing or renovating of any article of bedding or upholstered furniture for sale, being offered for sale, or renovated, repaired or remade for return to the owner in this state, any material that has been used by a person having an infectious or contagious disease or any material which has been a part of an article so used.

ILLUSTRATION II

Space to attach

DO NOT REMOVE THIS TAGUnder penalty of law except as
provided by statute

This article was

**MADE OF
SECONDHAND MATERIAL**

consisting of

Reg. No. Ohio 71061 (Ind.)

(Space
for
Ohio
Stamp)Certification is made
that the materials in
this article are de-
scribed in accordance
with law.

(Name of Manufacturer, Distributor, or Vendor)

(Address of Manufacturer, Distributor, or Vendor)

Space to Attach

INSERT DE-
SCRIPTION OF
FILLING MATE-
RIALS BY . ➡➡
CLEARLY IM-
PRINTING IN
BOLD RED
TYPE USING
CAPITAL LET-
TERS NOT LESS
THAN ⅛" IN
HEIGHT

THIS INFORMA-
TION IS MAN-
DATORY IN
OHIO. ➡➡

N.B. See preceding page for regulations governing cloth, size, printing, etc. for this label.

DIVISION F**LABEL REQUIREMENTS FOR RENOVATORS**

1. All renovators are governed by the requirements of Divisions A, B, C, D, and E of these regulations, except that those parts relating to the type and description of filling materials shall apply only when materials are added in remaking, repairing, or renovating.
2. Any person receiving an article of bedding or upholstered furniture for remaking, repairing, or renovating shall, while such article is in his possession, keep securely attached thereto a tag or label (Illustration III, next page) showing:
 - a. Name and address of the owner.
 - b. Date of receipt.
3. When only new material is added in remaking, repairing or renovating, the requirements of Divisions A, B, C, and D apply, except that the label (Illustration IV) shall read "Renovated by Adding New Material" instead of "All New Material."
4. When remaking, repairing, or renovating is done without adding any material the requirements of Divisions A, B, C, and D apply, except that the label (Illustration V) shall read "Renovated Without adding Any Material" instead of "All New Material."
5. When secondhand material is added in remaking, repairing, or renovating, the requirements of Divisions A, B, C, and E apply, except that the label (Illustration VI) shall read "Renovated by Adding Secondhand Material" instead of "Made of Secondhand Material."
6. On all labels the two words immediately preceding the name and address of the renovator shall read "Renovated by" instead of "Manufactured by."
7. An Ohio bedding and upholstered furniture stamp shall be affixed to each label if the registrant is not licensed.
8. Any article of bedding or upholstered furniture that is renovated for sale is a secondhand article and as such is governed by Division G of these regulations.

MINIATURE ILLUSTRATIONS OF RENOVATORS' TAGS

ILLUSTRATION III

This Tag to be ➡
attached to article
IMMEDIATELY upon
receipt by Renovator

THIS ARTICLE OF BEDDING OR UPHOLSTERED FURNITURE MUST NOT BE SOLD. IT MUST BE RETURNED AND IS THE PROPERTY OF

Name.....

Street.....

City.....

Date received.....

REGULAR LAW LABEL ALSO REQUIRED—SEE EXAMPLES BELOW

ILLUSTRATION IV

Space to attach	
DO NOT REMOVE THIS TAG Under penalty of law	
This article was RENOVATED BY ADDING NEW MATERIAL consisting of (space for filling description)	
Reg. No. Ohio.....	
(Space for Ohio Stamp)	Certification is made that the materials added to this article are described in accordance with law.
Renovated by (Name and address)	

Regulations govern-
ing label size and
printing for these
tags are on pages
16 and 18.

←➡

ILLUSTRATION V

Space to attach	
DO NOT REMOVE THIS TAG Under penalty of law	
This article was RENOVATED WITHOUT ADDING ANY MATERIAL	
Reg. No. Ohio.....	
(Space for Ohio Stamp)	This tag is at- tached as required by law as a cer- tification that this article is as represented.
Renovated by (Name and address)	

ILLUSTRATION VI

Regulations govern-
ing label size, color
of ink, border and
printing for this tag
are on pages 19 and
21.

➡

Space to attach	
DO NOT REMOVE THIS TAG Under penalty of law	
This article was RENOVATED BY ADDING SECONDHAND MATERIAL consisting of (space for filling description)	
Reg. No. Ohio.....	
(Space for Ohio Stamp)	Certification is made that the mate- rials added to this article are de- scribed in accordance with law.
Renovated by (Name and address)	

DIVISION G**LABEL REQUIREMENTS FOR THE SALE OF SECONDHAND
ARTICLES OF BEDDING AND UPHOLSTERED
FURNITURE**

1. MATERIAL: Suitable cloth or heavy paper as is generally used for tags.
2. SIZE: Not less than four by eight inches.
3. COLOR OF MATERIAL: Red is required.
4. COLOR OF PRINTING OR WRITING: Black is required.
5. Each label shall state in type or legible writing of not less than $\frac{1}{4}$ inch high the words

**SECONDHAND
PREVIOUSLY USED
CONTENTS UNKNOWN**

6. STAMPS: An Ohio bedding and upholstered furniture stamp shall be affixed to each tag or label. These stamps are sold by the Department of Industrial Relations, Division of Bedding and Upholstered Furniture Inspection, Columbus, Ohio, in amounts of not less than one thousand or multiples thereof, at the rate of ten dollars per thousand for all stamps required on pillows, comforters, cushions, headboards, mattress pads, and infant accessories; all other articles of bedding and upholstered furniture require stamps costing twenty dollars per thousand stamps.
7. No person shall sell, offer for sale, or have in his possession for sale any secondhand article of bedding or upholstered furniture, unless he first removes the original tag or label and securely attaches a tag or label where clearly visible, meeting the requirements of this Division.
8. The requirements of this Division do not apply to the sale of antique furniture or to the sale from the home of the owner directly to the purchaser, except that no person shall sell or offer for sale any article of bedding or upholstered furniture that has been used by a person having an infectious or contagious disease.

ILLUSTRATION VII

SECONDHAND

PREVIOUSLY USED

CONTENTS UNKNOWN

**Space for affixing
Ohio Stamp**

DIVISION H

FILLING DEFINITIONS

Scope

The purpose of these regulations is to designate the terms, definitions and nomenclature as commonly used and recognized in the manufacture, sale, and distribution of furniture and bedding products. Classifications of materials in these regulations are intended to have understandable meaning to the ultimate consumer. The definitions are in conformity with those adopted by the majority of the states in the Union. It is hereby declared to be the direction, policy, and intent of the Department of Industrial Relations of Ohio to adopt and promote these terms, definitions and nomenclature.

I

GENERAL PROVISIONS AND DEFINITIONS

A. DEFINITIONS:

Each of the following terms shall be used where appropriate, and shall be preceded by the plant, animal, or other origin of the material.

1. FELT means fibers that have been garnetted or carded in layer form. This term cannot be used when batting, or felt scraps, or clippings are stuffed or blown in the same manner as unfelted materials. Nor may this term be used for material which has been felted, but is not readily distinguishable from unfelted materials. The use of the term "Batting" instead of "Felt" is permissible.
2. FIBER means any natural or synthetic substance composed of thread-like tissue.
3. PAD means any material interwoven, punched, pressed, or molded into a flexible padded form.
4. NAPPER means the lint removed during the process of raising the face of a cloth.
5. CARD, STRIPS, OR STRIPPING means the fibrous by-product produced by or removed from the carding cloth following the carding process.
6. COMBER means the fibrous by-product removed during the combing process.
7. FLY means the fibrous by-product removed from the machines during carding, drawing, or other textile operations.
8. NOILS means the short fibers removed during the combing process.

9. PICKER, PICKER MOTES, or MOTES means the fibrous by-product resulting from the opening and cleaning of fibers in the opener room of the textile mill.
10. SWEEPINGS means the fibrous sweepings from textile mills.
11. SHODDY means material reclaimed from any yarn, fabric, or product by shredding, cutting, tearing, grinding, or breaking. The white ALL NEW MATERIAL label shall be used for new shoddy; the red-bordered SECONDHAND MATERIAL label shall be used for secondhand shoddy. In Ohio, this type material may not be described as either "Garnetted Clippings" or "Shredded Clippings", but must be described as "Shoddy".

B. PROVISIONS FOR PROPER LABELING OF HIDDEN FIL-
LERS:

1. Percentages: Percentages, as herein specified, are based on the percent by weight of the filling materials required to be shown on the label.
2. Mixtures: The names and percentages of the component materials in a mixture must be shown on the law label, and listed thereon in the order of predominance. Percentages need not be stated for shoddies.
3. Articles containing more than one type filler: When more than one type material is used in the construction of an article of bedding or upholstered furniture, each type material used must be shown on the law label, together with its percent by weight, and listed thereon in the order of predominance, except as otherwise provided for in Division C, 9.
4. Tolerance: A tolerance of 10% by weight of the materials listed on the label shall be allowed. The 10% tolerance is allowed for the purpose of adjusting unintentional errors due to processing difficulties in arriving at exact percentages. Tolerance is not intended to permit deliberate admixture of inferior materials.
5. "All", "Pure", "100%": "All", "Pure", "100%" or terms of similar import are permitted only if the material is as stated. No tolerance is allowed where such terms are used.
6. Color of material: The natural color of any material used as a filler need not be stated on the label. When this is stated, it must be a true statement. The term "Colored" shall be used when the material has been dyed or otherwise artificially colored.
7. Cleanliness: All fillings shall be clean, free from trash, excreta or foreign or objectionable substances or odors.
8. Bleached: When any filling material has been bleached, it shall be so stated on the label.

9. Resin treated or rubberized filler: When any filling material has been resin treated or rubberized, it shall be so stated on the label. The percent of rubber or resin used as a binder on a filler need not be shown.
10. Use of secondhand material: Secondhand filling, when used in whole or in part in the manufacture or renovation of bedding and upholstered furniture products, requires the use of the appropriate secondhand label as specified in Division E and Illustration II of these regulations. Secondhand material which has been used, or formed a part of any article which has been used by, on, or about any person having an infectious or contagious disease shall not be used again in any manner whatsoever.
11. Exclusions from labeling: The presence of any of the following need not be shown on the tag, provided such materials are new: burlap, muslin, tape, webbing, metal insulators; and if under 10% of the filling, the following are excluded: paper sheets used for separating or covering felts, the filling contained in a quilted ticking, glazed wadding, or trapunto embroidery when affixed to an article of bedding containing hidden filling, and the filling used in pre-built border constructions.
12. Stiffening material: The presence of any stiffening material, such as fiberboard, wood, or paper shall be shown on the label, and its percentage given.
13. Innerspring unit: The presence of an innerspring unit shall be shown on the label.
14. Name of fiber: The terms defined in these regulations shall be the proper terms to use in the labeling of bedding and upholstered furniture products. When it is desired to list the trade name in addition, this may be done at the bottom of the label, in the space for additional information.
15. Presence of oil: Any material containing in excess of 5% oil must be described as "oily".
16. Dirt or foreign material: The presence of non-fibrous mineral matter in excess of 5% in any filling material shall be described as "Dirt" and its percentage stated.

II

COTTON FILLERS

DEFINITIONS:

1. COTTON FELT means the product obtained when one or more of the cotton products defined under 2, 3, and 4, herein, has been carded in layers or sheets by a garnett or felting machine. The term "Blended Cotton Felt" may be used when more than one type material, as specified above, is used.

2. STAPLE COTTON means the staple fibrous growth as removed from the cotton seed in the usual process of ginning (first cut) containing no foreign material. The presence of the usual amount of leaves, hull, etc., shall not be considered foreign material. The term "Cotton" by itself shall not be used.
3. COTTON LINTERS means the fibrous growth removed from cottonseed subsequent to the usual process of ginning.
4. COTTON BY-PRODUCTS means the by-products removed from the various machine operations necessary in the manufacture of cotton yarn up to but not including the process of spinning, and shall include only the following materials commonly known in cotton mill terms as (1) cotton comber, (2) cotton card strips or cotton vacuum strips, (3) cotton fly, and (4) cotton picker. Either the blanket term "Cotton By-Products" or the individual terms: "Cotton Fly", etc., may be used on the law label.
5. COTTON WASTE means any material defined under cotton by-products containing more than 7% of trash, hull, leaf, stem, pulp, etc., and includes cotton motes.
6. COTTON MILL SWEEPINGS means sweeps, oily sweeps, or oily card.
7. TRASH means hull, leaf, stem, pulp, etc.: when present in excess of 10% of the filling, it shall be shown on the label as "Trash".

III

DOWN AND FEATHER FILLERS

A. DEFINITIONS:

Each of the following terms, herein defined, shall be further designated on the label by the name of the fowl—Goose, Duck, Turkey, and Chicken—from whence the material came, except as otherwise noted. The term "Waterfowl" may be used to designate goose, duck, or any mixture of goose and duck stock. A ten percent tolerance will be allowed on the statement of species.

1. DOWN means the soft undercoating of waterfowl consisting of the light, fluffy filaments grown from one quill-point but without any shaft. The term "Down" may be used by itself without denoting the species of fowl from whence it came. A ten percent tolerance of feathers is allowed in down stock.
2. DOWN FIBER means the barbs of down plumes separated from the quill-points of down. The presence of barbs in excess of 10% of the filling shall be shown on the label as "Down Fiber" and the percentage given.
3. FEATHERS means whole feathers which have not been processed in any way except for cleaning and dusting.

4. FEATHER FIBER means the barbs of feathers separated by any process from the quills, but free from quills. The presence of feather barbs in excess of 10% of the filling shall be shown on the label as "Feather Fiber" and the percentage given.
5. QUILL FEATHERS means wing feathers and/or tail feathers.
6. CRUSHED FEATHERS means feathers which have been processed by a curling or crushing machine, thereby changing the original form of the feathers without removing the quills.
7. STRIPPED FEATHERS means the barbs of feathers stripped from the quill shaft but not separated into feather fiber.
8. CHOPPED FEATHERS means feathers which have been chopped or cut into pieces by a chopping machine.
9. BROKEN FEATHERS means feathers which were broken or damaged by insects or in any manner apart from direct processing. The presence of broken feathers in excess of 10% of the filling shall be shown on the label as "Broken Feathers" and the percentage given.

B. LABELING:

1. Feather and down mixtures shall be designated in accordance with the definitions under part A of this section, by the name, character, and percent of each material used, and listed in the order of predominance, or else the entire mixture shall be designated by the name of the lowest grade of material used. The grades of materials in descending order are as follows: Goose down, duck down, goose feathers, duck feathers, turkey feathers, and chicken feathers.
2. The deviations from the statement on the label on species and character of feather and down materials shall not exceed 10% of the stated percentages.
3. Cleanliness: All feather and down stocks shall be thoroughly cleaned prior to use.

IV

HAIR FILLERS

A. Definitions:

Each of the following terms, herein defined, shall be further designated on the label as to origin, according to the following classifications: Horse Tail, Horse Mane, Cattle Tail, Cattle Hide, Hog, and Goat. A ten percent tolerance will be allowed on the statement of origin.

1. HAIR means the coarse, filamentous, epidermal outgrowth of such mammals as horses, cattle, hogs and goats. When used

in the manufacture or renovation of bedding or upholstered furniture, it shall be clean, properly cured, free from epidermis, excreta or foreign or objectionable substances or odors

2. DYED HAIR or BLEACHED HAIR means hair that is dyed or bleached. The appropriate designation shall appear on the label preceded by the word "Dyed" or "Bleached".
3. CURLED HAIR means hair which has been curled. The appropriate designation shall appear on the label preceded by the word "Curled".
4. UNCURLED HAIR means hair which has not passed through a curling process. The appropriate designation shall appear on the label preceded by the word "Uncurled".
5. HAIR PAD means hair which is interwoven or punched on any woven material or otherwise fabricated into a pad. The kind, grade, and percentage of each type material in the pad shall be stated on the label. No description of the woven material or any reference to it is required.
6. RUBBERIZED HAIR or RESIN TREATED HAIR means hair which has been rubberized or resin treated. The appropriate designation shall appear on the label preceded by the word "Rubberized" or "Resin Treated".
7. SHREDDED HAIR means hair which has been shredded. The appropriate designation shall appear on the label preceded by the word "shredded". The use of the term "curled" is not permitted in connection with shredded hair.

B. LABELING.

1. Hair mixtures: When hair of different origins is used in a blend, the kind and percent by weight of each shall be shown on the label. A tolerance of ten percent (10%) by weight of the percentages stated on the label shall be permitted.
2. Hair and fiber mixtures: When any material of whatever origin other than hair is used in a mixture or blend with hair, the kind and percent by weight of each such material shall be shown on the label. A tolerance of ten percent (10%) by weight of the percentages stated on the label shall be permitted.

V

WOOL FILLERS

A. DEFINITIONS:

1. WOOL FELT means the product obtained when one or more of the wool products defined under 2, 3 and 4, has been carded in layers or sheets by a garnett or felting machine. The term "blended Wool Felt" may be used when more than one type material, as specified above, is used.

2. WOOL and/or VIRGIN WOOL means the fleece of the sheep or lamb, which has been scoured, or scoured and carbonized. It shall not be the by-product of any manufacturing process, nor shall it have sustained prior use. It shall be free from kemp and vegetable matter.
3. (Optional for those manufacturers who want to use, and get credit for using a finer quality of wool.)
CHOICE WOOL and/or CHOICE VIRGIN WOOL means wool and/or virgin wool, as defined above, that is "1/4 blood" (48's) or finer in grade, according to the United States Standards for grades of wool, and shall be natural or bleached white in color. The fibers shall be reasonably uniform in length, viz., they shall contain no admixture of short wool fibers. The term "Choice Wool" and/or "Choice Virgin Wool" may not be used in describing the component parts of wool blends or mixtures.
4. WOOL BY-PRODUCTS means the by-products removed from the various machine operations necessary in the manufacture of wool yarn up to but not including the process of spinning, and shall include the following materials commonly known in wool mill terms as (1) noils, and (2) fulling flocks. Either the blanket term "Wool By-Products" or the individual terms: "Wool Noils," etc., may be used on the law label.
5. WOOL WASTE means all other by-products and wastes from any manufacturing process employing only new wool fibers, and includes wool pills and shank and tag wools.
6. TANNERS WOOL means wool reclaimed from tanned sheepskin.

B. LABELING:

1. Wool blends or mixtures: When two or more of the above materials are used in a product, they shall be described on the label as required above in the order of their predominance.
2. Tolerance: Materials which contain not less than 95% wool shall be considered wool.

VI

FOAM AND RUBBER FILLERS

DEFINITIONS:

1. The following terms shall be used with the appropriate foam or sponge product when applicable:
 - a. SHREDDED: This term shall be used when any foam product has been shredded.
 - b. CEMENTED: This term shall be used when any foam product has been cemented together.

- c. **MOLDED**: This term may be used when a foam product has been molded in the form intended for use.
 - d. **PIECES**: This term shall be used to describe pieces of unshredded foam waste from production, or trimmings from cutting sheets or shapes.
 - e. **IMPERFECT**: This term shall be used when any foam product shows major manufacturing imperfections and is sold as other than first quality material.
- 2. **RUBBER** means natural rubber as well as any of the following synthetic rubber-like materials: chloroprene, styrene-butadiene copolymers, butadiene-acrylonitrile copolymers, polymerized isobutylene, with or without comonomers present, and thioplasts (any of the polysulfide rubbers consisting of organic radicals linked through sulfur).
 - 3. **RUBBER FIBER** means a fiber composed of natural or synthetic rubber.
 - 4. **FOAM RUBBER** means the foam-like product made from white liquid rubber latex, either natural or synthetic, as defined above, which has not undergone previous use or processing.
 - 5. **SPONGE RUBBER** means crude rubber expanded into a cellular state.
 - 6. **SYNTHETIC FOAM** means the foam made from the polymerization product of certain organic chemicals. It includes the following chemical types:
 - URETHANE FOAM** means a foam made from a polymerized reaction product whose basic ingredient is a diisocyanate, and whose molecular structure contains, as a predominating structural unit, the urethane linkage. It shall include both polyether and polyester type foams.
 - POLYSTYRENE FOAM** means a foam made from a polymerization product of styrene monomers.
 - VINYL FOAM** means a foam made from homopolymers or copolymers of vinyl chloride.

Either the blanket term "Synthetic Foam", or the individual terms: "Urethane Foam", etc., may be used for these materials. The term "Rubber" may not be used in conjunction with these materials.

VII

SYNTHETIC FIBER FILLERS

DEFINITIONS:

- 1. **SYNTHETIC FIBERS** means long-chain synthetic polymers and/or copolymers joined either chemically or physically to form a filament or fiber. A disclosure of the polymers and/or copolymers contained therein shall be made in the descending order of their percentage by weight in the fiber, e. g., 'Polystyrene

Fibers", "Vinyl-Acrylic Fibers", etc., or the fibers may be designated as "Synthetic Fibers". This applies to all synthetic fibers defined in this section. The trade name of these fibers may be shown at the bottom of the label in the space for additional information.

2. ACRYLIC FIBER means the fiber formed from any long-chain synthetic polymer containing not less than 85% acrylonitrile.
3. AZLON FIBER means fiber formed from regenerated naturally occurring proteins.
4. MODACRYLIC FIBER means the fiber formed from any long-chain synthetic polymer containing less than 85% acrylonitrile units.
5. NYLON FIBER means the fiber formed from any long-chain synthetic polymeric amide which has recurring amide groups as an integral part of the main polymer chain.
6. NYTRIL FIBER means the fiber formed from a synthetic polymer of at least 85% vinylidene dinitrile, where the vinylidene dinitrile content is no less than every other unit in the polymer chain.
7. OLEFIN FIBER means the fiber formed from any synthetic polymer composed of at least 85% ethylene, propylene, or other olefin units.
8. POLYETHYLENE FIBER means the fiber formed from polymers and/or copolymers of ethylene.
9. POLYESTER FIBER means the fiber formed from a polymerized reaction product of esters and containing not less than 85% of a dihydric alcohol and terephthalic acid.
10. POLYETHER FIBER means the fiber formed from a polymerized reaction product of ethers.
11. POLYSTYRENE FIBER means the fiber formed from the polymerization product of styrene monomers.
12. POLYVINYLIDENE FIBER means the fiber formed from copolymers of vinylidene chloride and other monomers.
13. SARAN FIBER means the fiber formed from any long chain synthetic polymer containing not less than 80% vinylidene chloride units.
14. SPANDEX FIBER means the fiber formed from any long chain synthetic polymer containing at least 85% of a segmented polyurethane.
15. VINAL FIBER means the fiber formed from any long-chain synthetic polymer composed of at least 50% vinyl alcohol units and in which the total of the vinyl alcohol units and any one or more of the various acetal units is at least 85% of the fiber.
16. VINYON FIBER means the fiber formed from any synthetic polymer containing at least 85% vinyl chloride units.

VIII

MISCELLANEOUS FILLERS

DEFINITIONS:

1. ACETATE FIBER means the fiber formed from cellulose acetate.
2. CAT-TAIL PLANT FIBERS means fibers from the cat-tail plant.
3. CELLULOSE FIBER means fibers from wood or other vegetable growth to a cellulose state and containing not more than 4% lignin and 12% pentosans.
4. COCONUT HUSK FIBER or COIR means the fibrous material obtained from the husk or the outer shell of the coconut.
5. CORN HUSK means the leafy covering obtained from ears of corn.
6. CORRUGATED FIBER BOARD means the combination of three sections of stiff compact pasteboard whereby one section has been formed into folds and is enclosed between the other two sections.
7. EXCELSIOR means shredded threadlike wood fibers. It shall not include waste products such as shavings, sawdust or similar waste.
8. FLAX TOW means the coarse, broken and refuse parts of flax separated from the fine, fibrous parts in preparing the fibers for spinning.
9. FUR means the fine soft under fur removed from the tanned or untanned pelt of mammals of the class of furbearers. The name of the animal may be stated, and when so indicated on the label, it must be a true statement.
10. GLASS FIBER means the fiber obtained when glass is spun into thin filaments from a liquid state.
11. HAY means any grass, properly dried or cured, free from dust, burrs, sticks, or other foreign material.
12. JUTE FIBER means the bast fiber derived from any species of the corchorus plant.
13. JUTE TOW means the broken or refuse parts of jute separated from the fine, fibrous parts in preparing the fibers for spinning.
14. JUTE WASTE means the by-product of any machine through which jute fiber passes in spinning into yarn or cordage, but prior to the process of spinning.
15. KAPOK means the mass of fibers investing the seed of the kapok tree (*Ceiba Pentandra*). Any additional term descriptive of the geographical origin or of the quality of such fibers shall be a true statement when set forth on the label.

16. METALLIC FIBER means a fiber composed of metal, plastic-coated metal, metal-coated plastic, or a core completely covered by metal.
17. MILKWEED FIBER means the surface fiber from the inside of the seed pods of milkweed plants. (*Asclepias*).
18. MOSS means the vegetable fiber hair growth found in swamps and on trees.
19. PALM FIBER means the fibrous material obtained from the leaf of the palm, palmetto, or palmyra tree.
20. PAPER BY-PRODUCTS means paper which has been used in the manufacture or processing of other products and subsequently used in bedding and upholstered furniture products.
21. PAPER SHEETS means the sheets of paper used for separating or covering felts or batting. If this material does not exceed 10% of the filling, it need not be shown on the label.
22. RAYON means the fiber formed from regenerated cellulose.
23. SEA GRASS means the material obtained from maritime plants or seaweeds.
24. SILK WASTE means the by-products of any preparing or spinning machinery through which the silk filaments or fibers pass.
25. SISAL means the leaf fiber derived from the *Agave Sisalina* and similar species of agaves.
26. STEEL FIBERS means thin steel fibers similar to those found in steel wool pads. The term "STEEL WOOL" is not permitted.
27. STRAW means the stalk or stem of grain, such as wheat, rye, oats, rice and the like, after threshing. The kind of straw may be stated, but when indicated must be a true statement. It shall be free from chaff, beards, bristles, husks, glumes, dirt or other extraneous matter.
28. TAMPICO means the leaf fiber derived from the Tampico Istle (*Ixtle de lechuguilla*).
29. TULA means the leaf fiber derived from the Tula Istle and similar species of agaves.
30. WOOD FIBER means fibers reduced from wood or other vegetable growth to a cellulose state, and containing more than 4% lignin or 12% pentosans.

The division should be consulted for the correct labeling of any materials not defined in these regulations.

DIVISION I

INFORMATION FOR RETAILERS OF BEDDING AND
UPHOLSTERED FURNITURE

It is the responsibility of the retailer to make certain that any article of bedding or upholstered furniture which he offers for sale in the State of Ohio, regardless of where manufactured, is properly labeled, is stamped if the manufacturer is not licensed, and is in compliance with all provisions of the law. Retailers are subject to the penalties, outlined in the foreword of these regulations, when any article of bedding or upholstered furniture in violation of the law is possessed for sale or sold by them.

The requirements for bedding and upholstered furniture manufactured from the various classes of material, are clearly outlined elsewhere as follows:

	Division
General Requirements	C
Articles made of New Material	D
Articles made of Secondhand Material	E
Sale of Secondhand Articles of Bedding and Upholstered Furniture	G

Each manufacturer of bedding or upholstered furniture now has a choice of continuing the practice of affixing Ohio bedding and upholstered furniture stamps on labels or of obtaining a license in lieu of using such stamps (see Division A herein). The names of manufacturers who are licensed may be secured by contacting the Division of Bedding and Upholstered Furniture Inspection.

A study of the rules and regulations with emphasis on those parts indexed above, which apply to the particular class of goods handled, will enable retailers to become familiar with the requirements of their suppliers and themselves.

Inasmuch as the ultimate intent and purpose of this law is to protect the health and promote the general welfare of the citizens of Ohio, the cooperation of retailers will be of immeasurable help in accomplishing this end.

DIVISION J**PROCEDURE FOR NOTICE OF PUBLIC HEARING**

Public Notice of hearings to be conducted by the Ohio Bedding and Upholstered Furniture Advisory Board for the purpose of adopting, amending, or rescinding any of these rules and regulations shall be as follows:

At least thirty days prior to the public hearing required to be held by Section 119.03, Revised Code, a notice shall be advertised once in five newspapers published in different counties and of general circulation in the state. Such notice shall contain: a statement of the Board's intention to consider adopting, amending or rescinding any of these Rules and Regulations; the date and time and place of public hearing on such proposed action; and a general statement of the subject matter to which such proposed rule relates.

OKLAHOMA
STATE BEDDING LAW

WITH

RULES AND REGULATIONS



STATE DEPARTMENT OF HEALTH
ENVIRONMENTAL HEALTH SERVICES
DIVISION OF ENVIRONMENTAL SANITATION
GENERAL SANITATION SECTION
3400 N. EASTERN
OKLAHOMA CITY, OKLAHOMA

OKLAHOMA STATE BEDDING ACT

Title 63, O.S. 1951, Sections 51-62

Amended Title 63, O.S. 1959, Supplement, Sections 56-57

TITLE

An Act defining bedding to include mattresses, pillows, bolsters, feather beds, and other filled bedding of any description; requiring the labeling of bedding as to whether new or second-hand materials are used; prohibiting the use of materials from dump grounds, junk yards, and hospitals; requiring germicidal treatment of second-hand mattresses; placing enforcement of this Act in the State Board of Health; requiring permits for manufacture, repair or renovation, and application of germicidal process, payment of fees for permits; providing for the issuance of adhesive stamps and registration for selling bedding; providing that proceeds be placed in the State Treasury to the credit of the general revenue funds; creating positions of sanitary inspectors and setting salaries; providing penalty for violation; requiring bedding manufacturers or renovators to keep premises sanitary, except all bedding manufactured, repaired, or renovated, or sold prior to effective date of this Act; making provisions of Act severable.

SECTION 51. DEFINITIONS

(a) The term "bedding" as used in this Act shall mean mattresses, pillows, bolsters, feather beds, and other filled bedding of any description.

(b) The term "Department" when used in this Act shall mean the State Board of Health.

(c) The term "person" as used in this Act shall include persons, partnerships, companies, corporations, and associations.

(d) The term "renovate" as used in this Act shall mean to restore to former condition, or to place in a good state of repair.

(e) The term "materials" as used in this Act shall mean all articles or portions thereof, used as filling or covering in the manufacture, repair, or renovation of bedding.

(f) The term "new" as used in this Act shall mean any article or material which has not been previously used for any purpose.

(g) The term "second-hand" as used in this Act shall mean any article or material, or portions thereof, of which former use has been made in any manner whatsoever.

(h) Wherever in this Act the singular is used, the plural shall be included; and where the masculine gender is used, the feminine and neuter shall be included.

SECTION 52. LABELING OF BEDDING REQUIRED

(a) All bedding shall bear securely attached thereto and plainly visible a substantial white cloth tag upon which shall be indelibly stamped or printed with black ink, in the English language, a statement showing whether new materials or second-hand materials have been used in filling such bedding, and type

or grade of cotton and all other materials used in filling mattress to which attached when new materials are used, with approximate percentages when mixed; what germicidal treatment, if any, has been applied to the materials or to the bedding; the date of such germicidal treatment, the number of the permit of the person manufacturing the bedding, and the number of the permit of the person applying such germicidal treatment, if any.

(b) The terms used on the tag to describe materials shall be restricted to those defined in the Regulations of the Department, and no trade or substitute terms shall be used.

(c) It shall be unlawful to make any false or misleading statements on the tag required by this Section. It shall be unlawful for any person to remove, deface, alter, or cause to be removed, defaced, or altered any tag or statement contained thereon for the purpose of defeating any of the provisions of this Act. The placing of registration stamps required in Section 57 of this Act over any lettering on the tag shall be construed to be defacement of the tag.

(d) The size of the tag to be affixed to new bedding required by this Section shall not be less than six (6) square inches, and the lettering thereon covering the statement of filling materials shall be in plain type not less than one-eighth (1/8) inch in height.

(e) Every article of bedding manufactured for resale containing second-hand material shall bear, securely sewn thereto on all four sides of the tag, four (4) by eight (8) inches in size, upon which shall be indelibly stamped or printed in red ink, in the English language, in plain type not less than one-half (1/2) inch in height, stating "second-hand material."

SECTION 53. USED MATERIALS FROM DUMP GROUNDS AND HOSPITALS

No person shall manufacture, repair, or renovate into bedding or batting, using discarded materials obtained from dump grounds, junk yards, or hospitals within or without the State of Oklahoma.

SECTION 54. GERMICIDAL TREATMENT OF MATERIALS

All second-hand materials or portions thereof for resale shall be subjected to a germicidal treatment that will render said second-hand material safe for human use.

SECTION 55. ENFORCEMENT OF ACT

The State Board of Health is hereby charged with the enforcement of this Act for the protection of health and to prevent the spread of disease; to make rules and regulations providing for examination of bedding offered for sale; to embargo bedding suspected of being improperly labeled; to regulate disposal of bedding determined to be unsafe for human use; and to prescribe means, methods, and practices to make effective such provision.

SECTION 56. PERMITS

(a) No person shall engage in the business of manufacturing, repairing or renovating any bedding unless he shall have obtained a permit from the Department.

(b) No person shall be considered to have qualified to apply an acceptable germicidal process until such process has been registered with and approved by the Department, after which a

numbered permit shall then be issued by the Department. Such permit shall expire on June 30th following date of issue and shall thereafter be annually renewed at the option of the permit holder upon submission of proof of continued compliance with the provisions of this Act and the regulations of the Department. Every person to whom a permit has been issued shall keep such permit conspicuously posted on the premises of his place of business near the treatment device. Holder of permits to apply germicidal treatment shall be required to keep an accurate record of all materials which have been subjected to germicidal treatment, including the source of material, date of treatment, and name and address of buyer of each, and such records shall be available for inspection at any time by authorized representatives of the Department.

(c) For all initial permits issued, as required by the preceding paragraph (a) of this Section, there shall, at the time of issuance thereof, be paid by the applicant to the Department an initial fee not to exceed Five Dollars (\$5.00) to be determined by the State Board of Health and an annual renewal charge not to exceed Five Dollars (\$5.00) to be determined by the State Board of Health.

(d) For all initial permits issued, as required by preceding paragraph (b) of this Section, there shall, at the time of issuance, be paid by the applicant, to the Department, a fee not to exceed Twenty-five Dollars (\$25.00) to be determined by the State Board of Health. An annual renewal charge not to exceed Five Dollars (\$5.00) to be determined by the State Board of Health shall be paid to the same Department.

(e) Any permit issued in accordance with the provisions may be revoked by the State Health Office upon proof of violation of any of the provisions of this Act. A reissuance of said permit shall be subject to provisions as set forth for an initial permit. (As amended Session Laws, 1955, p. 351, Sec. 1.)

SECTION 57. REGISTRATION FOR SELLING

(a) No person shall manufacture, renovate, sell or lease, or have in his possession with intent to sell or lease, in the State of Oklahoma any bedding covered by the provisions of this Act, unless there be affixed to the tag required by this Act by the person manufacturing, renovating, selling or leasing the same, an adhesive stamp prepared and issued by this Department; Provided, however, that the provisions of this Section shall not apply to the sale of bedding owned and used by a householder and his family at auction or private sale.

(b) The Department shall register all applicants for stamps and assign to every such person a registration number, which thereafter shall constitute identification record, and said identification shall not be used by any other person.

(c) Adhesive stamps, as provided by this Act, shall be furnished by the Department in quantities of not less than one hundred (100), for which the applicant shall pay at the rate not to exceed Five Dollars (\$5.00) for each one hundred (100) stamps to be determined by the State Board of Health. The State Health Officer is hereby authorized to prepare and cause to be printed adhesive stamps which shall contain a replica of the seal of the State of Oklahoma, and such other matter as the State Health Officer shall direct. (As amended Laws 1955, p. 352, Sec. 2, Laws 1957, p. 469, Sec. 1.)

SECTION 58. PROCEEDS PLACED IN GENERAL FUND

Repealed. Session Laws, 1955, p. 352, Sec. 3. Eff. 90 days after May 27, 1955, date of adjournment of Legislature.

SECTION 59. PENALTIES

(a) Any person who shall be convicted of violation of any of the provisions of this Act, or of the rules and regulations established thereunder, shall be sentenced to pay a fine of not less than Fifty Dollars (\$50.00), nor more than One Hundred Dollars (\$100.00) for each offense.

(b) Each day of violation shall constitute a separate offense.

SECTION 60. SANITARY PREMISES

Every bedding manufacturer or renovator shall keep his place of business in a sanitary condition satisfactory to the Health Department, and failure to do so shall be sufficient cause to revoke his permit.

SECTION 61. EXCEPTION

The provisions of this Act shall apply to all bedding manufactured, repaired, renovated, and/or sold after the effective date hereof; but the same shall not apply to bedding which has been manufactured, repaired, or renovated prior to the effective date hereof.

SECTION 62. UNCONSTITUTIONALITY

If any Section, sub-section, sentence, clause, phrase, or words of this Act is for any reason held to be unconstitutional, such decree shall not affect the validity of any remaining portion of this Act.

RULES AND REGULATIONS

All Regulations promulgated prior to the effective date of these Regulations are hereby repealed.

RULE I - Terms Defined

As used in these rules, unless the context otherwise specifically requires:

A. The term "Act" means Title 63, O.S. 1951, Sections 51-62, and all amendments thereto (Title 63, O.S. 1959, Supplement, Sections 56 and 57.)

B. The terms "rule," "rules," "regulations," and "rules and regulations" mean the Rules and Regulations adopted by the Board of Health pursuant to Section 55 of the Act.

C. The definition of terms contained in Section 51 of the Act shall be applicable also to such terms when used in rules promulgated under the Act.

D. The terms "tag," "tags," "tagged," and "tagging" mean tag or label required to be on or affixed to bedding products by the Act and Regulations and on which the information required is to appear.

E. The term "bedding" means mattresses, box springs,

mattress pads, mattress protectors, quilts, comfortables, pillows, bolsters, feather beds, sofa beds, chair beds, day beds, studio couches, convertible chaise lounges, and any stuffed, filled, or upholstered items made for bedding purposes.

F. The term "second-hand" as defined in the Act does not apply to new materials subjected to manufacturing processes or to new materials which are the by-product of manufacturing processes.

G. The terms "filling," "filling material," and "materials" mean materials used as filling in the manufacture, repair, or renovation of bedding.

RULE II - General Requirements

A. These regulations shall apply to all persons, partnerships, corporations, and associations engaged in the business of manufacturing, repairing, renovating, germicidally treating, and selling items of bedding. These regulations do not apply to persons who make, renovate, and germicidally treat bedding for their own use.

B. Each item of bedding shall be tagged in conformity with the requirements of the Act and Regulations. All tags shall be attached at the factory.

C. It shall be unlawful to make any false or misleading statement on the tag required by the Act and Regulations; it shall be unlawful for any person to remove, deface, or alter any tag or statement thereon, or cause the same to be done, for the purpose of defeating the provisions of the Act and Regulations.

D. The terms used on the tag to describe materials used in filling shall be restricted to those defined in the Regulations under the Act.

E. When percentages are required in these Regulations it shall mean percentage by weight in lieu of percentage by volume. Wood frames, metal springs, and parts shall be excluded when calculating percentages.

F. The presence of an innerspring unit in an article of bedding shall be designated on the law tag. Spring unit may be designated as "spring unit," "coil spring unit," etc. as the case may be. Stating the number of coils in a spring unit is permissible and not mandatory. If the number of coils is stated, the statement must be true and correct.

G. If an article of bedding contains more than one kind of material, the percentage of each material shall be clearly stated on the tag.

H. Filling materials in pre-built border constructions used in the manufacture of mattresses and similar bedding products need not be stated on the tag provided the filling material does not exceed ten per cent (10%) of the material in the article to which the border construction is affixed.

I. When the filling material contained in a quilted ticking affixed to the cover of an article of bedding is in excess of ten per cent (10%) of the weight of the entire filling material of the article of bedding, such material shall be designated on the tag and its percentage given.

J. Burlap, muslin, webbing, and tape, when less than ten per

cent (10%) of the filling material, need not be stated on the law tag.

K. To allow for unintentional variations, a tolerance or variation not in excess of ten per cent (10%) by weight from the amount stated on the tag shall be allowed.

L. The terms "all," "pure," "100%" or terms of similar import are permitted only if the material is as stated. No tolerance is allowed where such terms are used.

M. Any new stiffening material, such as fiberboard, corrugated fiberboard, wood, or paper, when present in an amount exceeding ten per cent (10%) by weight of the entire filling material of an article of bedding shall be designated on the tag and its percentage given.

N. Filling material which has been artificially dyed or colored shall be designated as "colored." The natural color of filling material need not be stated.

O. Any filling material containing more than 5% oil shall be designated on the tag as "oily."

P. The presence of silicates in excess of 5% in any filling material shall be designated on the bedding-law tag as "clay" and the actual percentage thereof contained in the filling material shall be stated on the tag.

RULE III - Definitions and Designations of Filling Materials

A. Cotton

1. "Staple cotton" shall mean the staple fibrous growth as removed from the cottonseed in the usual process of ginning (first-cut from the seed) containing no foreign material. The term "cotton" by itself shall not be used.

2. The term "cotton linters" shall be used to designate the fibrous growth removed from cottonseed subsequent to the usual process of ginning. The term "linters" alone shall not be used.

3. The term "cotton by-products" shall be used to designate by-products removed from the various machine operations necessary in the manufacture of cotton yarn up to but not including the process of spinning, and shall include the following materials commonly known in cotton-mill terms as (a) cotton card strips or cotton vacuum strips, (b) cotton comber, (c) cotton fly, and (d) cotton picker; or the by product may be designated by the particular mill term applicable to it, e.g., "cotton card," "cotton comber," "cotton fly," or "cotton picker."

4. The term "mixed cotton" shall mean a mixture of staple cotton, cotton linters, and cotton by-products in any proportion which has not been garnetted or felted.

5. The term "cotton waste" shall mean any material of cotton origin containing more than ten per cent (10%) of hull, leaf, stem, and pulp.

B. Universal Definitions

1. The terms "cards," "strips," or "stripping," preceded by the name of the textile fiber from which it is produced, may be used to designate a tangled or matted mass of fibers produced by or removed from the carding cloth following the carding process.

2. The term "comber," preceded by the name of the textile fiber or fibers from which it is produced, may be used to designate tangled fibers removed during the combing process of textile fibers.

3. The term "fly," preceded by the textile fiber or fibers from which it is produced, may be used to designate fibers which come off the machines during carding, drawing, or similar textile operations.

4. The term "picker," "picker mote," or "mote," preceded by the textile fiber or fibers from which it is produced may be used to designate matted or tangled masses of fiber resulting from the opening and cleaning of fibers in the opener room of the textile mill.

5. The term "sweepings," preceded by the name of the textile fiber or fibers, shall be used to designate the fibrous sweepings from the floors of the textile mill.

6. The term "noils," preceded by the textile fiber or fibers from which it is produced, may be used to designate the short fibers removed during the combing process.

7. The term "napper," preceded by the textile fiber or fibers from which it is made shall be used to designate the lint removed during the process of raising the face of a cloth.

8. The term "defabricated fibers" means any new material which has previously been made into yarn or fabric and which subsequently has been reduced to a fibrous state. When yarns, threads, and/or fabric shreds are present in excess of five per cent of the entire filling material, the material shall be designated as "shredded clippings."

9. The term "textile by-products" or the name of the specific by-product, unless otherwise provided for in these rules, may be used to designate any of the fibrous by-products produced during the processing of textile fibers up to but not including the spinning of yarns.

C. Wool

1. The term "wool" and/or "virgin wool" shall mean the fleece of the sheep or lamb, which has been scoured or scoured and carbonized. It shall not be the by-product of any process of manufacture nor shall it have sustained prior use. It shall be free from kemp and vegetable matter.

2. The term "wool by-products" shall be used to designate the following by-products: "wool drawing laps," "wool card waste," "wool card strips," "wool doffer waste," removed from the various machine operations necessary in the manufacture of wool yarn up to but not including the process of spinning; or the by-product may be designated by the particular mill term applicable to it, e.g., "wool drawing laps," "wool card waste," "wool card strips," "wool doffer waste."

3. The term "wool waste" shall embrace all by-products and wastes of machines in any process of manufacture employing only new wool fibers except as set forth under "wool by-products" and shall also include wool pills and shank and tag wools.

4. The term "tanners wool" shall be applied to wool reclaimed from tanned sheepskin.

5. Mixtures of any of the following: "wool," "wool by-products," "wool wastes," or "tanners wool" shall be designated on the tag by the particular terms applicable to each of the constituents present in the mixture expressed in percentages, or the mixture may be designated as "blended wool."

6. Materials which contain at least ninety-five per cent (95%) wool shall be considered wool.

D. Hair

1. The term "hair" means the coarse filamentous epidermal outgrowth of such mammals as horses, cattle, hogs, and goats. When used in the manufacture of upholstered furniture, bedding, or filling material, it shall be clean, properly cured, free from epidermis, excreta, or foreign or objectionable substances or odors. The classifications of "hair" are as follows:

"horse hair," "cattle hair," "hog hair," and "goat hair."

2. When hair of different origins is used in a blend, the kind and percentage by weight of each shall be stated on the tag.

3. When any material of whatever origin other than hair is used in a mixture or blend with hair, the kind and percentage by weight of each such material shall be designated on the tag.

4. When hair has been curled, the kind of hair shall be stated preceded by the word "curled," e.g., "curled horse hair," "curled cattle hair."

5. Curled hair which has been placed in pad form and rubberized shall be stated on the tag as "rubberized curled hair pad."

6. When hair is rubberized or resin-treated, it shall be so designated on the tag. The percentage of rubber need not be stated on the tag. When rubberized hair is shredded, it shall be termed "shredded rubberized hair." The use of the term "curled" is not permitted in connection with shredded hair.

E. Feathers and Down

1. The term "down" by itself may be used for the soft undercoating of water-fowl, consisting of the light fluffy filaments grown from one quill-point but without any quill-shaft. It is permitted, however, to set forth on the tag the name of the fowl from which the down is obtained, such as "goose down," "duckdown," etc. The presence of loose down fibers in excess of ten per cent (10%) shall be designated as "down fibers."

2. The term "goose feathers" shall be used to designate feathers of any kind of goose, which are whole in physical structure, with the natural form and curvature of the feather.

3. The term "duck feathers" shall be used to designate feathers of any kind of duck, which are whole in physical structure, with the natural form and curvature of the feather.

4. The term "water-fowl feathers" may be used to designate any mixture of goose and duck feathers.

5. The term "turkey feathers" shall be used to designate feathers of any kind of turkey, which are whole in physical structure.

6. The term "chicken feathers" shall be used to designate feathers of any kind of chicken, which are whole in physical structure.

7. The term "feathers" shall not be used alone.

8. The term "feathers," by itself does not include crushed or chopped quill feathers, or stripped, chopped, crushed, or broken feathers, or feather fibers.

9. Broken feathers in excess of the amount allowed as tolerance by these Rules shall be designated on the tag and the name to the feathers shall be stated, e.g., "broken chicken feathers."

10. The term "chopped feathers" in conjunction with the name of the fowl from which the feathers came shall be used to designate feathers which have been processed through a chopping machine which has cut the feathers into small pieces, e.g., "chopped duck feathers." The term "chopped feathers" shall not be used alone.

11. The term "crushed feathers" in conjunction with the name of the fowl from which the feathers came shall be used to designate feathers which have been processed through a so-called curling machine which has changed the original form of the feathers, but has not removed the quill, e.g., "crushed duck feathers." The term "crushed feathers" shall not be used alone.

12. The term "stripped feathers" in conjunction with the name of the fowl from which the feathers came shall be used to designate feather barbs stripped from the main stem or quill but not to the extent of separating the barbs into feather fiber, e.g., "stripped goose feathers." The term "stripped feathers" shall not be used alone.

13. The term "feather fibers" in conjunction with the name of the fowl from which the fibers came shall be used to designate any barbs of feathers separated by any process from the quills, but free from the quills, e.g., "chicken feather fibers."

14. "Quill" shall mean the main shaft or axis of a feather and "quill feather" shall mean a flight feather or tail feather.

15. Feather mixtures shall be designated by the name, character, and percentage of each material used or the entire mixture shall be designated by the name of the lowest grade of material used. The grades of materials in descending order are as follows: goose down, duck down, goose feathers, duck feathers, turkey feathers, chicken feathers.

F. Manufactured Fibers (Synthetic Fibers)

"Synthetic fibers" means manufactured fibers as opposed to natural fibers from animal, fowl, or plant origin. Generic terms for manufactured fibers may be used in lieu of the term "synthetic fibers." The generic terms for manufactured fibers defined in Rule 7 of the Federal Trade Commission Rules and Regulations under the Textile Fiber Products Identification Act (Public Law 85-897, 85th Congress, Second Session, H.R. 469) may be used. If generic terms are used, they must be true and correct.

G. Rubber and Foam

1. The term "rubber" as used in these regulations shall apply to synthetic rubber as well as natural rubber.

2. "Latex foam rubber" means foam products made from rubber latex which previously has not been coagulated or solidified.

3. "Sponge rubber" means sponge products made from rubber which has previously been coagulated or solidified.

4. "Synthetic foam" means a polymerized cellular material made from an organic base other than rubber. Generic terms together with the word "foam" may be used in lieu of the term "synthetic foam." If generic terms are used, they must be true and correct, e.g., "urethane foam," "polystyrene foam," "vinyl foam."

5. When any one of the materials defined in Rule III, Sections G (2), G (3), and G (4) above are cut or broken into pieces of indefinite size, they shall be further defined as "pieces," e.g., "latex foam rubber pieces," "synthetic foam pieces," "urethane foam pieces."

6. When any one of the materials defined in Rule III, Sections G (2), G (3), and G (4) above have been shredded, they shall be further defined as "shredded," e.g., "shredded sponge rubber," "shredded synthetic foam," "shredded polystyrene foam."

7. When any one of the materials defined in Rule III, Sections G (2), G (3) and G (4) above have been molded into the form in which they are intended to be used, they may be further defined as "molded," e.g., "molded sponge rubber," "molded latex foam rubber," "molded synthetic foam," "molded vinyl foam."

8. When any one of the materials defined in Rule III, Sections G (2), G (3), and G (4) above have been either cut or broken into pieces of indefinite size or subjected to a shredding process and subsequently cemented together, whether or not this is done in a mold, the resulting product shall be further defined as "cemented." The term "molded" shall not be used, e.g., "cemented sponge rubber pieces," "cemented shredded latex foam rubber," "cemented shredded synthetic foam," "cemented shredded urethane foam."

H. Miscellaneous Filling Materials

1. "Cat-tail plant fibers," shall be so designated on the

tag.

2. The term "coconut husk fiber" or "coir" shall be used to designate the fibrous material obtained from the husk or the outer shell of the coconut.

3. The term "jute" by itself shall not be used.

4. The term "jute fibers" shall be used to designate jute of which no prior use has been made.

5. The term "jute pad" may be used to designate a pad made from jute fibers.

6. The term "jute shoddy" shall be used to designate reclaimed used cordage or other used jute material which has been fabricated and used for baling or other purposes.

7. The term "kapok" shall be used to designate the fibers obtained from the seeds of the kapok tree. The use of the term "silk floss" is prohibited.

8. The term "sisal fibers" shall be used to designate sisal of which no prior use has been made.

9. The term "sisal pad" may be used to designate a pad made from sisal fibers.

10. The term "palm fibers" shall be used to designate the fibrous material obtained from the leaf of the palm, palmetto, or palmyra tree.

11. The term "sea grass" shall be used to designate any of the materials obtained from maritime plants or sea-weeds.

12. Tampico fibers when curled shall be designated as "curled tampico fibers."

13. The term "cellulose," "cellulose fiber," "cellulose," shall be used to designate cellulosic products containing not more than four per cent (4%) lignin and twelve per cent (12%) pentosans.

14. The term "wood fiber pad" shall be used to designate a pad made of cellulose fiber containing more than four per cent (4%) lignin or twelve per cent (12%) pentosans.

15. Pads made from "cellulose" may be designated as "cellulose fiber pads."

16. The term "steel wool pads" is not permitted. When passed through some form of garnetting machine and carded in layers or sheets, steel fibers may be designated as "steel batting" or "steel fiber pads." When not garnetted, they shall be designated as "steel fibers."

17. The presence of paper in an article of bedding in lieu of other filling material shall be designated on the tag.

18. The use of the term "excelsior" is permitted to designate curled wood shreds. The term "wood wool" is prohibited.

19. A pad made of curled wood shreds shall be designated "excelsior pad."

RULE IV - Felt

A. "Felt" means material that has been carded in layers or sheets by a garnett or felting machine.

B. "Felt" does not include felt scraps or repicked felt.

C. The term "felt" or "felted" by itself shall not be used but shall be combined with the name of the material from which it is made. The use of the term "batting" instead of "felt" is permissible, e.g., "blended cotton felt," "jute felt," "wool batting."

D. Felt made of "mixed cotton" (Rule III, Section A (4) may be designated on the tag as "blended cotton felt." Stating the percentages of component materials in "blended cotton felt" is permissible but not mandatory. If percentages of component materials in "blended cotton felt" are stated, it must be a true

and accurate statement preceded by the term "blended cotton felt."

E. Felt made entirely of staple cotton shall be designated as "staple cotton felt."

F. Felt made from "blended wool" Rule III, Section C (5) may be designated on the tag as "blended wool felt."

G. Felt impregnated with vinyl or any other resin shall be defined as designated on the tag with the words "resin-treated" preceding the name of the material from which the felt is made, e. g., "resin-treated blended cotton felt."

RULE V - Labels

The following described law labels are required by these regulations as authorized by the State Bedding Law:

A. "All New Material" - Bedding meeting all requirements for new materials shall carry the "New Materials Label," and no other label is required.

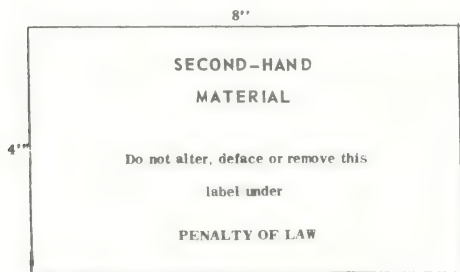
B. "Second-hand Material" (white label to be affixed by manufacturer or renovator only) is required on all second-hand materials renovated, remade, or manufactured. This label, together with the "Second-hand Material" (red label), is required on all articles manufactured, renovated, or remade, using second-hand materials. Germicidal treatment label must also be affixed to this article.

C. "Second-hand Material" (red label to be affixed by the germicidal treatment permit holder) is required on all articles or materials containing second-hand materials for sale, regardless of whether they have been renovated or remade, or are only sterilized and offered for sale.

D. "Second-hand Material Sanitized" label is to be attached by the person holding germicidal treatment permit to every article of bedding or material undergoing the process of sterilization, regardless of the conditions requiring sterilization. Bedding stamp must be affixed to this label when treatment is performed for a retail store.

E. "Owner's Own Material" label is required on all articles of bedding to be renovated or remade for the owner. Bedding stamp must be affixed by the renovator permit holder.

EXAMPLES FOR LABELING BEDDING PRODUCTS



(Must be sewn to article on all four sides)
Title "Second-hand Material" to be 1/2" high.

3''

Sew this edge to Mattress	
DO NOT ALTER, DEFACE OR REMOVE UNDER PENALTY OF LAW	
ALL NEW MATERIAL consisting of	
Place Bedding Stamp Here	THIS ARTICLE MANUFACTURED BY: (or expressly for)
	Date
Oklahoma Permit No.	

4''

Title "All New Material" to be 1/8" high.

3"

4"

Sew this edge to Article	
DO NOT ALTER, DEFACE OR REMOVE UNDER PENALTY OF LAW	
SECOND-HAND MATERIAL consisting of	
Place Bedding Stamp Here	<p style="text-align: center;">THIS ARTICLE MANUFACTURED BY: (or expressly for)</p> <p>Firm Name _____</p> <p>Address _____</p>
Date _____	
Oklahoma Permit No. _____	

(must be sewn to article on the top edge)
Title "Second-hand Material" to be 1/8" high.

3"

Reinforced
Eyelet

**DO NOT ALTER, DEFACE OR REMOVE
UNDER PENALTY OF LAW**

**SECOND-HAND MATERIAL
SANITIZED**

**By a process approved by the Oklahoma
State Department of Health**

4"

Record No. _____

**Place
Bedding
Stamp
Here**

Date Treated _____

Time from _____ to _____

Method _____

THIS ARTICLE TREATED FOR:

Name _____

Address _____

City _____

THIS ARTICLE TREATED BY:

Firm Name _____

Oklahoma Permit No. _____

(Attached with wire and lead seal to
article of bedding or material)

Title "Second-hand Article Sanitized"
to be 1/8" high.

3"

DO NOT ALTER, DEFACE OR REMOVE

UNDER PENALTY OF LAW

**NOT FOR SALE
OWNER'S OWN MATERIAL**

This label is attached as required by law
regulating the repairing and renovating
of bedding and contains the same material
as it did when received from its owner
to which has been added the following:
NEW MATERIAL

4"

RENOVATED AND REPAIRED BY:

Place	Firm _____
Bedding	Street _____
Stamp	City _____
Here	

FOR

Name _____

Street _____

City _____

Date Renovated _____

Oklahoma Permit No. _____

(Must be sewn to article on all four sides)
Title "Not For Sale — Owner's Own Material"
to be 1/8" high.

RULE VI - Germicidal Treatment

A. A person shall not sell, offer for sale, or include in a sale any article of second-hand bedding or any article of bedding manufactured in whole, or in part, from second-hand material, unless such bedding has been cleaned and germicidally treated by a method approved by the Department.

B. A person shall not use in the manufacture, renovation or repair of bedding any material which has been obtained from dump grounds, junk yards, or hospitals within or without the State of Oklahoma.

C. The following are approved methods of germicidal treatment:

1. Steam

All materials to be germicidally treated shall be subjected to treatment by steam under a pressure of fifteen (15) pounds maintained for thirty (30) minutes or a pressure of twenty (20) pounds maintained for twenty (20) minutes.

Alternate methods: Two (2) applications of streaming steam maintained for a period of one (1) hour each, to be applied at intervals of not less than six (6) nor more than twenty-four (24) hours will be accepted as an alternate for steam under pressure.

A gauge for registering steam pressure, visible from the outside of the room or chamber, shall be provided where steam under pressure is used and valved outlets shall be provided near the bottom and also the top of the room in cases where streaming steam is employed.

2. Dry Heat

A minimum temperature of two hundred thirty (230) degrees Fahrenheit, held for a period of one (1) hour, within a closed container is considered satisfactory for proper germicidal treatment. This method is not recommended for furniture.

3. Washing and Drying

a. Pillows: Feather pillows will be considered as having been germicidally treated when the feathers and ticking are kept intact without opening, and washed by a commercial laundry method with subsequent drying to remove moisture.

b. Mattresses: Hair mattresses will be considered as having been germicidally treated when the hair is removed from the ticking and washed by a commercial laundry method and subsequently dried to remove all moisture, and where the ticking is washed and subsequently dried.

4. Other Methods

Any other method of germicidal treatment may be used in germicidally treating bedding and materials, provided it has first been approved by the Department.

D. Germicidal treatment devices shall be properly housed to afford protection to the device and to allow for adequate working space around the device. Adequate space shall be provided for storage and segregation of treated and untreated bedding and materials. All rooms shall be clean, and germicidal treatment devices shall be cleaned and maintained in good repair and proper working condition.

E. Dry-heat germicidal treatment devices shall be equipped with recording clocks that will accurately record time and temperature. Recording clocks shall be attached to the outside of the chamber where they can be easily observed. The heat bulb of

the recording clock shall be installed at the farthest point practical in the chamber from the entry of heat.

F. All dry heat chambers and automatic circulating heat devices shall be constructed to maintain equal and uniform temperatures in all sections of the chamber.

G. All articles of bedding and materials shall be spaced within the germicidal treatment chamber to allow for not less than four (4) inches on all sides of each article for full circulation of heat or air.

H. When articles of bedding are manufactured in whole or in part from second-hand material and germicidally treated by the dry heat method as herein approved, the application of the dry heat germicidal treatment shall be subsequent to the manufacturing process.

I. Accurate records shall be kept by the operator of the germicidal treatment device, and such records shall show the following information concerning each article treated.

1. Date germicidally treated
2. Lot number (chart number)
3. Tag number (article number)
4. Length of time treated (time of day in chamber)
5. Name and address of person for whom treated and/or source of material
6. Name and address of buyer, if any

J. Recording charts from recording clocks shall be kept as part of the operator's record for a period of not less than two years. All records and charts and/or information thereon shall be available to the Department.

RULE VII - Sanitary Premises

Every person engaged in the business of manufacturing, repairing, or renovating bedding shall keep his place of business in a sanitary condition by complying with the rules that follow.

A. Adequate housing and floor space shall be provided to prevent crowding of materials and equipment and to allow for the practice of cleanliness and sanitation.

B. All work rooms shall be well ventilated, and high dust counts, odors, and stale air shall not be permitted. Any dust in excess of fifty (50) millions of particles per cubic foot of air shall be regarded as excessive. Dust control measures may include the housing or partitioning of dust producing machinery from other work rooms and the installation of metal hoods and extraction fans over dust producing machinery.

C. All work rooms shall be well lighted. Industrial lighting standards established by the American Standards Association may be used as a guide.

D. The floors of all rooms in which materials are stored, processed, or otherwise used in the manufacturing or renovating of bedding, shall be of such construction as to be easily cleaned, shall be smooth, and shall be kept clean and in good repair.

E. Walls and ceilings of all rooms where materials are stored, processed, or otherwise used in the manufacturing or renovating of bedding, shall be of tight, smooth construction, shall be painted, and kept clean and in good repair; cracks or recesses which would tend to harbor vermin and bacteria shall not be allowed.

F. All buildings, rooms therein, and immediate surroundings shall be kept in neat and clean condition. All rooms and surroundings shall be free of rubbish, trash, discarded equipment, or other unnecessary articles which may promote insanitary conditions.

G. There shall be no living quarters in the rooms, or opening directly into the rooms where materials are stored, processed, or otherwise used in the manufacturing or renovating of bedding.

H. Clean toilet facilities of a type approved by the Department shall be provided.

I. Adequate and clean hand washing facilities shall be provided. One lavatory (wash basin) with adequate and acceptable water supply shall be provided for every twenty (20) employees or portion thereof up to one hundred (100) persons and one lavatory (wash basin) for each additional twenty-five (25) persons or portion thereof. Soap or a suitable cleaning agent shall be provided at each lavatory.

J. A water supply and drinking fountain approved by the Department shall be provided. Paper cups with dispenser may be used instead of a fountain. The common drinking cup is prohibited.

RULE VIII - Permits

A. A person shall not engage in the business of manufacturing, repairing, and selling bedding unless he has obtained an authorizing permit from the Department.

B. A person shall not germicidally treat bedding unless he has obtained an authorizing permit from the Department.

C. Permits required by the Act and Regulations must be renewed annually on a fiscal year basis, i. e., July 1.

D. Permit fees are as follows:

Initial Bedding Permit	\$5.00
Renewal Bedding Permit	\$5.00
Initial Germicidal Treatment Permit	\$25.00
Renewal Germicidal Treatment Permit	\$5.00

RULE IX - Adhesive Revenue Stamps

A. A person shall not manufacture, renovate, and/or sell, or have in his possession with intent to sell, any bedding unless there be affixed to the law label required by the Act and Regulations an adhesive stamp prepared and issued by the Department. Adhesive stamps shall be affixed to law label by the person manufacturing, renovating, selling, or germicidally treating items of bedding.

B. Adhesive revenue stamps are valued at 5¢ each and shall be issued to authorized permit holders by the Department in multiples of 100. The smallest quantity of stamps which can be issued is 100 for \$5.00.

C. Persons applying for initial permits shall also purchase not less than 100 adhesive stamps unless the applicant has stamps on hand as the result of a previously assigned permit.

RULE X - Identification of Materials

A. Persons engaged in the manufacture, repair, and renovation of bedding shall keep new and second-hand materials segregated and identified; when new and second-hand materials are mixed, the entire mixture shall be regarded as second-hand.

B. Persons engaged in the manufacture, repair, renovation, and/or germicidal treatment of bedding shall tag, label, or mark all second-hand bedding and materials prior to manufacture, renovation, or germicidal treatment to show name and address of owner and reason for possession.

STATE OF OREGON

**Laws Relating
to
Sanitation of Upholstered
Furniture and Bedding**



Oregon State Board of Health

SANITATION OF UPHOLSTERED FURNITURE AND BEDDING

[S. B. 28]

To register and regulate persons engaged in the business of manufacturing and selling at wholesale and retail, repairing, renovating, sterilizing and fumigating bedding and upholstered furniture; to provide for the securing and issuing of registration certificates and the payment of fees therefor; to provide for the administration of this act by the state board of health and defining its duties and powers; to provide for disposition of fees and penalties collected hereunder; to provide for penalties and to repeal sections 99-1301, 99-1302, 99-1303, 99-1307, 99-1308, 99-1309, 99-1310, 99-1314, 99-1316, 99-1317, 99-1318, O. C. L. A., sections 99-1304, 99-1305, 99-1306, 99-1311, 99-1312, 99-1313, O. C. L. A., as amended by sections 1, 2, 3, 4, 5 and 6, chapter 147, Oregon Laws 1941, respectively, and section 99-1315, O. C. L. A., as amended by section 1, chapter 142, Oregon Laws 1947; and all acts or parts of acts inconsistent herewith; and providing a saving clause; having as its purpose the health, safety and welfare of the people of Oregon.

Be It Enacted by the People of the State of Oregon:

ADMINISTRATION

433.420 Administration by State Board of Health. The board shall administer ORS 433.405 to 433.680 and may adopt such rules and regulations as may be necessary for their administration. All rules and regulations shall have the full force and effect of law and shall become effective not earlier than 10 days after being filed with the Secretary of State.

433.660 Advisory council; membership; terms. There is created a Furniture and Bedding Advisory Council to the board which shall consist of the State Health Officer as secretary and five other members to be appointed by the Governor for a term of five years. On July 1 of each year, upon the expiration of the term of one member of the commission, the Governor shall appoint a successor.

433.665 Qualifications of appointed members. The five appointive members of the advisory

council shall be persons who, because of their vocations, employment or affiliations, are qualified to represent the various branches of the affected industries. Appointments shall be apportioned so that: (1) One member represents the upholstered furniture manufacturing industry; (2) One member represents the bedding manufacturing industry; (3) One member represents the retail furniture industry; (4) One member represents the sterilizing and fumigation industry; (5) One member, who having no commercial interest, affiliation or relationship in or to the industry, represents the public.

433.670 Vacancies and removals. (1) The Governor shall fill such vacancies as may occur in the membership of the council, and a member so appointed shall serve during the unexpired term of his predecessor; (2) The Governor may remove any member of the council when he ceases to represent the interest in whose behalf he was appointed.

433.680 Functions of the council. The advisory council may: (1) Consider all matters submitted to it by the State Health Officer; (2) Propose such rules and regulations as may, in its opinion, be necessary in carrying out ORS 433.405 to 433.680; (3) Make recommendations to the Civil Service Commission and the State Health Officer relative to the qualifications and duties of the inspectors; (4) Advise regarding enforcement policy and other matters which may be pertinent to the purpose and intent of ORS 433.405 to 433.680.

433.675 Meetings; compensation. (1) The Furniture and Bedding Advisory Council shall choose one of its members to act as chairman and shall meet twice each year at a time and place designated by the secretary. However, the secretary may, at the written request of two members of the council or, at his own option, call a special meeting of the council to discuss such matters as may, in his opinion, require interim discussion and advice; (2) The members of the advisory council shall receive \$10.00 per diem plus necessary travel and other expenses while engaged upon the work of the council.

DEFINITIONS

433.405 General definitions. As used in ORS 433.405 to 433.680, unless the context requires otherwise: (1) "Annually" or any of its variants means that period beginning July 1 of each year and ending June 30 of the succeeding year or any unexpired portion of that period; (2) "Board" means the State Board of Health; (3) "Certificate" means any registration certificate issued by the board; (4) "Chief" means the chief of the Furniture and Bedding Inspection Section; (5) "Inspector" means an inspector of the Furniture and Bedding Inspection Section; (6) "Person" includes individual, copartnership, association, firm, auctioneer, trust and corporation, and the agents, employees and servants of any of them; (7) "Section" means the Furniture and Bedding Inspection Section of the Board; (8) "Sell" or any of its variants means one or any combination of the following: Sell, offer or expose for sale, barter, trade, deliver, give away, rent, consign, lease, possess with an intent to sell or dispose of in any other commercial manner. Merchandise found on sales floors or in places from which sales or deliveries are made, is assumed to be for sale; (9) And for the purpose of the rules and regulations under those statutes, the present tense includes the past and future tenses, and the future, the present.

433.410 Definitions of affected materials. As used in ORS 433.405 to 433.680, unless the context requires otherwise: (1) "Bedding" means any quilted pad, packing pad, mattress pad, hammock pad, mattress, comforter, bunk quilt, sleeping bag, box spring, upholstered baby carriage, studio couch, pillow, cushion, hassock or any bag or container made of leather, cloth or any other material or any other device that is stuffed or filled in whole or in part with concealed material in addition to the structural units, all of which may be used by any human being for sleeping, resting or reclining purposes. "Pillow" includes a bag or a case of cloth filled or stuffed with feathers, downs, kapok, cotton, hair, wool or other sanitary filling not prohibited by the regulations of ORS 433.405 to 433.680 to be used, or that may be used, as a rest or a support for the

head in reclining, resting or sleeping; (2) "Filling material" means cotton, wool, kapok, feathers, downs, or any other material or combination thereof, loose or in batting, pads or any other prefabricated form, concealed or not concealed, to be used or that may be used in articles of bedding or upholstered furniture; (3) "Owner's own material" means any article or material belonging to any person for his own or his tenant's use that is sent to any manufacturer, repairer or renovator to be repaired or renovated or used in repairing or renovating; (4) "Secondhand" means any article or material of which prior use has been made, and includes all filling materials, not otherwise classed as new by the regulations of ORS 433.405 to 433.680. Any article of upholstered furniture or bedding on sales floors in a private residence or room which is not separated from living quarters is secondhand furniture or bedding. Any article of upholstered furniture or bedding shall be classed as secondhand if it contains any secondhand material in whole or in part; (5) "Slip cover" means any casing or cover without any filling material and which meets any of the following requirements: (a) is for use or is to be placed on or over any manufactured article of upholstered furniture or bedding, (b) covers or conceals the upholstered furniture or bedding in whole or in part, (c) is closed or held in place by snaps or hooks and eyes or lacing so that it may be removed without the use of tools or instruments, (d) is not permanently attached by tacking, sewing or in any other manner; (6) "Upholstered furniture" means any furniture, movable or stationary, including children's furniture, ottomans, barber chairs, beauty shop chairs, office furniture, massage and surgical tables and related equipment which is stuffed or filled in whole or in part with any material hidden or concealed by fabric or any other covering, including pillows, loose or attached, belonging to or forming a part thereof and the structural units, that can be used as a support for the body of a human being or his limbs and feet when in a sitting, resting or reclining position.

433.415 Definitions relating to trade or business. As used in ORS 433.405 to 433.680, unless the context requires otherwise: (1) "Branch fac-

tory" means one separated from the parent factory manufacturing in whole or in part any article of upholstered furniture or bedding; (2) "Branch renovating shop" means one separated from the parent shop renovating or re-covering any article of bedding; (3) "Branch repair shop" means one separated from the parent shop repairing any article of upholstered furniture; (4) "Fumigator" means any person certified by the board to fumigate any article of upholstered furniture or bedding or filling material relating thereto; (5) "Manufacturer" means a person who either by himself or through employees or agents makes any article of upholstered furniture or bedding in whole or in part or who does the upholstery or covering of any structural unit or part thereof, using either new or secondhand material; (6) "Repairer" or "renovator" means a person who repairs, makes over, re-covers, restores, renovates or renews upholstered furniture or bedding; (7) "Residence dealer" means any person who sells any new or used article of upholstered furniture or bedding from his own or another person's place of abode or from any sales room not having a recognized and ordinary store entrance; (8) "Retailer" means a person who sells any article or thing to a consumer or user of the article or thing purchased; (9) "Retail branch store" means any subordinate establishment, place or private residence maintaining a sales service other than one situated immediately next door to the main store, office or headquarters; (10) "Sterilizer" means any person certified by the board to sterilize any upholstered furniture, bedding or filling material relating thereto; (11) "Supply dealer" means any person certified by the board to manufacture, process or sell at wholesale any felt, padding, pads or loose material in bags or containers, concealed or not concealed, to be used or that could be used in articles of bedding or upholstered furniture; (12) "Supply depot" means any warehouse or storeroom used as a merchandising center or supply outlet, to supply or for the purpose of supplying merchandise subject to ORS 433.405 to 433.680, either directly or indirectly at wholesale or retail, which merchandise is sold or held for the purpose of sale to any person regardless of whether the

purchaser is in business or in the employ of any person; (13) "Transient repairer or renovator" means any person who travels from place to place and repairs upholstered furniture or renovates bedding with or without benefit of mobile facilities but who has no permanent shop or address; (14) "Wholesale branch house" means a branch situated in another locality and conducting a wholesale business independent of the parent house in so far as showroom and service to the trade are concerned, excepting however, sales or showrooms in established furniture marts or exchanges; (15) "Wholesaler" means a person who sells any article or thing to another for the purpose of resale.

ENFORCEMENT

433.550 Unauthorized sales prohibited. No person shall, directly or indirectly, sell any upholstered furniture, bedding or filling material made, repaired, renovated, sterilized or fumigated contrary to ORS 433.405 to 433.680.

433.425 Regulations on standards, grades and labels. The board shall, by regulation, establish grades, cleanliness standards and tolerances on the kinds and qualities of materials which are used or intended to be used or that may be used in the manufacture of upholstered furniture or bedding, provided such grades, specifications and tolerances are not in conflict with accepted national standards, relating thereto. The board may approve or adopt standard designations and rules for the proper labeling of articles filled with these materials, provided such rules are not in conflict with ORS 433.405 to 433.680.

433.595 Persons authorized to inspect records, materials and processing equipment; scope of inspection. The State Health Officer, the chief or any authorized inspector shall have access to any premises or to any records held by any person containing any information pertaining to any materials or articles affected by and subject to the provisions of ORS 433.405 to 433.680. They may inspect materials and structural parts intended to be used in the manufacture of upholstered furniture or bedding, partly finished and finished articles of upholstered furniture

and bedding, may open such articles or parts thereof for the purpose of inspecting concealed filling material and may take either the entire articles or samples of filling material in such quantities as may be necessary for laboratory analysis.

433.655 Presumption of intent to sell. The presence of any article or material regulated by ORS 433.405 to 433.680 on sales floors or premises from which sales or deliveries are made shall be presumptive evidence of intent to sell or use.

433.600 Methods of controlling fitness of materials and finished products. (1) The State Health Officer, the chief or any authorized inspector may determine the fitness of any second-hand or damaged article of upholstered furniture or bedding for sterilization or fumigation and sale and of any materials intended to be used in the manufacture of any article or articles of upholstered furniture or bedding; (2) The board may condemn, withhold from sale, seize or destroy any upholstered furniture or bedding which is found to be in violation of ORS 433.405 to 433.680 and any filling material, units or other structural parts, intended to be used or that could be used in the manufacture, repair or renovation of upholstered furniture or bedding in violation of ORS 433.405 to 433.680.

433.610 Condemned articles or articles ordered held to be produced on demand. Every person shall produce upon demand of an inspector any article or material that has been condemned or ordered held on an inspection notice.

433.605 Condemnation tags; removal prohibited. (1) The tag to be affixed to any articles of condemned upholstered furniture or bedding or any material by an inspector shall be a colored tag and shall contain such information as may be required by the board; (2) No person shall remove or cause to be removed any tag or device placed upon any upholstered furniture or bedding or any material by an inspector.

433.575 Separate storage of new and processed articles. New or sterilized or fumigated articles of upholstered furniture or bedding or materials shall at all times be kept separate from

secondhand articles or materials not fumigated or sterilized.

433.580 Identification of articles for repair and secondhand materials. Every person upon receiving upholstered furniture or bedding for repair or renovation shall securely affix immediately a tag of identification showing the owner's or dealer's name and address and the date upon which it was received. The tag shall remain affixed until actual repair or renovation is begun. Secondhand springs, structural parts and filling materials shall be likewise identified.

433.590 Imported goods to meet requirements. (1) Every person importing or selling either at wholesale or retail, directly or indirectly, any unlabeled foreign-made upholstered furniture or bedding, shall fully comply with all the requirements of ORS 433.405 to 433.680, including the registration and labeling provisions, before any such upholstered furniture or bedding can be offered or exposed for sale; (2) Secondhand upholstered furniture or bedding or secondhand filling materials to be used or that may be used in upholstered furniture or bedding, received from outside this state, shall comply with all the sterilization and fumigation provisions of ORS 433.405 to 433.680 before being accepted, sold or delivered, either directly or indirectly by any person.

433.640 Persons to comply with sterilization and fumigation laws. Responsibility for compliance with ORS 433.405 to 433.680 rests not only with the manufacturer but also with any person subject to the registration provisions of ORS 433.405 to 433.680.

433.645 Interference with inspectors prohibited; police powers of inspectors. (1) No person shall interfere with, obstruct or otherwise hinder any inspector of the board in the performance of his duties; (2) the chief and all inspectors in the performance of their official duties shall have the powers of peace officers of this state.

433.650 Courts having jurisdiction over prosecutions. Justices of the peace, district courts, county courts and all other courts having jurisdiction as justice of the peace, shall have con-

current jurisdiction with the circuit court of all prosecutions under ORS 433.405 to 433.680.

433.990 Penalties. (6) Violation of ORS 433.405 to 433.680 is punishable, upon conviction, for each offense by a fine of not less than \$50 nor more than \$500 or by imprisonment in the county jail for not less than three nor more than six months, or both. The unit for a separate and distinct offense under those sections is every article of improperly labeled, or not labeled, upholstered furniture or bedding made, repaired, re-covered, renovated, sterilized or fumigated, sold, exposed or offered for sale, delivered, consigned, rented or possessed with intent to sell contrary to ORS 433.405 to 433.680.

EXEMPTIONS

433.475 Slip cover makers need no certificate. Any person engaged exclusively in the manufacture of slip covers shall not be required to have a certificate under ORS 433.405 to 433.680.

433.480 Upholstered caskets excluded. Upholstered caskets used in the burial of the dead shall not be considered as upholstered furniture within the meaning of ORS 433.405 to 433.680.

433.585 Regulation of exported goods. ORS 433.405 to 433.680 do not apply to upholstered furniture or bedding manufactured, repaired or renovated which is for sale outside the borders of this state, except that if such articles when manufactured, repaired or renovated contain, in whole or in part, secondhand materials, such articles shall first be sterilized or fumigated as required by ORS 433.405 to 433.680.

FUMIGATION

433.550 Unauthorized sales prohibited. No person shall, directly or indirectly, sell any upholstered furniture, bedding or filling material made, repaired, renovated, sterilized or fumigated contrary to ORS 433.405 to 433.680.

433.555 Sale of used articles without processing prohibited. No person shall, directly or indirectly, sell in this state, at wholesale or retail or otherwise, any secondhand or previously used article of upholstered furniture or bedding or any

secondhand or previously used filling material to be used or that could be used in the manufacture, repair or renovation thereof, unless such article or material has, subsequent to its last use, been sterilized or fumigated by a process approved by the board and labeled according to ORS 433.405 to 433.680.

433.510 Registration of sterilizing and fumigating plants. (1) No person shall engage in the business of sterilizing or fumigating articles or materials subject to the regulations of ORS 433.405 to 433.680 without first applying for the proper registration certificate; (2) The application shall describe the place where the sterilization apparatus, or fumigation chamber, will be located, the type and kind of equipment to be used, the names and addresses of the true owners of the sterilizing or fumigating business and such other data as the board may from time to time require.

433.515 Certificate for approved equipment; subsequent inspection. (1) Upon receipt of an application to sterilize or fumigate, the board may cause an investigation to be made and, if satisfied that the apparatus or chamber will comply with the requirements of ORS 433.405 to 433.680 for sterilization or fumigation, the certificate shall be granted; (2) inspection shall be made by the board, or its authorized representatives, from time to time to determine whether the sterilizer or fumigation apparatus is fully and faithfully complying with the requirements and regulations of ORS 433.405 to 433.680 for sterilization and fumigation.

433.520 Construction of sterilization equipment; safety rules. (1) Sterilization and fumigation chambers shall be steam and gas tight in construction and only such methods and processes as will effectively destroy all insect and bacterial life shall be approved for use; (2) The board also shall prescribe by regulation such rules as may be necessary to the safety of sterilization and fumigation operators and to such human and animal life as may normally exist in the affected area.

433.530 Sterilization and fumigation of mate-

rials; articles labeled after processing. (1) Every person who receives for sterilization or fumigation any upholstered furniture, bedding or filling material to be used or that can be used in upholstered furniture or bedding for resale, shall sterilize or fumigate all such articles or material in accordance with ORS 433.405 to 433.680 and the regulations thereunder and shall affix a sterilization or fumigation label approved by the board immediately after the sterilization or fumigation has been completed; (2) the label shall be attached securely to the article or material at the sterilizing or fumigating plant as evidence that the article or material has been sterilized or fumigated by a process approved by the board. Such label shall be fixed in a position where it may be conveniently examined.

433.535 Additional data on sterilization or fumigation label; record of labels. (1) In addition to the language required by ORS 433.495 to 433.500, the sterilization or fumigation label shall show or state: (a) the lot number and label number of the attached sterilization or fumigation label; (b) the kind of article or filling material sterilized or fumigated and a statement as to the cushions, pads and pillows belonging to or forming a part thereof; (c) the name of the person for whom sterilized or fumigated; (d) the date sterilized or fumigated; (e) the name, address and registration number of the sterilizing or fumigating plant; (f) any other data which may be necessary and proper to establish that effective results are being obtained; (2) the sterilizer or fumigator shall keep a record of the data required by subsection (1) of this section showing the disposition of each and every label. The record shall be accessible at all times to authorized inspectors of the board.

433.540 Issue of labels restricted; illegal possession or transfer prohibited; return of void labels. (1) Sterilization or fumigation labels shall be issued only to persons who are authorized to sterilize or fumigate under ORS 433.405 to 433.680; (2) illegal possession of any sterilization or fumigation label is prohibited. No sterilization or fumigation label may be sold, given away or transferred, unless such sale or transfer is first

approved by the board; (3) void or multilabeled labels shall be returned to the board.

433.545 Processing required prior to repair. Every article of upholstered furniture or bedding from any private or public source shall be sterilized or fumigated before it is repaired or renovated.

433.585 Regulation of exported goods. ORS 433.405 to 433.680 do not apply to upholstered furniture or bedding manufactured, repaired or renovated which is for sale outside the borders of this state, except that if such articles when manufactured, repaired or renovated contain, in whole or in part, secondhand materials, such articles shall first be sterilized or fumigated as required by ORS 433.405 to 433.680.

LABELS AND LABELING REQUIREMENTS

433.495 Size, contents and attachment of labels. (1) Labels to be attached to articles of upholstered furniture and bedding regulated by ORS 433.405 to 433.680 shall: (a) not be less than six square inches in size, (b) be made of a fabric of good quality approved by the board, (c) show or state that the filling material is "new", "secondhand", "sterilized", "fumigated" or "owner's own", as the case may be, (d) show or state, in addition to the prescribed language, the registration number of the manufacturer as assigned by the board; (2) filling materials, singly or when blended, shall be described by true name as defined by the regulations of ORS 433.405 to 433.680. Feather and down contents shall be shown by percentage only, based on avoirdupois weight. The manner of describing the various filling materials, including the language required by law, together with such other descriptive information as may be required, and the type size, placement, and the color of ink thereof, shall be prescribed by the board; (3) if desired, the label also may describe the frame, cover and style of the article to which it is attached. When such descriptive statements are made they must, in fact, be true statements; (4) before display, sale or delivery of any article of upholstered furniture or bedding, all labels required by ORS 433.405 to 433.680 shall be attached securely to the article

at the factory or shop. Such labels shall be fixed in such position that they may be conveniently examined.

433.490 Articles to be labeled. (1) No person shall, at wholesale or retail or otherwise, directly or indirectly, make, repair, renovate or sell any upholstered furniture or bedding for use in any household or place of abode or which can be used by human beings, if it is made of new or secondhand material which is concealed by fabric or any other covering, unless such article is plainly and indelibly stamped or labeled with a tag or other marking as provided in ORS 433.405 to 433.680 and approved by the board; (2) before being sold, offered or exposed for sale, cotton, wool, kapok, feathers, downs or any other material or any combination thereof, loose, in batting, pad or any other prefabricated form, concealed or not concealed, to be used or that could be used in articles of bedding or upholstered furniture, shall be labeled with a tag or other device setting forth its true content in accordance with ORS 433.405 to 433.680.

433.500 Labels and stamps on particular items. (1) The finished size of bed pillows shall be stated on the label; (2) quilt and comforter labels shall show the "cut" size on the label, and a reasonable tolerance from the "cut" size measurement shall be established by regulations; (3) labels appearing upon decorative pillows, boudoir and fancy cushions need not show the finished size; (4) slip seat chairs and benches or upholstered stools and similar articles of upholstered furniture, having a wood or metal bottom, may be clearly and indelibly stamped at the factory in lieu of the label. The stamp to be used shall not be smaller than the minimum size approved by the board. When a stamp is approved in lieu of a label, such stamp shall show or state such information as would be required on the label which it replaces; (5) all feathers and downs, excepting raw stocks sold in bulk or package, shall be labeled with a tag or other marking upon each and every parcel setting forth the true contents according to the requirements of ORS 433.405 to 433.680; (6) any person who renovates or repairs upholstered furniture or

bedding for any owner or customer for his own use or for use by his tenants shall attach when completed the "Owner's Own Material" label approved by the board. The "Owner's Own Material" label shall be attached securely to the article at the factory or shop, and it shall be fixed in such position that it may be conveniently examined.

433.570 Special processing of certain fillers; proper labeling. Whenever the words "batt", "batting" or "felt" are used in any statement required by ORS 433.405 to 433.680, the material designated shall be in layers as processed by garnetting or carding machines and the statement on the label shall indicate whether the batt is a "staple cotton" or a "cotton linters batt" or such other true statement as may be in order.

433.505 Abuse of labels prohibited. No person shall: (1) place on labels required by ORS 433.405 to 433.680 any mark, tag or sticker or any other device, in such a way as to cover the statements required by law; (2) use on any label any misleading term or designation or term or designation likely to mislead; (3) attempt to or in fact remove, deface, alter, or cause to be removed, defaced or altered, the label or any mark or statement placed upon any upholstered furniture, bedding or material under ORS 433.405 to 433.680. A purchaser for his own use is exempted from the prohibition in this subsection; (4) use the required furniture and bedding label to advertise falsely or misrepresent any merchandise to which the bedding or furniture label is required to be attached.

433.530 Sterilization and fumigation of materials; articles labeled after processing. (1) Every person who receives for sterilization or fumigation any upholstered furniture, bedding or filling material to be used or that can be used in upholstered furniture or bedding for resale, shall sterilize or fumigate all such articles or material in accordance with ORS 433.405 to 433.680 and the regulations thereunder and shall affix a sterilization or fumigation label approved by the board immediately after the sterilization or fumigation has been completed; (2) the label shall be attached securely to the article or material at

the sterilizing or fumigating plant as evidence that the article or material has been sterilized or fumigated by a process approved by the board. Such label shall be fixed in a position where it may be conveniently examined.

433.535 Additional data on sterilization or fumigation label; record of labels. (1) In addition to the language required by ORS 433.495 and 433.500, the sterilization or fumigation label shall show or state: (a) the lot number and label number of the attached sterilization or fumigation label, (b) the kind of article or filling material sterilized or fumigated and a statement as to the cushions, pads and pillows belonging to or forming a part thereof, (c) the name of the person for whom sterilized or fumigated, (d) the date sterilized or fumigated, (e) the name, address and registration number of the sterilizing or fumigating plant, (f) any other data which may be necessary and proper to establish that effective results are being obtained; (2) the sterilizer or fumigator shall keep a record of the data required by subsection (1) of this section showing the disposition of each and every label. The record shall be accessible at all times to authorized inspectors of the board.

433.540 Issue of labels restricted; illegal possession or transfer prohibited; return of void labels. (1) Sterilization or fumigation labels shall be issued only to persons who are authorized to sterilize or fumigate under ORS 433.405 to 433.680; (2) illegal possession of any sterilization or fumigation label is prohibited. No sterilization or fumigation label may be sold, given away or transferred, unless such sale or transfer is first approved by the board; (3) void or mutilated labels shall be returned to the board.

433.630 Issuance and cost of labels. (1) All labels necessary to the enforcement of ORS 433.405 to 433.680 shall be issued by the board, except that labels to be affixed to articles manufactured of "All New Materials" shall be provided and affixed by the manufacturer; (2) Labels issued by the board may be sold to qualified persons in minimum quantities of 100 at a net price to the board of \$1 for each 100 labels sold.

REGISTRATION

433.470 Business to be certified. No person shall engage in a business regulated under ORS 433.405 to 433.680 unless he has first obtained the proper certificate required by ORS 433.405 to 433.680.

433.415 Definitions relating to trade or business. As used in ORS 433.405 to 433.680, unless the context requires otherwise: (1) "Branch factory" means one separated from the parent factory manufacturing in whole or in part any article of upholstered furniture or bedding; (2) "Branch renovating shop" means one separated from the parent shop renovating or re-covering any article of bedding; (3) "Branch repair shop" means one separated from the parent shop repairing any article of upholstered furniture; (4) "Fumigator" means any person certified by the board to fumigate any article of upholstered furniture or bedding or filling material relating thereto; (5) "Manufacturer" means a person who either by himself or through employees or agents makes any article of upholstered furniture or bedding in whole or in part or who does the upholstery or covering of any structural unit or part thereof, using either new or second-hand material; (6) "Repairer" or "renovator" means a person who repairs, makes over, recovers, restores, renovates or renews upholstered furniture or bedding; (7) "Residence dealer" means any person who sells any new or used article of upholstered furniture or bedding from his own or another person's place of abode or from any sales room not having a recognized and ordinary store entrance; (8) "Retailer" means a person who sells any article or thing to a consumer or user of the article or thing purchased; (9) "Retail branch store" means any subordinate establishment, place or private residence maintaining a sales service other than one situated immediately next door to the main store, office or headquarters; (10) "Sterilizer" means any person certified by the board to sterilize any upholstered furniture, bedding or filling material relating thereto; (11) "Supply dealer" means any person certified by the board to manufacture, process or sell at wholesale any felt, padding,

pads or loose material in bags or containers, concealed or not concealed, to be used or that could be used in articles of bedding or upholstered furniture; (12) "Supply depot" means any warehouse or storeroom used as a merchandising center or supply outlet, to supply or for the purpose of supplying merchandise subject to ORS 433.405 to 433.680, either directly or indirectly at wholesale or retail, which merchandise is sold or held for the purpose of sale to any person regardless of whether the purchaser is in business or in the employ of any person; (13) "Transient repairer or renovator" means any person who travels from place to place and repairs upholstered furniture or renovates bedding with or without benefit of mobile facilities but who has no permanent shop or address; (14) "Wholesale branch house" means a branch situated in another locality and conducting a wholesale business independent of the parent house in so far as showroom and service to the trade are concerned, excepting however, sales or showrooms in established furniture marts or exchanges; (15) "Wholesaler" means a person who sells any article or thing to another for the purpose of resale.

433.485 Each branch and firm name treated as separate unit; exception. (1) Every person in any class shall secure a separate certificate for each branch; (2) Every branch is subject to the provisions of ORS 433.405 to 433.680; (3) Every person doing business at the same address under more than one firm name is subject to the registration provisions for each firm name; (4) However, a person whose manufacturing plant is located in another state or foreign country and who is certified to manufacture upholstered furniture and bedding for sale in this state may have one wholesale outlet covered by the certificate issued to the factory.

433.445 Manufacturer's certificate. Every person manufacturing either upholstered furniture or bedding, or both, shall obtain annually a furniture and bedding manufacturer's certificate from the board bearing a registration number assigned by the board.

433.430 Assignment of registration numbers. The board shall prescribe the procedure relative

to assignment or reassignment of registration numbers.

433.455 Repairer's and renovator's certificate. Every person repairing upholstered furniture, or renovating bedding, unless he holds a furniture and bedding manufacturer's certificate, shall obtain annually a repairer's and renovator's certificate from the board bearing a registration number assigned by the board.

433.440 Special certificates required. Except as otherwise provided in ORS 433.405 to 433.680; a person who advertises, solicits or contracts to manufacture, repair or renovate upholstered furniture or bedding and either does the work himself or employs others to do it for him, shall secure the particular certificate required by ORS 433.405 to 433.680 for the particular type of work that he solicits or advertises that he will do, regardless of whether he has a shop or factory.

433.460 Retail dealer's certificate. Every person selling any upholstered furniture or bedding at retail, including upholstered antique furniture, regardless of its condition, unless he holds a furniture and bedding manufacturer's certificate, a wholesale furniture and bedding dealer's certificate, or a repairer's and renovator's certificate, shall obtain annually a furniture and bedding dealer's certificate from the board. This does not apply to upholstered furniture or bedding sold by a peace officer when so ordered by a court.

433.510 Registration of sterilizing and fumigating plants. (1) No person shall engage in the business of sterilizing or fumigating articles or materials subject to the regulations of ORS 433.405 to 433.680 without first applying for the proper registration certificate; (2) The application shall describe the place where the sterilization apparatus, or fumigation chamber, will be located, the type and kind of equipment to be used, the names and addresses of the true owners of the sterilizing or fumigating business and such other data as the board may from time to time require.

433.450 Wholesale dealer's certificate. A wholesaler of either upholstered furniture or bedding, or both, unless he holds a furniture and bedding manufacturer's certificate, shall obtain annually a wholesale furniture and bedding dealer's certificate from the board.

433.465 Supply dealer's certificate. Every person manufacturing, processing or selling at wholesale, any felt or batting or any pads or loose materials in bags or containers for use in bedding or upholstered furniture, unless he holds a furniture and bedding manufacturer's certificate shall procure annually a supply dealer's certificate from the board bearing a registration number assigned by the board.

433.615 Annual registration fees. The annual registration fee for each certificate granted under ORS 433.405 to 433.680 shall be in accordance with the following table and shall be due and payable on or before July 1.

Certificate to engage in business as a Manufacturer of Furniture and Bed- ding or of either	\$60
Wholesaler of Furniture and Bedding or of either	\$60
Supply Dealer	\$60
Supply Depot	\$60
Renovator of Furniture and Bedding or of either	\$25
Sterilizer and Fumigator or either	\$25
Retailer of Furniture and Bedding or of either	\$15

433.620 Fees to be prorated. A person who applies for a certificate of registration after July 1 of any year for a particular classification of business, and who was not subject to registration during the preceding registration year, may obtain the certificate on a prorated basis by payment of an amount equal to one-fourth of the annual registration fee, for the particular classification of business for each quarter or fraction thereof remaining in the annual registration period in which he applies. The quarterly periods shall begin July 1, October 1, January 1 and April 1.

433.625 Additional fee for delinquency in obtaining certificates. (1) Any person failing to apply for the proper certificate within 30 days after engaging in a business for which a certificate is required is delinquent and shall pay a delinquent fee amounting to 20 percent of the requisite registration fee in addition to the requisite registration fee. (2) An applicant submitting a renewal registration fee: (a) On or after August 1 and prior to September 1 shall pay a delinquency fee amounting to 20 percent of the requisite fee in addition to that requisite fee. (b) On or after September 1 shall pay a delinquency fee amounting to 30 percent of the requisite registration fee in addition to that requisite fee.

433.635 Disposition of moneys and fines collected under ORS 433.405 to 433.680. (1) All fines resulting from prosecutions under ORS 433.405 to 433.680 shall be paid to the board and credited to the Furniture and Bedding Inspection Fund. (2) All moneys collected by the board under ORS 433.405 to 433.680 and any other available moneys in the Bedding and Upholstery Fund, as established by the State Treasurer, shall be received by the board and expended only in carrying out ORS 433.405 to 433.680.

433.435 Reciprocity with other states. The board may reciprocate with other states regarding the mutual recognition and acceptance of labels in interstate commerce, the recognition of manufacturer-shipper identification numerals and in such other manner as may be consistent with the best interests of this state.

SANITATION

433.525 Cleanliness of equipment. The premises, delivery equipment, machinery, appliances, and devices of all persons under ORS 433.405 to 433.680 shall at all times be kept free of refuse, dirt, contamination, insects or vermin.

433.560 Soiled articles not to be sold. No person shall sell for human use an article of

upholstered furniture or an article of bedding which is unclean, filthy, soiled, offensive, hazardous or which has been obtained from any garbage or refuse dump or any other type of refuse disposal site; and no person shall sell for human use any article of upholstered furniture or any article of bedding which has been manufactured of, repaired or renovated with, in whole or in part, filling material which is unclean, filthy or soiled or contains foreign matter or dirt, or structural units, filling material, or parts obtained from any garbage or refuse dump or any type of refuse disposal site.

433.565 Cleanliness of filling materials. No person shall sell for human use filling material which contains foreign matter or dirt or which is unclean, filthy, offensive, hazardous or has been obtained from a garbage or refuse disposal dump or any type of refuse disposal site. No person shall use filling material which is unclean, filthy, offensive, hazardous or has been obtained from a garbage or refuse dump or any type of refuse disposal site in the manufacture, repair or renovation of an article of upholstered furniture or an article of bedding.

433.685 to 433.700 [Reserved for expansion]

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF LABOR
AND INDUSTRY
BEDDING AND UPHOLSTERY LAW
ACT No. 249, MAY 27, 1937 AS AMENDED
MAY 22, 1953 AND AUGUST 23, 1961

Relating to the manufacture, repair, renovating, cleansing, sterilizing, and disinfecting of mattresses, pillows, bolsters, feather beds, and other filled bedding, cushions, upholstered furniture *and bulk materials intended for use in such products* intended for sale or lease, and to the sale or lease thereof; requiring the placing of tag and adhesive stamp on such material; providing for the sale of adhesive stamps; authorizing and requiring the Department of Labor and Industry to adopt rules and regulations; providing penalties; and repealing certain acts.

Section 1. Be it enacted, &c., That the provisions herein set forth shall be construed to cover and apply to the manufacture, repair, and renovation of all mattresses, pillows, bolsters, feather beds, and other filled bedding of any description, also to cushions and all types of upholstered furniture which are intended for sale or lease in this Commonwealth, and to the sale or lease thereof.

Department of
Labor and
Industry.

Section 2. (a) The term "Department," when used in this act, shall mean the Department of Labor and Industry, *and the term "secretary" shall mean the Secretary of the Department of Labor and Industry.*

Definitions.

(b) The term "new," as used in this act, shall mean any article or material which has not been subjected to a previous manufacturing process, or which has not been previously used for any purpose.

(c) The term "secondhand," as used in this act, shall mean any article or material, or portion thereof, of which prior use has been made in any manner whatsoever.

(d) The term "person," as used in this act, shall include persons, partnerships, companies, corporations, and associations.

(e) The term "renovate," as used in this act, shall mean to restore to former condition or to place in a good state of repair.

(f) The term "auction," as used in this act, shall mean a public sale of property or effects conducted upon the principle of the highest bidder becoming the purchaser of any particular article or lot offered for sale.

(g) Wherever in this act the singular is used the plural shall be included, and where the masculine gender is used the feminine and neuter shall be included.

Compliance with provisions of act.

Section 3. (a) No person shall manufacture, offer for sale or lease, or have in his possession with intent to sell, auction, or include in a sale, lease or auction, any new or secondhand article or material covered by this act, unless all provisions of this act have been complied with.

(b) It is intended that the responsibility for compliance with this section, in the case of any article or material imported into the Commonwealth, shall rest upon the vendor, lessor or other person having such article or material in his possession.

Use of secondhand material.

Section 4. (a) No person shall use any secondhand material in the renovation of any article covered by this act, unless, since last used, such secondhand material has been effectively cleansed and sterilized or disinfected by a process approved by the department, and in accordance with the regulations of the department, and such article, if not so cleansed, sterilized or disinfected, shall be returned to

its original owner, and shall not thereafter be offered for sale.

(b) The use of secondhand material previously used in any article covered by the act, shall be prohibited in the manufacture of any article covered by this act other than an article to be returned to its original owner.

Section 5. (a) No secondhand article covered by this act, except upholstered furniture, shall be offered for sale, lease, or auction, or be in the possession of any person with intent to sell, lease, or auction, unless such article, since last used, has been effectively cleansed and sterilized or disinfected by a process approved by the department and in accordance with regulations of the department. Secondhand upholstered furniture shall be so treated when required by the rules and regulations of the department.

Secondhand
articles.

Section 6. (a) No person shall be considered to have qualified to apply an acceptable sterilizing or disinfecting process, as required by the provisions of this act, until such process has been registered with and approved by the department, after which a numbered permit shall then be issued by the department. Such permit shall expire one year from date of issue and shall thereafter be annually renewed at the option of the permit holder, upon submission of proof of continued compliance with the provisions of this act and the regulations of the department. Every person to whom a permit has been issued shall keep such permit conspicuously posted on the premises of his place of business near the sterilizer. Holders of permits to apply sterilization or disinfection shall be required to keep an accurate record of all articles or material which have been sterilized or disinfected, including the date of the same, and name and address of the buyer of each, and such records shall be available for inspection at any time by authorized representatives of the department.

Permits.

Fees.

(b) For all initial permits issued, as required by the preceding section, there shall, at the time of issue thereof, be paid by the applicant to the Department of Labor and Industry a fee of twenty-five dollars (\$25.00). An annual renewal charge of *five dollars (\$5.00)* shall be paid to the same department.

(c) Every application for a sterilizing or disinfecting permit to be held in a state, other than Pennsylvania, shall be approved only after personal inspection of said sterilizer or disinfector by the Secretary of Labor and Industry or his authorized representative. The expenses for such inspections out of the State shall be paid by the applicant.

(d) A sterilization or disinfection permit may be revoked by the Secretary of Labor and Industry upon proof of violation of any of the provisions of this act. A reissue of said permit shall be subject to provisions as set forth for an initial permit.

Articles to be
tagged.

Section 7. (a) Every article containing *only* new material covered by this act shall bear securely attached thereto and plainly visible a substantial white tag of *approved material*, upon which shall be indelibly stamped or printed, in the English language, *the registration number of the manufacturer or vendor and* a statement showing the kind of materials used in filling such article, with approximate percentages when mixed, and with the word NEW clearly printed thereon. When required to be sterilized or disinfected, the number of the permit of the person who sterilized or disinfected such material shall appear thereon.

(b) Every article covered by this act containing secondhand material, or a portion thereof, shall bear securely attached thereto and plainly visible a yellow tag of *approved material* upon which shall be indelibly stamped or printed, in the English language, *the registration number of the manufacturer, vendor or renovator and* a statement showing

the kind of materials used in filling such article, with approximate percentages when mixed, and shall state STERILIZED AND DISINFECTED, with the permit number of the person who performed such work.

(c) The terms used on the tag to describe filling materials shall be restricted to those defined in the regulations of the department, and no trade or substitute terms shall be used.

(d) It shall be unlawful to make any false or misleading statements on the tag required by this section. It shall be unlawful for any person to remove, deface, or alter, or cause to be removed, defaced, or altered, any tag or statement contained thereon. The placing of stamps required in the next succeeding section of this act over any lettering on the tag shall be construed to be defacement of the tag.

(e) The size of the tag required by this section shall be not less than six (6) square inches, and the lettering thereon, covering the statement of filling materials and whether new or secondhand, shall be in plain type not less than one-eighth ($\frac{1}{8}$) inch in height.

Section 8. (a) No person shall sell or lease, or have in his possession with intent to sell or lease, in the Commonwealth of Pennsylvania, any article covered by the provisions of this act, unless there be affixed to the tag required by this act by the person manufacturing, selling, or leasing the same, an adhesive stamp prepared and issued by the department, *except that any person desiring to do so may make application to the secretary on an approved form for a license which, if issued, will relieve him of the requirement that an adhesive stamp be attached to every tag. Each license shall expire one year from the date of issue unless revoked prior thereto.*

Registration.

(b) The department shall register all applicants for stamps or licenses and assign to every such person a registration number,

which thereafter shall constitute his identification record, and said identification shall not be used by any other person. *Each registration shall expire one year from the date of issue unless revoked prior thereto. The annual registration fee for an applicant for stamps shall be five dollars (\$5). The annual registration fee for an applicant for a license shall be twenty-five dollars (\$25).*

(c) Adhesive stamps as provided for by this act shall be furnished by the Secretary of Labor and Industry in quantities of not less than one thousand (1000), for which the applicant shall pay fifteen dollars (\$15.00) for each one thousand stamps. The Secretary of Labor and Industry is hereby authorized to prepare and cause to be printed adhesive stamps, which shall contain a replica of the seal of the Commonwealth, and such other matter as the secretary shall direct.

(D) *Every licensee shall make a report to the secretary every three months. The report shall show the exact number of articles sold in this Commonwealth, or shipped into this Commonwealth, for sale in this Commonwealth by the licensee, which are covered by the provisions of this act during the period covered by the report, and the licensee shall, at the same time, pay to the secretary one and one-half cents ($1\frac{1}{2}\text{¢}$) for each such article. The reports shall be made under oath within thirty days of the expiration of the three month period unless the period is extended by the secretary. Whenever any licensee shall fail to make the report and payment required herein or whenever a report is unsatisfactory, the secretary may cause the books and records of such licensee to be examined for the purpose of determining the correct amount due from such licensee. Any licensee failing to pay any amount found to be due, or the expenses incurred in making the examination, shall forfeit its license and registration.*

Section 9. (a) The Department of Labor and Industry is hereby charged with the *administration and enforcement* of this act, and it is further empowered and its duty shall be to make, amend, alter or repeal general rules and regulations for carrying into effect all the provisions of this act and to prescribe means, methods and practices to make effective such provisions.

Duties of the
Department of
Labor and
Industry.

(b) All places where mattresses, pillows, bolsters, feather beds, and other filled bedding, cushions, or articles of upholstered furniture are manufactured, repaired, or renovated, or where materials for the herein named articles are prepared, or where said articles are offered for sale or lease, or where there is possession with intent to sell or lease, or where sterilizing and disinfecting is performed, shall be subject to inspection by authorized representatives of the department to ascertain whether the requirements of this act and of regulations of the department have been met.

The department, through its officers and employes, is hereby empowered to take samples of materials under the authority of this act and to hold for evidence at a trial for the violations of this act any articles or materials manufactured or offered for sale or lease in violations of this act.

(c) Properly accredited representatives of the department shall have authority to place "off sale" any article or material which is offered for sale or lease, or found in the possession of any person with intent to sell or lease in violation of any of the provisions of law herein set forth. When articles or materials are removed from sale, they shall be so tagged, and such tags shall not be removed except by an authorized representative of the department, after satisfactory proof of compliance with all requirements of this act and of regulations of the department.

(d) The department is also empowered to test samples of materials when requested to do so by any reputable person.

(e) All auctioneers shall be required to be registered in the Department of Labor and Industry, and shall secure thereupon a certificate authorizing the sterilization of articles under the jurisdiction of this act by an approved process. Each certificate at the time of issue thereof shall be subject to a fee of *ten dollars (\$10.00)*, with an annual renewal of *five dollars (\$5.00)*.

(f) An auctioneer's certificate may be revoked by the Secretary of Labor and Industry upon proof of violation of the provisions of this act. A reissue of said certificate shall be subject to provisions set forth for initial certificate.

Proceeds payable
into the General
Fund.

Section 10. (a) All proceeds of the sale of stamps and all fines and other monies collected in the administration of this act shall be payable to the Secretary of Labor and Industry, and when collected shall thereafter be transmitted by him to the State Treasury, through the Department of Revenue.

Prosecutions for
violations.

Section 11. (a) Prosecution for violations of the provisions of this act or of the rules and regulations adopted by the department may be instituted by said department, and shall be in the form of summary proceedings before an alderman, magistrate or justice of the peace. Upon conviction, after a hearing, the penalties herein provided for shall be imposed.

Violations.

Section 12. (a) Any person, who shall be convicted of violation of any of the provisions of this act, or of the rules and regulations established thereunder, shall be sentenced to pay a fine of not less than fifty dollars (\$50.00) or more than one hundred dollars (\$100.00) for each offense, and in default of payment of such fine, to undergo an imprisonment of not less than thirty days for each sep-

Penalties.

arate offense, provided that the term of imprisonment at any one time for total computed offenses shall not exceed six (6) months.

(b) Of all monies collected by the magistrates of cities of the first class and turned over to the department, one-half shall be returned to the treasurer of such cities, and the other half to the General Fund of the Commonwealth of Pennsylvania.

(c) Each mattress, pillow, bolster, feather bed, and other filled bedding, cushion, or article of upholstered furniture manufactured, repaired, or renovated, sold, offered for sale, or leased or possessed with intent to sell or lease, contrary to the provisions of this act or of the rules and regulations established thereunder, shall constitute a separate offense and shall be punishable as provided in clause (a) of this section.

(d) The Secretary of Labor and Industry may revoke any permit issued under the provisions of this act if the person to whom the permit was issued has violated any provisions of this act or of the rules and regulations established thereunder.

Section 13. This act shall become effective and operative immediately upon final enactment.

When effective.

Section 14. It is intended that the various provisions of this act are severable, and if any such provisions are declared to be unconstitutional at any time by courts of authorized jurisdiction, the said action shall not be considered to affect the remainder of the provisions of this act.

Constitutional provisions.

Section 15. The following act, which this act is to replace, approved the fourteenth day of June, one thousand nine hundred and twenty-three (Pamphlet Laws, eight hundred two), entitled "An act relating to mattresses, pillows, bolsters, feather beds, comfortables,

Act of June 14, 1923 (P.L. 802) repealed.

cushions, and upholstered furniture; regulating the making, remaking, renovating, sterilizing, disinfecting, sale, leasing, delivering, and consigning thereof, and the possession thereof with intent to sell, lease, deliver, or consign," and the amendments thereto, are hereby repealed. All other acts or parts of acts inconsistent herewith are hereby repealed.

Public Health Law,
Rules And Regulations
Relating To
Bedding
State Of South Carolina



Published by

SOUTH CAROLINA STATE BOARD OF HEALTH

G. S. T. PEEPLES, M.D.

State Health Officer

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LAW RELATING TO BEDDING

ARTICLE 1

General Provisions

32-1351. Definitions.

The term "*bedding*" as used in this chapter shall mean any mattress, upholstered spring, comforter, pad, cushion or pillow designed and made for use in sleeping or reclining.

The word "*shoddy*" shall mean any material which has been spun into yarn, knit or woven into fabric and subsequently cut up, torn up, broken up or ground up.

32-1352. Material not to be used in making bedding for sale.

No person shall in the making or remaking of any article of bedding for sale within the State use:

(a) Any material of any kind that has been used by or about any person having an infectious or contagious disease or has formed a part of any article of bedding which has been so used;

(b) Any material known in the cotton waste trade as cotton mill sweeps or shoddy and consisting in whole or part of old or worn clothing, carpets or other fabric or material previously used; or

(c) Any other fabric or material from which shoddy is constructed;

Unless washed or sterilized by a process approved by the State Board of Health.

32-1353. Invoices of material furnished for bedding.

Any person supplying material to a bedding manufacturer shall furnish therewith an itemized invoice of all material so furnished. Each material entering into willowed or other mixtures shall be shown on such invoice. The bedding manufacturer shall keep such invoice on file for one year subject to inspection by any officer of the State Board of Health.

32-1354. Bedding used by diseased person not to be sold.

No person shall sell, offer for sale, deliver or consign for sale, have in his possession with intent to sell, deliver or consign for sale, barter, trade, rent, lease or give away in connection with a sale any article of bedding that has been used by or about any person having an infectious or contagious disease.

32-1355. Sterilization and disinfection of material and of used bedding.

No person shall remake or renovate any article of bedding unless all the material used in such remade or renovated bedding shall first have been thoroughly sterilized and disinfected by a process approved by the State Board of Health. No person shall sell, offer for sale, deliver, consign for sale, have in his possession with intent to sell, deliver or consign for sale, barter, trade, rent, lease or give away in connection with a sale any article of bedding which has been previously used unless such article shall first have been thoroughly sterilized and disinfected by a process approved by the State Board of Health. Any person who receives bedding for renovation, sterilization or storage shall keep attached thereto, from the time such bedding is received, a tag on which is legibly written the date of receipt and the name and address of the owner.

32-1356. Construction as to manufacture from materials furnished by user.

This chapter shall not be construed to prevent a person from making or having made any bedding out of materials furnished by such person for his own use, providing the label required under § 32-1371 is attached.

32-1357. Remodeling or renovation by owner.

The provisions of this chapter shall not apply in cases where a mattress or mattresses are being remodeled or renovated by the owner.

32-1358. Liability of principals and agents.

When construing and enforcing the provisions of this chapter, the act, omission or failure of any officer, agent or other person acting for or employed by any other person, within the scope of his employment or office, shall in every case be deemed the act, omission or failure of both such persons.

ARTICLE 2*Tags and Stamps***32-1371. Tags required on bedding for sale.**

No person shall sell, offer for sale, consign for sale, have in his possession with intent to sell, offer for sale or consign for sale, barter, trade, rent, lease or give away in connection with a sale any article of bedding unless there shall be securely sewed upon the outside thereof a cloth or cloth-back tag as hereinafter provided, approved by the State Board of Health and to which is affixed an adhesive stamp purchased from the South Carolina Tax Commission pursuant to the provisions of § 32-1375, such stamp to be so affixed as not to interfere with the wording on the tag. In the case of all articles of bedding, the sewing of any edge of the tag securely into an outside seam of the article before material used for filling has been placed inside the ticking or cover shall be deemed a compliance with the requirement that the tag be "*securely sewed*" upon the article.

The tag required under this section must be approved by the State Board of Health and may contain the statement that the article of bedding is made in compliance with an act or acts of other states.

32-1372. Statements on tags.

Upon the tag shall be legibly written or printed, in the English language, a description of the material used as the filling of such article of bedding. If none of the

material used as the filling of such article of bedding shall have been previously used the words "Manufactured of new material" shall appear upon the tag, together with the name and address of the maker or vendor thereof.

If any of the material used in the making or remaking of such article of bedding shall have been previously used, the words "Manufactured of previously used material" or "Remade of previously used material", as the case may be, shall appear upon the tag, together with the name and address of the maker or vendor thereof, and also a description of the material used in the filling of such article of bedding.

The word "Manufactured of new material", "Manufactured of previously used material", or "Remade of previously used material", together with the description of the material used as the filling of an article of bedding, shall be in letters not less than one-eighth of an inch in height.

It shall be unlawful to use in such statement concerning any mattress the word "felt" or words of like import if there has been used in filling such mattress any materials which are not felted and filled in layers.

No term of description likely to mislead shall be used on any tag required by this chapter in the description of the materials used in the filling of any article of bedding.

32-1373. Defacement or alteration of label or tag on bedding.

Any person other than a purchaser for his own use who shall remove, deface or alter or shall cause to be removed, defaced, or altered any label or tag upon any article of bedding labeled or tagged under the provisions of this chapter shall be guilty of a violation hereof.

32-1374. Prohibiting sale of bedding not properly tagged.

Any officer of the State Board of Health may order off sale, and so tag, any bedding which is not made and tagged as required by this chapter or which is tagged with a tag containing a statement false or misleading and such bedding shall not be sold until such defect is remedied and an officer of the State Board of Health has reinspected same and removed the off-sale tag.

32-1375. Tax commission to provide and sell stamps.

The South Carolina Tax Commission shall contract for the printing of stamps required by this chapter and shall, upon the application of any person, furnish to such person such stamps, fashioned and formed in accordance with the provisions hereof, in lots not less than two hundred fifty or multiples thereof at a cost of five dollars per two hundred and fifty. State institutions engaged in the manufacture of bedding shall not be required to pay a fee for the stamps.

32-1376. Disposition of proceeds of sale of stamps.

The charges for such stamps shall be paid directly to the South Carolina Tax Commission and when so paid and collected shall be paid into the general funds of the State after the Commission shall have deducted therefrom and paid the cost for the printing of the stamps.

ARTICLE 3*Enforcement***32-1391. State Board of Health to supervise and inspect manufacture or sale.**

Every place where articles of bedding are made, remade or renovated or held for sale, consignment or delivery and material which is to be used in the manufacturing of bedding shall be subject to supervision and inspection by the State Board of Health, which shall

supervise and inspect the manufacture and the sale of articles of bedding.

32-1392. Regulations.

The State Board of Health may make such regulations as may be found necessary for carrying out the provisions of this chapter and may amend or repeal such regulations.

32-1393. Powers of officers inspecting bedding.

If and when any officer of the State Board of Health has reason to believe that any article of bedding sold, ordered for sale, delivered, consigned or possessed with intent to sell, offer for sale, deliver or consign is not correctly labeled as to contents the officer may open such article of bedding to examine the material used in filling it. If the officer after examination of the material used as filling is unable to determine definitely (a) whether the material used as filling is new or has been previously used, (b) whether the material used in filling such article of bedding is of the kind it is stated to be on the label or (c) in the case of feather pillows, whether the feathers used in filling may have been sterilized or not, the officer may seize and hold the article as evidence and examine the purchase invoice or invoices of such material and such other records of the business as are necessary to determine definitely the kind and character of the material used in such articles of bedding.

32-1394. Second-hand or damaged articles; condemnation.

Any officer of the State Board of Health may determine the fitness of any second-hand or damaged article of bedding for sale or sterilization and sale or of any materials intended to be used in manufacturing any article of bedding. The officer of the State Board of Health may condemn and seize any article of bedding or any filling material found to be in violation of this

chapter. The tag to be affixed to any article of condemned bedding or material shall be approved and provided by the State Board of Health. The failure of any person to produce upon demand of any officer of the State Board of Health any article that has been condemned and ordered held is a violation of this chapter.

32-1395. Opportunity to correct insanitary conditions.

Should the State Board of Health find articles of bedding being made, remade or renovated or held for sale, consignment or delivery or material which is to be used in the manufacturing of bedding in other than sanitary condition, the Board shall give the person responsible for this insanitary condition a definite length of time, within the discretion of the Board, not to exceed sixty days, in which to remedy the insanitary condition and in the event of failure to do so on the part of the person responsible therefor, such failure shall become a violation of this chapter.

32-1396. Prosecution for violation.

The State Board of Health may prosecute all violations of this chapter. Should the Board have reason to believe that any person is violating or has violated any provision of this chapter the Board shall prosecute such person therefor.

32-1397. Enforcement by persons generally.

Any person who has reason to believe that this chapter has been or is being violated may present the facts to the sheriff of the county wherein such violation is believed to have occurred and thereupon the sheriff shall investigate the facts and institute a prosecution if he finds reasonable cause to believe that there has been such a violation. Any individual may institute proceedings to enforce this chapter and punish any violation thereof in the county in which such violation occurs.

32-1398. Penalties for violation.

Any person who shall fail to comply with any of the provisions of this chapter shall be guilty of a violation thereof. The unit for each separate and distinct offense in violation of this chapter shall be each article of bedding made, remade, sold, offered for sale, delivered, consigned or possessed with an intent to sell, offer for sale, deliver or consign contrary to the provisions hereof.

Any person who violates any provision of this chapter shall be guilty of a misdemeanor and upon conviction thereof shall be fined not more than one hundred dollars or imprisoned for not more than thirty days.

RULES AND REGULATIONS

*Bedding and Bedding Material;
Sterilization, Labeling and Renovation*

(Filed in the Secretary of State's office June 16, 1949.)

Section 1. Sterilization methods of bedding materials.

The sterilization of bedding and bedding materials shall be in accordance with one of the following methods:

(a) *The dry heat method*: Loose materials or bedding shall be subjected to dry heat at a temperature of 230 degrees F. and maintained at that temperature for at least sixty (60) minutes. Dry heat sterilization apparatus shall be equipped with a suitable recording thermometer and with such control devices as will provide an adequate control of the temperature to be maintained.

(b) *The steam method*: Loose materials or bedding shall be subjected to direct steam under a pressure of 15 pounds per square inch and maintained at that pressure for at least thirty (30) minutes. A gauge for registering the steam pressure inside the sterilizer, and visible from the outside of the sterilizer, and a suitable

recording thermometer shall be provided where steam sterilization is employed.

Section 2. Specifications for dry heat method sterilization.

Bedding or bedding materials to be sterilized by the dry heat method shall be stood on end or placed upon shelves or other open construction with a space of not less than six (6) inches between, or shall be suspended by means of suitable hangers with space of not less than six (6) inches between bedding, or between bedding and floors, ceiling or sidewalls. Shelving for bedding or loose bedding materials shall be of lattice or other open construction.

Section 3. Location of recording thermometer and temperature charts.

The recording thermometer used in either of the above methods shall be located as far as reasonably possible from the source of heat or steam entering the sterilization chamber, and in no event more than one (1) foot above the floor of the chamber. The temperature charts from the recording thermometer, together with entries thereon of the date and bedding or bedding materials sterilized, shall be kept by the person performing such sterilization for a period of at least one (1) year, and shall be available at all times for inspection by the State Board of Health or its agents. The said board or its agents may seal the recording thermometers on sterilization apparatus to prevent tampering or falsification of records, and any unwarranted removal or breakage of such seal shall be a violation of the act under which these regulations are issued.

Section 4. Certificate to be issued; may be revoked.

Satisfactory compliance with these regulations as to sterilization shall be evidenced by a certificate which shall be issued by the State Board of Health to all persons who operate sterilization apparatus for bedding or bedding materials, such certificate of satisfactory compliance to be displayed at all times in a conspicuous place

at the location or place of business where such sterilization is conducted. Such certificate may be revoked or removed without notice by the said Board or its agents upon failure to comply with or maintain the standards set up by these regulations and the act under which these regulations are issued; and such person shall be liable to the penalties provided for violation of the said act and regulations.


Section 5. Labeling.


The labels to be attached to all articles of bedding as provided by the act, shall be furnished by the manufacturer or maker or seller thereof. A white label shall be used on bedding, as defined in the act, which is manufactured of all new materials. A yellow label shall be used on bedding, as defined in the act, that is manufactured or remade of previously used materials. The notation "Contents Sterilized" shall be entered upon such label where sterilization is required by the act.


Section 6. Printing on labels.


All printing on said labels shall be in permanent ink on vellum cloth or a cloth of comparable quality, which shall not flake out when abraded; and exclusive of such portion allowed to affix the tag to the article, the minimum size of the tag shall not be less than six (6) square inches, but may be greater; and shall appear approximately as follows:


DO NOT REMOVE THIS TAG UNDER PENALTY OF LAW	
ALL NEW MATERIAL (or) PREVIOUSLY USED MATERIAL Consisting of (Description of Materials in Clear letters at least $\frac{1}{8}$ inch high)	
Reg. No. (For Use where other states require)	
(Space for Stamp)	Certification is made that the materials in this article are de- scribed in accordance with law.
CONTENTS STERILIZED	
(Name of Manufacturer or Vendor) (Address of Manufacturer or Vendor)	
(Additional Information)	

 Space for Stitching

 (White tags to Read
thus)

 (Yellow tags to Read
thus)

 (Insert this in letters $\frac{1}{4}$
inch high where law re-
quires sterilization of
any part of article.)

 (For use of manufacturer
or vendor)

Section 7. Description of materials used to appear on label.

An accurate and complete description of materials used in the filling of bedding, including the exact number of spring coils in spring units, shall be written or printed in permanent ink in the space provided on the said label.

Section 8. Specifications for cotton filling materials.

Description of cotton filling material used in the manufacture of bedding shall be as follows:

COTTON and/or VIRGIN COTTON and/or STAPLE COTTON: This term shall mean the staple fibrous growth as removed from cottonseed in the usual process of ginning (first cut from seed), containing no foreign material. The presence of the usual amount of leaves, hull, etc., shall not be considered foreign matter. This term shall be shown on the label.

COTTON BY-PRODUCTS: This term shall mean the by-products removed from the various machine operations necessary in the manufacture of cotton yarn

up to but not including the process of spinning, and shall include only the following materials commonly known in cotton-mill terms as (1) cotton comber, (2) cotton card strips, (3) cotton fly and (4) cotton picker.

COTTON LINTERS: This term shall mean the fibrous growth removed from cotton-seed in cotton-oil mills subsequent to the usual process of ginning and shall be so designated on the label.

COTTON WASTE: This term shall mean the by-products removed from the various machine operations necessary in the manufacture of cotton products but not including those grades defined as cotton by-products. Oil mill motes shall be included as cotton waste.

SHODDY: This term shall mean any material which has been spun into yarn, knit or woven into fabric and subsequently cut up, torn up, broken up, ground up or otherwise defabricated and shall be so designated on the label as "Shoddy."

BLENDS OR MIXTURES: When two or more of the above materials are used in a product, they shall be described on the label as required above in the order of their predominance.

COTTON FELT: This term shall be used only when fibres are garnetted or carded and used in layer form. It cannot be used when cotton batting or cotton felt scraps or clippings are stuffed or blown in the same manner as unfelted materials. This term must be followed by a listing of the component materials as required above.

OIL PERCENTAGES: When any filling material contains more than five percent (5%) of oil, it must be described as "oily."

DIRT and/or FOREIGN MATERIAL: When any filling material contains more than five percent (5%) of dirt and/or any other foreign material it shall be described as dirt.

Section 9. All new or previously used material.

Any person supplying material to a bedding manufacturer, within the provisions of the bedding law, shall state in writing, upon the itemized invoice required thereunder whether each item of material is "all new" or "previously used" as defined in the bedding law.

Section 10. Stamps to be sold by South Carolina Tax Commission.

The South Carolina Tax Commission, Columbia, South Carolina, will sell stamps required by the act in lots of not less than 250, or multiples thereof, at a cost of five (\$5.00) dollars per 250. Stocks of labels or stamps previously issued or provided by the State Board of Health or the State Tax Commission under this or previous bedding acts may be used by the purchaser thereof until such stocks are exhausted.

TEXAS STATE BEDDING LAWS and REGULATIONS

RULES AND REGULATIONS CONCERNING
TEXAS STATE BEDDING LAWS

Bulletin No. 5
June 20, 1960



TEXAS STATE DEPARTMENT OF HEALTH
Environmental Health Services
Bedding Division
Austin, Texas

RULES AND REGULATIONS UNDER
THE TEXAS BEDDING ACT
(Senate Bill No. 200 of the 46th Legislature
and All Amendments Thereto)
Art. 4476a V.C.S.

All Regulations promulgated prior to the effective date of these Regulations and in conflict therewith are repealed.

RULE I — *Terms Defined*

As used in these rules, unless the context otherwise specifically requires:

A. The term "Act" means Senate Bill No. 200 of the 46th Legislature and all amendments thereto (Art. 4476a V.C.S.).

B. The terms "rule," "rules," "regulations," and "rules and regulations" mean the Rules and Regulations prescribed by the Department pursuant to Section 5 (a) of the Act.

C. The definition of terms contained in Section 1 (a) of the Act shall be applicable also to such terms when used in rules promulgated under the Act.

D. The terms "tag," "tags," "tagged," and "tagging" mean tag or label required to be on or affixed to bedding products by the Act and Regulations and on which the information required is to appear.

E. The term "bedding" means mattresses, box springs, mattress pads, mattress protectors, quilts, comfortables, pillows, bolsters, feather beds, sofa beds, chair beds, day beds, studio couches, convertible chaise lounges, and any stuffed, filled, or upholstered items made for bedding purposes.

F. The term "second-hand" as defined in the Act does not apply to new materials subjected to manufacturing processes or to new materials which are the by-product of manufacturing processes.

G. The terms "filling," "filling material," and "materials" mean materials used as filling in the manufacture, repair, or renovation of bedding.

RULE II — *General Requirements*

A. These regulations shall apply to all persons, partnerships, corporations, and associations engaged in the business of manufacturing, repairing, renovating, germicidally treating, and selling items of bedding. These regulations do not apply to persons who make, renovate, and germicidally treat bedding for their own use.

B. Each item of bedding shall be tagged in conformity with the requirements of the Act and Regulations. All tags shall be attached at the factory.

C. It shall be unlawful to make any false or misleading statement on the tag required by the Act and Regulations; it shall be unlawful for any person to remove, deface, or alter any tag or statement thereon, or cause the same to be done, for the purpose of defeating the provisions of the Act and Regulations.

D. The terms used on the tag to describe materials used in filling shall be restricted to those defined in the Regulations under the Act.

E. When percentages are required in these Regulations it shall mean percentage by weight in lieu of percentage by volume. Wood frames, metal springs, and parts shall be excluded when calculating percentages.

F. The presence of an innerspring unit in an article of bedding shall be designated on the law tag. Spring unit may be designated as "spring unit," "coil spring unit," etc. as the case may be. Stating the number of coils in a spring unit is permissible and not mandatory. If the number of coils is stated, the statement must be true and correct.

G. If an article of bedding contains more than one kind of material, the percentage of each material shall be clearly stated on the tag.

H. Filling materials in pre-built border constructions used in the manufacture of mattresses and similar bedding products need not be stated on the tag provided the filling material does not exceed ten per cent (10%) of the material in the article to which the border construction is affixed.

I. When the filling material contained in a quilted ticking affixed to the cover of an article of bedding is in excess of ten per cent (10%) of the weight of the entire filling material of the article of bedding, such material shall be designated on the tag and its percentage given.

J. Burlap, muslin, webbing, and tape, when less than ten per cent (10%) of the filling material, need not be stated on the law tag.

K. To allow for unintentional variations, a tolerance or variation not in excess of ten per cent (10%) by weight from the amount stated on the tag shall be allowed.

L. The terms "all," "pure," "100%" or terms of similar import are permitted only if the material is as stated. No tolerance is allowed where such terms are used.

M. Any new stiffening material, such as fiberboard, corrugated fiberboard, wood, or paper when present in an amount exceeding ten per cent (10%) by weight of the entire filling material of an article of bedding shall be designated on the tag and its percentage given.

N. Filling material which has been artificially dyed or colored shall be designated as "colored." The natural color of filling material need not be stated.

O. Any filling material containing more than 5% oil shall be designated on the tag as "oily."

P. The presence of silicates in excess of 5% in any filling material shall be designated on the bedding-law tag as "clay" and the actual percentage thereof contained in the filling material shall be stated on the tag.

RULE III — *Definitions and Designations of Filling Materials*

A. Cotton

1. "Staple cotton" shall mean the staple fibrous growth as removed from the cotton seed in the usual process of ginning (first-cut from the seed) containing no foreign material. The term "cotton" by itself shall not be used.

2. The term "cotton linters" shall be used to designate the fibrous growth removed from cottonseed subsequent to the usual process of ginning. The term "linters" alone shall not be used.

3. The term "cotton by-products" shall be used to designate by-products removed from the various machine operations necessary in the manufacture of cotton yarn up to but not including the process of spinning, and shall include the following materials commonly known in cotton-mill terms as (a) cotton card strips or cotton vacuum strips, (b) cotton comber, (c) cotton fly, and (d) cotton picker; or the by product may be designated by the particular mill term applicable to it, e.g., "cotton card," "cotton comber," "cotton fly," or "cotton picker."

4. The term "mixed cotton" shall mean a mixture of staple cotton, cotton linters, and cotton by-products in any proportion which has not been garnetted or felted.

5. The term "cotton waste" shall mean any material of cotton origin containing more than ten per cent (10%) of hull, leaf, stem, and pulp.

B. Universal Definitions

1. The terms "cards," "strips," or "stripping," preceded by the name of the textile fiber from which it is produced, may be used to designate a tangled or matted mass of fibers produced by or removed from the carding cloth following the carding process.

2. The term "comber," preceded by the name of the textile fiber or fibers from which it is produced, may be used to designate tangled fibers removed during the combing process of

textile fibers.

3. The term "fly," preceded by the textile fiber or fibers from which it is produced, may be used to designate fibers which come off the machines during carding, drawing, or similar textile operations.

4. The term "picker," "picker mote," or "mote," preceded by the textile fiber or fibers from which it is produced may be used to designate matted or tangled masses of fiber resulting from the opening and cleaning of fibers in the opener room of the textile mill.

5. The term "sweepings," preceded by the name of the textile fiber or fibers, shall be used to designate the fibrous sweepings from the floors of the textile mill.

6. The term "noils," preceded by the textile fiber or fibers from which it is produced, may be used to designate the short fibers removed during the combing process.

7. The term "napper," preceded by the textile fiber or fibers from which it is made shall be used to designate the lint removed during the process of raising the face of a cloth.

8. The term "defabricated fibers" means any new material which has previously been made into yarn or fabric and which subsequently has been reduced to a fibrous state. When yarns, threads, and/or fabric shreds are present in excess of five per cent of the entire filling material, the material shall be designated as "shredded clippings."

9. The term "textile by-products" or the name of the specific by-product, unless otherwise provided for in these rules, may be used to designate any of the fibrous by-products produced during the processing of textile fibers up to but not including the spinning of yarns.

C. Wool

1. The term "wool" and/or "virgin wool" shall mean the fleece of the sheep or lamb, which has been scoured or scoured and carbonized. It shall not be the by-product of any process of manufacture nor shall it have sustained prior use. It shall be free from kemp and vegetable matter.

2. The term "wool by-products" shall be used to designate the following by-products: "wool drawing lap\$,," "wool card waste," "wool card strips," "wool doffer waste," removed from the various machine operations necessary in the manufacture of wool yarn up to but not including the process of spinning; or the

by-product may be designated by the particular mill term applicable to it, e.g., "wool drawing laps," "wool card waste," "wool card strips," "wool doffer waste."

3. The term "wool waste" shall embrace all by-products and wastes of machines in any process of manufacture employing only new wool fibers except as set forth under "wool by-products" and shall also include wool pills and shank and tag wools.

4. The term "tanners wool" shall be applied to wool reclaimed from tanned sheepskin.

5. Mixtures of any of the following: "wool," "wool by-products," "wool wastes," or "tanners wool" shall be designated on the tag by the particular terms applicable to each of the constituents present in the mixture expressed in percentages, or the mixture may be designated as "blended wool."

6. Materials which contain at least ninety-five per cent (95%) wool shall be considered wool.

D. Hair

1. The term "hair" means the course filamentous epidermal outgrowth of such mammals as horses, cattle, hogs, and goats. When used in the manufacture of upholstered furniture, bedding, or filling material, it shall be clean, properly cured, free from epidermis, excreta, or foreign or objectionable substances or odors. The classifications of "hair" are as follows: "horse hair," "cattle hair," "hog hair," and "goat hair."

2. When hair of different origins is used in a blend, the kind and percentage by weight of each shall be stated on the tag.

3. When any material of whatever origin other than hair is used in a mixture or blend with hair, the kind and percentage by weight of each such material shall be designated on the tag.

4. When hair has been curled, the kind of hair shall be stated preceded by the word "curled," e. g. "curled horse hair," "curled cattle hair."

5. Curled hair which has been placed in pad form and rubberized shall be stated on the tag as "rubberized curled hair pad."

6. When hair is rubberized or resin-treated, it shall be so designated on the tag. The percentage of rubber need not be stated on the tag. When rubberized hair is shredded, it shall be termed "shredded rubberized hair." The use of the term "curled" is not permitted in connection with shredded hair.

E. Feathers and Down

1. The term "down" by itself may be used for the soft undercoating of water-fowl, consisting of the light fluffy filaments

grown from one quill-point but without any quill-shaft. It is permitted, however, to set forth on the tag the name of the fowl from which the down is obtained, such as "goose down," "duck down," etc. The presence of loose down fibers in excess of ten (10%) shall be designated as "down fibers."

2. The term "goose feathers" shall be used to designate feathers of any kind of goose, which are whole in physical structure, with the natural form and curvature of the feather.

3. The term "duck feathers" shall be used to designate feathers of any kind of duck, which are whole in physical structure, with the natural form and curvature of the feather.

4. The term "water-fowl feathers" may be used to designate any mixture of goose and duck feathers.

5. The term "turkey feathers" shall be used to designate feathers of any kind of turkey, which are whole in physical structure.

6. The term "chicken feathers" shall be used to designate feathers of any kind of chicken, which are whole in physical structure.

7. The term "feathers" shall not be used alone.

8. The term "feathers," by itself does not include crushed or chopped quill feathers, or stripped, chopped, crushed, or broken feathers, or feather fibers.

9. Broken feathers in excess of the amount allowed as tolerance by these Rules shall be designated on the tag and the name to the feathers shall be stated, e. g., "broken chicken feathers."

10. The term "chopped feathers" in conjunction with the name of the fowl from which the feathers came shall be used to designate feathers which have been processed through a chopping machine which has cut the feathers into small pieces, e. g., "chopped duck feathers." The term "chopped feathers" shall not be used alone.

11. The term "crushed feathers" in conjunction with the name of the fowl from which the feathers came shall be used to designate feathers which have been processed through a so-called curling machine which has changed the original form of the feathers, but has not removed the quill, e. g., "crushed duck feathers." The term "crushed feathers" shall not be used alone.

12. The term "stripped feathers" in conjunction with the name of the fowl from which the feathers came shall be used to designate feather barbs stripped from the main stem or quill but not to the extent of separating the barbs into feather fiber, e. g.,

"stripped goose feathers." The term "stripped feathers" shall not be used alone.

13. The term "feather fibers" in conjunction with the name of the fowl from which the fibers came shall be used to designate any barbs of feathers separated by any process from the quills, but free from the quills, e. g., "chicken feather fibers."

14. "Quill" shall mean the main shaft or axis of a feather and "quill feather" shall mean a flight feather or tail feather.

15. Feather mixtures shall be designated by the name, character, and percentage of each material used or the entire mixture shall be designated by the name of the lowest grade of material used. The grades of materials in descending order are as follows: goose down, duck down, goose feathers, duck feathers, turkey feathers, chicken feathers.

F. Manufactured Fibers (Synthetic Fibers)

"Synthetic fibers" means manufactured fibers as opposed to natural fibers from animal, fowl, or plant origin. Generic terms for manufactured fibers may be used in lieu of the term "synthetic fibers." The generic terms for manufactured fibers defined in Rule 7 of the Federal Trade Commission Rules and Regulations under the Textile Fiber Products Identification Act (Public Law 85-897, 85th Congress, Second Session, H.R. 469) may be used. If generic terms are used, they must be true and correct.

G. Rubber and Foam

1. The term "rubber" as used in these regulations shall apply to synthetic rubber as well as natural rubber.

2. "Latex foam rubber" means foam products made from rubber latex which previously has not been coagulated or solidified.

3. "Sponge rubber" means sponge products made from rubber which has previously been coagulated or solidified.

4. "Synthetic foam" means a polymerized cellular material made from an organic base other than rubber. Generic terms together with the word "foam" may be used in lieu of the term "synthetic foam." If generic terms are used, they must be true and correct, e. g., "urethane foam," "polystyrene foam," "vinyl foam."

5. When any one of the materials defined in Rule III, Sections G(2), G(3), and G(4) above are cut or broken into pieces of indefinite size, they shall be further defined as "pieces," e. g., "latex foam rubber pieces," "synthetic foam pieces," "urethane foam pieces."

6. When any one of the materials defined in Rule III, Sections

G(2), G(3), and G(4) above have been shredded, they shall be further defined as "shredded," e. g., "shredded sponge rubber," "shredded synthetic foam," "shredded polystyrene foam."

7. When any one of the materials defined in Rule III, Sections G(2), G(3), and G(4) above have been molded into the form in which they are intended to be used, they may be further defined as "molded," e. g., "molded sponge rubber," "molded latex foam rubber," "molded synthetic foam," "molded vinyl foam."

8. When any one of the materials defined in Rule III, Sections G(2), G(3), and G(4) above have been either cut or broken into pieces of indefinite size or subjected to a shredding process and subsequently cemented together, whether or not this is done in a mold, the resulting product shall be further defined as "cemented." The term "molded" shall not be used, e. g., "cemented sponge rubber pieces," "cemented shredded latex foam rubber," "cemented shredded synthetic foam," "cemented shredded urethane foam."

H. Miscellaneous Filling Materials

1. "Cat-tail plant fibers," shall be so designated on the tag.

2. The term "coconut husk fiber" or "coir" shall be used to designate the fibrous material obtained from the husk or the outer shell of the coconut.

3. The term "jute" by itself shall not be used.

4. The term "jute fibers" shall be used to designate jute of which no prior use has been made.

5. The term "jute pad" may be used to designate a pad made from jute fibers.

6. The term "jute shoddy" shall be used to designate reclaimed used cordage or other used jute material which has been fabricated and used for baling or other purposes.

7. The term "kapok" shall be used to designate the fibers obtained from the seeds of the kapok tree. The use of the term "silk floss" is prohibited.

8. The term "sisal fibers" shall be used to designate sisal of which no prior use has been made.

9. The term "sisal pad" may be used to designate a pad made from sisal fibers.

10. The term "palm fibers" shall be used to designate the fibrous material obtained from the leaf of the palm, palmetto, or palmyra tree.

11. The term "sea grass" shall be used to designate any of the materials obtained from maritime plants or sea-weeds.

12. Tampico fibers when curled shall be designated as "curled tampico fibers."

13. The term "cellulose," "cellulose fiber," or "cellulose," shall be used to designate cellulosic products containing not more than four per cent (4%) lignin and twelve per cent (12%) pentosans.

14. The term "wood fiber pad" shall be used to designate a pad made of cellulose fiber containing more than four per cent (4%) lignin or twelve per cent (12%) pentosans.

15. Pads made from "cellulose" may be designated as "cellulose fiber pads."

16. The term "steel wool pads" is not permitted. When passed through some form of garnetting machine and carded in layers or sheets, steel fibers may be designated as "steel batting" or "steel fiber pads." When not garnetted, they shall be designated as "steel fibers."

17. The presence of paper in an article of bedding in lieu of other filling material shall be designated on the tag.

18. The use of the term "excelsior" is permitted to designate curled wood shreds. The term "wood wool" is prohibited.

19. A pad made of curled wood shreds shall be designated "excelsior pad."

RULE IV — *Felt*

A. "Felt" means material that has been carded in layers or sheets by a garnett or felting machine.

B. "Felt" does not include felt scraps or repicked felt.

C. The term "felt" or "felted" by itself shall not be used but shall be combined with the name of the material from which it is made. The use of the term "batting" instead of "felt" is permissible, e. g., "blended cotton felt," "jute felt," "wool batting."

D. Felt made of "mixed cotton" (Rule III, Section A(4) may be designated on the tag as "blended cotton felt." Stating the percentages of component materials in "blended cotton felt" is permissible but not mandatory. If percentages of component materials in "blended cotton felt" are stated, it must be a true and accurate statement preceded by the term "blended cotton felt."

E. Felt made entirely of staple cotton shall be designated as "staple cotton felt."

F. Felt made from "blended wool" (Rule III, Section C(5) may be designated on the tag as "blended wool felt."

G. Felt impregnated with vinyl or any other resin shall be de-

fined as designated on the tag with the words "resin-treated" preceding the name of the material from which the felt is made, e.g., "resin-treated blended cotton felt."

RULE V — *Tags*

A. The tag required by Section 2(b) of the Act shall be known as the "All New Material Tag."

B. The tag required by Section 2(c) of the Act shall be known as the "Second-Hand Material Tag."

C. The tag required by Section 2(d) of the Act shall be known as the "Renovate Tag."

D. The tag required by Section 4(c) of the Act shall be known as the "Germicidal Treatment Tag."

E. Tags shall be printed on substantial white cloth tag material or a material of equal quality. Tag material must be of substantial quality and must have Departmental approval.

F. Tags shall be securely attached where clearly visible. The "Germicidal Treatment Tag" shall be securely attached with a wire and lead seal unless both the manufacturing and germicidal treatment is performed by the same person, in which case, germicidal treatment tags may be securely sewn to articles of bedding. All other tags required by the Act and Regulations shall be securely attached by sewing, tacking, or by any other method approved by the Department. All tags must be attached where the information contained thereon is visible.

G. The "All New Material Tag" shall not be less than six (6) square inches in size; all other tags required by the Act and Regulations shall not be less than twelve (12) square inches in size.

I. Tag forms approved in Texas are as follows:

1. The "All New Material Tag"

This tag shall be printed in black ink on a white background and shall not be less than six (6) square inches in size.

Space to Attach	
DO NOT REMOVE THIS TAG UNDER PENALTY OF LAW	
ALL NEW MATERIAL Consisting of	
Mfg. Per. Tex.	
SPACE FOR STAMP When Required This article is made in compliance with an act of: Dist. of Col. approved July 3, 1926; Kansas approved March 1923; Minn. approved April 24, 1929; New Jersey revised Statutes 26:10-6 to 18. La. Act 467-1948. Mass. G.L., Sec. 270, Chap. 94.	Certification is made that the filling materials and innerspring in this article are described in accordance with State Law.
Made By – or – Sold By	

2. The "Second-Hand Material Tag"

This tag shall be printed in red ink on a white background and shall not be less than twelve (12) square inches in size.

**DO NOT ALTER, DEFACE OR REMOVE
UNDER
PENALTY OF LAW**

THIS ARTICLE CONTAINS

**SECOND HAND
MATERIAL**

**PLACE
BEDDING
STAMP
HERE**

TEXAS PERMIT NO. _____

3. The "Renovate Tag"

This tag shall be printed in black ink on a white background and shall not be less than twelve (12) square inches in size.

DO NOT ALTER, DEFACE OR REMOVE UNDER PENALTY OF LAW	
NOT FOR SALE OWNER'S OWN MATERIAL WHICH IS SECOND-HAND MATERIAL New Material Added in Remaking: _____ _____	
Place Bedding Revenue Stamp Here	RENOVATED and REPAIRED BY: FIRM _____ STREET _____ CITY _____
FOR	
Name _____ Street _____ City _____ Date Renovated _____ Texas Permit No. _____	

4. The "Germicidal Treatment Tag"

This tag shall be printed in black ink on a white background and shall not be less than twelve (12) square inches in size.

	
DO NOT ALTER, DEFACE OR REMOVE UNDER PENALTY OF LAW	
<hr/>	
SANITIZED	
This Article of Bedding Treated by a Germicidal Process Approved by the Texas State Department of Health	
Place Stamp Here	Method _____ Lot No. _____ Tag No. _____ Date _____
This Article Treated For:	
Name _____	
Street _____	
City _____	
Texas Permit No. _____	
Treated By _____	

RULE VI — *Germicidal Treatment*

A. A person shall not sell, offer for sale, or include in a sale any article of second-hand bedding or any article of bedding manufactured in whole, or in part, from second-hand material, unless such bedding has been germicidally treated and cleaned by a method approved by the Department. Upholstered sofa beds and studio couches are exempt from germicidal treatment unless they, or the materials used in their manufacture, are filthy, harbor loathsome insects or pathogenic bacteria, or have been used by a person with an infectious or contagious disease.

B. A person shall not use in the manufacture of bedding any material which (1) has been used by a person with an infectious or contagious disease, (2) or which is filthy, (3) oily, (4) or harbors loathsome insects and pathogenic bacteria, unless such material is cleaned and germicidally treated by a process or treatment approved by the Department.

C. The following are approved methods of germicidal treatment:

1. Steam

All materials to be germicidally treated shall be subjected to treatment by steam under a pressure of fifteen (15) pounds maintained for thirty (30) minutes or a pressure of twenty (20) pounds maintained for twenty (20) minutes.

Alternate method: Two (2) applications of streaming steam, maintained for a period of one (1) hour each, to be applied at intervals of not less than six (6) nor more than twenty-four (24) hours will be accepted as an alternate for steam under pressure.

A gauge for registering steam pressure, visible from the outside of the room or chamber, shall be provided where steam under pressure is used and valved outlets shall be provided near the bottom and also the top of the room in cases where streaming steam is employed.

2. Dry Heat

A minimum temperature of two hundred thirty (230) degrees Fahrenheit, held for a period of one (1) hour, within a closed container is considered satisfactory for proper germicidal treatment. This method is not recommended for furniture.

3. Washing and Drying

a. Pillows: Feather pillows will be considered as having been germicidally treated when the feathers and ticking are kept intact without opening, and washed by a commercial laundry method with subsequent drying to remove moisture.

b. Mattresses: Hair mattresses will be considered as having been germicidally treated when the hair is removed from the ticking and washed by a commercial laundry method and subsequently dried to remove all moisture, and where the ticking is washed and subsequently dried.

4. Other Methods

Any other method of germicidal treatment may be used in germicidally treating bedding and materials, provided it has first been approved by the Department.

D. Germicidal treatment devices shall be properly housed to afford protection to the device and to allow for adequate working space around the device. Adequate space shall be provided for storage and segregation of treated and untreated bedding and materials. All rooms shall be clean, and germicidal treatment devices shall be cleaned and maintained in good repair and proper working condition.

E. Dry-heat germicidal treatment devices shall be equipped with recording clocks that will accurately record time and temperature. Recording clocks shall be attached to the outside of the chamber where they can be easily observed. The heat bulb of the recording clock shall be installed at the farthest point practical in the chamber from the entry of heat.

F. All dry heat chambers and automatic circulating heat devices shall be constructed to maintain equal and uniform temperatures in all sections of the chamber.

G. All articles of bedding and materials shall be spaced within the germicidal treatment chamber to allow for not less than four (4) inches on all sides of each article for full circulation of heat or air.

H. When articles of bedding are manufactured in whole or in part from second-hand material and germicidally treated by the dry heat method as herein approved, the application of the dry heat germicidal treatment shall be subsequent to the manufacturing process.

I. Accurate records shall be kept by the operator of the germicidal treatment device, and such records shall show the following information concerning each article treated.

1. Date germicidally treated
2. Lot number (chart number)
3. Tag number (article number)
4. Length of time treated (time of day in chamber)
5. Name and address of person for whom treated and/or source of material
6. Name and address of buyer, if any

J. Recording charts from recording clocks shall be kept as part

of the operator's record for a period of not less than two years. All records and charts and/or information thereon shall be available to the Department.

RULE VII — *Sanitary Premises* (Section 10 of Act)

Every person engaged in the business of manufacturing, repairing, or renovating bedding shall keep his place of business in a sanitary condition by complying with the rules that follow.

A. Adequate housing and floor space shall be provided to prevent crowding of materials and equipment and to allow for the practice of cleanliness and sanitation.

B. All work rooms shall be well ventilated, and high dust counts, odors, and stale air shall not be permitted. Any dust in excess of fifty (50) millions of particles per cubic foot of air shall be regarded as excessive. Dust control measures may include the housing or partitioning of dust producing machinery from other work rooms and the installation of metal hoods and extraction fans over dust producing machinery.

C. All work rooms shall be well lighted. Industrial lighting standards established by the American Standards Association may be used as a guide.

D. The floors of all rooms in which materials are stored, processed, or otherwise used in the manufacturing or renovating of bedding, shall be of such construction as to be easily cleaned, shall be smooth, and shall be kept clean and in good repair.

E. Walls and ceilings of all rooms where materials are stored, processed, or otherwise used in the manufacturing or renovating of bedding, shall be of tight, smooth construction, shall be painted, and kept clean and in good repair; cracks or recesses which would tend to harbor vermin and bacteria shall not be allowed.

F. All buildings, rooms therein, and immediate surroundings shall be kept in neat and clean condition. All rooms and surroundings shall be free of rubbish, trash, discarded equipment, or other unnecessary articles which may promote insanitary conditions.

G. There shall be no living quarters in the rooms; or opening directly into the rooms where materials are stored, processed, or otherwise used in the manufacturing or renovating of bedding.

H. Clean toilet facilities of a type acceptable to the Department shall be provided. Departmental requirements shall be in conformity with Occupational Health Regulation No. 2, subsection V., approved by the State Board of Health June 17, 1957.

I. Adequate and clean hand washing facilities shall be provided.

One lavatory (wash basin) with adequate and acceptable water supply shall be provided for every twenty (20) employees or portion thereof up to one hundred (100) persons and one lavatory (wash basin) for each additional twenty-five (25) persons or portion thereof. Soap or a suitable cleaning agent shall be provided at each lavatory.

J. A water supply and drinking fountain acceptable to the Department shall be provided. Paper cups with dispenser may be used instead of a fountain. The common drinking cup is prohibited.

RULE VIII – *Permits* (Section 6 of Act)

A. A person shall not engage in the business of manufacturing, repairing, and selling bedding unless he has obtained an authorizing permit from the Department.

B. A person shall not germicidally treat bedding unless he has obtained an authorizing permit from the Department.

C. Permits required by the Act and Regulations must be renewed annually (one year from issue date).

D. The initial permit issued to a person under the provisions of Rule VIII, Section A., above, shall be known as "Initial Bedding Permit." The initial permit issued to a person under the provisions of Rule VIII, Section B., above, shall be known as "Initial Germicidal Treatment Permit."

E. Permits issued subsequent to initial permits as provided in Rule VIII, Section D., above, but on or before the expiration date of said permits, shall be known as "Renewal Bedding Permit" and "Renewal Germicidal Treatment Permit."

F. Permit fees are as follows:

Initial Bedding Permit	\$15.00
Renewal Bedding Permit	\$10.00
Initial Germicidal Treatment Permit	\$15.00
Renewal Germicidal Treatment Permit	\$10.00

G. Persons who do not renew previously assigned permits by paying renewal fees on or before expiration date shall be required to comply with the requirements for obtaining initial permits.

RULE IX – *Adhesive Revenue Stamps*

A. A person shall not manufacture, renovate, and/or sell, or have in his possession with intent to sell, any bedding unless there be affixed to the tag required by the Act and Regulations an adhesive stamp prepared and issued by the Department. Adhesive stamps shall be affixed to tags by the person manufacturing, renovating, selling, or germicidally treating items of bedding.

B. Adhesive revenue stamps are valued at 1¢ each and shall be issued to authorized permit holders by the Department in multiples of 500. The smallest quantity of stamps which can be issued is 500 for \$5.00.

C. Persons applying for initial permits shall also purchase not less than 500 adhesive stamps unless the applicant has stamps on hand as the result of a previously assigned permit.

RULE X — *Identification of Materials*

A. Persons engaged, in the manufacture, repair, and renovation of bedding shall keep new and second-hand materials segregated and identified; when new and second-hand materials are mixed, the entire mixture shall be regarded as second-hand.

B. Persons engaged in the manufacture, repair, renovation, and/or germicidal treatment of bedding shall tag, label, or mark all second-hand bedding and materials prior to manufacture, renovation, or germicidal treatment to show name and address of owner and reason for possession.

EXAMPLES FOR LABELING NEW MATERIALS

IN BEDDING PRODUCTS

Space to Attach	
DO NOT REMOVE THIS TAG UNDER PENALTY OF LAW	
ALL NEW MATERIAL Consisting of	
MOLDED LATEX FOAM RUBBER	
Mfg. Per. Tex.	
SPACE FOR STAMP When Required This article is made in compliance with an act of: Dist. of Col. approved July 3, 1926; Kansas ap- proved March 1923; Minn. approved April 24, 1929; New Jersey revised Statutes 26: 10-6 to 18. La. Act 467-1948. Mass. G.L., Sec. 270, Chap. 94.	Certification is made that the filling materials and innerspring in this article are described in accordance with State Law.
Made By — or — Sold By	

Space to Attach

DO NOT REMOVE THIS TAG
UNDER PENALTY OF LAW

ALL NEW MATERIAL
Consisting of

DUCK DOWN - 50%

DUCK FEATHERS - 50%

Mfg. Per. Tex.

SPACE FOR STAMP
When Required

This article is made
in compliance with
an act of: Dist. of
Col. approved July 3,
1926; Kansas ap-
proved March 1923;
Minn. approved April
24, 1929; New Jersey
revised Statutes 26:
10-6 to 18. La. Act
467-1948, Mass. G.L.,
Sec. 270, Chap. 94.

Certification is
made that the
filling materials
and innerspring
in this article
are described in
accordance with
State Law.

Made By - or - Sold By

Space to Attach

DO NOT REMOVE THIS TAG
UNDER PENALTY OF LAW

ALL NEW MATERIAL
Consisting of

BLENDED COTTON FELT

AND

COIL SPRING UNIT

Mfg. Per. Tex.

SPACE FOR STAMP
When Required

This article is made in compliance with an act of: Dist. of Col. approved July 3, 1926; Kansas approved March 1923; Minn. approved April 24, 1929; New Jersey revised Statutes 26: 10-6 to 18. La. Act 467-1948, Mass. G.L., Sec. 270, Chap. 94.

Certification is made that the filling materials and innerspring in this article are described in accordance with State Law.

Made By — or — Sold By

Space to Attach

DO NOT REMOVE THIS TAG
UNDER PENALTY OF LAW

ALL NEW MATERIAL
Consisting of

BLENDDED COTTON FELT - 75%

SISAL PADDING - 25%

COIL SPRING UNIT

Mfg. Per. Tex.

SPACE FOR STAMP
When Required

This article is made in compliance with an act of: Dist. of Col. approved July 3, 1926; Kansas approved March 1923; Minn. approved April 24, 1929; New Jersey revised Statutes 26:10-6 to 18. La. Act 467-1948, Mass. G.L., Sec. 270, Chap. 94.

Certification is made that the filling materials and innerspring in this article are described in accordance with State Law.

Made By — or — Sold By

TEXAS BEDDING ACT
Art. 4476a, V.C.S.

Definitions

Section 1. (a) The term "bedding," as used in this Act shall mean mattresses, mattress pads, mattress protectors, pillows, bolsters, feather beds, quilts, comfortables, sofa beds, studio couches, box springs and other filled bedding of any description.

(b) The term "department," when used in this Act, shall mean the Texas State Department of Health.

(c) The term "person," as used in this Act, shall include persons, partnerships, companies, corporations and associations.

(d) The term "renovate," as used in this Act, shall mean to restore to former condition or to place in good state of repair.

(e) The term "materials" as used in this Act, shall mean all articles, materials or portions thereof, used as filling in the manufacture, repair or renovation of bedding.

(f) The term "new," as used in this Act, shall mean any article or material which has not been previously used for any purpose.

(g) The term "second-hand," as used in this Act, shall mean any article or material or portion thereof, of which former use has been made in any manner whatsoever.

(h) Wherever in this Act the singular is used, the plural shall be included; and where the masculine gender is used, the feminine and neuter shall be included. As amended Acts 1949, 51st Leg., p. 918, ch. 497, § 1.

Labeling of Bedding Required

Sec. 2 (a) No person shall manufacture, repair, renovate or sell, or have in his possession with intent to sell, any article of bedding, unless there is securely attached, where clearly visible, a white tag, made of substantial cloth or a material of equal quality, as provided in this Act. All tags required by this Section shall be attached at the factory.

(b) Bedding manufactured in whole from all new material shall have attached a tag not less than six (6) square inches in size upon which shall be plainly stamped or printed, in black ink, in the English language, the statement "All New Material" in lettering not less than one-eighth (1/8) inch in height; the kind and grade of each material used in the filling, expressed in percentages by weight when more than one kind or grade of material is used; and the manufacturer's permit number, assigned by the Department.

(c) Bedding manufactured in whole, or in part, from second hand material shall have securely attached a tag not less than twelve (12) square inches in size upon which shall be plainly printed in red ink, in the English language, the statement "Second Hand Material" in lettering not less than one-fourth ($\frac{1}{4}$) inch in height and the manufacturer's permit number assigned by the Department. The provisions of this paragraph (c) of Section 2 are not intended to apply to bedding reworked, repaired or renovated for the owner for his own use.

(d) Bedding renovated, reworked or repaired for the owner, for the owner's use, from the owner's material, which is in whole or in part second hand, shall have attached a tag not less than six (6) square inches in size, upon which shall be plainly printed in black ink, in the English language, the statement "Not for Sale, Owner's Own Material which is Second Hand Material" in lettering not less than one-eighth ($\frac{1}{8}$) inch in height; the name and address of the owner; and the manufacturer's permit number assigned by the Department.

(e) The terms used on the tag to describe kinds and grades of materials used in filling shall be restricted to those defined in the regulation of the Department, and no trade or substitute terms shall be used.

(f) It shall be unlawful to make any false or misleading statements on the tag required by this Section. It shall be unlawful for any person to remove, deface, alter or cause to be removed, defaced or altered, any tag or statement contained thereon for the purpose of defeating any of the provisions of this Act. The placing of registration stamps required in Section 7 of this Act over any lettering on the tag shall be construed to be defacement of the tag. As amended Acts 1955, 54th Leg., p. 578, ch. 192, § 1; Acts 1959, 56th Leg., p. 126, ch. 74, § 1.

Use of materials from dump-grounds and hospitals

Sec. 3. No person shall manufacture, repair or renovate into bedding or batting, using discarded materials obtained from dump-grounds, junk yards, or hospitals within or without the State of Texas.

Germicidal treatment of bedding and materials

Sec. 4. (a) No person shall sell, offer for sale or include in a sale any article of secondhand bedding or any article of bedding manufactured in whole or in part from secondhand material, except sofa beds and studio couches, unless such bedding has been germicidally treated and cleaned, by a method approved by the Department.

Upholstered sofa beds and studio couches shall be germicidally treated and cleaned only when required by the Rules and Regulations of the Department.

(b) No person shall use in the manufacture, repair and renovation of bedding any material which has been used by a person with an infectious or contagious disease, or which is filthy, oily or harbors loathsome insects or pathogenic bacteria, unless such material is cleaned and germicidally treated by a process or treatment approved by the Department.

(c) No person shall sell, or offer for sale or include in a sale any material or bedding requiring germicidal treatment by this Act unless there is securely attached, by a method approved by the Department, by the person applying the germicidal treatment, a white tag not less than twelve (12) square inches in size, made of substantial cloth or a material of equal quality, upon which shall be plainly printed, in black ink, in the English language, a statement showing that the article or material has been germicidally treated by a method approved by the State Health Department, the method of germicidal treatment applied, the lot number and the tag number of the article germicidally treated, the name and address of the person for whom germicidally treated, and the permit number of the person applying germicidal treatment. As amended Acts 1955, 54th Leg., p. 578, ch. 192, §1-a.

Enforcement of Act

Sec. 5. (a) The Department is hereby charged with the enforcement of this Act, for the protection of the public health and the public welfare. It is further empowered, and its duty shall be to make, amend, alter or repeal general rules and regulations of procedure for carrying into effect all the provisions of this Act, and to prescribe means, methods, and practices to make effective such provisions.

(b) No person shall interfere, obstruct, or hinder an authorized representative of the Department in the performance of his duty as set forth in the provisions of this Act.

(c) The Department, through its authorized representative, shall have the authority to enter any place or establishment where bedding is manufactured, repaired, renovated, stored, sold, offered for sale, or where materials are prepared for use in bedding, or where germicidal treatment of bedding is performed, for the purpose of ascertaining whether the requirements of this Act and the regulations of the Department have been met.

(d) The Department, through its authorized representative, is empowered to take samples of materials for inspection and analysis, and to hold for evidence, at a trial, for the violation of this Act any article of bedding or materials manufactured, repaired, renovated, sold or offered for sale, in violation of this Act.

(e) The Department, through its authorized representative, shall have authority to place "Off-Sale" any article of bedding or material which is offered for sale, or which could be offered for sale, in violation of this Act. When articles of bedding or materials are removed from sale, they shall be so tagged; and such tags shall not be removed except by an authorized representative of the Department, or as the Department may direct, after satisfactory proof of compliance with all requirements of this Act and of the regulations of the Department and after a "Release for Sale" has been issued by the Department through its authorized representative.

(f) The violation of a general rule or regulation of procedure promulgated under this Act shall be deemed to be a violation of this Act.

(g) If any party at interest be dissatisfied with any act, order, ruling or decision of the State Department of Health in connection with the administration of this Act, such party may file an action, naming the State Department of Health as defendant, in any of the District Courts of Travis County to set aside the particular act, order, ruling or decision. The cause shall be tried by the court without a jury in the same manner as civil actions generally and all fact issues material to the validity of such act, order, ruling or decision shall be re-determined in such trial on the preponderance of the competent evidence but no evidence shall be admissible which was not either tendered to the State Department of Health or in its files while the matter was pending before the Department for decision. The burden of proof shall be on the plaintiff and judgment shall be entered by the court declaring the action, order, ruling or decision in question either valid or invalid. Appeals from any final judgment may be taken in the manner provided for in ordinary civil actions generally. No appeal bond shall be required by the State Department of Health. All acts, orders, rulings and decisions of the State Department of Health shall be final unless an action to set aside as herein authorized is filed within thirty days after the action, order, ruling or decision is taken or made by the State Department of Health. As amended Acts 1959, 56th Leg., p. 126, ch. 74, § 2.

Permits

Sec. 6. (a) No person shall engage in the business of manufacturing, repairing, renovating, and selling any bedding unless he shall have obtained a permit from the Department.

(b) No person shall be considered to have qualified to apply an acceptable germicidal process until such process has been registered with and approved by the Department, after which a numbered permit shall then be issued by the Department. Such permit shall expire one year from date of issue and shall thereafter be annually renewed at the option of the permit holder upon submission of proof of continued compliance with the provisions of this Act and the regulations of the Department. Every person to whom a permit has been issued shall keep such permit conspicuously posted on the premises of his place of business near the treatment device. Holders of permits to apply germicidal treatment shall be required to keep an accurate record of all materials which have been subjected to germicidal treatment, including the source of material, date of treatment, and name and address of the buyer of each, and such records shall be available for inspection at any time by authorized representatives of the Department.

(c) For all initial permits issued, as required by the preceding paragraph (a) of this Section, there shall, at the time of issuance thereof, be paid by the applicant to the Department a fee of Fifteen (\$15.00) Dollars. An annual renewal charge of Ten (\$10.00) Dollars shall be paid to the same Department.

(d) For all initial permits issued, as required by the preceding paragraph (b) of this Section, there shall, at the time of issuance thereof, be paid by the applicant, to the Department, a fee of Fifteen (\$15.00) Dollars. An annual renewal charge of Ten (\$10.00) Dollars shall be paid to the same Department.

(e) Any permit issued in accordance with the provisions of this Act may be revoked by the Commissioner of Health, after a hearing and upon proof of violation of any of the provisions of this Act.

Registration for Selling

Sec. 7. (a) No person shall manufacture, renovate, sell or lease or have in his possession with intent to sell or lease in the State of Texas, any bedding covered by the provisions of this Act, unless there be affixed to the tag required by this Act by the person manufacturing, renovating, selling or leasing the same, an adhesive stamp prepared and issued by this Department.

(b) The Department shall register all applicants for stamps and assign to every such person a registry number and/or separate and different serial numbers to be printed on each stamp as a means of identifying the applicant and the stamps issued thereto, and said identification shall not be used by any other person.

(c) Adhesive stamps as provided for by this Act shall be furnished by the Department in quantities of not less than five hundred (500), for which the applicant shall pay at the rate of Five Dollars (\$5.00) for each five hundred (500) stamps. The Department is hereby authorized to prepare and cause to be printed, adhesive stamps which shall contain a replica of the Seal of the State of Texas, the registry number and/or serial numbers assigned by the Department, and such other matter as the Department shall direct. As amended Acts 1955, 54th Leg., p. 578, ch. 192, § 2.

Proceeds placed in general fund

Sec. 8. All moneys obtained from the sale of stamps, fees and other moneys collected in the administration of this Act shall be payable to the Department, and when collected shall thereafter be transmitted to the State Treasury and be placed in the General Fund and be appropriated out in such amounts that may be deemed necessary by the Legislature. In the administration of this enactment the Regular Departmental Appropriation Bill will be adopted.

Expenditure of moneys

Sec. 8c. The expenditure of any moneys under this Act shall never exceed the amount of money obtained from the collection of money required by any fee, permit, license or registration required by the provisions of this Act.

Penalties

Sec. 9. Every person who violates any of the provisions of this Act and the rules and regulations established thereunder, is guilty of a misdemeanor and punishable for each offense by a fine of not less than Fifty Dollars (\$50.00) and not more than Two Hundred Dollars (\$200.00). As amended Acts 1949, 51st Leg., p. 918, ch. 497, § 5.

Sanitary premises

Sec. 10. Every bedding manufacturer or renovator shall keep his place of business in a sanitary condition satisfactory to the Health Department, and failure to do so shall be sufficient cause to revoke his permit.

Exceptions

Sec. 11. The provisions of this Act shall apply to all bedding manufactured, repaired, renovated and/or sold after the effective date hereof; but the same shall not apply to bedding; which has been manufactured, repaired or renovated prior to the effective date hereof. Acts 1939, 46th Leg., p. 376.

Unconstitutionality

Sec. 12. If any section, subsection, sentence, clause, phrase or word of this Act is, for any reason, held to be unconstitutional, such decree shall not affect the validity of any remaining portion of this Act.

STATE OF UTAH

BEDDING AND UPHOLSTERED FURNITURE INSPECTION ACT

LAWS OF UTAH
1959

AMENDED
1961

RULES AND REGULATIONS 1964



UTAH STATE
BOARD OF AGRICULTURE

BEDDING AND UPHOLSTERED FURNITURE INSPECTION ACT

4-28-1. Title of Act.

This act shall be known and may be cited as the "bedding and upholstered furniture inspection act."

4-28-2. Definitions.

As used in this act:

(1) The word "person" means individual, copartnership, association, firm, auctioneer, trust, and corporation, and the agents, servants and employees of any of them.

(2) The word "sell" or any of its variants, includes any of, or any combination of, the following: sell, offer or expose for sale, barter, trade, deliver, give away, rent, consign, lease, possess with intent to sell or dispose of in any other commercial manner; but does not include any judicial, executor's, administrator's, or guardian's sale, or any insolvency or bankruptcy sale, or any sale for charitable or benevolent purposes. The possession of any article of bedding, furniture or filling materials, as herein defined, by any maker, or dealer, or his agent or servant in the course of business, shall be presumptive evidence of intent to sell.

(3) The word "bedding" means any quilted pad, packing pad, mattress pad, hammock pad, mattress, comforter, quilt, sleeping bag, box spring, studio couch, pillow or cushion made of leather, cloth or any other material, which is stuffed or filled in whole or in part with concealed material, which can be used by any human being for sleeping or reclining purposes.

(4) The words "upholstered furniture" mean any furniture, including children's furniture, movable or stationary, which is made or sold with cushions or pillows, loose or attached, or is itself stuffed or filled in whole or in part with any material, hidden or concealed by fabric or any other covering, including cushions or pillows, belonging to or forming a part thereof, together with the structural units, the filling material and its container and its covering which can be used as a support

for the body of a human being, or his limbs and feet when sitting or resting in an upright or reclining position.

(5) The words "filling material" mean cotton, wool, kapok, feathers, down, hair, or any other material, or any combination thereof, loose or in batting, pads, or any other prefabricated form, concealed or not concealed, to be used or that could be used in articles of bedding or upholstered furniture.

(6) The word "new" means any article or material which has not been previously used for any purpose.

(7) The words "second-hand" mean any article or material, or portion thereof, of which prior use has been made. Any article of bedding is second-hand, if it contains any second-hand material in whole, or in part.

(8) The words "manufacture," "making," "make," or "made" include altering, repairing, finishing, or preparing articles of bedding or upholstered furniture or filling material for sale, made out of either new or second-hand material.

(9) The word "shoddy" means garnetted or shredded clippings when made in whole or in part from old or worn rags, clothing or second-hand fabrics.

(10) The word "department" means the State Department of Agriculture of the State of Utah.

(11) The word "manufacturer" means a person who, either by himself or through employees or agents, makes for the purpose of sale any article of upholstered furniture or bedding in whole or in part, or who does the upholstering or covering of any structural unit thereof, using either new or second-hand material.

(12) The word "wholesaler" means a person who sells any article or thing to another for the purpose of resale, but shall not include an affiliate or a subsidiary corporation where the ownership is identical, and which is the exclusive sales outlet of such a manufacturing plant.

(13) The words "repairer" and "renovator" mean a person who repairs, makes over, recovers, restores, renovates or renews upholstered furniture or bedding for a consideration.

(14) The words "supply dealer" mean a person licensed by the department to manufacture, process or sell at wholesale any felt, batting, pads or other filling, loose in bags, in bales, or in containers, concealed or not concealed, to be used or that could be used in articles of bedding or upholstered furniture.

(15) The word "retailer" means a person who sells any article of upholstered furniture or bedding or filling material to a consumer or user of the article as purchased.

(16) The word "annually" or any of its variants, means that period beginning January first of each year and ending December thirty-first of the same year, or any unexpired portion of that period.

(17) The words "owner's own material" mean any article or material belonging to any person for his own or his tenant's use that is sent to any manufacturer, repairer or renovator to be repaired or renovated or used in repairing or renovating.

(18) The word "board" means the Utah State Board of Agriculture.

(19) The word "nonresident" means a person who is not a resident of the State of Utah at the time he engages in business in the State of Utah as licensed by this act.

(20) Whenever in this act the singular is used, the plural shall be included and where the masculine gender is used the feminine and neuter shall be included.

4-28-3. Department of Agriculture to Administer Act.

The State Department of Agriculture, through its officers and employees, is charged with the administration and enforcement of this act. It shall be the duty of the said department to inspect and supervise the inspection of all bedding and upholstered furniture subject to the provisions of this act, and to enforce the provisions thereof within this state.

4-28-4. Bedding Advisory Board — Membership — Duties.

There is created in the Department of Agriculture a bedding advisory committee which shall consist of five members. One of the commissioners of agriculture shall be a member of said committee and its chairman. The other four members shall be appointed by the department and shall be residents of Utah who, on account of their vocations, employment or affiliations, truly represent the manufacturing and distributing interests of the various products or branches of the industries affected by this act. The term of office of each member shall be two years; except that of the five members first appointed by the department after the effective date of this act, the term of office of two of said members shall be one year. The department is authorized to fill vacancies occurring in the membership of the committee. The members of the advisory committee shall be reimbursed for actual and necessary traveling and other expenses incurred while attending meetings, as provided in this act. Such committee shall meet quarterly, and other necessary times at the call of the chairman. The committee shall advise and consult with the department on all matters pertaining to the promulgation by the department of rules and regulations, the qualification and duties of inspectors, and the enforcement policies and procedures under this act.

4-28-5. Establish Regulations.

The department is hereby authorized and empowered to make such regulations as may be found necessary for carrying out the provisions of this act and to amend or repeal such regulations.

4-28-6. License — Who to be Licensed.

Except as otherwise provided in this act, any person who advertises, solicits, or contracts to manufacture, repair or renovate upholstered furniture or bedding, and who either does the work himself or has others do it for him, shall secure the particular license required by this act for the particular type of work that he solicits or advertises that he will

do, regardless of whether he has a shop or factory.

4-28-7. Manufacturer's License.

Every person manufacturing upholstered furniture and/or bedding shall annually obtain a manufacturer's license from the department bearing a serial number assigned by the department.

4-28-8. Wholesale Dealer's License.

A wholesaler of upholstered furniture and or bedding, unless he holds a manufacturer's license, shall obtain annually a wholesale dealer's license from the department.

4-28-9. Repairer's License.

Every person repairing or renovating upholstered furniture or any article of bedding for a consideration, unless he holds a manufacturer's license shall obtain annually a repairer's license from the department bearing a serial number assigned by the department.

4-28-10. Supply Dealer's License.

Every person manufacturing, processing or selling at wholesale any felt or batting or any pads of loose material in bags, in bales or containers for use in bedding or upholstered furniture, and every person engaged in the manufacture of materials, other than prime material, which is used as a component part of bedding or upholstered furniture, unless he holds a manufacturer's license shall procure annually a supply dealer's license from the department bearing a serial number assigned by it.

4-28-11. Each Firm Named to Be Licensed.

Every person doing business at the same address under more than one firm name is subject to the license provisions for each firm name.

4-28-12. Premises, etc., to Be Kept Clean.

The premises, delivery equipment, machinery, appliances, and devices of all persons licensed under this act shall at all times be kept free from refuse, dirt, contamination or insects.

4-28-13. New Articles to Be Labeled.

No person shall sell as new any article of bedding or upholstered furniture unless it is made from all new material and is tagged as provided herein.

4-28-14. Sale of Used Material as New Prohibited.

No person shall sell, representing it to be new material, any old or second-hand hair, down, feathers, wool, cotton, kapok, or other material used for filling articles of bedding and upholstered furniture.

4-28-15. Used Material to Be Labeled.

No person shall sell any article of bedding or upholstered furniture made from old or second-hand material unless it shall be tagged as provided herein.

4-28-16. Materials Prohibited for Use in Bedding or Furniture.

No person shall use in the making, repair or renovating of any article of bedding or furniture any shoddy, or any material:

- (1) that contains any bugs, vermin, or filth;
- (2) that is unsanitary;
- (3) that contains burlap, or other material, that has been used for baling.

4-28-17. Articles to Be Tagged.

No person shall sell, offer for sale, exchange, or lease, or deliver, or consign for like purpose, any article or bedding or upholstered furniture or filling material unless tagged as herein required.

4-28-18. Tag — No False Statement — Not to Be Removed.

It shall be unlawful to use any false or misleading statement, term or designation on said tag. When the label contains descriptive statements of the filling material, frame, cover, and style of the article to which it is attached, such descriptive statements must, in fact, be true statements. Filling material shall be de-

scribed by true name and grade. When more than one kind or grade is described in a mixture, the component parts shall be listed in order of their predominance. Feather and down contents shall be shown by percentage. Labels required on every article of bedding or upholstered furniture or filling material which contains all new material covered by this act shall be securely attached to the article or filling material at the factory or shop in a position where they can be conveniently examined. It shall be unlawful for any person, except the purchaser for his own use, to remove, deface or alter, or to attempt to remove, deface or alter such tag or the statement of filling materials made thereon.

4-28-19. Labeling.

No person shall make, repair, renovate, process, prepare, sell at wholesale or retail or otherwise, offer for sale, display, or deliver any article or upholstered furniture or bedding or any filling material in prefabricated form, or loose in bags or containers, if made of new or second-hand material concealed by fabric or any other covering, unless such material is plainly and indelibly stamped or labeled with a tag or other marking as provided in this act.

4-28-20. Required Information.

Labels to be attached to articles of upholstered furniture and bedding and filling material regulated by this act shall not be less than six square inches in size and shall be plainly and indelibly stamped, in the English language, with the words "All New Material," "Second-Hand Material," or "Owner's Own Material," as the case may be. The serial number of the person manufacturing the said article, as issued by the department, shall appear on said label. The material from which furniture and bedding labels are made shall be a cloth fabric of good quality approved by the department. Labels on articles manufactured wholly of new material shall be white in color. Labels on articles manufactured in whole or in part of second-hand material shall be red in color. Labels for "Owner's Own Material" shall be green in color. Color of ink on labels shall be black.

4-28-20.5. Labels Required.

The information required by this act shall be printed on one side of the label only and no mark, tag, sticker, advertising matter, or any other device shall be placed upon the labels in such a way as to cover the required information.

4-28-21. Stamp or Stencil May Be Used.

A rubber stamp or stencil may be used in lieu of a label on articles with slip seat covers having a smooth backing on which the imprint can be legibly and indelibly stamped, and on suitable surfaces of bales or containers of felt, batting, pads or other filling material used or to be used in articles of bedding or upholstered furniture. Any filling material or other component parts used or to be used in upholstered furniture or bedding which does not have a smooth surface on which the imprint can be legibly and indelibly stamped shall be plainly labeled with a tag approved by the department.

4-28-21.5. Second-Hand Material.

The repairer or renovator of any second-hand upholstered furniture or bedding or filling material which is subsequently sold shall affix the "Second-Hand Material" label. Retailers of second-hand upholstered furniture or bedding or filling material which is not repaired or renovated, but offered for sale shall affix the "Second-Hand Material" label, which shall be approved by the department.

4-28-22. Filling Material to Be Tagged.

A person shall not make, process, prepare, felt or sell, directly or indirectly, at wholesale or retail or otherwise, any filling material or other component parts to be used or that could be used in upholstered furniture or bedding, unless such material is plainly labeled with a tag as described in the preceding sections.

4-28-22.5. Owner's Material.

Every person who repairs or renovates upholstered furniture or filling material for the owner, for his own or a tenant's use, shall securely affix, immediately upon arrival at his place of business, the "owner's material" label

which shall be a tag of identification showing the owner's or dealer's name, address and the date upon which it was received. This tag shall remain affixed until the article is in the process of repair or renovation and shall be re-attached to the article immediately after this process of repair or renovation is completed.

4-28-23. Annual License Fee.

The annual fee imposed for each license granted under this act shall be set annually by the department at a sum not more nor less than that shown in the following table:

	Maximum Fee	Minimum Fee
Manufacturer's license	\$45.00	\$20.00
Wholesale dealer's license....	45.00	20.00
Supply dealer's license	45.00	20.00
Repairer's license:		
For repairers having one or more employees	25.00	10.00
For repairers having no employees	5.00	5.00

4-28-23.5. Renewal Fees.

All license fees shall be paid in advance for each year and the license shall expire December 31 of the year in which it is issued. Any person not licensed during the last preceding year may obtain a license after July 1 for one-half of the amounts above specified. Renewal license fees shall be paid on or before January 1. When such fees are not paid before March 1, they shall become delinquent, and there shall be added to the fee a penalty of 20 percent. If such fee and penalty are not paid on or before April 1, the license shall be subject to further penalties as approved by the department.

4-28-24. Disposition of Fees.

All fees collected under the provisions of this act shall be paid to the department, and deposited in a separate fund, which shall be used exclusively for the administration of this act, and from which shall be paid all expenditures necessary in carrying out the provisions of this act. All monies in said bedding fund are specifically appropriated to the department for the payment of salaries and expenses of

inspectors, employees, for research or any other necessary expenses of said department connected with the enforcement of this act; except that all monies in excess of \$10,000.00 remaining in said fund at the end of any biennial period shall be transferred to the general fund.

4-28-25. Applicability of Act.

This act shall apply to upholstered furniture and bedding and filling materials sold in Utah regardless of their point of origin.

4-28-26. Material Received from Outside State to Be Labeled.

Second-hand upholstered furniture or bedding, or second-hand filling to be used, or that could be used in upholstered furniture or bedding, received from outside of Utah shall be labeled as required herein, and shall comply with all of the provisions of this act before it is accepted, sold, or delivered either directly or indirectly by any person.

4-28-27. Compliance with Act — Responsibility.

Responsibility for compliance with this act rests not only with the manufacturer, but also with the wholesaler, and any person having in his possession any article of upholstered furniture or bedding or filling materials contrary to the provisions of this act.

4-28-28. Labeling Foreign Made Upholstered Furniture or Bedding — Responsibility.

Responsibility for labeling of unlabeled foreign-made upholstered furniture or bedding in compliance with the requirements of this act, shall rest with the person selling such merchandise in Utah.

4-28-28.5. Tagging Condemned Articles.

The tag to be affixed to any article of condemned upholstered furniture or bedding, or any material by an inspector shall be a red tag and shall contain such information as may be required by the department.

4-28-29. Violation — Misdemeanor.

Any person who fails to comply with or who violates any of the provisions of this act, or of the rules and regulations of the department shall be guilty of a misdemeanor.

4-28-30. Each Improperly Labeled Article a Violation.

The unit for a separate and distinct offense in violation of this act is each and every article of improperly labeled, or unlabeled, upholstered furniture or bedding or filling material made, repaired, re-covered, renovated, sterilized, sold, exposed or offered for sale, delivered, consigned, rented or possessed with intent to sell contrary to the provision of this act.

4-28-31. Right to Inspect — Access to Premises.

The department or any inspector thereof, shall have access to the premises, equipment, materials and partly finished and finished articles, of any person subject to the provisions of this act. The word "premises" includes all places where these articles are sold, offered for sale, exposed for sale, stored, or manufactured, and the delivery vehicles used in their transportation.

4-28-32. Inspection — Payment for Damage.

The department or any inspector may open any articles of upholstered furniture or bedding, including pillows or cushions belonging to or forming a part thereof, for the purpose of inspecting concealed filling material, and may take either the entire article, or samples of the filling material in such quantities as may be necessary for analysis; provided, however, that the department shall reimburse any retail dealer who has possession of such articles for any damage done by any inspector of the department during the process of inspection to merchandise of the retailer.

4-28-33. Articles in Violation — Seizure.

The department may condemn, withhold from sale, seize, or destroy any upholstered furniture or bedding or any filling material which is found to be in violation of this act.

4-28-34. Violation — What Constitutes.

Every person who removed, or causes to be removed, any tag or device placed upon any upholstered furniture or bedding or any material, by an inspector, is guilty of violation of this act.

4-28-35. Duty to Produce Article Upon Demand.

The failure of any person to produce upon demand of an inspector any article that has been condemned and ordered held on an inspection notice signed by such person, or an inspection notice that the person has refused to sign, is a violation of this act.

4-28-36. Inspection — No Interference.

No person shall interfere with, obstruct or otherwise hinder any inspector of the department in the performance of his duties. The department, its deputies and assistants, and all inspectors in the performance of their official duties, shall have the same powers as are possessed by the peace officers of this state.

4-28-37. Notification of Violation.

Any inspector having knowledge of a violation of any of the provisions of this act shall notify the department of the violation.

4-28-38. Nonresident Rights.

The acceptance of a nonresident licensee of any of the rights and privileges conferred upon him by this act, as evidenced by his engaging within this state, either personally or through an agent or an employee, in a business subject to license under this act, is equivalent to the appointment by such licensee of the chairman of the board as his true and lawful attorney upon whom may be served all lawful process in any proceedings conducted against him under this act.

4-28-39. Service Upon Licensee.

The acceptance of such rights and privileges as so evidenced shall signify the agreement of the licensee that any such process

which is served against him in the manner provided in this act shall be of the same legal force and validity as if served upon him personally in this state.

4-28-40. Service of Process.

Service of such process shall be made by serving a copy thereof upon the chairman of the board together with payment of a fee of \$2 and such service shall be sufficient service upon the said nonresident, provided that notice of such service and a copy of the process are within ten days thereafter sent by registered mail by the plaintiff to the defendant at his last known address as furnished by the board, and proof of compliance with this section shall be made by affidavit of the plaintiff showing such service by mail, together with the return receipt of the United States Post Office bearing the signature of the licensee or his agent. Such affidavit and receipt shall be appended to the original pleading filed with the court.

4-28-41. Court Action.

The court in which the action is pending may order such continuance as may be necessary to afford the defendant reasonable opportunity to defend any such action not exceeding ninety days from the date of filing of the action in such court. The fee of two dollars paid by the plaintiff to the chairman of the board at the time of service of such proceedings shall be taxed as costs if he prevails in the suit. The said chairman of the board shall keep a record of all such processes so served which shall show the day and hour of such service.

4-28-42. Separability Clause.

If any of the provisions of this act are determined to be unconstitutional, all the remaining provisions shall be given full force and effect, as fully as if the part or parts so determined to be unconstitutional had not been included in this act.

REGULATIONS GOVERNING UPHOLSTERED FURNITURE AND BEDDING, Promulgated under authority of Title 4, Chapter 28, Utah Code Annotated 1953, as amended; Adopted by the Utah State Board of Agriculture, December 4, 1963, to become effective January 1, 1964.

I. Scope.

It is the purpose of these regulations to designate the terms, definitions, and nomenclature as are commonly used and as recognized in the manufacture, sale and distribution of furniture and bedding products.

II. General Provisions.

A. Application of These Regulations. These regulations shall apply to all persons, partnerships, corporations and associations engaged in the business of manufacturing, repairing, renovating, and selling items of bedding, upholstered furniture or filling materials.

B. The term "second-hand" as defined in the act does not apply to new materials subjected to manufacturing processes or to new materials which are the by-product of manufacturing processes, when these materials are adequately protected from dirt or other contamination.

C. Names, Standards and Definitions of Filling Materials. When filling materials are named, designated or represented on the label as being present in any material or article, they shall conform to the names, definitions, standards, descriptions and terminology for such materials as outlined in the following regulations and standards.

D. In wastes which contain more than one type of synthetic fiber, the quantity of the different types shall be combined and shall be classified as "Synthetic Fiber."

E. Deviation From Percentage Stated. No deviation from percentages represented, in excess of 5 percent is permitted in any material except as provided in these regulations.

F. Other Materials. A material represented as consisting of one kind and grade of material may not contain more than 5 percent of other materials.

G. The terms "all," "pure," "100%" or terms of similar import are permitted only if the material is as stated. No tolerance is allowed where such terms are used.

H. Cleanliness of Filling Materials. All filling materials shall be reasonably clean and free from extraneous material, dirt, dust, filth, epidermis, excreta, disagreeable odors, or other contamination.

I. Sludge Limitation. When any filling material contains sludge in excess of .3 milliliters per 20 gram sample, it is unfit for use. As used in this section "sludge" means any material which will settle out of a solution which has been passed through a 40 mesh sieve.

J. Oil and Grease Limitations. When any filling material contains more than 2 percent but not more than 5 percent of oil, grease, or fat or a combination thereof, it shall be classified as "oily." Material which contains more than 5 percent of oil, grease, or fat or a combination thereof is unfit for use.

K. Trash Limitations. (1) Vegetable Fibers. When any batting, felt, pad or any other prefabricated material of vegetable origin contains more than 7 percent but not more than 10 percent of trash, shell, shale, leaf, stem, pulp, undecorticated fibers, etc., it shall be classified as "Waste." When the trash, shell, shale, leaf, stem, pulp, etc., exceeds 10 percent, but does not exceed 20 percent, such extraneous material shall be classified as "Trash" and the material itself shall be classified as "Waste." Any batting, felt, pad, or any other prefabricated material in which the trash exceeds 20 percent is unfit for use.

(2) Animal Fibers. When any product of animal origin contains more than 2 percent but not more than 10 percent of trash, burrs, stickers, seeds, sticks, epidermis, kemp, etc., it shall be classified as "Waste." When the trash,

burrs, stickers, seeds, etc., exceed 10 percent, the material is unfit for use.

(3) When any filling material, not covered by (1) and (2) above, contains more than 20 percent of a combination of trash, debris, seeds, sticks, etc., and/or foreign material, it is unfit for use.

L. Thread Limitation. Any material which contains more than 2 percent of hard spun thread, yarn or roving shall be classified as "Waste."

III. Definitions and Classifications of Filling Material.

A. Waste. Any new material classified as "Waste" under Sections II K, or L, and any other new material which is the by-product or waste of the various machines in any process of manufacture employing only new materials, except as provided in Section III B (By-products), and fibers recovered from clean fabric clips and similar scraps made in whole of new materials, and which are subsequently completely defabricated, and pills, shank, and tag wools, etc., shall be classified as "Waste."

B. "By-products" shall mean new fibers that are the by-products removed from the various machine operations in the preparation and manufacture of yarn up to and including the process of spinning, spun fibers being subsequently reduced to individual fibers, together with the cotton known as gin flues, and shall include only the following materials:

- (a) Comber
- (b) Strips
- (c) Fly
- (d) Picker
- (e) Textile spun fiber
- (f) Gin flues
- (g) Noils
- (h) Tanners wool
- (i) Napper flocks
- (j) Fulling flocks

C. "Batting" or "Felt." Either of these terms shall be used only when fibers are gar-

netted or carded and used in layer form. They may not be used when batting or felt scraps or clipping are stuffed or blown in the same manner as unfelted materials.

D. Pads. Any material or fiber which is interwoven or punched on burlap or any other woven material or otherwise fabricated into cushion-like form including the application of man-made materials or latex rubber as a factor in a molding process, if the binding material is mentioned on any label, the designation shall be accurate, true and not misleading. The word "pad" shall not be used alone, but shall be preceded by the name of any by-product or fiber as approved; e.g. "cotton pad," "cotton waste pad."

E. Cotton.

(1) "Staple Cotton" shall mean the staple fibrous growth as removed from the cottonseed in the usual process of ginning (first-cut from the seed) free from excessive foreign material. The term "cotton" by itself shall not be used.

(2) The term "cotton linters" shall mean the fibrous growth removed from cottonseed subsequent to the usual first process of ginning.

F. Feathers and Down.

(1) "Down" shall mean the undercoating of waterfowl, consisting of the light fluffy filaments growing from one quill point but without any quill shaft.

(2) "Feathers" shall mean the feathers of any fowl which are whole in structure and which have not been processed in any manner other than dusting, washing and sterilizing.

(3) "Body feathers" shall mean the feathers of any fowl other than wing and tail feathers. "SMALL BODY FEATHERS" shall mean body feathers the overall length of which does not exceed 3½ inches.

(4) "Quill feathers" shall mean the wing and tail feathers commonly known as quills.

(5) "Crushed feathers" shall mean feathers which have been processed by a curling or

crushing machine and includes the feather fiber resulting from such processing.

(6) "Free fiber" shall mean the detached barbs from down plumes or detached barbs from the basal end of feathers and undistinguishable from the barbs of down plumes.

(7) "Feather fiber" shall mean the detached barbs and strippings of waterfowl, chicken and turkey feathers.

(8) "Damaged feathers" shall mean feathers which have been broken, injured by insects, or depreciated from the original value in any manner; provided, however, that this shall not apply to "crushed feathers" as defined in III F (5) above. "Damaged feathers" in excess of 5 percent of any stock shall not be permitted.

(9) "Residue" shall mean quill pith, quill fragments, trash or any foreign matter and shall not exceed 2 percent of any feather and down stock.

(10) (a) Products represented as down may contain not over 10 percent of small natural body feathers of the same fowl as that from which the down is derived. There shall be no chicken or turkey feather fiber in down.

(b) A product represented as "goose down" shall not contain duck down in excess of 10%.

(c) A product represented as "goose feathers" shall not contain duck feathers in excess of 10% nor shall it contain chicken and/or turkey feathers in excess of 5%. Such chicken and/or turkey feather content shall reduce the permissible duck feather content in like amount.

(d) A product represented as "duck feathers" shall not contain chicken and/or turkey feathers in excess of 5%.

(11) Cleanliness. (a) The oxygen number of any filling material consisting of whole feathers or down or a combination thereof, and the oxygen number of any filling material consisting of an admixture of feathers and down

which contains 5 percent or less of crushed feathers, shall not exceed 25 grams of oxygen per 100,000 grams of sample.

(b) The oxygen number of any filling material which contains more than 5 percent of crushed feathers shall not exceed 40 grams of oxygen per 100,000 grams of sample.

G. Hair. The term "hair" means the coarse filamentous epidermal outgrowth of such mammals as horses, cattle, hogs and goats. When used in the manufacture of upholstered furniture, bedding, or filling material, it shall be clean, properly cured, free from epidermis, excreta, or foreign or objectional substances or odors.

H. Generic Names and Definitions for Vegetable Fibers.

(1) Akund—Seed fiber of the *Calitropis* member of the *Asclepiadaceae* family, *C. gigantes* and *C. procera*.

(2) Coco or Coir—The fibrous growth obtained from the husk or outer shell of the coconut.

(3) Cotton—The fibrous hair clothing of the seeds of the genus *Gossypium* of the malvow family. (Cotton plant).

(4) *Excelsior*—Shredded thread-like wood fibers.

(5) Flax—Fiber derived from the plant of genus *Linum usitatissimum* raised primarily for fiber.

(6) Jute—The bast fiber derived from any species of the *Corchorus* plant.

(7) Kapok—The mass of fibers investing the seed of the kapok tree (*Ceiba Pentandra*).

(8) Manila—The leaf fiber derived from the Abaca Plant (*Musa-textilis*).

(9) Milkweed—The surface fiber from the inside of the seed pods of milkweed plants (*Asclepias*).

(10) Moss—The processed fiber of epiphytic plants. These plants, while growing, form pendant tufts from trees.

(11) Palm—The fibrous material obtained from the leaf of the palm, palmetto, or Palmyra tree.

(12) Sisal—Leaf fiber derived from the *Agave Sisalana* and similar species of *Agaves*.

(13) Tula—The fiber derived from the leaf of the "tula istle" and similar species of *Agaves*.

I. Synthetic or Manufactured Fibers.

(1) Acetate Fiber — Manufactured fiber in which fiber-forming substance is cellulose acetate. Where not less than 92% of hydroxyl groups are acetylated, term triacetate may be used as generic description of the fiber.

(2) Acrylic Fiber—Manufactured fiber in which fiber-forming substance is any long chain synthetic polymer composed of at least 85% by weight of acrylonitrile units $(-\text{CH}_2-\text{CH})$.
CN

(3) Azlon—Manufactured fiber in which fiber-forming substance is composed of any regenerated naturally occurring proteins.

(4) Cellulose Fiber—Fiber obtained from cellulosic products and containing not more than 4% lignin and 12% pentosans.

(5) Glass Fiber—Manufactured fiber in which fiber-forming substance is glass.

(6) Modacrylic Fiber—Manufactured fiber in which fiber-forming substance is any long chain synthetic polymer composed of less than 85% but at least 35% by weight of acrylonitrile units (CH_2-CH) .
CN

(7) Nylon, Nylon Fiber — Manufactured fiber in which fiber-forming substance is any long chain synthetic polyamide having recurring amide groups $(-\text{C}-\text{NH}-)$.
O

(8) Nytril, Nytril Fiber—Manufactured fiber containing at least 85% of long chain polymer of vinylidene dinitrile $(-\text{CH}-\text{C}(\text{CN})_2-)$ where vinylidene dinitrile content is no less than every other unit of polymer chain.

(9) Olefin, Olefin Fiber — Manufactured fiber in which fiber-forming substance is any long chain synthetic polymer composed of at least 85% by weight of ethylene, propylene, or other olefin units.

(10) Polyester Fiber—Manufactured fiber in which fiber-forming substance is any long chain synthetic polymer composed of at least 85% by weight of an ester of dihydric alcohol and terephthalic acid ($\text{p-HOOC-C}_6\text{H}_4\text{-COOH}$).

(11) Rayon — Manufactured fiber composed of generated cellulose, as well as manufactured fibers composed of regenerated cellulose in which substituents have replaced not more than 15% of the hydrogens of the hydroxyl groups.

(12) Saran—Manufactured fiber in which fiber-forming substance is any long chain synthetic polymer composed of at least 80% by weight of vinylidene chloride units ($-\text{CH}_2\text{-CCl}_2-$).

(13) Spandex—Manufactured fiber in which fiber-forming substance is a long chain synthetic polymer comprised of at least 85% of a segmented polyurethane.

(14) Vinal, Vinal Fiber — Manufactured fiber in which fiber-forming substance is any long chain synthetic polymer composed of at least 50% by weight of vinyl alcohol units ($-\text{CH}_2\text{-CH}(\text{H})-$), and in which the total of vinyl alcohol units and any one or more of the various acetal units is at least 85% by weight of the fiber.

(15) Vinyon, Vinyon Fiber — Manufactured fiber in which fiber-forming substance is any long chain synthetic polymer composed of at least 85% by weight of vinyl chloride units ($-\text{CH}_2\text{-CHCl}-$).

J. Wool. (1) "Virgin wool" shall mean the fleece of the sheep or lamb, which has been scoured, or scoured and carbonized. It shall not be the by-product of any process or manufacture nor shall it have sustained prior use. The fibers shall be reasonably uniform in length, viz: it shall contain a mixture of long

and short fibers. It shall be free from kemp and vegetable matter.

(2) Choice Virgin Wool. "Choice virgin wool" shall mean wool as defined above that is " $\frac{1}{4}$ blood" (48s) or finer in grade, according to the United States standards for grades of wool, and shall be natural or bleached white in color. The fibers shall be reasonably uniform in length, viz.,: it shall not contain a mixture of long and short fibers. The term "choice virgin wool" may not be used in describing the component parts of wool blends or mixtures.

K. Foam Products.

(1) "Latex foam rubber" shall mean the product made from rubber latex to which compounding ingredients are added in dissolved form and the mixture usually agitated to a foam and vulcanized in this state. It has interconnecting cells.

(a) "Latex foam rubber" shall mean first quality latex rubber products.

(b) "Imperfect latex foam rubber" shall mean any foam rubber product which shows major manufacturing imperfections and the producer sells as other than first quality material.

(c) "Shredded latex foam rubber" shall mean shredded waste or trimmings from cutting sheets or shapes, shredded imperfect products or shredded overflow from molds known as flashings and similar material.

(d) "Latex foam rubber scrap" shall mean unshredded waste from production and similar unshredded material.

(e) "Remolded shredded latex foam rubber" shall mean the material described in (c) above, remolded into a predetermined stable shape.

(2) "Sponge rubber" shall mean the product made from solid rubber into which the compounding ingredients are milled or mechanically worked and a blowing agent, usually sodium bicarbonate, is added which expands during vulcanization. It has interconnecting cells.

(a) "Sponge rubber" shall mean first quality sponge rubber products.

(b) "Imperfect sponge rubber" shall mean any sponge rubber product which shows major manufacturing imperfections and which the producer sells as other than first quality material.

(c) "Shredded sponge rubber" shall mean shredded waste or trimmings from cutting sheets or shapes, shredded imperfect products or shredded overflow from molds known as flashings and similar material.

(d) "Sponge rubber scrap" shall mean unshredded waste from production and similar unshredded material.

(e) "Remolded sponge rubber scrap" shall mean the material described in (c) above, remolded into a predetermined stable shape.

(3) Synthetic Foam. Any synthetic foam shall be labeled by its proper chemical name, such as "Polyurethane foam," "Polyether foam," "Polyester foam," Polyvinylchloride foam," etc. Polyurethane foam, Polyester foam, etc., shall mean first quality foam products.

(a) Second-grade or Imperfect Polyurethane foam, Polyester foam, etc., shall mean any product which shows major manufacturing imperfections.

(b) "Shredded Polyurethane foam, Polyester foam, etc., shall mean shredded waste or trimmings from cutting sheets or shapes, shredded imperfect, seconds, products or shredded overflow from molds and any other material which has gone through the process of shredding.

(c) Polyurethane "Foam Scrap" or any other synthetic foam scrap shall mean unshredded waste from production and similar unshredded material.

(d) Remolded Shredded Polyurethane foam or any other synthetic foam shall mean the material described in "Shredded" remolded into a predetermined stable shape.

IV. Size of Feather and Down Articles.

A. Any size representation made for pillows or other items of bedding shall mean the finished size.

B. Standard Size. No down pillow represented as being of standard size shall be less than 20" x 26" finished size and shall contain not less than 13 oz. of down.

C. When pillows which are represented as down pillows are represented to be of a certain size they shall contain not less than the corresponding net weight of down as specified in the following schedule of sizes and weights.

Finished Pillow Size	Minimum Net Weight of Down
21" x 27"	15 oz.
20" x 26"	13 oz.
19" x 27"	12 oz.
18" x 25"	11 oz.
17" x 24"	10 oz.

Pillows represented to be of any other size than those set forth in the above schedule shall contain a proportionate weight of down.

D. The size represented for comforters, sleeping bags or any other article of bedding shall mean the minimum finished size.

**Label for Second-hand Upholstered Furniture
and Bedding and Filling Material**

RED CLOTH FABRIC LABEL

Minimum: 2 inches x 3 inches

(Space for stitching at top or bottom)

**DO NOT REMOVE THIS LABEL
UNDER PENALTY OF LAW**

**SECONDHAND
MATERIAL**

Consisting of

Registry No.

Certification is made that the
materials in this article are
described in accordance
with law.

NAME and ADDRESS of
VENDOR OR MANUFACTURER

(Space for stitching at top or bottom)

- A. Minimum type size one-eighth inch in height, in capital letters.
- B. Insert description of filling materials by clearly imprinting in English, using capital letters not less than one-eighth inch high.
- C. This space optional.

RUBBER STAMP

Size: Not less than 3 inches x 2 inches
(See Sec. 4-28-21 of the Act)

A →	ALL NEW MATERIAL
B →	<hr/> <p>Registry No.</p>

- A. The heading shall be in 24-point gothic type, in capital letters.
- B. Insert description of filling materials by clearly imprinting in English, using capital letters not less than one-eighth inch high.

RUBBER STAMP

Size: Not less than 3 inches x 2 inches
(See Sec. 4-28-21 of the Act)

A →	Secondhand Material
B →	<hr/> <p>Registry No.</p>

- A. The heading shall be in 24-point gothic type, in capital letters.
- B. Insert description of filling materials by clearly imprinting in English, using capital letters not less than one-eighth inch high.

For: "Owner's Material"—

Repaired or Renovated

GREEN LABEL

Minimum: 2 inches x 3 inches

**STATE OF UTAH
DEPARTMENT OF AGRICULTURE**

THIS ARTICLE NOT FOR SALE

Owner's Material

The repairer or renovator certifies this article complies with the law. It contains the same material it did when received from its owner to which has been added the following:

RENOVATED OR REPAIRED BY:

REGISTRY NO.

ADDRESS

DATE:

ADDRESS

Under penalty of law this tag is not to be removed except as permitted in section 4-28-22-5 of Bedding and Upholstering Furniture Inspection Act.



Bedding, Mattresses and Upholstered Furniture

Reprint of
Subchapter 9, Chapter 5, Part 5
VERMONT HEALTH REGULATIONS



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Ch. 5

SANITARY ENGINEERING

Part 5 § 5-872

*Subchapter 9. Bedding, Mattresses, and Upholstered Furniture***§ 5-871. Used materials prohibited**

(a) A person shall not manufacture for purposes of sale, sell or offer or expose for sale, or have in possession with intent to sell any article of bedding or article of upholstered furniture the filling of which shall have been previously used for like purpose in other bedding or upholstered furniture. Possession by a manufacturer of or dealer in bedding or upholstered furniture of any article of bedding or article of upholstered furniture the filling of which shall have been previously used for like purpose in other bedding or upholstered furniture shall be prima facie evidence that such article is being manufactured, remade or renovated or is offered for sale in violation of this chapter.

(b) A person shall not use in the manufacture of any article of bedding or article of upholstered furniture for purposes of sale, or sell, or offer or expose for sale, or have in his possession for the purpose of such use or for sale or for use in the remaking or renovating of any such article, any material which has previously been used in or about a hospital, or on or about the person of anyone having an infectious or contagious disease, nor shall any person sell, or offer or expose for sale, any article containing materials which have previously been so used.

Source. Section is section 2941 of Title 9, V.S.A.

§ 5-872. Tagging of bedding and furniture

A person shall not manufacture for purposes of sale, sell or offer or expose for sale, or have in possession with intent to sell any article of bedding or article of upholstered furniture unless there is plainly marked upon each such article or upon a tag sewed thereon, or otherwise securely attached thereto, a statement in the English language, containing no misleading terms or descriptions of the kind of material used for filling in the manufacture of such article, the name of the manufacturer or vendor, and a statement that such article contains all new material, and unless, if any such article is enclosed in a bale, box, crate or other receptacle, there shall be plainly marked upon such receptacle, or upon a tag securely attached thereto, a statement that the contents of the package are marked as herein required. Possession of any article of bedding or article of upholstered furniture not marked as provided herein, by any person engaged in the business of manufacturing, selling

Part 5 § 5-872**ENVIRONMENTAL HEALTH****Ch. 5**

or offering for sale any such article, shall be prima facie evidence that such article is being manufactured or is offered or exposed for sale in violation of the provisions of this section. The tag required by this section shall be at least three inches by four inches in dimensions and made of cloth or with a cloth back, or, in the case of articles of upholstered furniture, of paper or cloth, and shall be permanently pasted or attached to each such article.

Source. Section is section 2942 of Title 9, V.S.A.

§ 5-873. Penalties

(a) A person who violates a provision of sections 2941 and 2942 of this title, shall be imprisoned not more than six months or fined not more than \$500, or both.

(b) A person, except a purchaser at retail, who removes or effaces any marking upon any article or receptacle or any tag or label attached thereto, as provided in section 2942 of this title, shall be fined not more than \$50.

Source. Section is section 2943 of Title 9, V.S.A.

STATE OF VIRGINIA
DEPARTMENT OF HEALTH

Bureau of Industrial Hygiene
Bedding and Upholstered Furniture Inspection

Mack I. Shanholtz, M.D.
Health Commissioner



Mack D. Shelhorse
Agency Fiscal Director

Advisory Board

Vernon Blick, Jr.
Irving Buchman
Dave Crowder
Dalton Dutton
M. D. (Sid) Gordon
Kenneth Lord

Fred Maldeise
Robert Mathinson
Warwick Mayo
Bertram Schewel
Robert J. Shine
(Mrs.) Kathryn Woolwine

A. P. Hudson, Secretary

State Office Building, Richmond 19, Va.

FOREWORD

So that all interested may be fully advised regarding the "Bedding and Upholstered Furniture Law" of the State of Virginia, the Department of Health herewith presents the requirements of the law, regulating the manufacture and sale of articles of bedding and upholstered furniture and supplier of filling materials used therein including renovating, reupholstering, sterilizing, tagging and licensing.

The law authorizes an inspector to seize and hold for evidence any article of bedding, upholstered furniture or filling material he has cause to believe is in violation of any provision of this act. Violations are punishable for each offense by a fine of not less than twenty-five nor more than one hundred dollars or by imprisonment not exceeding six months or by both such fine and imprisonment.

It is provided further that the registration number of any person, convicted of violating this act may be revoked or suspended by the Commissioner. Only after the payment of a special inspection fee of \$100.00 and the determination, by the Commissioner, that such person is complying with the Provisions of this act, may it be issued.

VIRGINIA BEDDING AND UPHOLSTERED FURNITURE LAW

(Chapter 7 of Title 32 of the Code of Virginia, as amended.)

§ 32-117. The following words, as used in this chapter, shall have the following meanings, unless the context otherwise requires:

(1) "Mattress" means any mattress, mattress pad, mattress protector, box spring, upholstered spring, or quilted pad, which is stuffed, padded or filled with any soft material, and whether containing metal springs or not, designed or made for use on a bed or couch for sleeping or reclining purposes.

(2) "Pillow," "Bolster" or "featherbed" means any bag, case or covering made of textile or other material and stuffed with feathers, down or other soft material, designed or made for use on a bed or couch for sleeping, sitting or reclining purposes.

(3) "Comfortable" means any cover, quilt or quilted article, made of textile or other material and stuffed or filled with any soft material designed or made for use on a bed or couch for sleeping purposes.

(4) "New" means any material or article which has not been previously used for any purpose. Manufacturing processes shall not be considered a prior use.

(5) "Secondhand" means any article or material of which prior use has been made.

(6) "Shoddy" means any material which has been spun into yarn, knit or woven into fabric and subsequently cut up, torn up, broken or ground up.

(7) "Upholstered furniture" means any article designed to be used for sitting, resting or reclining which is covered, stuffed or filled with excelsior or other soft material.

(7a) "Supply dealer" shall mean any person manufacturing, processing or selling at wholesale any felt, batting, pads, or loose material in bags or containers, concealed or not concealed, to be used in articles of bedding or upholstered furniture.

(8) "Person" includes persons, corporations, partnerships and associations.

(9) "Commissioner" means the State Health Commissioner.

§ 32-118. No person shall use in the making, remaking or renovating of any mattress, pillow, bolster, featherbed, upholstered furniture or comfortable any material known as shoddy or any fabric from which shoddy is made; or any secondhand material; or any new or secondhand feathers or down, unless such shoddy, secondhand material and feathers or down have been thoroughly sterilized and disinfected by a reasonable process approved by the Commissioner.

§ 32-119. No person shall rent, offer or expose for sale, barter, give away, or dispose of in any other commercial manner any article mentioned in § 32-118, made, remade, or renovated in violation of this chapter, or any secondhand article covered by this chapter, unless since last used, it has been thoroughly sterilized and disinfected by a reasonable process approved by the Commissioner.

§ 32-120. Any person desiring to secure approval of the process by which the materials or articles named in sections 32-118 and 32-119 of this Act are sterilized and disinfected, shall submit to the Commissioner a plan of such apparatus and the process intended to be used for such sterilization and disinfection, and upon approval a numbered permit for its use shall be issued. Such permit shall expire one year from date of issue, and there shall be paid by the applicant to the Commissioner at the time of issue thereof, the sum of twenty-five dollars (\$25.00). Nothing herein shall prevent any person engaged in the manufacture, renovation or sale of any article or material which requires sterilizing and disinfecting under the provisions of this act, from having such sterilizing and disinfecting performed by any person who has a valid permit for such purposes, provided the number of such permit appears on the tag, hereafter described, attached to each article.

§ 32-120.1. Every person engaged in the manufacturing of bedding and upholstered furniture or renovating or reupholstering any article or processing or selling any filling material to be used in articles of bedding or upholstered furniture covered by this act shall first obtain a numbered license certificate from the Commissioner. The payment and charge for this license shall constitute an inspection charge for the purpose of enforcing this chapter. All fees collected under the provisions of this chapter, shall be paid to the State treasurer, and deposited by him in a separate fund, to be known as the bedding and furniture fund, from which shall be paid all expenditures necessary in carrying out the provisions of this chapter. Such license certificate shall expire one year from date of issue. The Commissioner may revoke or suspend any such license certificate issued for any violation of the provisions of this article. The annual fees imposed for license certificates issued pursuant to this article shall be as follows:

- (1) Manufacturers of bedding—forty dollars;
- (2) Manufacturers of upholstered furniture—forty dollars;
- (3) Supply dealer—ten dollars;
- (4) Bedding renovators—ten dollars;
- (5) Reupholsters—ten dollars.

§ 32-121. All places where any article covered by this act is made or renovated; or where materials for such articles are prepared; or where such articles are offered for sale or are possessed with intention to sell or deliver; or where sterilizing and disinfecting is performed, shall be subject to inspection at reasonable hours by the Commissioner or his representative to ascertain whether such materials and articles conform to its provisions. No person shall interfere with such inspections.

§ 32-122. Each new mattress, pillow, bolster, featherbed, upholstered furniture and comfortable shall bear securely attached thereto and visible on the outside covering a substantial white cloth tag or equivalent, not less than six square inches in size, upon which shall be plainly stamped or printed, in English, a statement showing the kind of materials used in filling such articles, and that the materials are new, and the number of the permit issued for sterilizing and disinfecting new feathers or down. Each secondhand article of the kinds above mentioned, each article of secondhand upholstered furni-

ture, and each such article containing any secondhand material shall have securely attached to it a similar tag, printed on yellow cloth or equivalent upon which shall be stamped or printed, in the same manner as above required, a statement showing the kind of materials used in filling such articles, and that the article or materials are secondhand, and the number of the permit issued to the processor who sterilized and disinfected such articles or material. No additional information shall be contained in such statement, which must be in type not less than one-eighth inch in height.

§ 32-122.1. Any shipment or delivery however contained, of material used for filling articles of bedding or upholstered furniture mentioned in § 32-117 shall have conspicuously attached thereto a tag upon which shall be stamped or printed as required in § 32-122, or as required by the regulations of the State Health Department, a statement showing the kind of material and whether the material is new or secondhand, the name and address of the manufacturer, distributor or vendor, and the registration number of the manufacturer, distributor, or vendor, and in the case of secondhand material or material from animal or fowl, the permit number of the processor who sterilized or disinfected such material.

§ 32-122.2. Tagging bulk filling material.

(a) Processed material must be tagged by the processor and must bear his registry number.

(b) Unprocessed material may be tagged by the jobber or preparer and may bear the registry number of either the jobber or the preparer, but in each case whether processed or unprocessed the concen having its registry number on the tag shall be responsible for all statements on the tag and for violations in case the material is not as represented on the tag.

(a-1) The following and similar materials shall be deemed to be processed; cotton felt, batting, shoddy; scoured and carbonized wool, wool felt or batting; processed hair, curled or uncurled, felted or rubberized; processed feathers and down; processed foam or sponge rubber; jute felt; sisal pads; curled tampico.

(b-1) The following and similar materials shall be deemed to be unprocessed; staple cotton, cotton and spinning mill products or by-products; unprocessed feathers and down, wool, hair and foam or sponge rubber; kapok; moss; palm fiber; sisal fiber; tampico fiber (not curled); coconut husk fibers; excelsior; jute tow; flat tow; napper waste.

§ 32-123. Repealed by Chapter 530, Acts 1954

§ 32-124. Repealed by Chapter 530, Acts 1954

§ 32-125. It shall be unlawful to use any false or misleading statement, term or designation on any such tag or to remove, deface or alter, or to attempt, to remove, deface or alter such tag or the statement of filling materials made thereon.

§ 32-126. The State Board of Health is hereby charged with the administration and enforcement of this chapter, and shall have the power, through any of its officers or agents, to take for evidence, any article made or offered for sale in violation of this chapter. It is the intention of this chapter to prevent both the manufacture and sale in this State of any articles covered by this chapter, unless manufactured and sold in conformity with its pro-

visions. The Board may make and enforce reasonable rules and regulations for the enforcement of this chapter, and may suspend, revoke and void the registration number of any person convicted of violating the provisions of this act. Any person, a nonresident of this State, who has been issued a certificate of registration who fails or refuses to enter an appearance in any court of record in this State to answer charge or charges of violation within twenty-five days after service upon him of a notice by registered mail so to do, shall have his certificate of registration peremptorily revoked by the Board. Such person shall not thereafter engage in the manufacture, making, remaking, renovating or delivering for sale in this State of articles of bedding or upholstered furniture until he has paid a special inspection fee of one hundred dollars and the Board has determined that such person is complying with the provisions of this act whereupon the Board shall reinstate or reissue the registration number to such person. The State Health Commissioner, if in his judgment he deems such action advisable is hereby authorized to appoint a "Bedding and Upholstery Furniture Advisory Board" to consist of persons who, on account of their vocations, employment or affiliations, represent the bedding and upholstery manufacturing industry. Upon the appointment of such Bedding and Upholstery Advisory Board, the State Health Commissioner shall designate an employee of the State Board of Health to serve as Secretary of said Bedding and Upholstery Advisory Board. The Bedding and Upholstery Advisory Board shall meet at such time as the State Health Commissioner shall designate.

§ 32-127. The provisions of this chapter shall not apply to any such articles sold under the order of any court, or under any sale of a decedent's estate, or any sale made by any person of household effects incident to a change of residence.

§ 32-128. The provisions of this chapter shall not apply to any interstate railroad passenger trains and except as provided in this section shall not apply to any state institution, agency or department unless such institution, agency or department offers for sale the articles manufactured or renovated. Further, the provisions of this chapter shall not apply to individual blind persons renovating mattresses for institutions or individuals for their own use and not for sale. The provisions of this chapter relating to secondhand upholstered furniture shall apply to any such furniture which has been used by any person suffering from an infectious or contagious disease, including such articles owned by or used in any hospital, jail or other public or private institution, but shall not require the sterilization or tagging of any upholstered furniture which has not been used by any such person.

§ 32-129. Any person violating any of the provisions of this chapter, or any rule or regulation of the State Board of Health adopted hereunder, shall be guilty of a misdemeanor and upon conviction thereof, shall be punished for each offense by a fine of not less than twenty-five nor more than one hundred dollars or by imprisonment not exceeding six months or by both such fine and imprisonment. Each remaking, renovating, selling, offering for sale, delivering, consigning, or possessing with intent to sell deliver or consign, any mattress, pillow, bolster, featherbed, article of upholstered furniture or comfortable, contrary to this chapter, shall be a separate offense.

THE FOLLOWING FORMS COMPLY WITH THE VIRGINIA LAW

NO. 1

LABEL FOR ALL NEW MATERIAL

For Filling Materials NOT Requiring Sterilization or Disinfection

<p>See NOTE (3) at bottom of page.</p> <p>→</p>	<p>Space to Attach</p>		<p>In bold type. Minimum type size $\frac{1}{8}$ inch in height. Preferably black ink.</p> <p>←</p> <p>Space for description of filling material. Printing to be in English using capital letters not less than $\frac{1}{8}$ inch in height.</p> <p>←</p>
	<p>DO NOT REMOVE THIS TAG Under Penalty of Law</p>		
<p>→</p>	<p>ALL NEW MATERIAL Consisting of</p>		<p>←</p>
	<p>REG. NO.</p>		
<p>"Date of Delivery" line of Manufacturer's stock information, etc., here</p> <p>→</p>		<p>Certification is made that the materials in this article are described in accordance with law.</p>	<p>←</p> <p>Required in Virginia</p>
	<p>(NAME OF MANUFACTURER OR VENDOR) (ADDRESS OF MANUFACTURER OR VENDOR)</p>		
<p>(Additional Information)</p>			

- Note: (1) All above printing preferably in black ink on white vellum cloth or a cloth of comparable quality, which shall not flake out when abraded.
- (2) Size of label: Exclusive of the portion required to affix the tag to the article, the minimum size of the tag shall be not less than (6) square inches, but may be greater as the need demands.
- (3) Virginia approves and recognizes the uniform registry number and will accept the registration number issued by another State if registrant so desires, providing such registration follows the policy of uniform registration.

This policy is intended to benefit the registrant by requiring but one registration to be imprinted on the law labels used, regardless of where merchandise may be shipped.

The registration number shall be preceded by name of state (may be abbreviated) issuing REG. NO. and if factory is located in another state than that issuing REG. NO. then name of state in which factory is located shall follow the registration number in parenthesis.

NO. 2

LABEL FOR ALL NEW MATERIAL
ARTICLES WITH EXTRA CUSHIONS AS AN
INTEGRAL PART OF UNIT

For Filling Materials NOT Requiring Sterilization or Disinfection

	Space to Attach			
	DO NOT REMOVE THIS TAG Under Penalty of Law			
	ALL NEW MATERIAL Consisting of	In bold type. Minimum type size $\frac{1}{8}$ inch in height. Preferably black ink. ← Space for description of filling material. Printing to be in English using capital letters not less than $\frac{1}{8}$ inch in height.		
	BODY CUSHIONS			
See NOTE (3) at bottom of page. →	REG. NO.			
	<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 50%; height: 80px;"></td> <td style="width: 50%; padding: 5px; vertical-align: top;"> Certification is made that the materials in this article are described in accordance with law. </td> </tr> </table>		Certification is made that the materials in this article are described in accordance with law.	
	Certification is made that the materials in this article are described in accordance with law.			
	(NAME OF MANUFACTURER OR VENDOR) (ADDRESS OF MANUFACTURER OR VENDOR)	← Required in Virginia		
"Date of Delivery" line of Manufacturer's stock information, etc., here →	(Additional Information)			

Note: (1) All above printing, preferably in black ink on white vellum cloth or a cloth of comparable quality, which shall not flake out when abraded.

- (2) Size of label: Exclusive of the portion required to affix the tag to the article, the minimum size of the tag shall be not less than (6) square inches, but may be greater as the need demands.
- (3) Virginia approves and recognizes the uniform registry number and will accept the registration number issued by another State if registrant so desires, providing such registration follows the policy of uniform registration.

This policy is intended to benefit the registrant by requiring but one registration to be imprinted on the law labels used, regardless of where merchandise may be shipped.

The registration number shall be preceded by name of state (may be abbreviated) issuing REG. NO. and if factory is located in another state than that issuing REG. NO. then name of state in which factory is located shall follow the registration number in parenthesis.

NO. 3

LABEL FOR ALL NEW MATERIAL

For Animal and Fowl and Any Other Filling Material Requiring
Sterilization or Disinfection

See NOTE (3) at
bottom of page.

States referred to
here do not use
stamps so inspection
stamps may cover
this printing when
articles are not to
be shipped to these
States.

"Date of Delivery"
line of Manufacturer's
stock information,
etc., here

Space to Attach	
DO NOT REMOVE THIS TAG Under Penalty of Law	
ALL NEW MATERIAL Consisting of	
REG. NO.	Permit No.
<div style="border: 1px solid black; padding: 5px; margin-top: 10px;"> <p>Certification is made that the materials in this article are described in accordance with law.</p> <p style="text-align: center;">CONTENTS STERILIZED OR DISINFECTED</p> </div>	
(NAME OF MANUFACTURER OR VENDOR)	
(ADDRESS OF MANUFACTURER OR VENDOR)	
(Additional Information)	

In bold type. Minimum type size $\frac{1}{8}$ inch in height. Preferably black ink.

Space for description of filling material. Printing to be in English using capital letters not less than $\frac{1}{8}$ inch in height.

Sterilization or disinfection permit number of person or firm performing sterilization or disinfection. See NOTE (4) at bottom of page.

Required in Virginia

Note: (1) All above printing preferably in black ink on white vellum cloth or a cloth of comparable quality, which shall not flake out when abraded.

(2) Size of label: Exclusive of the portion required to affix the tag to the article, the minimum size of the tag shall be not less than (6) square inches, but may be greater as the need demands.

(3) Virginia approves and recognizes the uniform registry number and will accept the registration number issued by another State if registrant so desires, providing such registration follows the policy of uniform registration.

This policy is intended to benefit the registrant by requiring but one registration to be imprinted on the law labels used, regardless of where merchandise may be shipped.

The registration number shall be preceded by name of state (may be abbreviated) issuing REG. NO. and if factory is located in another state than that issuing REG. NO. then name of state in which factory is located shall follow the registration number in parenthesis.

(4) Virginia will accept the PERMIT NO. issued by another State if applicant so desires, providing approval is granted and a Virginia Sterilization or Disinfection Permit is issued to applicant bearing such number.

NO. 4
**YELLOW LABEL FOR ARTICLES CONTAINING ALL
 SECONDHAND MATERIAL OFFERED FOR SALE BY
 SECONDHAND DEALERS "AS IS."**

REQUIRED TO BE STERILIZED OR DISINFECTED

Space to Attach	
<hr/> DO NOT REMOVE THIS TAG Under Penalty of Law <hr/>	
This Article Contains ALL SECONDHAND MATERIAL CONTENTS UNKNOWN <hr/>	
Permit No.	
	Certification is made that the materials in this article are described in accord- ance with law.
<hr/> CONTENTS STERILIZED OR DISINFECTED <hr/>	
(NAME OF VENDOR) (ADDRESS OF VENDOR)	

In bold type. Mini-
 mum type size $\frac{1}{8}$
 inch in height. Pref-
 erably black ink.

Permit number of
 person or firm who
 sterilized or disin-
 fected article.

Note: (1) All above printing preferably in black ink on yellow vellum cloth or a cloth of com-
 parable quality, which shall not flake out when abraded.

(2) Size of label: Exclusive of the portion required to affix the tag to the article, the
 minimum size of the tag shall be not less than six (6) square inches, but may be
 greater as the need demands.

NO. 5

**YELLOW LABEL FOR ARTICLES WHICH HAVE BEEN
RENOVATED FOR RESALE AND WHICH CONTAIN
SECONDHAND MATERIAL IN WHOLE OR IN PART**

REQUIRED TO BE STERILIZED OR DISINFECTED

Space to Attach	
DO NOT REMOVE THIS TAG Under Penalty of Law	
This Article Contains SECONDHAND MATERIAL To Which Has Been Added	
List Additions In This Space	
REG. NO.	Permit No.
	Certification is made that the materials in this article are described in accord- ance with law.
CONTENTS STERILIZED OR DISINFECTED	
Renovator or Vendor Name	
Renovator or Vendor Address	

Registration number
 of person or firm who
 renovated article.

In bold type. Mini-
 mum type size $\frac{1}{8}$
 inch in height. Pref-
 erably black ink.

Permit number of
 person or firm who
 sterilized or disin-
 fected article.

Note: (1) All above printing preferably in black ink on yellow vellum cloth or a cloth of com-
parable quality, which shall not flake out when abraded.

(2) Size of label: Exclusive of the portion required to affix the tag to the article, the
minimum size of the tag shall be not less than six (6) square inches, but may be
greater as the need demands.

**RECOMMENDED DEFINITIONS OF FILLING MATERIALS
WHICH ARE NEITHER LAW NOR RULES
BUT ARE BASED ON BOTH**

Basic Definitions. It is the purpose of the following definitions to provide names, terms and nomenclatures as are commonly used, and are recognized in the manufacture, sale and distribution of bedding products. The following definitions are also intended to have understandable meaning to the ultimate consumer.

COTTON:

1. Cotton, Virgin Cotton or Staple Cotton: Any of these terms shall mean the staple fibrous growth as removed from cottonseed in the usual process of ginning (first cut from seed), containing no foreign material. The presence of the usual amount of leaves, hull, etc., shall not be considered foreign matter.
2. Cotton By-Products: This term shall mean the by-products removed from the various machine operations necessary in the manufacture of cotton yarn up to but not including the process of spinning, and shall include only the following materials commonly known in cotton mill terms as (1) cotton comber, (2) cotton card strips or cotton vacuum strips, (3) cotton fly and (4) cotton picker.
3. Cotton Linters: This term shall mean the fibrous growth removed from cottonseed subsequent to the usual process of ginning and shall be designated on the label.
4. Cotton Waste: This term shall mean the by-products removed from the various machine operations necessary in the manufacture of cotton products but not including those grades defined in 2 above. Cotton waste to which the immature ends or particles of seed hull adhere, and known to the industry as cotton motes, shall be included as cotton waste.
5. Shoddy: This term shall mean any material which has been spun into yarn, knit or woven into fabric and subsequently cut up, torn up, broken up, ground up or otherwise defabricated and shall be so designated on the label as Shoddy.
6. Blends or Mixtures: When two or more of the above materials are used in a product, they shall be described on the label as required above in the order of their predominance. Any of the materials listed under cotton by-products may be designated on the label individually or as cotton by-products.
7. Cotton Felt: This term shall be used only when fibers are garnetted or carded and used in layer form. It cannot be used when cotton batting or cotton felt scraps or clippings are stuffed or blown in the same manner as unfelted materials.

8. Oil Percentages: When any filling material contains more than five percent (5%) of oil, it must be described as Oily.
9. Dirt or Foreign Material: When any filling material contains more than five percent (5%) dirt or any other foreign material, it must be described as Dirty.

FEATHERS AND DOWN:

1. Down: This term shall mean the soft undercoating of waterfowl, consisting of the light fluffy filaments growing from one quill point but without any quill shaft. This term includes all real downs and it shall not be necessary to indicate the kind of down used, but if indicated on the label as a particular kind of down, such as goose down, duck down or eider down, the material must be as stated.
 - 1a. Down Fiber: This term shall mean the barbs of down plumes separated by any process from the quill point. Any individual fibers resembling down closely enough to create doubt as to whether they are down fiber or feather fiber may be classed as down.
 - 1b. A tolerance of 10 percent by weight of the down content stated on the label is permissible. Articles labeled as containing Down must contain not less than 90 percent pure down.
2. Feathers or Natural Feathers: This term shall mean the original or natural form and means feathers which have not been processed in any manner other than washing, dusting, sterilizing or disinfecting.
3. Crushed Feathers: This term shall mean feathers which have been processed by a curling or crushing machine which has changed the original form of the feather without removing the quill. Such stock shall be designated on the label as Crushed followed by the name of the fowl from which they came.
4. Chopped Feathers: This term shall mean feathers which have been chopped or cut into pieces. Such stock shall be designated on the label as Chopped followed by the name of the fowl from which they came.
5. Stripped Feathers: This term shall mean the barbs of feathers stripped by any process from the feather shaft, but not separated into feather fiber. Such designation shall include the name of the fowl from which they came.
6. Quill Feathers or Wing and Tail Feathers: Either of these terms shall mean the wing or tail feathers of any fowl.
7. Waterfowl Feathers: This term shall mean goose or duck feathers or any mixture thereof.
8. Damaged Feathers: This term shall mean feathers which have been broken, injured by insects, or depreciated from the original value in any manner; provided however, that this term shall not apply to crushed feathers as defined in 3. Damaged feathers in excess of 10 percent by

weight of the total feathers shall be indicated on the label and the name of the feathers shall be stated.

9. Blends or Mixtures: Feathers or down mixtures shall be designated by the foregoing definitions, by the name, character and percentage of each material used, or the entire mixture shall be designated by the name of the lowest grade of material used.
10. Color: The color of feathers or down need not be stated on the label, but if stated the contents shall be as declared. Feathers or down from waterfowl may be designated on the label as White or Gray as the case may be. Chicken or turkey feathers may be designated on the label as White or Colored as the case may be.
11. Tolerance: A tolerance of 10 percent by weight of the feather content stated on the label is permissible. Feathers of any fowl named on the label must contain not less than 90 percent of such feathers.
12. Cleanliness: All feather and down stocks shall be thoroughly cleaned prior to use by washing, dusting, sterilizing or disinfecting.
13. Secondhand Feathers or Down: Either of these terms means any such material which has been previously used for any purpose and shall be so designated on the required label for secondhand material with the proper classification of such feathers or down.

HAIR:

Classifications

Horse Tail Hair
Horse Mane Hair
Cattle Tail Hair
Cattle Hide Hair (Body Hair)
Hog Hair
Goat Hair

1. Hair is the coarse filamentous epidermal outgrowth of such mammals as horses, cattle, hogs and goats. When used in the manufacture of bedding or as filling material thereof, it shall be clean, properly cured, free from epidermis, excreta or other foreign or objectionable substances or odors.
2. Curled Hair: This term applies when any hair has been curled. The appropriate designation as to origin shall appear on the label preceded by the word Curled.
3. Uncurled Hair: This term applies when any hair has not passed through a curling process. The appropriate designation as to origin shall appear on the label preceded by the word Uncurled.
4. Rubberized Hair: This term shall mean any hair treated with liquid latex or synthetic rubber. When hair is rubberized the designation on the label shall state whether the rubber is Latex or Synthetic.

5. **Rubberized Curled Hair Pieces:** This term shall mean trimmings and pieces of rubberized curled hair of indefinite size. The term shall be preceded by the term Latex or Synthetic.
6. **Hair Blends or Mixtures:** When hair of two different origins is used in a blend or mixture, the kind and percentage by weight of each shall be stated on the label.
7. **Hair and Fiber Blends or Mixtures:** When any other filling material of whatever origin is used in a blend or mixture with hair, the kind and percentage by weight of each such material shall be designated on the label.
8. **Hair Pad:** This term shall mean hair which is interwoven or punched on burlap or any other woven material or otherwise fabricated into a pad, including the application of latex or synthetic rubber as a component and as a factor in the fabricating process. Percentages shall be based on the hair and fiber content only. No reference to or inclusion of the burlap or woven material backing is required on the label nor is the quantity or percentage of rubber when the rubber is used solely as a binder element.
9. **Color:** Hair need not be identified as to color on the label, but if it is so identified it shall be as represented in all respects.
10. **Tolerance:** A tolerance of 10 percent by weight of the percentages stated on the label shall be permitted.
11. **Secondhand Hair:** This term shall mean any hair which has sustained prior use and such hair shall be so designated on the required second-hand label with the proper classification of such hair.
12. **Labeling Examples For Hair:**

Curled Hair Pad	{	Cattle Tail .. 15%	}	100%
		Hog 85%		
Curled Hair and Fiber Pad	{	Hog 70%	}	100%
		Sisal Fiber .. 30%		
Latex Rubberized Curled Hair Pad	{	Horse Mane . 35%	}	100%
		Hog 65%		
Cattle Hide Hair Felt Pad				100%

WOOL:

1. **Wool or Virgin Wool:** Either of these terms shall apply to the fleece of the sheep, or lamb, which has been scoured or scoured and carbonized. It shall not be the by-product of any process of manufacture nor shall it have sustained prior use. It shall be free from kemp and vegetable matter.

2. Choice Wool or Choice Virgin Wool: (Optional for those manufacturers who want to use and get credit for using a finer quality of wool). Either of these terms shall apply to Wool or Virgin Wool as defined above that is " $\frac{1}{4}$ blood" (48s) or finer in grade, according to the United States Standards for grades of wool, and shall be natural or bleached white in color. The fibers shall be reasonably uniform in length, viz; it shall contain no admixture of short wool fibers. The term Choice Wool or Choice Virgin Wool shall not be used in describing the component parts of Wool Blends or Mixtures.
3. Wool By-Products: This term shall include noils and fulling flocks from fabrics made entirely of new wool fibers.
4. Wool Waste: This term shall embrace all other by-products and wastes of machines in any process of manufacture employing only new wool fibers and shall include wool pills, and shank and tag wools.
5. Tanners Wool: This term shall apply to wool reclaimed from tanned sheepskins.
6. Wool Shoddy: This term shall apply to any wool fiber which has been spun into yarn, knit or woven into fabric and subsequently cut up, torn up, broken up, ground up or otherwise defabricated and shall be designated on the label as Wool Shoddy. Wool shoddy shall not contain in excess of five percent (5%) of fibers other than wool.
7. Wool Blends or Mixtures: When two or more of the above materials are used in a product, they shall be described on the label as required above in the order of their predominance.
8. Wool Batt or Wool Felt: Either of these terms shall be used only when wool fibers alone are garnetted or carded and used in layer form. Neither can be used when wool batting or wool felt scraps or clippings are stuffed or blown in the same manner as unfelted materials. Either of these terms must be followed by a listing of the component materials as required above.
9. Oil and Grease Percentages: When any wool filling material contains more than five percent (5%) oil, wool grease or other free fat, it shall be described as Oily.
10. Damaged Wool: This term shall be applied to wool, although new, which has been damaged through excessive exposure to the elements, faulty storage, fire, or in any other manner, or has begun to disintegrate.
11. Tolerance: Materials which contain not less than 95 percent wool shall be considered wool.
12. Secondhand Wool: This term shall apply to any wool which has been previously used for any purpose.

MISCELLANEOUS FILLING MATERIALS:

1. Casein Fiber: This term shall mean the textile filament or fiber made from caesin by chemical and mechanical processes.
2. Caesin Fiber Waste: This term shall mean the by-product of any preparing or spinning machinery through which the casein filaments or fibers pass in any operation prior to the weaving or knitting process and shall include "napper" and "fulling flocks."
3. Coco Husk Fiber: This term shall mean the fibrous growth obtained from the husk of the coconut.
4. Excelsior: This term shall mean shredded threadlike wood fibers, but shall not include waste products such as shavings, sawdust or similar waste. Terms such as Woodwool shall not be used to describe excelsior.
5. Flax Tow: This term shall mean the coarse, broken and refuse parts of flax separated from the fine fibrous parts in preparing the fibers for spinning.
6. Fur Fiber: This term shall mean the fine soft under fur, with or without the usual guard hair, removed from the tanned or untanned pelts of mammals of the class of furbearers. The name of the animal may be stated on the label, and when so indicated shall be a true statement.
7. Glass Fiber: This term shall mean the very fine filaments or fibers made of glass.
8. Hay: This term shall mean any grass, properly cured and dried, free from dust, burrs, sticks or other objectionable material.
9. Jute Fiber: This term shall mean the bast fiber derived from any species of the corchorus plant.
10. Jute Tow: This term shall mean the broken and refuse parts of jute separated from the fine fibrous parts in preparing the fibers for spinning.
11. Jute Waste: This term shall mean the by-product of any machines through which jute fiber passes in spinning into yarn or cordage, but prior to the process of weaving.
12. Kapok: This term shall mean the mass of fibers investing the seed of the kapok tree (*Ceiba pentandra*). Any additional statement, descriptive of the geographical origin or of the quality of such fibers, shall be a true statement when designated on a label.
13. Latex Foam Rubber: This term shall mean natural rubber which has been converted into a staple foamy mass and molded into suitable shapes for use in bedding products.
 - A. Latex Foam Rubber Pieces: This term shall mean latex foam rubber which has been cut or broken into pieces of indefinite size, but shall not apply to shredded latex foam rubber.
 - B. Shredded Latex Foam Rubber: This term shall mean latex foam rubber which has been subjected to a shredding process.

- C. Molded Shredded Latex Foam Rubber: This term shall mean shredded latex foam rubber molded together by use of an adhesive binder.
 - D. Synthetic Foam Rubber: This term shall mean any of the various artificial substances closely resembling natural rubber converted into a staple foamy mass and molded into suitable shapes for use in bedding products.
14. Latex Sponge Rubber: This term shall mean natural rubber expanded into cellular sheets and vulcanized in that state into slabs.
- A. Latex Sponge Rubber Pieces: This term shall mean latex sponge rubber cut or broken into pieces of indefinite size, but shall not apply to shredded latex sponge rubber.
 - B. Shredded Latex Sponge Rubber: This term shall mean latex sponge rubber which has been subjected to a shredding process.
 - C. Molded Shredded Latex Sponge Rubber: This term shall mean shredded latex sponge rubber molded together by use of an adhesive binder.
 - D. Synthetic Sponge Rubber: This term shall mean any of the various artificial substances closely resembling natural rubber expanded into cellular sheets and vulcanized in that state into slabs.
15. Milkweed Fiber: This term shall mean the surface fiber from the inside of the seed pods of milkweed plants. (*Asclepias*).
16. Moss: This term shall mean the processed material derived from the moss growth found in swamps and on trees.
17. Nylon: This term applies to a synthetic protein-like filament or textile fiber. (Polyamide).
18. Nylon Waste: This term shall mean the by-product of any preparing or spinning machinery through which the nylon filaments or fibers pass in any operation prior to the weaving or knitting process.
19. Palm Fiber: This term shall mean the fibrous material obtained from the leaf of the palm, palmetto or palmyra tree.
20. Rayon: This term shall mean the synthetic filament or fiber made from modified cellulose.
21. Rayon Waste: This term shall mean the by-product of any preparing or spinning machinery through which the rayon fibers pass in any operation prior to the weaving or knitting process and shall include "napper" and "fulling flocks."
22. Sea Grass: This term shall mean any of the material obtained from maritime plants or seaweeds.
23. Silk Waste: This term shall mean the by-product of any preparing or spinning machinery through which the silk filaments or fibers pass.

24. Sisal Fiber: This term shall mean the leaf fiber derived from the (Agave Sisalana) and similar species of Agaves.
25. Sisal Fiber Tow: This term shall mean the residual fibers left after the extraction of the spinnable sisal fiber from the leaf. For the purpose of these regulations, this includes the product known as Bagassi. It shall not contain over 3 percent (3%) pulp.
26. Sisal Fiber Waste: This term applies to the sisal fiber waste of cordage mills, including rope and cordage ends, but shall not contain knots and refuse.
27. Straw: This term shall mean the stalk or stem of grain, such as wheat, rye, oats, rice and the like, after threshing. The kind of straw need not be stated on the label, but if so indicated, shall be a true statement. It shall be free from shaff, beards, bristles, husks, glumes, dirt or other extraneous matter.
28. Tula Fiber: This term shall mean the leaf fiber derived from the (Tula istle) and similar species of Agaves; sometimes called Tulatex. The term Tulatex is a trade name and shall not be used.
29. Vinyon Fiber: This term shall apply to a synthetic filament or fiber which is a vinyl resin product prepared by the conjoint polymerization of vinyl chloride and vinyl acetate.
30. Vinyon Fiber Waste: This term shall apply to the by-product of any preparing or spinning machinery through which the vinyon filaments or fibers pass in any operation prior to the weaving or knitting process, and shall include "napper" and "fulling flocks."
31. Wood Fiber Pad: This term shall apply to wood which has been reduced to a fibrous state and subsequently fabricated into a flat resilient mass.
32. Cleanliness: All miscellaneous filling materials used in the manufacture of bedding products shall be clean and free from trash, pith, pulp, extraneous matter, oil and grease.
33. Fiber: This term shall mean any threadlike tissue. The term shall be preceded by a designation which will disclose the true source from which the fiber was obtained. Labeling examples for fiber would be Hemp Fiber, Flax Tow Fiber, etc.
34. Secondhand: This term shall be applied to any of the above materials which have been previously used for any purpose.

ADVICE RELATIVE TO STERILIZATION IS NEITHER LAW NOR RULE BUT IS BASED ON BOTH. ITS PURPOSE IS TO ASSIST MANUFACTURERS AND MERCHANTS TO PROPERLY COMPLY WITH THE LAW. IT INCLUDES OPINIONS AND INFORMATION SUPPLIED AS ANSWERS TO QUESTIONS MOST COMMONLY ASKED.

ADVICE RELATIVE TO STERILIZATION

1. **Steam Pressure:** A Steam pressure process, when approved by the Board, may be used to sterilize or disinfect any article of bedding or filling material.

Satisfactory Compliance: Articles of bedding or filling materials therefor sterilized or disinfected by this process shall be subjected to treatment by live steam for thirty (30) minutes at a pressure of fifteen (15) pounds and at a temperature of 250 degrees Fahr., or for twenty (20) minutes at a pressure of twenty (20) pounds and at a temperature of 260 degrees Fahr. Chamber must be steam tight, sufficiently strong to withstand the pressure applied, be equipped with visible pressure and temperature gauges and necessary safety devices. Chamber must be provided with wire or lattice work shelving which provides a minimum clearance of one (1) inch from bottom, top, sides and between articles of bedding being sterilized or disinfected.

2. **Dry Heat:** Dry hot air, when approved by the Board, may be used to sterilize or disinfect articles of bedding or filling materials thereof. Satisfactory Compliance: Sterilization or disinfection by the dry heat method requires developing and holding a temperature of 230 degrees Fahr. for a minimum period of two (2) hours after the temperature of 230 degrees Fahr. plus or minus 5 degrees is attained in an approved chamber. Steam, electricity or flue gases may be used to produce the heat but gas will not be approved for heating unless an indirect system is used where there could be no possibility of igniting the materials being sterilized or disinfected. A thermostat shall be connected with the heating device to provide and maintain a reasonably uniform temperature of 230 degrees Fahr. plus or minus 5 degrees Fahr. A recording thermometer shall be used to automatically record the temperature and time of each sterilization or disinfection period. The operator shall initial and date each sterilization or disinfection period on the recording thermometer charts and such charts shall be kept carefully filed for examination at any time by the Board.

3. **Formaldehyde and Moisture:** Formaldehyde gas in the presence of moisture, when approved by the Board, may be used to sterilize or disinfect articles of bedding or filling materials thereof which is not compressed to a degree in excess of the usual compression of cotton felt. Articles of bedding or filling materials shall be so spaced in approved sterilizing or disinfecting chamber as to allow free circulation of gas; not less than 4 inches on all sides and between articles. The exhaust from the sterilization or disinfection chamber shall discharge above the roof of building in such manner as will not create a health hazard. Formaldehyde being a toxic gas, provisions must be made to preclude any danger to employees in workroom. A minimum temperature shall be maintained in sterilization or disinfection chamber of not less than 70 degrees Fahr.

Satisfactory Compliance: Articles of bedding or filling materials thereof to be sterilized or disinfected by this method shall be treated with formaldehyde in a moist atmosphere not less than 70 degrees Fahr.

for a period of at least ten (10) hours. Formaldehyde gas shall be generated from the use of one (1) pint of formaldehyde solution (37%) to each 1,000 cubic feet of air space in sterilizing or disinfecting chamber or through the use of any commercial fumigators which generate an equivalent quantity of gas. The minimum quantity of solution permitted is two (2) ounces regardless of how small the sterilizing or disinfecting chamber is. The solution must be heated or boiled to release the gas. Chamber must be gas tight and equipped with air inlet and outlet. Tight closure gate valves shall be provided on both air inlet and outlet. Shelving shall be of wire or lattice type construction or mattress may be suspended from suitable hangers with proper spacing. Formaldehyde will not sterilize or disinfect unless moisture is present and the gas is used for the full period required, a minimum of ten (10) hours. Care must be taken that no fire hazard is present if a flame is used to vaporize the formaldehyde. This process is a germicidal treatment only and is not recommended as an insecticide.

NOTE 1. The safest and most convenient way to release the gas from the formaldehyde solution is to add to the solution one-half ($\frac{1}{2}$) the amount of potassium permanganate. This boils the solution and releases the gas. The moist atmosphere in the sterilization or disinfecting chamber may be obtained by thoroughly sprinkling the floor of the chamber with warm water just before beginning the sterilization or disinfection process.

NOTE 2. There are several types of commercial "fumigators" on the market. Any of these which uses formaldehyde of the proper quantity and quality will be acceptable but those which contain but 2 ounces of "active ingredient" and yet purport to be able to sterilize or disinfect the contents of a room having 1,000 cubic feet of space will not be accepted unless a sufficient number are used to supply gas in the quantity required herein, i.e., the equivalent of gas generated from 1 pint of formaldehyde solution (37%) to each 1,000 cubic feet of space.

NOTE 3. The specific gravity of formaldehyde solution is such that 1 pint equals approximately 15 ounces. To figure the necessary amount of formaldehyde to use, based upon the size of the sterilizing or disinfecting chamber, multiply the length, height and width in feet to obtain the cubical area. Then multiply the cubical area by 15 and point off the three right hand figures. The result will be the number of ounces or "fifteenths of a pint" required. EXAMPLE: Chamber is 8'x7'x6' 6" equals 364 cubic feet x 15 equals 5.460 or 6 ounces (next higher unit). Use 6 ounces of formaldehyde solution or 6/15 of a pint for a chamber containing 364 cubic feet of space.

4. FEATHERS OR DOWN:

- (1). New Feathers or Down: Sterilization or disinfection application must indicate that feathers or down are thoroughly washed and rinsed, that live steam and dry heat are applied and that feathers or down are free of dust or dirt on completion of the process.

- (2). Secondhand Feathers or Down: Secondhand feathers or down articles of bedding will be considered as having been sterilized or disinfected when the contents and ticking are kept intact without opening and washed by a commercial laundry method with subsequent drying to remove moisture; or when processed by a method for which approval has been obtained from the Board.

5. HAIR:

- (1). New Hair: Sterilization or disinfection application must indicate the entire process used for washing and curling (if curled), and that at some point during the process the hair remains in boiling water a sufficient period (not less than 1 hour) to kill all pathogenic organisms.
- (2). Secondhand Hair: Secondhand articles of bedding will be considered as having been sterilized or disinfected when the hair is removed from the ticking and washed by a commercial laundry method and subsequently dried to remove all moisture and when the ticking is also washed and subsequently dried; or when processed by a method for which approval has been obtained from the Board.

6. WOOL:

- (1). New Wool: Sterilization or disinfection application must indicate whether raw wool or previously scoured and carbonized wool is to be treated. The processing of raw wool must be set forth in detail and indicate that at some point during the scouring and carbonizing, the wool is subjected to wet or dry heat or acid treatment sufficient to kill all pathogenic spores and microorganisms. Wool fibers reclaimed from new fabric need not be re-sterilized or re-disinfected.
- (2). Secondhand Wool: Secondhand wool articles of bedding will be considered as having been sterilized or disinfected when the contents and cover are kept intact without opening and washed or dry cleaned by a commercial laundering or dry cleaning method; or when processed by a method for which approval has been obtained from the Board.

7. Dry Cleaning: Dry cleaning, when approved by the Board, may be used to sterilize or disinfect articles of bedding or filling materials thereof.

Satisfactory Compliance: Sterilization or disinfection by dry cleaning shall be deemed to have been met when bedding articles or materials have been subjected to a commercial dry cleaning process.

8. Other Method: Articles of bedding or filling materials thereof may be sterilized or disinfected by any other method which is safe to use, and is adequately proficient to thoroughly sterilize or disinfect the product or material to be processed, and for which approval has been given by the Board.



State of Washington
DEPARTMENT OF HEALTH
Seattle

Chapter 183, Laws of 1951



RELATING TO
UPHOLSTERED FURNITURE
AND
BEDDING INDUSTRY

**STATE OF WASHINGTON
DEPARTMENT OF HEALTH**

Chapter 183, Laws of 1951

Relating to furniture and bedding; defining terms; prescribing the duties of certain officers; creating the furniture and bedding advisory council; prescribing fees, providing penalties, and repealing sections 70.66.010 to 70.66.160, inclusive, RCW.

Be it Enacted by the Legislature of the State of Washington:

Section 1. When used in this act, the following terms, words or phrases shall have the following meaning:

"Person" includes individual, copartnership, association, firm, auctioneer, trust and corporation and the agents, employees and servants of any of them.

"Sell" or any of its variants includes any of, or any combination of, the following: Sell, offer or expose for sale, barter, trade, deliver, give away, rent, consign, lease, possess with an intent to sell or dispose of in any other commercial manner. Merchandise found on sales floors or in places from which sales or deliveries are made, shall be assumed to be for sale.

"Department" refers to department of health.

"Director" refers to the director of health or his authorized representatives.

"Annually," or any of its variants, means that period beginning July first of each year and ending June thirtieth of the succeeding year, or any unexpired portion of that period.

"Certificate" means any registration certificate issued by the department of health.

"Upholstered furniture" includes any furniture, including children's furniture, movable or stationary, which

(1) is made or sold with cushions or pillows, loose or attached, or

(2) is itself stuffed or filled in whole or in part with any material, hidden or concealed by fabrics or any other covering, including cushions or pillows belonging to or forming a part thereof, together with the structural units, the filling material and its covering and its container, that can be used as a support for the body of a human being, or his limbs and feet when sitting or resting in an upright or reclining position.

"Bedding" means any quilted pad, packing pad, mattress pad, hammock pad, mattress, comforter, bunk quilt, sleeping bag, box spring, studio couch, pillow, cushion, hassock or any bag or container made of leather, cloth or any other material or any other device that is stuffed or filled in whole or in part with concealed material in addition to the structural units, all of which may be used by any human being for sleeping, resting, or reclining purposes.

"Bedding" also includes pillows which are hereby defined as a bag or a case of cloth filled or stuffed with feathers, down, kapok, cotton, hair, wool, or other sanitary filling not prohibited by the regulations of this act to be used, or that may be used, as a rest or a support for the head in reclining, resting, or sleeping.

"Filling material" means cotton, wool, kapok, feathers, down, or any other material, or any combination thereof, loose or in batting, pads, or any other prefabricated form, concealed or not concealed, to be used, or that may be used, in articles of bedding or upholstered furniture.

"Secondhand" means any material or article of which prior use has been made, and includes defabricated material, thread, and yarn, not otherwise classed as new by the regulations of this act.

Any article of upholstered furniture or bedding is secondhand if it contains any secondhand material in whole or in part.

Any article of upholstered furniture or bedding on sales floors in a private residence or room, which is not separated from living quarters, is secondhand furniture or bedding.

"Manufacturer" means a person who, either by himself or through employees or agents, makes any article of upholstered furniture or bedding in whole or in part, or who does the upholstery or covering of any structural unit or part thereof, using either new or secondhand material.

A "wholesaler" is a person who sells any article of upholstered furniture or bedding or filling material to another for purpose of resale.

A "retailer" is a person who sells any article of upholstered furniture or bedding or filling material to a consumer or user of the article purchased.

"Repairer" or "renovator" means a person who repairs, makes over, re-covers, re-stores, renovates, or renews upholstered furniture or bedding.

"Transient repairer or renovator" means any person who travels from place to place and repairs upholstered furniture or renovates bedding with or without benefit of mobile facilities but who has no permanent shop or address.

"Sterilizer" means any person certified by the department to sterilize any upholstered furniture, bedding, or filling material relating thereto.

"Fumigator" means any person certified by the department to fumigate any article of upholstered furniture or bedding or filling material relating thereto.

"Supply dealer" means any person certified by the department to manufacture, process, or sell at wholesale any felt, padding, pads, or loose material in bags or containers, concealed or not concealed, to be used, or that could be used, in articles of bedding or upholstered furniture.

"Supply depot" means any warehouse or storeroom used as a merchandising center or supply outlet, to supply, or for the purpose of supplying, merchandise subject to this act, either directly or indirectly at wholesale or retail, which merchandise is sold or held for the purpose of sale to any person regardless of whether the purchaser is in business or in the employ of any person.

"Auctioneer" means any person who sells at auction to the highest bidder, either for himself or another party, at public or private sale, any article or material regulated by this act.

"Residence dealer" means any person who sells any new or used article of upholstered furniture or bedding from his own or another person's place of abode or from any salesroom not having a recognized and ordinary store entrance.

"Slip cover" means any casing or cover without any filling material and meeting any of the following requirements:

(1) Which is for use or is to be placed on or over any manufactured article or upholstered furniture or bedding;

(2) Which covers or conceals the upholstered furniture or bedding in whole or in part;

(3) Which is closed or held in place by snaps or hooks and eyes or lacing so that it may be removed without the use of tools or instruments;

(4) Which is not permanently attached by tacking, sewing, or in any other manner.

Any person engaged exclusively in the manufacture of slip covers shall not be required to have a certificate under the provisions of this act.

"Branch" means any subordinate establishment situated apart from the parent house, maintaining a separate service to the trade.

"Owner's own material" means any article or material belonging to any person for his own or his tenant's use that is sent to any manufacturer, repairer or renovator to be repaired or renovated or used in repairing or renovating.

Sec. 2. The director shall administer this act.

Sec. 3. It shall be unlawful for any person to engage in a business regulated by this act unless he has first obtained the proper certificate as required by this act.

Sec. 4. Except as otherwise provided in this act, a person who advertises, solicits, or contracts to manufacture, repair, or renovate upholstered furniture or bedding and either does the work himself or employs others to do it for him, shall secure the particular certificate required by this act for the particular type of work that he solicits or advertises that he will do, regardless of whether he has a shop or factory.

Sec. 5. Every person manufacturing either upholstered furniture, or bedding, or both, shall annually obtain a furniture and bedding manufacturer's certificate from the department bearing a registration number assigned by the department.

Sec. 6. A wholesaler of either upholstered furniture, or bedding, or both, unless he holds a furniture and bedding manufacturer's certificate, shall annually obtain a wholesale furniture dealer's certificate from the department.

Sec. 7. Every person repairing upholstered furniture or renovating bedding, unless he holds a furniture and bedding manufacturer's certificate, shall annually obtain a repairer's and renovator's certificate from the department bearing a registration number assigned by the department.

Sec. 8. Every person selling any upholstered furniture or bedding at retail, including upholstered antique furniture, regardless of its condition, unless he holds a furniture and bedding manufacturer's certificate, a wholesale furniture and bedding manufacturer's certificate, a wholesale furniture and bedding dealer's certificate, or a repairer's and renovator's certificate, shall annually obtain a retail furniture and bedding dealer's certificate from the department. This does not apply to upholstered furniture or bedding sold by a peace officer when so ordered by a court: "Provided, That the provisions of this section and of section 7 shall not apply to any person repairing and/or selling the furnishings of his own household."

Sec. 9. Every person manufacturing, processing, or selling at wholesale any felt or batting or any pads or loose material in bags or containers for use in bedding or upholstered furniture, unless he holds a furniture and bedding manufacturer's certificate shall annually procure a supply dealer's certificate from the department bearing a registration number assigned by the department. Each and every branch is likewise subject to the provisions of this act.

Sec. 10. Every person in any class shall secure a separate certificate for each branch. But one whose manufacturing plant is located in another state or foreign country and who is certified to manufacture upholstered furniture or bedding for sale in Washington, may have one wholesale outlet covered by the certificate issued to the factory.

Sec. 11. Every person doing business at the same address under more than one firm name is subject to the registration provisions for each firm name.

Sec. 12. The department may reciprocate with other states regarding the mutual recognition and acceptance of labels in interstate commerce, the recognition of manufacturer-shipper identification numerals, and in such other manner as may be consistent with the best interests of the state of Washington.

Sec. 13. The department shall prescribe the procedure relative to assignment or reassignment of registration numbers.

Sec. 14. This act shall not apply to upholstered furniture or bedding manufactured, repaired, or renovated which is for sale outside the borders of this state, except that if such articles when manufactured, repaired, or renovated, contain in whole or in part, secondhand materials, such articles shall first be sterilized, fumigated, or otherwise treated as required by this act.

Sec. 15. Secondhand upholstered furniture or bedding, or secondhand filling materials to be used, or that may be used, in upholstered furniture or bedding, received from outside of this state shall comply with all provisions of this act before being accepted, sold or delivered, either directly or indirectly by any person.

Sec. 16. Every person importing or selling either at wholesale or retail, directly or indirectly, any unlabeled foreign-made upholstered furniture or bedding, shall fully comply with all the requirements of this act, including the registration and labeling provisions before any such upholstered furniture or bedding can be offered or exposed for sale.

Sec. 17. A person shall not, at wholesale or retail or otherwise, directly or indirectly make, repair, renovate, or sell any upholstered furniture or bedding for use in any household or place of abode which can be used by human beings, if it is made of new or secondhand material which is concealed by fabric or any other covering, unless such article is plainly and indelibly stamped or labeled with a tag or other marking as provided in this act and approved by the department. The presence of any article or material regulated by this act on sales floors or premises from which sales or deliveries are made shall be presumptive evidence of intent to sell or use.

Sec. 18. A person shall not, directly or indirectly, sell in this state, at wholesale or retail or otherwise, any secondhand or previously used article of upholstered furniture or bedding or any

secondhand or previously used filling material to be used, or that could be used in the manufacture, repair, or renovation thereof, unless such article or material has, subsequent to its last use, been sterilized, fumigated, or otherwise treated by a process approved by the department and labeled in accordance with the provisions of this act.

Sec. 19. Labels to be attached to articles of upholstered furniture and bedding regulated by this act shall not be less than six square inches in size and shall show or state that the filling material is "new," "secondhand," or "owner's own," as the case may be.

Sec. 20. Filling material shall be described by true name and grade. When more than one kind or grade is used in a mixture the component parts shall be described in order of their predominance. Feather and down contents shall be shown by percentage. The manner of describing the various filling materials, including the language required by law, together with such other descriptive information as may be required, and the type size, placement and the color of ink thereof, shall be prescribed by the department. In addition to the prescribed language appearing on the label, the label shall show or state the registration number of the manufacturer as assigned by the department.

Sec. 21. If desired, the label may also describe the frame, cover, and style of the article to which it is attached. When such descriptive statements are made they must, in fact, be true statements. Before display, sale, or delivery of any articles of upholstered furniture or bedding, all labels required by this act shall be securely attached to the article at the factory or shop. Such labels shall be fixed in such position that they may be conveniently examined.

Sec. 22. The finished size of bed pillows shall be stated on the label. Quilt and comforter labels shall show the "cut" size on the label and a reasonable tolerance from the "cut" size measurement shall be established by regulation. Labels appearing upon decorative pillows, boudoir and fancy cushions, need not show the finished size. Slip-seat chairs and benches or upholstered stools and similar articles of upholstered furniture, having a wood or metal bottom, may be clearly and indelibly stamped at the factory in lieu of the label. The stamp to be used shall not be smaller than the minimum size approved by the department. When a stamp is approved in lieu of a label, such stamp shall show or state such information as would be required on the label which it replaces.

Sec. 23. Before being sold, offered, or exposed for sale, cotton, wool, kapok, feathers, down, or any other material or any combination thereof, loose, in batting, pad, or any other prefabricated form, concealed or not concealed, to be used, or that could be used, in articles of bedding or upholstered furniture, shall be labeled with a tag or other device setting forth its true content in accordance with this act.

Sec. 24. All feathers and down, excepting raw stocks sold in bulk or package, shall be labeled with a tag or other marking upon each and every parcel setting forth the true contents according to the requirements of this act.

Sec. 25. Any person who renovates or repairs upholstered furniture or bedding for such owner's or customer's own use or by his tenants, shall attach, when completed, the "owner's own material" label approved by the department.

Sec. 26. The "owner's own material" label shall be securely attached to the article at the factory or shop and it shall be fixed in such position that it may be conveniently examined.

Sec. 27. The material from which furniture and bedding labels are made shall be a fabric of good quality approved by the department.

Sec. 28. No mark, tag or sticker, or any other device shall be placed upon labels required hereby by any person in such a way as to cover the statements required by law.

Sec. 29. It shall be unlawful to use on any label any misleading term or designation or term or designation likely to mislead.

Sec. 30. Every person except the purchaser for his own use, who attempts to or does remove, deface, alter, or causes to be removed, defaced or altered, the label or any mark or statement placed upon any upholstered furniture, bedding, or material under the provisions of this act, is guilty of a violation of this act.

Sec. 31. Filthy articles of upholstered furniture or filthy articles of bedding cannot be sold, offered for sale, or exposed for sale.

Sec. 32. No person shall engage in the business of sterilizing, fumigating, or otherwise treating articles or materials subject to the regulations of this act without first obtaining the proper registration certificate.

Sec. 33. Every article of upholstered furniture or bedding from any private or public hospital, jail, or any other institution, or which has been used by any person suffering from an infectious or contagious disease, shall be sterilized before it is repaired or renovated.

Sec. 34. New, sterilized, fumigated, or otherwise treated articles of upholstered furniture or bedding or materials shall at all times be kept separate from secondhand articles or materials not sterilized, fumigated, or otherwise treated.

Sec. 35. Every person who uses the required furniture and bedding label coming under the provisions of this act or who uses any other type of tag or device to falsely advertise or misrepresent any merchandise to which the bedding or furniture label is required to be attached is guilty of a violation of this act.

Sec. 36. Whenever the words "bat," "batting," or "felt" are used in any statement required by this act, the material designated shall be in layers as processed by garnetting or carding machines and the statement on the label shall indicate whether the bat is a "staple cotton bat" or a "cotton linters bat," or such other true statement as may be in order.

Sec. 37. Any and all filling material to be used in the manufacture of upholstered furniture or bedding shall be free from foreign matter, dirt or trash.

Sec. 38. The state board of health shall by regulation, establish grades, specifications, and tolerances on the kinds and qualities of materials which are used or intended to be used or that may be used in the manufacture of upholstered furniture or bedding, provided such grades, specifications and tolerances are not in conflict with accepted national standards relating thereto, and may approve or adopt standard designations and rules for the proper labeling of articles filled with those materials, provided such rules are not in conflict with any of the provisions of this act, and may adopt such other rules and regulations as may be necessary for carrying out the provisions of this act.

Sec. 39. Every person, upon receiving upholstered furniture or bedding for repair or renovation, shall securely affix immediately a tag of identification showing the owner's or dealer's name and address and the date upon which it was received. The tag shall remain affixed until actual repair or renovation is begun. Secondhand springs, structural parts and filling materials shall be likewise identified.

Sec. 40. The premises, delivery equipment, machinery, appliances and devices of all persons under this act shall at all times be kept free of refuse, dirt, contamination, insects or vermin.

Sec. 41. The annual registration fee for such certificates granted under this act shall be in accordance with the following table and shall be due and payable on or before July 1st of each year:

Furniture and bedding manufacturer's certificate	\$35
Wholesale furniture and bedding dealer's certificate	\$35
Supply dealer's certificate	\$35
Supply depot	\$35
Furniture repairer's and renovator's certificate	\$25
Sterilizer's or fumigator's certificate	\$25
Retail furniture and bedding dealer's certificate	\$10
Auctioneer's certificate	\$10

The schedule of fees prescribed in this act constitutes a maximum, and the director, with the approval of the advisory council, may make a proportionate reduction in the schedule for any year upon the basis of the department's needs for the proper enforcement of this act.

Sec. 42. All registration fees shall be paid in full up to the following July 1st. Prorated license fees shall be on a quarterly basis beginning as of July 1st, October 1st, January 1st, April 1st.

Sec. 43. Any person not licensed during the last preceding fiscal year may obtain a certificate on the prorated basis by payment of the registration certificate fee beginning the quarter in which he engages in business.

Sec. 44. Renewal registration fees are payable on or before July 1st. When such fees are not paid in full before September 1st they shall become delinquent and there shall be added to the requisite fee a penalty of twenty per cent. If such fee and delinquent penalty are not paid on or before October 1st the licensee shall be subject to such further penalties as provided elsewhere in this act.

Sec. 45. All monies received under this act shall be paid over to the state treasurer at the close of each month. Expenses for carrying out the provisions of this act shall be obtained from these monies. The department shall maintain separate records showing receipt and expenditure of such monies.

Sec. 46. The director shall have access to any premises or to any records held by any person containing any information pertaining to any materials or articles affected by and subject to the provisions of this act. They may inspect materials and structural parts intended to be used in the manufacture of upholstered furniture or bedding, may open such articles or parts thereof for the purpose of inspecting concealed filling material and may take either the entire article or samples of filling material in such quantities as may be necessary for laboratory analysis.

Sec. 47. When the director determines that any secondhand or damaged article of upholstered furniture or bedding for sale, or any materials intended to be used in the manufacture of any article or articles of upholstered furniture or bedding are detrimental to public health, he may condemn, withhold from sale, seize, or destroy any such article or articles.

Sec. 48. The tag to be affixed to any article of condemned upholstered furniture or bedding or any material by a representative shall be a colored tag and shall contain such information as may be required by the department.

Sec. 49. The failure of any person to produce upon demand of the director any article or material that has been condemned or ordered held on an inspection notice is a violation of this act.

Sec. 50. Every person who violates any of the provisions of this act is guilty of a misdemeanor and upon conviction shall be punished by a fine of not less than fifty dollars nor more than five hundred dollars or by imprisonment in the county jail for not less than thirty days nor more than six months or by both such fine and imprisonment.

Sec. 51. The unit for a separate and distinct offense in violation of this act is each and every article of improperly labeled, or not labeled, upholstered furniture or bedding made, repaired, re-covered, renovated, sterilized, fumigated, or otherwise treated, sold, exposed or offered for sale, delivered, consigned, rented or possessed with intent to sell contrary to the provisions of this act.

Sec. 52. There is hereby created a furniture and bedding advisory council to the department which shall consist of the director as secretary and seven members to be appointed by the governor. The seven appointive members shall be persons who, because of their vocations, employment or affiliations, are qualified to represent the various branches of the affected industries. Members shall be appointed for a seven-year term, except that in the initial instance following the effective date of this act, one member shall serve for one year, one member for two years, one member for three years, one member for four years, one member for five years, one member for six years, and one member for seven years, as the governor may designate. Vacancies of unexpired terms shall be filled by appointment by the governor.

Sec. 53. Appointments to the advisory council, except to fill vacancies, shall be as of July 1st and apportioned as follows: One representing the upholstered furniture manufacturing industry; one representing the bedding manufacturing industry; one representing the retail furniture industry; one representing the sterilizing and fumigation industry; and three having no commercial interest, affiliation or relationship in or to the industry, to represent the public. The governor shall fill such vacancies as may occur in the membership of the council and a member so appointed shall serve during the unexpired term for which his predecessor was appointed. The furniture and bedding

advisory council shall choose one of its members to act as chairman and shall meet once each year at a time and place to be designated by the chairman: *Provided, however,* The chairman may, at the written request of two members of the council, or, at his own option, call a special meeting of the council to discuss such matters as may, in his opinion, require interim discussion and advice.

Sec. 54. The governor may remove any member of the council for misconduct or when he is no longer connected with that segment of industry in whose behalf he was appointed. All advisory council members shall serve without pay. The advisory council shall have full power to:

- (1) Consider all matters submitted to it by the director;
- (2) Recommend such rules and regulations as may in their opinion be necessary in carrying out the provisions of this act;
- (3) Make recommendations to the state merit system and the director relative to the qualifications and duties of the representatives provided for in this act;
- (4) Advise regarding enforcement policy and other such matters as may be pertinent to the purpose and intent of this act.

Sec. 55. If any provision of this act or the application thereof to any person or circumstance shall be held invalid, such invalidity shall not affect the provisions or the application of this act which can be given effect without the invalid provision or application, and to this end the provisions of the act are declared to be severable.

Sec. 56. Sections 70.66.010 to 70.66.160, inclusive, RCW, as derived from chapter 125, Laws of 1931, are repealed. [Rep. R.R.S. §§ 6294-1 to 6294-17 incl.]

Passed by the House February 28, 1951.

Passed by the Senate March 6, 1951.

Approved by the Governor March 16, 1951.

WISCONSIN

146.04 MISCELLANEOUS HEALTH PROVISIONS

146.04 Mattresses and upholstering. (1) Whoever manufactures for sale, offers for sale, sells, delivers, or has in his possession with intent to sell or deliver any mattress which is not properly branded, or labeled; or whoever uses, in whole or in part in the manufacture of mattresses, any material which has been used, or has formed a part of any mattress, pillow or bedding used in or about public or private hospitals or on or about any person having a communicable disease; or dealing in mattresses, has a mattress in his possession for the purpose of sale, or offers it for sale, without a brand or label as herein provided, or removes, conceals or defaces the brand or label, shall be fined not less than twenty-five nor more than five hundred dollars, or imprisoned not to exceed six months, or both. The brand or label herein required shall contain, in plain print in the English language, a statement of the material used, whether they are, in whole or in part, new or secondhand, and the qualities. Such brand or label shall be a paper or cloth tag securely attached. A mattress within this section is a quilted, stuffed pad, to be used on a bed for sleeping or reclining purposes.

(2) Any person upholstering or reupholstering any article, or who manufactures for sale, offers for sale, sells or delivers, or who has in his possession with intent to sell or deliver anything containing upholstering, without a brand or label as herein provided or who removes, conceals or defaces the brand or label, shall be punished as provided in subsection (1). The brand or label shall contain, in plain print in English, a statement of the kind of materials used in the filling and in the covering, according to the grades of filling and covering used by the trade, whether they are in whole or in part new or secondhand, and the qualities, and whether, if secondhand, they have been thoroughly cleaned and disinfected. Such brand or label shall be a paper or cloth tag securely attached.

(3) If the industrial commission believes this section is being or has been violated, it shall advise the attorney-general, giving the grounds of its belief; and the attorney-general or, under his direction, the district attorney, shall forthwith institute proceedings for enforcement and punishment.



N O M E N C L A T U R E

Terms - Classifications

Definitions

with restrictions for

F I L L I N G M A T E R I A L S

used in

B E D D I N G - F U R N I T U R E

1964

Association of Bedding & Furniture Law Officials

PREFACE

Presented herein is an itemized list of definitions, nomenclature and terms that are commonly used and as recognized for the various filling materials employed in the manufacture and sale of upholstered furniture and bedding products. Most states in the nation have a law and regulations controlling to a varied extent the processing, sale and use of filling materials and the manufacture, renovation and sale of upholstered furniture and items of bedding. These definitions are an essential and a mandatory part of the labeling requirements of these state laws. The long-range program of the ABFLO is to standardize these definitions for national uniformity among all states having such law.

It must be recognized that a state law is often explicit and mandatory as to the meaning, application and use of specific definitions. Therefore, uniformity or standardization of terms and definitions for all filling material among all states is not now obtainable and will depend in instances upon legislative amendments to existing laws.

This list reflects uniformity where uniformity exists and specifies for each definition its mandatory use, acceptable use or prohibited use by the respective states having applicable law and contributing to a nationwide poll. Its purpose is to inform the manufacturer, particularly where engaged in inter-state shipments, on the labeling requirements of the various states and, also, to accent the lack of uniformity where lack of uniformity exists to those states constituting a minority of individual and contrary requirements on specific definitions with the hope that positive effort will prevail for ultimate conformity among all states in the nation.

COTTON

1. COTTON

Cotton, virgin cotton or staple cotton: the staple fibrous growth removed from cottonseed in the usual process of ginning (first cut from seed) not containing any foreign material. Presence of usual amount of leaves, hull, etc. shall not be considered foreign material. Term "cotton" alone shall not be used.

Mandatory in all states except Indiana.

Term "cotton" acceptable if blown into mattress in unfelted condition.

2. COTTON
LINTERS

Fibrous growth removed from cottonseed subsequent to ginning. Term "linters" alone shall not be used.

Mandatory in all states.

3. COTTON
BY-PRODUCTS

Fibers removed from various machine operations in manufacture of cotton yarn up to but not including process of spinning and includes following materials commonly known in cotton mill terms as cotton comber, cotton card strips, cotton vacuum strips, cotton fly and cotton picker. By-products may be designated by applicable mill term.

Mandatory in all states except

California - Mill term mandatory.

Oregon - " " "

Connecticut - Mill term specified or term "cotton fiber" optional.

4. COTTON
WASTE

Comber, noils, card strips, vacuum strips or strippings, fly, picker, notes and sweepings containing more than seven per cent (7%) but not more than ten per cent (10%) hull, leaf, stem, pulp, etc. shall be classified waste.

Mandatory in all states except

Connecticut - Prohibited.

Oregon - When trash, shale, shell, hull or seed particles exceed five per cent (5%) same shall be termed "dirt" and be so designated by percentage by weight. Over ten per cent (10%) material unfit for use.

Washington -- Fibrous by-products removed from various machine operations necessary in manufacture of cotton products but shall not include grades defined in No. 3. Napper flocks from new material classified "cotton waste."

5. COTTON FELT-"A" Felt made of mixture of any of the following: staple cotton, cotton linters or cotton by-products shall be designated as cotton felt. Percentages of component parts of each grade shall be listed in order of their predominance stating percentage by weight of each.

Mandatory in Arkansas, California, Colorado, City of Detroit, District of Columbia, Georgia, Maine, Massachusetts, Missouri, Oregon, Pennsylvania, Rhode Island, South Carolina, Tennessee, Utah, Washington, West Virginia.

Acceptable in Connecticut, Florida, Louisiana, Maryland, North Carolina, Ohio, Indiana, Virginia.

Prohibited in New York, Oklahoma, Texas.

6. COTTON FELT-"B" Felt made of mixture of any of the following: staple cotton, cotton linters or cotton by-products shall be designated as cotton felt.

Acceptable in Connecticut, Florida, Louisiana, Maryland, North Carolina, Ohio, Indiana, Virginia.

Prohibited in New York, Oklahoma, Oregon, Texas.

7. BLENDED
COTTON FELT Felt made of mixture of any of the following: staple cotton, cotton linters or cotton by-products.

Mandatory in New York, Oklahoma, Texas, Virginia.

Prohibited in Oregon.

Acceptable in other states.

8. STAPLE
COTTON FELT Felt made entirely of staple cotton.

Acceptable in all states.

HAIR

9. HAIR Coarse filamentous epidermal outgrowth of mammals as horses, cattle, hogs and goats used in the manufacture of bedding, upholstered furniture or filling materials. It shall be clean, properly cured, free from epidermis, excreta or other foreign or objectionable substances or odors.

Mandatory in all states.

10. HAIR MIXTURES Hair of different animal origin used in blend or mixture. Kind and percentage by weight of each shall be stated on the label. When materials other than hair are used in a blend or mixture with hair, kind and percentage by weight of each material shall be designated.
- Mandatory all states except North Carolina. Percentages not required.
11. HAIR CLASSIFICATION Hair is to be classified according to the body origin as horse tail hair, horse mane hair, cattle tail hair, cattle hide (body) hair, hog hair, goat hair and shall be so labeled.
- Mandatory in all states except Florida and North Carolina. Designation of tail, mane or body not required.
12. CURLED HAIR Hair which has been curled. Appropriate designation as to origin shall appear on label preceded by word "curled."
- Mandatory in all states.
13. DYED HAIR OR BLEACHED HAIR Hair that is dyed or bleached shall be indicated on the label as "dyed" or "bleached" respectively.
- Mandatory in all states except
- | | | |
|----------------|---|------------------------------|
| Florida | - | See Colored. |
| New York | - | " " |
| North Carolina | - | " " |
| Virginia | - | " " |
| Indiana | - | Acceptable but not required. |
14. HAIR TOLERANCE Tolerance of ten per cent (10%) by weight of percentage stated on label permitted.
- Acceptable in all states except
- | | | |
|------------|---|---|
| California | - | Tolerance of five per cent (5%) allowed. |
| Oregon | - | Trash over five per cent (5%) but less than ten per cent (10%) shall be termed "dirt" and be so designated by percentage of weight. Over ten per cent (10%) material unfit for use. |

FEATHERS AND DOWN

15. DOWN Soft undercoating of waterfowl consisting of light fluffy filaments grown from quill point without quill shaft. Name of fowl from which down is obtained may be designated, such as goose down, duck down. Loose down fibers in excess of ten per cent (10%) shall be designated down fiber.
- Acceptable in all states except Connecticut, Maryland, Oregon, Washington. Name of fowl and color must be stated.
16. DOWN FIBER Single strand of fiber or barb detached from down plume and plumules which are not joined or attached to each other.
- Acceptable in all states.
17. LABELING DOWN The following composition specified for items labeled as containing "down."
- | | |
|---|-------|
| A. Down (pure) - Minimum content | = 80% |
| B. Balance - Maximum content | = 20% |
| Composed of any combination of the following: | |
| 1. Down Fiber - Maximum | = 10% |
| 2. Small water fowl feathers including plumules - Maximum | = 10% |
| 3. Feather Fiber - Maximum | = 5% |
| 4. Quill Feathers, damaged feathers, etc. - Maximum | = 1% |
| 5. Residual Matter - Maximum | = 2% |
- Acceptable in Florida, Georgia, Louisiana, North Carolina, Ohio, Oklahoma, Rhode Island, Tennessee, Texas, Virginia, West Virginia.
- Prohibited in Connecticut, Indiana, New York, Oregon, Maryland.
18. GOOSE FEATHERS Feathers of goose, whole in physical structure with natural form and curvature.
- Mandatory in all states.
19. DUCK FEATHERS Feathers of duck, whole in physical structure with natural form and curvature.
- Mandatory in all states.

20. **WATER FOWL
FEATHERS** May be used to designate mixtures of goose and duck feathers.
- Acceptable in all states except California, Connecticut, City of Detroit, Maryland, Massachusetts, Oregon, Washington.
21. **TURKEY
FEATHERS** Feathers of turkey in whole physical structure.
- Mandatory in all states.
22. **CHICKEN
FEATHERS** Feathers of chicken in whole physical structure.
- Mandatory in all states.
23. **LAND FOWL
FEATHERS** May be used to designate mixtures of turkey and chicken feathers.
- Acceptable in Louisiana, Oklahoma, Texas.
- Prohibited in all other states.
24. **FEATHER
DESIGNATION** Term feathers as designation shall not be used alone.
- Mandatory in all states.
25. **BROKEN
FEATHERS** Broken feathers in excess of allowed tolerance shall be designated with name of feathers; e.g., "broken chicken feathers."
- Mandatory in all states except Oregon, Utah, and Washington. See "damaged feathers."
26. **DAMAGED
FEATHERS** Feathers which have been materially broken, injured by insects or depreciated from the original value in any manner. Damaged feather in excess of two per cent (2%) of the feather content shall be stated with percentage by weight; e.g., "damaged chicken feathers."
- Mandatory in Oregon, Utah, Washington.
- Acceptable in Connecticut, Georgia, Indiana (with ten per cent (10%) tolerance), Louisiana, North Carolina, Ohio, Virginia, West Virginia.
- Prohibited in Florida, New York, Oklahoma, Tennessee, Texas.

27. STRIPPED
FEATHERS
- With name of fowl from which feathers originated designate feather barbs stripped from main stem or quill but not separating barbs from feather into feather fiber; e.g., "stripped goose feathers."
- Mandatory in all states except Oregon, Washington.
See "crushed and/or damaged feathers."
28. CRUSHED
FEATHERS
- Crushed feathers with name of fowl from which feathers originated designate feathers processed through so-called curling machine which has changed original form of feathers without removing quill; e.g., "crushed duck feathers." Crushed feathers as designation shall not be used alone.
- Mandatory in all states.
29. CHOPPED
FEATHERS
- With name of fowl from which feathers originated designate feathers processed through chopping machine which has cut feathers into small pieces; e.g., "chopped duck feathers." Chopped feathers as designation shall not be used alone.
- Mandatory in all states except Oregon, Washington.
See "crushed feathers."
30. FEATHER
FIBERS
- With name of fowl from which feather originated designates barbs of feathers separated by processing from quills but free from quills; e.g., "chicken feather fibers."
- Acceptable in Indiana.
- Mandatory in all other states.
31. PLUMULE
- Small downy water fowl feathers with underdeveloped soft and flaccid quill, with barbs or filament undistinguishable from those of down.
- Acceptable in all states.
32. QUILL
- Main shaft or axis of feathers.
- Mandatory in all states.
33. QUILL
FEATHERS
- Wing or tail feathers.
- Mandatory in all states.

34. FEATHER
MIXTURES

Feather or down mixture shall be designated by name, character and percentage of each material or mixture may be designated by lowest grade used.

Mandatory in all states except Connecticut, Massachusetts. Must also be designated by color.

Prohibited in Oregon, Washington. Components of a feather and down mixture shall be designated by specie, color and percentage of each.

35. GRADE -
FEATHERS and
DOWN

Grades of materials in descending order are: goose down, duck down, goose feathers, duck feathers, turkey feathers and chicken feathers.

Mandatory in all states.

36. COLOR -
FEATHERS and
DOWN

Color of feather or down need not be designated but, if so, contents shall be as designated. Feathers or down from waterfowl may be designated as white or gray. Chicken and turkey feathers may be designated as white or colored.

Acceptable in all states except

Connecticut - Color mandatory.

California - " "

Maryland - " "

Oregon and

Washington - Color mandatory except for chicken and turkey feathers.

37. TOLERANCE -
FEATHERS and
DOWN

Ten per cent (10%) tolerance unless otherwise permitted is allowed for purpose of adjusting unintentional errors due to processing difficulties in arriving at exact percentages. Tolerance is not intended to permit deliberate admixture of inferior materials. See also "labeling down."

Acceptable in all states except Oregon.

Fiber up to and including five per cent (5%) of down content considered "down." Fiber above five per cent (5%) and including ten per cent (10%) of feather content shall be reported as "feather." Fiber present exceeding combined amounts allowed for down and feather shall be designated "fiber" by percentage of weight.

WOOL

38. WOOL or VIRGIN WOOL Fleece of sheep or lamb scoured or scoured and carbonized. It shall not be the by-product of any process of manufacture or sustained prior use and shall be free from kemp and vegetable matter.
- Mandatory in all states.
39. WOOL BY-PRODUCTS By-products removed from various machine operations necessary in manufacture of wool yarn up to but not including process of spinning; e.g., "wool drawing laps," "wool card waste," "wool card strips," "wool doffer waste," or the by-product may be designated by the particular mill term applicable.
- Mandatory in all states except
- California - Mill term mandatory.
 - Connecticut - Shall include noils, fulling flocks, wool pills and shank and tag wools. Mill term or wool fiber waste shall be designated.
 - Florida - Includes only noils and fulling flocks from fabrics made of new wool fibers.
40. WOOL WASTE Other by-products and wastes of machines from process of manufacture employing new wool fibers and shall include wool pills, shank and tag wools.
- Prohibited in Connecticut.
- Mandatory in all other states.
41. TANNERS WOOL Reclaimed from tanned sheepskin and classed as new material. Percentage of tanners wool in felt or batting shall be designated.
- Mandatory in all states except North Carolina, Oklahoma, Texas. Percentage not required.
42. WOOL SHODDY Any wool fiber which has been spun into yarn, knitted or woven into fabric and subsequently cut up, torn up, broken up, ground up or otherwise defabricated, shall be designated on the label as "wool shoddy." Excess of five per cent (5%) fiber other than wool not allowed.
- Mandatory in all states except Connecticut, Florida, Maryland, Massachusetts, North Carolina, New York. Acceptable as used material.
- Prohibited in Louisiana, Oklahoma, Texas. See defabricated fibers. Oregon - Excess of five per cent (5%) other than wool must be designated by percentage by weight.

43. WOOL BLENDS
or MIXTURES
(BLENDED WOOL) Mixtures of wool, wool by-products, wool wastes and tanners wool shall be designated by term applicable to each constituent present, exposed in percentage or the mixture may be designated "blended wool."

Mandatory in all states except

California - Prohibited.
Utah - "

Indiana - Permissible - with percentage of component parts in order of their predominance stated.

Oklahoma - Term "mixed wool" mandatory.
Texas - " " " "

Oregon) Term applicable to each constituent
Washington) expressed by percentage mandatory.

44. WOOL FELT,
WOOL BATT,
WOOL BATTING Either term shall be applied to felt made of wool that has not been the by-product of any process of manufacture.

Mandatory in all states except California, Indiana.
Terms for component parts with per cent in order of predominance mandatory.

45. BLENDED WOOL
FELT "A" Mixture of any of the following: wool, wool by-products, wool waste or tanners wool, when felted, may be designated by particular term applicable to each of these constituents or the mixture may be designated "blended wool felt," "blended wool batt," or "blended wool batting."

Prohibited in California, Indiana, Oregon, Washington, Utah.

Acceptable in all other states.

46. BLENDED WOOL
FELT "B" Mixture of any of the following: wool, wool by-products, wool waste or tanners wool, when felted, may be designated by particular term applicable to each of these constituents or the mixture may be designated "blended wool felt," "blended wool batt," "blended wool batting," and percentages of component parts of each grade shall be listed in order of their predominance stating percentage by weight of each.

Mandatory in California, Indiana, Oregon, Washington, Utah.

Prohibited in New York, Oklahoma, Texas.

Acceptable in all other states.

47. WOOL - OIL
and GREASE
PERCENTAGES

Wool filling material containing more than five per cent (5%) oil, grease and/or other free fat shall be described as "oily."

Mandatory in all states except

California - Over five per cent (5%) unfit for use.
Washington - " " " " " " " "

Oregon - More than two per cent (2%) and not more than five per cent (5%) shall be designated as "waste." Over five per cent (5%) unfit for use.

Utah - More than two per cent (2%) and not more than five per cent (5%) label as "oily." Over five per cent (5%) unfit for use.

48. WOOL - SECOND
HAND

Wool filling material which previously has been used for any purpose. Manufacturing process shall not be considered previous use.

Mandatory in all states except North Carolina. Manufacturing process considered previous use.

49. WOOL -
TOLERANCE

Materials which contain at least ninety-five per cent (95%) new wool shall be considered wool.

Mandatory in all states except Oregon, Washington. Percentage shall be ninety-eight per cent (98%).

50. WOOL -
FOREIGN
MATERIAL

When dirt and/or any other foreign matter not otherwise provided for is present in a filling material in excess of five per cent (5%) by weight, its presence shall be disclosed as "foreign material."

Mandatory in all states except

California) - When dirt exceeds .3 milliliters
Oregon) per 20 gram sample, unfit for use.

Ohio - Foreign matter in excess of five per cent (5%) shall be classified dirt and percentage given.

Utah - Prohibited.

Washington - Foreign matter over ten per cent (10%) unfit for use.

FOAM

51. **FOAM** Polymerized material consisting of a mass of thinwalled cells produced chemically or physically and shall be designated as "foam" together with the name of the organic base from which it is made; e.g., "urethane foam," "vinyl foam."
- Mandatory in all states except Connecticut.
See Connecticut law.
52. **URETHANE
FOAM** A cellular urethane product which is created by the inter-action of an ester or an ether and a carbamic acid derivative. If of an ester type, may be designated as "polyester foam." If of an ether type, may be designated as "polyether foam."
- Mandatory in all states.
53. **VINYL
FOAM** Designates foam produced from "vinyl."
- Mandatory in all states.
54. **SYNTHETIC:
FOAM** Foam made from "urethane," "vinyl" or any other synthetic base, may be designated as "synthetic foam."
- Prohibited in Connecticut, Indiana, Massachusetts, Oregon and Washington.
- Acceptable in all other states.
55. **MOLDED** May precede the terms set forth above whenever such foam product has been made in a mold in the shape in which it is intended to be used.
- Acceptable in all states.
56. **FOAM
PIECES** Shall apply to foam which has been cut or broken into pieces of indefinite shape, size or form, but shall not apply to shredded foam. Word "foam" shall not be used alone but preceded by type of foam; e.g., "urethane foam pieces."
- Mandatory in all states except Oregon and Washington.
Term "scrap" mandatory.
57. **SHREDDED** Shall precede or follow the term foam or foam products set forth above whenever the product has been subjected to a shredding process; e.g., "shredded urethane foam."
- Mandatory in all states.

58. CEMENTED FOAM Shall be applied to foam pieces and to shredded foam which has been cemented together; e.g., "cemented shredded urethane foam," "cemented urethane foam pieces."

Mandatory in all states.

RUBBER

59. RUBBER Shall apply to the following synthetic rubber-like materials as well as to natural rubber: chloroprene, styrene-butadiene, copolymers, butadiene-acrylonitrile copolymers, polymerized isobutylene, with or without co-monomers present, and thioplasts (any of the polysulfide rubbers consisting of organic radicals linked through sulfur).

Mandatory in all states except

Massachusetts - "natural rubber" mandatory for rubber latex.

Oregon - Defined as "Manufactured fibers in which fiber forming substance is comprised of natural or synthetic rubber."

60. SPONGE RUBBER Sponge products made from rubber which has previously been coagulated or solidified and shall be mandatory for a sponge rubber product consisting of not more than two inserts of unlaminated prime material for attaining desired height, not more than one vertical splice in every three square feet of top surface area excluding those permitted for T's and U's and not more than one splice in every three linear feet of added side-walls or in lieu thereof in each corner, excepting side-walls that are irregular in contour in which case the number of splices shall be subject to the approval of the individual enforcing agency.

Mandatory in all states.

61. MOLDED SPONGE RUBBER May be applied to a sponge rubber product which has been molded in the form in which it is intended to be used.

Acceptable in all states.

62. SPONGE RUBBER PIECES Shall apply to sponge rubber which has been cut or broken into pieces of indefinite shape, size or form, but shall not apply to shredded sponge rubber.

Mandatory in all states except

Oregon) Term "sponge rubber scrap" mandatory.
Washington) " " " " "

Utah - Size limit to be specified.

63. CEMENTED SPONGE RUBBER PIECES Shall be applied to sponge rubber pieces which have been cemented together.
- Mandatory in all states.
64. SHREDDED SPONGE RUBBER Shall be applied to sponge rubber which has been subjected to a shredding process.
- Mandatory in all states.
65. CEMENTED SHREDDED SPONGE RUBBER Shall be applied to shredded sponge rubber which has been cemented together.
- Mandatory in all states.
66. LATEX FOAM RUBBER A foam product made from rubber latex which previously has not been coagulated or solidified and shall be mandatory for a latex foam product consisting of not more than two inserts of unlaminated prime material for attaining desired height, not more than one vertical splice in every three square feet of top surface area, except in T's and U's, but not more than two vertical splices regardless of top surface area excluding those permitted for T's and U's and not more than one vertical splice in every three linear feet of vertical side-walls or in lieu thereof in each corner, excepting side-walls that are irregular in contour in which case the number of splices shall be subject to the approval of the individual enforcing agency.
- Mandatory in all states.
67. MOLDED LATEX FOAM RUBBER May be applied to a latex foam rubber product which has been molded in form in which it is intended to be used.
- Acceptable in all states.
68. LATEX FOAM RUBBER PIECES Term shall apply to latex foam rubber which has been cut or broken into pieces of indefinite shape, size or form, but shall not apply to shredded latex foam rubber.
- Mandatory in all states except Oregon, Washington. Must be labeled "foam rubber scrap." Utah - Size limits to be specified.
69. CEMENTED LATEX FOAM RUBBER PIECES Shall be applied to latex foam rubber pieces which have been cemented together.
- Mandatory in all states.
70. SHREDDED LATEX FOAM RUBBER Latex foam rubber which has been subjected to a shredding process.
- Mandatory in all states.

71. CEMENTED
SHREDDED
LATEX FOAM
RUBBER Shredded latex foam rubber which has been cemented together.

Mandatory in all states.
72. MOLDED Term shall not be used to describe pieces, shreds, or fragments of latex or sponge rubber that have been cemented together whether or not this is done in a mold.

Mandatory in all states.
- SYNTHETIC FIBERS
73. ACETATE
FIBERS Man-made fibers, monofilaments and continuous filament yarns of acetylated cellulose, with or without lesser amounts of non-fiber forming material. "Cellulose acetate fibers" may be used.

Mandatory in all states.
74. ACRYLIC
FIBERS Fibers of long chain synthetic polymer containing not less than eighty-five per cent (85%) acrylonitrile which is formed into a filament.

Mandatory in all states.
75. AZLON
FIBERS Fibers or filaments manufactured from modified proteins or derivatives with or without lesser amounts of non-fiber forming materials.

Mandatory in all states.
76. CASEIN
FIBERS Filament made from casein by chemical and mechanical process.

Mandatory in all states.
77. MODACRYLIC
FIBERS Manufactured fiber in which fiber forming substance is any long chain synthetic polymer composed of less than eighty-five per cent (85%) but at least thirty-five per cent (35%) by weight of acrylonitrile units.

Mandatory in all states.
78. NYLON Long chain synthetic polymeric amide which has recurring amide groups as integral part of main polymer chain and capable of being formed into filament in which structural elements are oriented in direction of axis.

Mandatory in all states.

79. **NYTRIL FIBERS** Manufactured fiber containing at least eighty-five per cent (85%) of long chain polymer of vinylidene dinitrile when the vinylidene dinitrile content is not less than every other unit in the polymer chain.
- Mandatory in all states.
80. **OLEFIN FIBERS** Manufactured fiber in which the fiber forming substance is any long chain synthetic polymer composed of at least eighty-five per cent (85%) by weight of ethylene, propylene or other olefin units.
- Mandatory in all states.
81. **POLYESTER FIBER** Fibers manufactured from a polymerized reaction product of esters.
- Mandatory in all states.
82. **POLYETHYLENE FIBERS** Fibers made from polymers and/or copolymers of ethylene.
- Mandatory in all states.
83. **POLYETHER** A polymerized reaction product of ethers; e.g., hydrocarbons in which one or several hydrogen atoms are replaced by alkoxy groups.
- Mandatory in all states.
84. **POLYSTYRENE** The product resulting from the polymerization of styrene monomers.
- Mandatory in all states.
85. **POLYVINYLIDENE** A copolymer of vinylidene chloride and other monomers.
- Mandatory in all states.
86. **RAYON FIBERS** Man-made fibers, monofilaments and continuous filament yarns composed of regenerated cellulose, with or without lesser amounts of non-fiber forming materials.
- Mandatory in all states.
87. **SARAN FIBERS** Fiber in which the fiber forming substance is any long chain synthetic polymer composed of at least eighty per cent (80%) by weight of vinylidene chloride units.
- Mandatory in all states.
88. **SPANDEX FIBERS** Manufactured fiber in which the fiber forming substance is a long chain synthetic polymer comprised of at least eighty-five per cent (85%) of a segmented polyurethane.
- Mandatory in all states.

89. TRIACETATE FIBERS Man-made fibers and continuous filaments of cellulose acetylated to a degree of not less than ninety-two per cent (92%).
- Mandatory in all states.
90. VINYL FIBERS Manufactured fiber in which the fiber-forming substance is any long chain synthetic polymer composed of at least fifty per cent (50%) by weight of vinyl alcohol units ($-\text{CH}_2-\text{CHOH}-$) and in which the total of the vinyl alcohol units and any one or more of the various acetal units is at least eighty-five per cent (85%) by weight of the fiber.
- Mandatory in all states.
91. VINYLON FIBERS Fiber in which the fiber-forming substance is any long chain synthetic polymer composed of at least eighty-five per cent (85%) by weight of vinyl chloride units.
- Mandatory in all states.
92. SYNTHETIC FIBERS Any synthetic fiber may be described as "synthetic fibers" instead of name of fiber.
- Acceptable in all states except Connecticut, Indiana, Massachusetts, Oregon, Tennessee, Washington. Name of fiber must be stated.

MISCELLANEOUS DEFINITIONS

93. BAGASSE Fibers from pressed beets, sugar cane and other fibrous plants.
- Acceptable in all states.
94. CARD, CARD STRIPS, STRIPPINGS Either term preceded by the name of the textile fiber from which it is produced may be used to describe a tangled or matted mass of fibers produced by or removed from the carding cloth following the carding process.
- Acceptable in all states.
95. CAT TAIL FIBERS Fiber from the seed pod of tall marsh plant having long flat leaves, typha latifolia. (Family Typhaceae).

96. CELLULOSE Cellulose, cellulose fiber or cellulosic shall describe cellulosic products containing not more than four per cent (4%) lignin and twelve per cent (12%) pentosans.
- Mandatory in all states except Connecticut.
Designate as "cellulose fiber" or "wood fiber."
97. COCONUT HUSK Fibrous material obtained from husk or outer shell
FIBER or COIR of coconut.
- Mandatory in all states.
98. COMBER or Preceded by the name of the textile fiber or fibers
NOILS from which it is produced may be applied to tangled fibers removed during the combing process of textile fibers.
- Acceptable in all states except Indiana. Must be designated "cotton waste."
99. CORRUGATED Combination of three sections of compact pasteboard
FIBER BOARD where one section has been formed into folds enclosed between other two.
- Mandatory in all states.
100. DEFABRICATED New material spun or made into yarn or fabric and
FIBERS reduced to a fibrous state. When yarns and thread are present in excess of five per cent (5%) material shall be designated "shredded clippings."
- Acceptable in all states except
- | | | |
|---------------|---|--|
| California | - | Term "shoddy" mandatory. |
| Ohio | - | " " " |
| Tennessee | - | " " " |
| Connecticut | - | Prohibited. |
| Massachusetts | - | " |
| Indiana) | - | Prohibited. Must be designated |
| Maryland) | | as "shredded clippings," |
| | | "garnetted clippings," or |
| | | "shoddy." |
| Oregon | - | Designate as "waste." |
| Washington | - | " " " |
| Utah | - | Designate as "waste" with percent-
age of fabricated material stated. |
| North | - | Term acceptable with classification |
| Carolina | | "used material" mandatory. |

101. EXCELSIOR Curled wood shreds. (use of term "wood wool" prohibited).
- Mandatory in all states.
102. FELT Material carded in layers or sheets by a garnett or felting machine. Term "felt" or "felted" by itself shall not be used but must be combined with name of material from which it is made; e.g., "cotton felt," "wool felt," "jute felt," etc. Term "batting" may be used instead of "felt." Felt scrap or repicked felt shall not be designated as "felt."
- Mandatory in all states.
103. FLY May be used to designate fibers which come off carding machines when preceded by term for textile fiber or fibers from which produced.
- Acceptable in all states except Indiana. Must be designated "cotton by-products."
104. GARNETTED
 CLIPPINGS Any material which has been made into fabric and subsequently cut up, torn up, broken up or ground up and has been run through a garnett machine and thoroughly processed.
- Mandatory in all states except
- | | | |
|----------------|---|--|
| California | - | Term "shoddy" mandatory. |
| Ohio | - | " " " " |
| Tennessee | - | " " " " |
| Oregon | - | Term "waste" or "shoddy" mandatory. |
| Washington | - | " " " " " |
| Utah | - | Term "waste" mandatory. |
| North Carolina | - | Term acceptable with classification "used material" mandatory. |
105. GLASS FIBER Fiber made from glass. When "resin treated" it shall be so designated.
- Mandatory in all states.
106. HAY Grass properly cured, dried, free from dust, dirt, burrs, sticks, or other objectionable material.
- Mandatory in all states.
107. JUTE FIBERS Glossy fiber of either of two East Indian plants (*Corchorus olitorius* and *Corchorus capsularis*) of the linden family. Word "jute" shall not be used alone.
- Mandatory in all states.

108. JUTE SHODDY Shall designate reclaimed used cordage or other jute material which has been used for baling or other purposes.
- Prohibited in West Virginia.
- Mandatory in all other states.
109. KAPOK Fibers from seeds of kapok tree.
- Mandatory in all states except
- Tennessee - Over five per cent (5%) hull, dirt, etc., shall be classified "kapok waste."
- Utah - Specie shall be specified.
110. MILKWEED Surface fiber from inside of seed pods of milkweed plant. (Asclepias)
- Mandatory in all states.
111. MOSS The processed filamentous structure of any of several pteridophytic plants found growing on certain types of trees in tropical regions.
- Mandatory in all states except Utah. Type shall be specified.
112. NAPPER Lint removed during process of raising face of cloth and shall be preceded by name of textile fiber from which composed.
- Mandatory in all states.
113. PAD Any fiber, filament or similar material that has been carded, interwoven, loomed or punched, with or without fabricated backing, with or without bonding agent of resin, rubber, or plastic and compressed into a compact, dense, tough homogeneous solid by simultaneous application of heat and/or pressure. The term "pad" shall not be used alone but preceded by the name of any product or fiber as approved; e.g., "sisal pad," " jute pad."
- Acceptable in all states.

114. PALM FIBER Fibrous material obtained from leaf of palm, palmetto or palmyra tree.
- Mandatory in all states.
115. PICKER, PICKER MOTE, MOTE May be applied to matted or tangled masses of fiber resulting from opening and cleaning of fibers in opener room of the textile mill where preceded by textile fiber or fibers from which produced.
- Acceptable in all states except Indiana.
Must be designated "cotton waste."
116. RUBBERIZED or RESIN TREATED When each fiber or filament in a pad has been thoroughly coated with resin, rubber or plastic, this term, as appropriate shall be combined with the descriptive term. Percentage of resin, rubber or plastic need not be stated; e.g., "rubberized hair pad," "resin treated cotton pad."
- Acceptable in all states except Massachusetts.
Percentage of rubber mandatory.
117. RUBBERIZED or RESIN COATED When the surfaces only of a pad have been coated with resin, rubber or plastic, the term as appropriate shall be combined with the descriptive term. If a pad is coated on one side only, term must include "ONE SIDE ONLY." Percentage of resin rubber or plastic need not be stated.
- Acceptable in all states.
118. SEA GRASS Material obtained from maritime plants or sea weeds.
- Mandatory in all states.
119. SHODDY (NEW) Any fiber which has been spun into yarn, woven or knitted into fabric, which has not been used by ultimate consumer, subsequently cut, broken, torn or ground up and reduced to fibrous state.
- Mandatory in Californis, Ohio, Oregon, South Carolina, Tennessee, Utah, Washington.
- Acceptable in Indiana provided it contains more than five per cent (5%) dirt, trash or other foreign material. Otherwise shredded clippings or garnetted clippings acceptable.
- Prohibited in all other states.

120. SHODDY
(USED)

Any fiber which has been spun into yarn, woven or knitted into fabric which has been used by ultimate consumer, subsequently cut, broken, torn or ground up and reduced to a fibrous state.

Mandatory in all states except

Oklahoma	-	Prohibited.
Texas	-	"
West	-	"
Virginia		

Acceptable in Indiana. If containing more than five per cent (5%) trash, dirt or other foreign material and must be sterilized.

121. SHREDDED
CLIPPINGS

Any material which has been made into fabric and subsequently cut up, torn up, broken up or ground up, but which has not been run through a garnett machine and thoroughly processed.

Mandatory in all states except

California	-	Term "shoddy" mandatory.
Ohio	-	" " "
Tennessee	-	" " "
Utah	-	" " "

Oregon)	Classification "waste" or "shoddy"
Washington)	mandatory.

North Carolina	-	Term acceptable with classification "used material" mandatory.
Rhode Island		

122. SILK WASTE

Products recovered from machine operations in manufacture of threads of natural silk.

Mandatory in all states.

123. SISAL FIBER

Leaf fiber derived from agave, sisalana and similar species of agaves.

Mandatory in all states.

124. SISAL FIBER WASTE Waste of cordage mills, including rope and cordage ends but shall not contain knots and refuse.
- Mandatory in all states.
125. SISAL SHODDY (USED) Shall be used to designate reclaimed used cordage or other sisal material which has been fabricated and used for baling or other purposes.
- Prohibited in West Virginia.
- Mandatory in all other states.
126. STEEL FIBER-STEEL BATTING Fine shavings of steel or fine steel wire fragments and when passed through some form of garnetting machine and carded in layers, may be designated "steel batting."
- Prohibited in Indiana.
- Mandatory in all other states.
127. STRAW Stalk or stem of grain as wheat, rye, oats, rice and like after threshing. Kind of straw need not be designated, but if so indicated, shall be a true statement. It shall be free from chaff, beards, bristles, husks, glumes, dirt or other extraneous matter.
- Mandatory in all states.
128. SWEEPINGS Designates fibrous sweepings from floors of textile mills, oil mills or warehouses and shall be preceded by name of textile fiber or fibers.
- Prohibited in Indiana and West Virginia
- Mandatory in all other states.
129. TAMPICO FIBERS Mixture of various Mexican agave fibers from Tampico, Mexico. When curled shall be designated "curled tampico fibers."
- Oregon - term "sisal" mandatory.
- Mandatory in all other states.
130. TULA FIBER Leaf fiber from Tula Istle and similar species of agaves.
- Acceptable in all states.
131. TOW Coarse strawlike part of plant recovered as by-product in securing commercial fibers and shall be designated by plant origin.
- Mandatory in all states.

132. USED Shall refer to and mean any material, or portion thereof, of which previous use, other than subjecting same to manufacturing process, has been made.
- Acceptable in all states except North Carolina. Manufacturing process considered previous use.
- Prohibited in Connecticut.
- RESTRICTIONS - LIMITATIONS
133. ALL, PURE, Or terms of similar import are permitted only if
100% material is as stated. No tolerance allowed.
- Mandatory in all states.
134. BONDED Shall not be used on any label describing filling materials.
- Acceptable in Massachusetts.
- Mandatory in all other states.
135. BORDER Filling material in prebuilt border need not be stated on label provided it does not exceed ten per cent (10%) of total filling material and is all new.
- Mandatory in all states except Massachusetts.
136. BURLAP Burlap, muslin, tape, etc. when new need not be mentioned on label.
- Acceptable in all states.
137. COLORED Material which has been artificially dyed or colored shall be designated as "colored."
- Mandatory in all states except
- | | | |
|----------------|---|------------------------------------|
| Massachusetts | - | Not required. |
| North Carolina | - | " " |
| Virginia | - | " " |
| Utah | - | Mandatory with term dyed optional. |
| Indiana | - | Required with cotton fibers only. |
138. CURLED FEATHERS Term prohibited.
- Mandatory in all states.

139. DACRON

Term prohibited.

Mandatory in all states.

140. DIRT

Presence of non-fibrous mineral matter in excess of five per cent (5%) in any filling material shall be described as "dirt" and actual percentage thereof contained in filling material shall be stated on label. Mineral fibers excepted.

Mandatory in all states except

California) - When dirt exceeds .3 milliliters
Oregon) per 20 gram sample, material unfit
for use.

North - Percentage not required.
Carolina

Utah - One and one-half per cent (1 ½%)
allowed.

141. HEN FEATHERS

Term prohibited.

Mandatory in all states.

142. OILY

Any material containing more than five per cent (5%) oil shall be described as "oily."

Mandatory in all states except

California) - Over five per cent (5%) unfit
Oregon) for use.

Utah - Over two per cent (2%) unfit for
use.

Connecticut - Prohibited.
West Virginia - "

143. PAPER
BY-PRODUCT

Paper which has been used in manufacture or processing of other products and subsequently used for manufacture of edging or other articles may be described on label as "all new material consisting of paper by-products."

Mandatory in all states except

Indiana - Prohibited.
Oregon - "

North - Classify as "second-hand."
Carolina

144. PAPER SHEETS Sheets used for separating or covering felt or wadding when present in amount not exceeding ten per cent (10%) by weight of entire filling material, need not be disclosed on label.
- Prohibited in Utah.
- Acceptable in all other states.
145. PERCENTAGES Any article of bedding containing more than one kind of filling material, the different materials shall be described in order their predominance stating percentages of each by weight.
- Not required in Georgia and North Carolina.
- Required only with down, silk, latex and synthetic products in Ohio.
- Mandatory in all other states.
146. RUBBER PRODUCTS Term prohibited.
- Mandatory in all states.
147. SPRING UNIT The presence of innerspring unit in an article of bedding or upholstered furniture shall be disclosed on label.
- Acceptable but not required in California, Florida, Tennessee, Oregon and Washington.
- Mandatory in all other states.
148. STEEL WOOL Term prohibited.
- Mandatory in all states.
149. TAN-O-QUILL Term shall not be used to describe feathers or down.
- Acceptable in Oklahoma and Texas.
- Acceptable at bottom of label below delivery date in Indiana and Florida.
- Mandatory in all other states.
150. TOLERANCE To allow for unintentional variations, ten per cent (10%) by weight from amount stated on label is allowed except as otherwise stated herein. Tolerance allowed for purpose of adjusting unintentional errors due to processing difficulties in arriving at exact percentage of individual materials in mixture. Tolerance is not to permit deliberate admixture of inferior materials.
- Mandatory in all states.

151. ~~TRADE NAMES~~,
TRADE MARKS All trade names and trade marks are prohibited.

Mandatory in all states.
152. TRASH When hull, leaf, stem, pulp, etc. exceeds ten per cent (10%) such filling material shall be designated on the label as "trash."

Mandatory in all states except

Florida - When trash exceeds twenty per cent (20%) unfit for use.

Oregon - Prohibited.
153. VIRGIN Term permitted only in connection with textile fiber filling material which has never been reclaimed from any spun, woven, knitted, felted or similarly manufactured products.

Acceptable in all states except Florida, New York, Oregon. Acceptable with virgin wool only.
154. WOOD WOOL Term prohibited.

Mandatory in all states.

SURVEY OF ADMINISTRATION OF STATE BEDDING LAWS

FEDERAL TRADE COMMISSION,
BUREAU OF INDUSTRY GUIDANCE

Washington 25, D.C., Sept. 30, 1964

MR. WILLIAM W. MONTGOMERY, *Consultant*
Senate Fact Finding Committee on
Business and Commerce,
California Legislature,
State Capitol,
Sacramento, California.

Dear Mr. Montgomery :

Your letter of September 2, 1964, directed to the Commission has been referred to me for reply.

The Commission has promulgated trade practice rules for the Household Furniture Industry and the Bedding Manufacturing and Wholesale Distributing Industry, copies enclosed. The rules for each of these industries are administered by a staff attorney as are the trade practice rules for the Feather and Down Products Industry. In addition to the above rules, these same attorneys also administer other trade practice rules for various industries.

Trade practice rules are interpretive of requirements of laws administered by the Commission. In the event we are unable to secure voluntary compliance with the rules, alleged violations may be referred to other Bureaus within the Commission for attention. In these circumstances it would be most difficult to determine the amount of money expended for administering any particular set of rules.

I hope the above information will prove helpful to you.

Very truly yours,

FAUSTER VITTONI,
Attorney

Enc.

STATE OF CONNECTICUT, LABOR DEPARTMENT
OFFICE OF THE COMMISSIONER

Hartford 15, Connecticut, July 17, 1964

MR. W. W. MONTGOMERY, *Consultant*
Senate Fact Finding Committee on
Business and Commerce
State Capitol
Sacramento, California 95814

Dear Mr. Montgomery :

Commissioner Ricciuti has directed your letter of July 1st to my attention. I submit the following information which I trust will be of help to your legislative committee.

The Connecticut Labor Department, in the enforcement of Bedding and Upholstered Furniture Laws, utilizes the services of three full-time employees and five part-time employees at an annual cost of approximately \$30,000. The three full-time employees are a consultant, a senior factory inspector and a typist. The five part-time factory inspectors spend approximately 40% of their time in the enforcement of the Bedding and Upholstering Statutes and inspection of those facilities coming within the purview of the law. (Labor Laws of Connecticut, Chapter 357—pages 259-263—Revised October 1, 1963) a copy of which was previously directed to your attention.

The department maintains an analytical laboratory which testing equipment, apart from laboratory cost built in as part of a new building, initially cost \$2,100. The average yearly maintenance has not been fully computed.

The effectiveness of this program is bearing results as reports of retailers indicate that their suppliers are providing a better quality of merchandise and follow-up samples of upholstered filling material tested in the laboratory are indicating proper labeling of contents.

From the latest figures available covering the period July 1962 through June 1963, revenue received was \$76,193.75 collected in bedding and upholstered furniture fees and \$8,875 in sterilization fees. There were 3,874 inspections made during this period.

Very truly yours,

LEO J. DUNN
Deputy Commissioner

STATE OF MAINE, DEPARTMENT OF LABOR AND INDUSTRY

Augusta, July 7, 1964

SENATE FACT FINDING COMMITTEE ON
BUSINESS AND COMMERCE
California Legislature
State Capitol
Sacramento, California 95814

Attention: W. W. Montgomery
Committee Consultant

Gentlemen:

We are replying to your letter of July 1 in which you request certain information regarding the administration of the Maine Bedding and Upholstered Furniture Law.

Total expenses for the fiscal year 1963-1964 amounted to \$6,215. We have no full-time inspector but the Deputy Commissioner handles bedding inspections on a *part-time basis* as his available time permits. It should be noted that a *very limited time* is spent on such inspections.

We do not maintain a laboratory to test samples but, rather, refer them to the Sanitation Division of the Department of Health and Welfare to check our samples for us when requested and bill this Department for its services.

We are one of those States employing the bedding stamp system and the revenue received from the sale of stamps during the year as noted above amounted to \$6,935.

Should you need any further information, please do not hesitate to let us know.

Yours truly,

C. WILDER SMITH
Deputy Commissioner

STATE OF NEBRASKA, DEPARTMENT OF HEALTH
ENVIRONMENTAL HEALTH SERVICES

Lincoln 9, Nebraska, March 31, 1964

THE HON. ALAN SHORT, *Senator*
Suite 105, Hunter Building
807 North San Joaquin Street
Stockton 3, California

Dear Senator Short :

Enclosed please find a copy of Nebraska Laws relating to bedding. After reading these you will undoubtedly reach the conclusion that *these are inadequate for the intended purpose and should be subject to amendment.*

In meeting with the National Association of Bedding Law enforcement officials, I attempted to learn just what inspection should be made of a factory but was told that the important phase of bedding law inspection is that of checking the product on the retailers display floor or warehouse to insure that the bedding materials are such as represented by the label and especially to insure that disinfection has been carried out in case second hand materials are offered for sale. You will notice that neither of these two details are included in our law.

We will, therefore, wait with interest to learn of the amendments that you make to your law with the possibility of adopting them for our use and thereby benefit by the experience that you are now realizing.

Very truly yours,

T. A. FILIPI, Director
Environmental Health Services

STATE OF NEBRASKA, DEPARTMENT OF HEALTH
ENVIRONMENTAL HEALTH SERVICES

Lincoln 9, Nebraska, July 10, 1964

MR. W. W. MONTGOMERY
State Capitol
Sacramento, California 95814

Dear Sir:

Nebraska is *budgeting no money for the enforcement of its bedding laws.*

We have never become fully organized to administer this act and occasion has not as yet arisen where activation appears to be justified. Our present program consists mainly of informing persons interested in shipping bedding materials into the State that they should bear the stamp of approval in their state of origin and if the bedding complies with the mother state, it is acceptable to us.

Yours very truly,

T. A. FILIP, Director
Environmental Health Services

THE STATE OF NEVADA, EXECUTIVE CHAMBER

Carson City, April 15, 1964

HON. ALAN SHORT

*Senator, Twentieth Senatorial District
San Joaquin County
California Legislature
State Capitol
Sacramento, California*

Dear Senator Short:

I am enclosing herewith a copy of the law regulating the sale of used bedding in Nevada.

On new items of upholstered furniture, pads and bedding, we *suggest* they have the approved uniform label of the National Association of Bedding Manufacturers.

Sincerely,

GRANT SAWYER
Governor

THE STATE OF NEW HAMPSHIRE, ATTORNEY GENERAL

Concord, July 27, 1964

SENATE FACT FINDING COMMITTEE ON BUSINESS AND COMMERCE

*State Capitol
Sacramento, California*

Att: Mr. W. W. Montgomery, Committee Consultant

Gentlemen:

With regard to your further inquiry concerning our law pertaining to the manufacture and sale of bedding, this is to advise that enforcement of same is delegated to our State Board of Health under RSA 339:66. This Board advises that it has *no active program under this law and only investigates complaints registered with it*; that no one person in that department has been delegated to this one activity as the number of complaints does not warrant this, and that they have no statistics on enforcement costs and/or revenue received which has been negligible.

Very truly yours,

IRMA A. MATTHEWS
Attorney

NORTH CAROLINA, STATE BOARD OF HEALTH

Raleigh 27602, July 8, 1964

MR. W. W. MONTGOMERY
Committee Consultant
Senate Fact Finding Committee
California Legislature
Sacramento, California 95814

Dear Mr. Montgomery:

In your letter of July 1, information was sought concerning the method of financing and cost of enforcing the North Carolina Bedding Law.

Approximately \$40,000 is expended annually on this activity. We have three full time inspectors and a part of my time is devoted to supervision. We do not maintain a laboratory for bedding alone, but, the State Laboratory of Hygiene, which is a branch of the State Board of Health performs such work when it is requested by us.

We require all manufacturers to obtain a registration number from us and have this number printed or stamped on the law label that is attached to each piece of bedding. The Uniform Registry System is recognized. No charge is made for registration but all in-state manufacturers are required to purchase a Bedding Manufacturer's License at the cost of \$25 per annum. It is also required that a bedding stamp be affixed to the law label on each item. In lieu of affixing the stamp, a Stamp Exemption Permit can be obtained. The cost of this permit is based on the volume of business done during the previous calendar year. Details covering this can be found in the enclosed copy of our Bedding Law with rules and regulations adopted pursuant thereto.

Sincerely,

CHARLES M. WHITE, Chief
Insect and Rodent Control Section
Sanitary Engineering Division

STATE OF OHIO, DEPARTMENT OF INDUSTRIAL RELATIONS,
DIVISION OF BEDDING AND UPHOLSTERED FURNITURE INSPECTION

Columbus 15, Ohio, July 7, 1964

W. W. MONTGOMERY, *Consultant To*
Senate Fact Finding Committee
State Capitol
Sacramento, California 96814

Dear Mr. Montgomery :

Acknowledging your letter of July 1st, please find enclosed copy of the Ohio Bedding and Upholstered Furniture Law and Rules. Also, we are sending you Registration and License Applications.

Following is the information you requested.

NUMBER OF EMPLOYEES—All Full-Time

- 1—Acting Chief
- 1—Assistant Chief
- 1—Chemist
- 4—Office Staff
- 8—Field Inspectors

The heart of the Ohio Law is "WHAT'S INSIDE". Therefore, we maintain a Laboratory for testing samples of filling materials sent to this office by our Field Inspection Staff.

Also, we encourage many of our 3200 registrants, when in doubt of the fillings they are using, to avail themselves without charge, of our Laboratory service.

Revenue for this Division is derived from the sale of Stamps and our License Plan. The enclosed chart shows amounts of each.

The following may not be of interest for the recommendations that you are making to your Committee, but we thought we would call it to your attention.

At the Chicago Conference, a member suggested from the floor that Bedding Stamps should be discontinued by all States. This we opposed.

Sure, 57 percent of our total revenue is contributed by manufacturers on our License Plan—but they are all big corporations—shipping thousands of units each month into this State, and save money by not using Stamps.

We opposed the suggestion in Chicago because we must be fair to the medium and small manufacturers who may ship only one or two thousand units to dealers in Ohio during a whole calendar year. Also, our Law cannot be changed by Executive Order.

Very truly yours,

T. F. NOONE
Acting Chief of Division

Enc.: Chart—Law Book
License & Registration Applications

STATE OF OREGON, OREGON STATE BOARD OF HEALTH

Portland 1, July 15, 1964

MR. W. W. MONTGOMERY
Committee Consultant
Senate Fact Finding Committee on
Business and Commerce
California Legislature
State Capitol
Sacramento, California 95814

Dear Mr. Montgomery :

This is in reply to your inquiry of July 2, 1964. Currently we are expending approximately \$70,000 annually in the enforcement of the Furniture and Bedding Program.

Four field men, a laboratory man, one-and-a-half secretaries, and a supervisor are employed on a full-time basis. During the peak of the registration period, June through August inclusive, a part-time clerk is employed.

The Licensing structure is specified on pages 21 and 22 of the enclosed copy of the Law, O.R.S. 433.615 to 433.620, 433.625 and 433.635.

Another statute requires that ten per cent of all fees received be immediately transferred to the State's General Fund. The remaining ninety percent is retained in the Furniture and Bedding Fund and expended for that activity only. The fees received are adequate to fully finance this activity of the State Board of Health.

A third statute requires that all fines or like revenues resulting from litigation be paid to and retained by the county in which the litigation occurred. The Furniture and Bedding Program does not receive any of these moneys.

I hope this information will be useful to your committees.

Very truly yours,

RICHARD H. WILCOX, M.D.
State Health Officer

RHW :RR :hr
Enclosure

COMMONWEALTH OF PENNSYLVANIA,
DEPARTMENT OF LABOR AND INDUSTRY

Harrisburg, July 13, 1964

MR. W. W. MONTGOMERY
Senate Fact Finding Committee
on
Business and Commerce
State Capitol
Sacramento, California

Dear Mr. Montgomery :

This is in response to your requests of July 2, 1964, for additional information concerning the operation of the Division of Bedding and Upholstery. I am sorry that I am unable to give you the amount of money expended in the enforcement of the Bedding and Upholstery Law due to the fact that our expenses are included in the totals for the Bureau of Inspection. There is no breakdown of expenditures for each Division.

The number of employees in this Division are as follows: nine (9) full time Field Inspectors, one (1) Secretary, one (1) Clerk-Steno and one (1) Division Chief.

At this time there is no working laboratory in this Division. However, we now have a contract with the Department of Health for their laboratory services when simple tests employed in this office fail to produce the required information.

Below is a breakdown of the revenue received for the fiscal year July 1, 1963, to July 1, 1964.

Stamp Fees:	\$60,135.00
Permit Fees:	10,310.00
Auctioneer Certificate Fees:	2,710.00
Toy Registration Fees:	3,325.00
B & U Registration Fees:	13,050.00
Manufacturers License Fees:	7,200.00
Quarterly Report Fees:	73,272.64
Total	<hr/> \$170,002.64

I hope the above information is beneficial to you and if there are any further questions, please do not hesitate to write.

Very truly yours,

A. RICHARD GEISLER, Chief
Division of Bedding and Upholstery

ARG/fn

TEXAS STATE DEPARTMENT OF HEALTH

Austin, Texas, July 13, 1964

MR. W. W. MONTGOMERY
Committee Consultant
Senate Fact Finding Committee
on Business and Commerce
California Legislature
State Capitol
Sacramento, California 95814

Dear Mr. Montgomery :

We have your letter of July 2 in which you have asked for certain information about the Texas Bedding Law program.

In answer to your questions, approximately \$75,000 per year is received from bedding revenue stamps and bedding permit fees, all of which is spent on the inspection program. This is about half enough money to properly carry on the inspection program in Texas.

There are nine people full time on the bedding law program, and laboratory services are supplied gratis from the Department's Bureau of Laboratories. In other words, laboratory services are not directly under the supervision and control of the Bedding Division.

Our present system of revenue is from annual permit fees and fees from revenue stamps. The Initial Permit fee for manufacturer's permits is \$15.00, renewable annually at a fee of \$10.00. Each item of bedding sold in Texas must have a bedding revenue stamp affixed to law tag. These revenue stamps are issued to manufacturers and vendors in multiples of 500 at a fee of \$5.00 for each 500 stamps.

In our opinion, there is much to be desired concerning the financing of the Texas Bedding Law. We feel that the revenue stamp system is somewhat archaic and does not lend itself to mass production. The system also makes for easy violations of revenue, and enforcement is most difficult. We hope in the near future to go to an annual licensing system similar to California.

The Texas Bedding Law is not also an upholstered furniture law. The Texas Bedding Law is applicable to various items of bedding but does not include various items of upholstered furniture. This narrows the scope of business establishments subject to permit fees. We think this is a weakness in the law. We look on the California system of licensing and the California law as being ideal. In fact, *we hope to pattern the Texas law after some of the features in the California law.*

If we may be of further assistance in any way, please let us know.

Very truly yours,

W. H. MALLARD
Director
Bedding-Law Division

THE STATE OF UTAH, DEPARTMENT OF AGRICULTURE

Salt Lake City, July 15, 1964

MR. W. W. MONTGOMERY
Committee Consultant
California Legislature
State Capitol Building
Sacramento, California 95814

Dear Mr. Montgomery:

This is in answer to your questions. In the fiscal year from July 1, 1963 to June 30, 1964, we expended for the enforcement of this act—\$25,028.32. The money received through the licensing structure was \$25,325.50. We have one inspector working full time on this program and part of the time, one stenographer, and also part of the time, myself, as the supervisor of the program, along with other programs of the department.

Also, part of the time, one analyst in the laboratory, and we do maintain and operate a laboratory and laboratory facilities for the examination of samples under this program.

The organization of our licensing procedure, I would think, would be self explanatory in the booklet which we have already sent you, and this does not provide for the collection of use taxes or stamps or anything of that kind.

Yours truly,

UTAH STATE DEPARTMENT OF AGRICULTURE
GUY P. STEVENS, Supervisor
Food and Drug Division

NATIONAL ENFORCEMENT OFFICIALS ASSOCIATION

The consultant to the committee attended a meeting of the Association of Bedding and Furniture Law Enforcement Officials, as an observer, at their meeting in Chicago March 14 through 18, 1964. The purpose of his attendance was to secure information as to various regulations in the other states and the type of enforcement pursued in said states.

The Association of Bedding and Furniture Law Enforcement Officials, commonly known as ABFLO, is a voluntary association of state officials charged with the enforcement of the various bedding and furniture laws in their respective states. Approximately 32 states are members of ABFLO, and each state has one vote. The organization is incorporated under the laws of the State of Ohio and the annual dues are \$25. In attendance at the 1964 meeting in Chicago were 35 people representing approximately 15 states. Some states had as many as five of their enforcement people present and, quite obviously, some states were not represented.

ABFLO holds its meeting in connection with the annual meeting of the National Bedding Manufacturers Association. The expense of the ABFLO conference, with the possible exception of the traveling expenses, is apparently borne by the manufacturers.

There are 11 committees of ABFLO in addition to the usual committees, such as program committee, executive committee, and membership committee. They deal with such varied programs as nomenclature, laboratory, sterilization, label uniformity, FTC liaison, and model law. Between sessions of the annual meeting, it appears that the work of the organization is conducted by correspondence and questionnaires. An effort is being made on the part of the officials of this organization to secure uniformity with respect to legislation throughout the country and a uniformity with respect to nomenclature.

TRANSCRIPT OF SPEECH BY SENATOR ALAN SHORT
TO THE
CALIFORNIA FURNITURE MANUFACTURERS
ASSOCIATION

PALM SPRINGS, CALIFORNIA

October 30, 1964

Good morning, ladies and gentlemen:

Most speeches begin with the usual "It's a real pleasure," and so forth. In this instance, I use it advisedly. A year ago such would not have been the case. An invitation from you then would have been highly suspect. A lynching bee would probably have been what you had in mind.

Well, a year has passed, and we know each other better. I hope you found out that I haven't horns on my head and, for sure I want you to know that I never did suspect that 50 percent of the furniture manufactured in California was either mislabeled or unfit for human use.

In the interim, I have learned quite a bit about your problems. As a result of our study of the furniture industry, I have come to the conclusion that California is the best regulated state in the nation. Furthermore, we have higher standards than any of the other states. As a matter of fact, our standards, almost without exception, are higher than those set by our federal government. Notwithstanding this, there is room for improvement and I am proud to say that the industry itself is in the forefront, striving for such improvement. The public will benefit from this and so will the quality-minded, honest manufacturer. We are proud of the furniture industry in California and feel that any manufacturer shipping products into our fair state should compete on the same basis and meet the same high standards we have set for our home industry. I can assure you that, without stifling competition, we are going to recommend legislation to accomplish that very thing.

I look back to a year ago and the cries of anguish raised over the publicity coming out of the hearings. As I recall, there was quite a furor over the figures and percentages emanating from the laboratory tests. Well, gentlemen, a year has passed, and progress has been made. If you ever had a complacent attitude, it has disappeared. There has been more industry participation than ever before. I had the pleasure of attending an industry meeting in Sacramento earlier this year, and I was most impressed. There were manufacturers, suppliers, and retailers from all over the United States there. They thought enough of

the meeting to pay their own expenses. They came because California is the leading state in the Union and because they were looking to us for leadership and guidance. We are number one and we intend to remain one. It won't be easy.

No state and no nation in history has ever had to meet such an enormous challenge as that now facing California. Let me give you just one or two examples.

Each year we must build the equivalent of 2,000 miles of highway lanes to accommodate a half-million additional cars.

Every week from now until 1975 we must build three elementary schools to house 750 students. At the same time, we must build three high schools every month.

Just as urgent is our need to create some 200,000 new jobs every year. And that means we must attract many, many industries to our state. And a look at the record shows that in that great effort we are meeting with success.

We are building an industrial complex on the Pacific Coast which will one day surpass the industrial regions of the Midwest, the East, and the South. In the last generation, one-sixth of the nation's industrial growth has taken place in California. One-tenth of the increase in economic value contributed by manufacturing has occurred in California. And our industrial leadership is being recognized increasingly throughout the nation.

Last year, for example, some 100 companies invested close to one billion dollars in new or expanded plant facilities here in our state. Recently, *Business Week* magazine concluded its annual national survey of companies asking which states they favored as sites for new plants. Again California came away the winner, hands down, far ahead of any other state, with 26 percent of the vote. What accounts for this striking gain? In part we must attribute it to our God-given natural resources, to the imagination and faith in our society shown by business leaders, and to the vigor and hard work of our labor force.

Let me add that we must also have a government which gives top priority to fiscal stability and a business climate which encourages industrial growth. The record shows that we have both. Our state government is sound.

For example, all our economic indicators last January led us to expect a modest budget surplus of \$8.7 million on June 30, 1964. California's booming economy, however, surpassed our expectations. The Controller recently reported that we closed the last fiscal year with a surplus of \$113 million on June 30, 1964. These and other factors have led us to revise our estimates upward. It is now expected that we will have a free budget surplus of \$62 million on June 30, 1965.

Let me say emphatically here that we don't just automatically assume that tax money should be raised for any and all purposes. Nor do we ever overlook any opportunity to save money for the taxpayers of the state. In the middle of the last fiscal year, there was an accelerated drive for economy in government. Reports from the Controller's office show that an additional \$10 million over and above the original anticipated amount was saved before that drive took place. I can assure you that I will do all that I can to see that a similar drive takes place this

year. There should and I understand there will be a task force to go over every existing state program to see which have become obsolescent or have lost their former priority. A number of items, I am sure, will be found. As a member of the Senate Finance Committee, you can be certain that I will watch for such items and strongly recommend that such programs be dropped. Such budget cuts may be politically painful, but will have to be made.

We believe, in short, that California is combining drive and imagination with sound and solid fiscal policies—and the result is progress and a business climate second to none in the United States. . . .

At the same time, we recognize that there will be changes in manufacturing employment as redirections are effected in this nation's program of national defense. We intend to be ready for those changes.

Right now we are seeking solutions through the cooperation of private industry, labor, and government—both federal and state. We know that we must apply our advanced scientific, technical, and systems-management knowledge to all the fields which should absorb our energies in the future. . . .

California will continue to make investments in public services of the highest quality in order to maintain our good business climate. In the wake of our water project, for example, there will be new cities and farms, and new billions in industrial and agricultural wealth. And just as inevitably, our massive efforts in education will lend new strength to California's economy in the future.

We are making other substantial investments in progressive programs. . . . Let me be the first to add that all this booming growth does not blind us to the fact that there are problems yet unsolved, and injustices still to be put right. . . . And if a changing economy, or the changing tides of history, make new demands on us—as surely they will—you know and I know that California will be in a position to take those changes in stride.

When I talked to your secretary, John Beebe, and asked him for some suggestions, he indicated that you would be interested in the general economic outlook for the manufacturing industry in California. Well, the facts I have just given to you should give you the obvious answer. A state growing at the rate of more than 1,000 people daily, populationwise, and with the highest personal income increase in the nation, is a pretty healthy place to be in business.

California is a state rich in people, rich in talent, rich in wealth, rich in natural resources, and all indications are we will retain our position of eminence for some time to come.

John Beebe also indicated that you were interested in what the state has done or is doing to protect you from unfair out-of-state competitors. Well, let me give you a few examples.

As a result of our hearings last October, the entire enforcement and inspection program of the Bureau of Furniture and Bedding Inspection has been changed. Inspectors formerly would check an article in the field, check the contents, and send a sample to the laboratory for analysis. This was fine as far as it went, but the basic weakness of this program was that, by the time they got the laboratory analysis back, all of the similar items in the store or plant had been sold. The

net result was that we knew there was a violation and the culprit was told to cease and desist, but the unfit merchandise was still passed on to the public. This was one of the principal things that bothered our committee last October. On paper there was a good set of laws and rules to protect the public, but in practice they were meaningless. . . .

We now have an enforcement program regarding furniture and bedding. Perhaps our prodding, prying, and the attendant publicity was not without some benefit.

I still recall asking a bureau representative what had happened to the supply of some feathers that the laboratory had analyzed a sample of and found unfit for use. Everyone at the hearing laughed when he told us that when the inspectors returned to the supplier, they were informed that the feathers had been sold and probably were already in pillows. Here we had a supplier who sold chicken feathers as a sideline, not particularly interested in the state program; to him it was a nuisance and an interference with his regular business. Well, it would really have been funny except you saw what happened after the newspaper reports. You were offended. The public was offended. Inspection of the bureau records indicated that this was not an uncommon occurrence.

Another time, one of our large retail chains advertised lounging chairs, and by the time the contents were analyzed and it was determined that they were mislabeled it was too late to take them off sale.

Well, it was time for a change. I'm happy to report that such a change has taken place.

Now when the inspectors find a *prima facie* violation of the state regulations, the article is sent to the laboratory for analysis and all articles of the same style are withheld from sale. The laboratory procedure has been streamlined to get faster results. Now the entire article is analyzed rather than a small sample. Also, for a change for the better, the inspectors are now picking up and checking mattresses, chairs, and sofas, rather than the heavy concentration in pillows as in the past. Of course, I realize the retailer will scream less loudly at a pillow being picked up than he will a chesterfield set, but we also have to realize that a consumer invests probably once in his lifetime in a living-room set and they, too, need close checking. The figures indicate that the new procedure is working. Let me give you some of them:

First: 25,235 articles of furniture and bedding have been held off sale.

Second: 3,889 articles of furniture and bedding have been shipped out of state (in lieu of destruction).

Third: 11,088 pieces of furniture and bedding have been released for sale.

Close to one-half million dollars' worth of chairs and sofas from out of state were held off sale early this year at one time. You can well imagine the cries of anguish from eastern competitors. Protests were received. Phone calls from pretty high-placed officials were made. Our state officials were questioned quite thoroughly regarding their author-

ity to pick up and dismantle whole pieces of furniture. This was particularly true when the retail prices of some pieces were in hundreds of dollars. Their greatest concern, however, was the order to withhold from sale and to destroy or ship out of state articles found unfit for sale under California regulations. When you get calls from Governors, U.S. Senators, Congressmen and nationally known attorneys, you have some idea as to the impact of the "new look" in California law enforcement insofar as it pertains to the furniture and bedding industry.

It is interesting to note that, once the legal basis for the state's activities was explained and letters of legal notice were mailed to the manufacturers concerning each type of violation and what had to be done to correct it, no one challenged the law or the right to act as the Bureau of Furniture and Bedding had done. Trade papers all over the country publicized the new enforcement program. Independent laboratories called, requesting copies of our laboratory's test procedures. Supply dealers called because the manufacturers were holding them accountable for the materials they had supplied.

Obviously one of the cries raised when the state changed its activities was discrimination against out-of-state manufacturers and restraint of trade. There was a total of 242 manufacturers represented in the figures I just gave you; 31 of these were in state and 211 were out of state. This may seem disproportionate until you realize that percentage-wise probably more California manufacturers were included than out-of-state when you consider the total number of manufacturers in the United States. Even if this were not so, the California manufacturer is checked periodically at his factory, and closer control can be maintained. This type of control is impossible for the out-of-state manufacturer. We have plans to correct this, I can assure you.

It is my understanding that the new program provides for checking each manufacturer's products at least once in a three-year period. These will be selected on a random basis. The inspectors are notified and a whole article of furniture is picked up and sent to the laboratory for analysis. In California, this article will be picked up at the factory. For out-of-state manufacturers, however, the article must be picked up either at a wholesaler's or at a retail store. The present field inspection will continue but with greater emphasis on unlicensed activity and prima facie violations of the law.

Let's take a look at more of the new look. Let's look at mattresses. A survey was started last January of all bedding manufacturers. At one period earlier this year, there was not a mattress for sale in California that fully complied with our regulations. Either the component parts of the cotton batting were not listed, or there was an improper description of the sisal pads, or there was a misquoting of size and weight on the label, or a violation as to content. As a result of this survey, the manufacturers, retailers, suppliers, and allied groups were invited to meet with your advisory board and the bureau director. Our committee consultant attended this meeting in Los Angeles as an observer. The results of this meeting were beneficial both to the consumer and to the industry. There were subsequent meetings with the legislative committee of the Furniture Manufacturers Association and the Bureau of Furniture and Bedding Inspection. More meaningful

rules were proposed and adopted. Additional meetings are being held to adopt rules which will offer more protection to the consumer, particularly in the field of advertising. The word "guarantee" has several connotations, and I am happy to see the industry and the bureau making a joint effort to eliminate sharp practices.

The whole question of false and misleading advertising is one that cannot have too much emphasis. I am happy to report that the bureau has stepped up its enforcement program in this area; 13 cases have been referred to the Attorney General and are scheduled for administrative hearing. The general types of violations for these cases are aiming at advertisements which (a) state "going out of business"; (b) falsely advertise great reductions in price such as "prices slashed 50 percent"; and (c) advertisements which show in one ad "Former price \$-----, regular price \$-----, sale price \$-----." It is interesting to note that 2 of the 13 cases have been completed and have resulted in suspension of licenses.

In addition to the rule changes previously mentioned, the bureau and the advisory board are taking a new look at the sterilization regulations and at those pertaining to synthetic fibers as well as to feather and down. To my knowledge this is the first time since the inception of the Bureau of Furniture and Bedding Inspection that there has been such a wholesale change in outlook. I like to think that we had a little part in this change.

Our factfinding committee has been busy also. We've been doing some research to ascertain what is going on elsewhere in the country. We wrote letters to the other 49 states as well as to the federal government seeking information so we might compare the California program with the rest of the country. We received replies from 25 of the states. Some of them are most interesting.

After receiving those replies, another letter was sent asking how much money was spent in enforcement, how many people were employed, and the source of revenue. The response to the latter letter was poor. Only 12 states replied and those replies left a lot to be desired. Perhaps when we call on some of them personally, we'll get the answers.

You will be interested in some of their replies on enforcement. Let me read some of the excerpts.

This is from the State of Maine. "We have no full-time inspector, but the deputy commissioner handles bedding inspections on a *part-time basis as his available time permits*. It should be noted that a *very limited time* is spent on such inspections."

The Attorney General of New Hampshire advises that furniture and bedding law enforcement is delegated to the State Board of Health. I quote from his reply. "This board (Board of Health) advises that it has no active program under this law and only investigates complaints registered with it."

The letters from Nebraska are refreshing for their candor. Let me quote from the first reply to our inquiry. "After reading these [he is referring to the Nebraska laws] you will undoubtedly reach the conclusion that these are inadequate for the intended purpose and should be subject to amendment." The reply to our second letter is even more

revealing, and I quote: "Nebraska is budgeting no money for the enforcement of its bedding laws." The laws are not only inadequate but apparently they aren't even enforced.

Let's take a look closer to home. You must be aware of Nevada's regulations. Used bedding is controlled. New furniture and bedding is unregulated. May I read from the letter we received—"we suggest they have the approved uniform label of the National Association of Bedding Manufacturers." After looking at some of the California violations, where we have what must be classed as strict enforcement, I can only imagine what happens to such a, and I quote, "suggestion."

Wisconsin says that it has no complete law covering the specifics of either the manufacture or marketing of furniture and bedding. The Department of Agriculture is charged with the enforcement of the mattress and bedding regulations in the State of Iowa. There are none for upholstered furniture, and this is common with most of the states. Their letter states, "Our mattress law is very brief and greatly in need of updating." After reading their statutes, I agree wholeheartedly with their conclusion. It certainly does need updating.

Let me quote from the Director of the Division of Industrial Inspection of the State of Missouri: "The mattress and beddings laws of our state fall far short of being adequate, and, in my opinion, legislation in this area is badly needed."

You'll never believe where this letter came from. In discussing his state's laws this gentleman says, "we look on the California system of licensing and the California law as being ideal. In fact, we hope to pattern the Texas law after some of the features in the California law." Yes, this is from Texas. I never thought I'd ever live to see the day that Texas would concede that California has better laws.

The State of Florida indicates that they hope to secure a revision in their present regulations at the next session of their State Legislature.

Just two or three more excerpts and that will be all. The State of Georgia states that the bedding industry is fully regulated but, and I quote, "The State of Georgia does not in any way regulate the furniture industry." Arkansas does have certain regulations promulgated by the State Board of Health. They say, however, "We have no licensing requirements for manufacturers or renovators of bedding, etc. . . . We have no way of knowing the cost of enforcement. We are informed by the State Health Officer that the cost is very minor."

It doesn't paint a very pretty picture. You can count on the fingers of one hand the number of states that have fairly adequate regulations and enforcement programs. The concern on our part was magnified when we tried to secure information on the role of the federal government in its regulation of the furniture and bedding industry.

Originally we wrote to the Federal Trade Commission to ascertain what rules and standards had been set. We received them in due course and were impressed by them. The trade practice rules promulgated by the Federal Trade Commission for the household furniture industry, the bedding manufacturers, the wholesale distributing industry, and the feather and down regulations are excellent. We wrote to them in an effort to ascertain how large their enforcement staff was and the number of violators prosecuted. Here is the reply we received:

FEDERAL TRADE COMMISSION

WASHINGTON, D.C.

Mr. William Montgomery,
Consultant,
Factfinding Committee
on Business and Commerce,
California Legislature,
State Capitol,
Sacramento, California.

Dear Mr. Montgomery,

Your letter of September 2, 1964, directed to the Commission has been referred to me for reply.

The Commission has promulgated trade practice rules for the Household Furniture Industry and the Bedding Manufacturing and Wholesale Distributing Industry, copies enclosed. The rules for each of these industries are administered by the staff attorney as are the trade practice rules for the feather and down products industry. In addition to the above rules, these same attorneys also administer other trade practice rules for various industries.

Trade practice rules are interpretive of requirements of laws administered by the Commission. In the event we are unable to secure voluntary compliance with the rules, alleged violations may be referred to other bureaus within the Commission for attention. In these circumstances it would be most difficult to determine the amount of money expended for administering any particular set of rules.

I hope the above information will prove helpful to you.

Very truly yours,

Fauster Vittone,
Attorney

Enclosures.

I can only conclude that there is no federal enforcement program of its own rules. This was vividly brought home to me earlier this year when complaints were coming in relative to the stepped-up enforcement program and the number of out-of-state articles held off sale by the Bureau of Furniture and Bedding Inspection in California. Our committee had requested the bureau to check a certain out-of-state manufacturer's merchandise when we were tipped off that it contained used material. The report was true and the merchandise held off sale. At the manufacturer's request, it was returned to him. In checking reports of the bureau, we learned that this was common with out-of-state merchandise. When we asked what happened, we were advised that, in all probability, that merchandise was shipped to another state that either had no regulations or no enforcement program. I'd like to point out that all of this merchandise was in violation of the FTC rules and had twice crossed state lines, so there was no question of interstate commerce coverage.

A further check revealed that there are only two federal inspectors in all of California. If the federal regulations are to be meaningful, they should be enforced. The FTC rules are good ones. I hope that California adopts some of them. But let's see that they are enforced. If there were rigid federal enforcement, it wouldn't be necessary for the State of California to protect you from unfair out-of-state competition. In the first place, there wouldn't be much competition if federal laws were enforced and, in the second place, it certainly wouldn't be unfair. We hope to do something about it. We also want to make

certain that any merchandise manufactured in California meets the minimum standards for California before it is shipped to other states. I'm sorry to say that isn't so today.

Perhaps it's time to go over some of the recommendations we will make to the Legislature in our report. While these are not final, they have been given considerable thought.

We expect to make to the Legislature in our report of the Furniture and Bedding Industry in California, the following recommendations:

1. That the present advisory board should be a full policymaking and regulatory board with powers to adopt rules, discipline licensees, set fees above the minimum established by the Legislature, and such other powers necessary to protect the welfare of the public.
2. That the Legislature by resolution request through Congress and the executive branch of the government to insure rigid enforcement of Federal Trade Commission Regulations.
3. That the Furniture and Bedding Regulatory Board, by rule, make mandatory that the FTC and the home state be informed of any violations discovered in California by out-of-state manufacturers, suppliers, etc.
4. That there be a review of the license fees charged by the Bureau of Furniture and Bedding.
5. That there be a periodic review of the rules and regulations adopted by the Furniture and Bedding Regulatory Board, not less than biennially.
6. That some control of out-of-state shipments be adopted so better inspection is advanced. Perhaps a requirement that the bureau receive a copy of the bill of lading for each shipment would be the answer.
7. That consideration be given to a system of fines for violators, and the moneys so derived be set up in a special fund to pay for samples taken for inspection.
8. That a system of lot numbers be worked out so that merchandise found to be unfit could be traced and placed off sale.
9. That a statement of policy be adopted that California standards be not less than those of the federal government.
10. That consideration be given to rules covering quality standards for all materials used, including designation of the types of woods used in furniture construction.

Some of these recommendations need no further explanation. With respect to the present advisory board, in my opinion it is high time it be recognized for what it is and be given the authority and responsibility for the good conduct of the industry and protection of the public.

We feel that the fees should be reviewed. The present ones don't make sense. As a matter of fact, they helped to create much of the resentment of the bureau's enforcement program and led to the present interim hearings and study of the furniture and bedding industry. It didn't make sense at our hearings last October to learn that drug

chains and grocery chains which sold a few pillows paid the largest license fees in the state; that the Goodwill Society and other charitable organizations paid far more than the largest mattress manufacturer in the United States.

Not much more need be said about periodic review of the board rules and regulations. In the course of our study, we discovered that technological improvements and new synthetics were either ignored or their use curtailed. Some rules were of no protection to the public but did hamstring the industry. Periodic review should be made.

Out-of-state merchandise is a real problem. Information we have garnered tends to indicate that the vast majority of it is never checked. The new hotels and buildings being erected as well as the new apartment houses being built are furnished by contractors and are not in the normal course of trade. If our enforcement program is to really work, we have to know where the merchandise is coming from, where it is going, and if it meets California standards. I am certain from talking to many of you that if we had this information, a great deal of merchandise would either be held off sale or never get here in the first place. It would also give our California manufacturers a chance to bid on some of this business. . . .

I touched a little on FTC regulations. These are good and some of them would be helpful if adopted for California. I trust and hope that we will do all within our power to see that these regulations are enforced and, further, that California does nothing to dilute or eliminate them. The reason I stress this is that I know the eminent position California holds in the industry. Should we adopt any weaker rules, it would be used to get the FTC to weaken theirs. Let us be honest with ourselves and let us keep the eminent position we have. Let us also not forget the rules are for the protection of the consumer.

This, then, is what we propose. Most of these proposals have been made after meeting with leaders of the furniture and bedding industry and a study of what goes on elsewhere in this land of ours. I think they are fair and will be of help to the industry and to the public if adopted.

CONCLUSION

Legislation incorporating the committee's major recommendations was introduced in the 1965 session of the Legislature. This was a consensus bill that had the full support of the manufacturing, retailing, and material-supply segments of the furniture and bedding industry as well as the consumer groups.

Though the bill passed both houses of the Legislature with the unanimous support of both parties, the bill was vetoed by the Governor. The main reason given for the veto was that the director was not given the authority deemed necessary to administer the proposed bill, and that a new board was being created.

The committee has consistently maintained that the present rules and regulations have a history of weak and lax enforcement. Subsequent to the public hearings held by this Committee, the increased activity by the Bureau of Furniture and Bedding Inspection can be directly attributed to the leadership of the Director and Deputy Director of the department. This obviously was at the expense of the 29 other boards and commissions under their direction.

It is felt that a policy-making board rather than an advisory board would result in better protection for the industry and for the public. A review of the other boards and commissions within the Department of Business and Vocational Standards verifies this conclusion.

The committee is continuing its study of the Furniture and Bedding Industry. It is compiling additional data with respect to licensing fees and in regard to disciplinary proceedings. It is anticipated that another bill incorporating the committee's earlier recommendations will be introduced possibly in 1966, but certainly in 1967.

SENATE BILL No. 224

An act to amend Sections 19004, 19012.5, 19031, 19034, 19035, 19035.5, 19052, 19054, 19056, 19058.3, 19059, 19059.5, 19063, 19064, 19081, 19089, 19120, 19121, 19122, 19122.5, 19123.4, 19123.5, 19123.6, 19124, 19124.5, 19127, 19127.5, 19127.6, 19129, 19131, 19132, 19170, 19170.5, 19171.6, 19174, 19202, 19203, 19206, 19208, 19210, 19215, 19215.1, 19215.3, 19215.4, 19215.5, 19215.6, and 19215.7 of, to add Sections 19000.5, 19012.6, 19222, 19223, 19224, and 19225 to, and to repeal Sections 19030, 19033, 19035.6, and 19035.8 of, the Business and Professions Code, and to amend Sections 19034, 19035, 19121, 19123.4, 19123.6, 19124, 19132, 19170, 19202, and 19203 of said code, as proposed by Assembly Bill No. 3227 of the 1965 Regular Session, relating to furniture and bedding inspection.

The people of the State of California do enact as follows:

SECTION 1. Section 19004 of the Business and Professions Code is amended to read:

19004. (a) "Board" refers to the Board of Furniture and Bedding.

(b) "Chief" refers to the executive secretary and chief of the board.

(c) "Inspector" refers to an inspector of the board.

(d) "Director" refers to the Director of Professional and Vocational Standards.

(e) "Department" refers to the Department of Professional and Vocational Standards.

SEC. 1.5. Section 19012.5 of said code is amended to read:

19012.5. "Disinfestor" means a person who disinfests articles of upholstered furniture or bedding or filling materials.

SEC. 1.6. Section 19012.6 is added to said code, to read:

19012.6. "Disinfest" means and includes for the purposes of this chapter disinfest, disinfect, and fumigate, and all the noun and verb forms thereof.

SEC. 2. Section 19030 of said code is repealed.

SEC. 3. Section 19031 of said code is amended to read:

19031. The chief shall be appointed by the Governor and shall serve at his pleasure. His compensation shall be fixed by the Director of Professional and Vocational Standards in accordance with law. The chief shall serve as executive secretary of the board and shall perform the duties delegated to him by

the board and he shall be responsible to the board for performance thereof.

SEC. 4. Section 19033 of said code is repealed.

SEC. 5. Section 19034 of said code is amended to read:

19034. With the approval of the director, the board may adopt rules and regulations necessary for the administration of this chapter and declaring the policy of the board, and shall determine when any article, not otherwise clearly defined is "upholstered furniture," "stuffed, padded or lined toys," or "bedding" under the provisions of this chapter.

SEC. 6. Section 19035 of said code is amended to read:

19035. There is in the Department of Professional and Vocational Standards a California Board of Furniture and Bedding, which consists of eight members appointed by the Governor. The first members of the board shall be the board members of the former California Advisory Board of Furniture and Bedding who shall serve until expiration of the respective terms for which each of them was heretofore appointed and until such expirations said members shall be charged with all of the duties and be vested with the authorities pertaining to board members of the Board of Furniture and Bedding.

SEC. 7. Section 19035.5 of said code is amended to read:

19035.5. The board shall meet at least once in each calendar quarter of each year. Special meetings of the board may be held at such times as the board may provide.

Four members shall constitute a quorum for the transaction of business.

The board shall elect from its members, each for a term of one year, a chairman and a vice chairman, and may appoint such committees as it deems necessary to carry out its duties. The duty of enforcing and administering this chapter is vested in the board and it is responsible to the director therefor. The board is authorized to operate and maintain a laboratory for the purpose of performing chemical and other research, analysis and inspections of all filling materials used or useable in the manufacture, renovation or repair of articles of upholstered furniture, bedding and stuffed, padded or lined toys, for the protection of the public.

SEC. 8. Section 19035.6 of said code is repealed.

SEC. 9. Section 19035.8 of said code is repealed.

SEC. 10. Section 19052 of said code is amended to read:

19052. Every upholstered furniture repairer, unless he holds a furniture manufacturer's license, shall hold a furniture repairer's license bearing a registry number assigned by the board.

SEC. 11. Section 19054 of said code is amended to read:

19054. Every upholstered furniture manufacturer shall hold a furniture manufacturer's license, bearing a registry number assigned or approved by the board.

SEC. 12. Section 19056 of said code is amended to read:

19056. Every bedding renovator, unless he holds a bedding manufacturer's license, shall hold a bedding renovator's license, bearing a registry number assigned by the board.

SEC. 13. Section 19058.3 of said code is amended to read:

19058.3. Every manufacturer of toys which are stuffed, padded, or lined with filling material shall hold a toy manufacturer's license, bearing a registry number assigned or approved by the board.

SEC. 14. Section 19059 of said code is amended to read:

19059. Every supply dealer, unless he holds an upholstered furniture manufacturer's license or a bedding manufacturer's license, shall hold a supply dealer's license bearing a registry number assigned or approved by the board.

SEC. 15. Section 19059.5 of said code is amended to read:

19059.5. Every disinfestor shall hold a disinfestor's license bearing a registry number assigned by the board.

SEC. 16. Section 19063 of said code is amended to read:

19063. The board may refuse to issue any license provided for in this chapter to any individual:

(a) Who has had any license issued to him revoked, or whose license is under suspension, or who has failed to renew his license while it was under suspension.

(b) If any license of a partnership of which he is or was a member, or of a corporation of which he is or was an officer or director, or of a firm or association of which he is or was an officer or of which he is or was acting in a managerial capacity, has had any license issued to it revoked or suspended, and while acting as such member, officer, director, or in such managerial capacity he participated in any of the prohibited acts for which any such license was revoked or suspended.

SEC. 17. Section 19064 of said code is amended to read:

19064. The board may refuse to issue any license provided for in this chapter to any partnership, corporation, firm, or association:

(a) Who has had any license issued to it revoked, or whose license is under suspension, or who has failed to renew its license while it was under suspension.

(b) If any member of any such partnership, or any officer or director of any such corporation, or any officer or person acting in a managerial capacity of any such firm or association has had any license issued to him revoked, or whose license is under suspension, or who has failed to renew his license while it was under suspension.

(c) If any member of the partnership, or any officer or director of the corporation, or any officer or person acting in a managerial capacity of the firm or association, was either a member of any partnership, or an officer or director of any corporation, or an officer or person acting in a managerial capacity of any firm or association, whose license has been revoked, or whose license is under suspension, or who failed to renew a license while it was under suspension, and while acting as such member, officer, director, or person acting in a managerial capacity participated in any of the prohibited acts for which any such license was revoked or suspended.

SEC. 18. Section 19081 of said code is amended to read:

19081. The form and size of labels, the fabric of which they are made and the wording and statements thereon necessary to carry out the provisions of this chapter, shall be approved by the board.

SEC. 19. Section 19089 of said code is amended to read:

19089. The board may establish grades, specifications and tolerances for the kinds and qualities of materials which are used or intended to be used in the manufacture, repair or renovation of upholstered furniture, bedding or filling materials, and may approve or adopt designations and rules which are not in conflict with any provisions of this chapter, for the labeling of articles filled with these materials.

SEC. 20. Section 19120 of said code is amended to read:

19120. The enforcement of all disinfection regulations approved by the California State Department of Public Health pertaining to any article subject to the provisions of this chapter is vested in the board.

SEC. 21. Section 19121 of said code is amended to read:

19121. Filthy or soiled articles of new or used upholstered furniture or bedding, or toys which are stuffed, padded, or lined with filling material, cannot be sold, offered or exposed for sale unless the fabric covering them is either properly cleaned or replaced by a new covering and then subjected to disinfection when so provided for in this chapter.

SEC. 22. Section 19122 of said code is amended to read:

19122. A person shall not engage in the business of disinfecting any article of upholstered furniture or bedding or filling material, provided for in this chapter, without first having his disinfection equipment tested and approved by the board.

SEC. 23. Section 19122.5 of said code is amended to read:

19122.5. Periodic tests and inspections shall be made by an authorized representative of the board, to determine whether or not the equipment and procedures used, comply with the requirements of the disinfection regulations.

SEC. 24. Section 19123.4 of said code is amended to read:

19123.4. Newly manufactured articles of upholstered furniture and bedding, or toys which are stuffed, padded, or lined with filling material, which contain any secondhand filling material shall be disinfested before they are offered or exposed for sale, except feather- and down-filled articles. Feathers and down must be disinfested loose.

SEC. 25. Section 19123.5 of said code is amended to read:

19123.5. Every article of upholstered furniture and bedding and all filling material, repaired or renovated for resale or repaired or renovated for an owner but subsequently offered for sale shall be disinfested before being offered or exposed for sale.

SEC. 26. Section 19123.6 of said code is amended to read:

19123.6. Every article of upholstered furniture or bedding, and all toys which are stuffed, padded, or lined with filling material, to which any secondhand material has been added in the process of repairing, shall be disinfested in accordance with the provisions of the disinfestation regulations.

SEC. 27. Section 19124 of said code is amended to read:

19124. Every person who receives for disinfestation any upholstered furniture or bedding, or any toys or filling material, which are stuffed, padded, or lined with filling material, shall disinfest all such articles and material in accordance with the disinfestation regulations.

SEC. 28. Section 19124.5 of said code is amended to read:

19124.5. Every person who disinfests any upholstered furniture or bedding or filling material shall affix a disinfestation label to the article or material immediately after the disinfestation has been completed. The label shall be securely attached in a position where it may be conveniently examined.

SEC. 29. Section 19127 of said code is amended to read:

19127. The form, size and color of disinfestation labels, and the paper of which they are made shall be approved by the board and as provided in the label regulations.

SEC. 30. Section 19127.5 of said code is amended to read:

19127.5. Disinfestation labels shall be sold by the board only to disinfestors licensed under this chapter. Illegal possession of any disinfestation label is a violation of this chapter. Void or mutilated labels shall be returned to the board.

SEC. 31. Section 19127.6 of said code is amended to read:

19127.6. The disinfestor shall keep a record of all data and show the disposition of every label as required in the disinfestation regulations. The record shall be accessible at all reasonable times to the board, chief and the inspectors.

SEC. 32. Section 19129 of said code is amended to read:

19129. Articles of secondhand upholstered furniture and bedding listed in the disinfestation regulations, and any

secondhand article that can be used for sleeping or reclining purposes, shall be disinfested under the provisions of this chapter before being sold and have attached thereto a disinfection label.

SEC. 33. Section 19131 of said code is amended to read:

19131. Every article of upholstered furniture or bedding from any private or public hospital, jail or other institution, or which has been used by any person, suffering from an infectious or contagious disease, shall be disinfested before it is repaired or renovated.

SEC. 34. Section 19132 of said code is amended to read:

19132. New or disinfested articles of upholstered furniture or bedding, toys, or materials shall at all times be kept separate from any secondhand articles or materials that are non-disinfested.

SEC. 35. Section 19170 of said code is amended to read:

19170. (a) The fee imposed for the issuance and for the renewal of each license granted under this chapter shall be set by the board, with the approval of the director, at a sum not more nor less than that shown in the following table:

	Maximum fee	Minimum fee
Furniture manufacturer's license.....	\$120	\$40
Wholesale furniture dealer's license.....	120	40
Bedding manufacturer's license.....	120	40
Wholesale bedding dealer's license.....	120	40
Supply dealer's license.....	120	40
Furniture repairer's license.....	80	20
Bedding renovator's license.....	80	20
Disinfestor's license.....	80	20
Retail furniture dealer's license.....	20	4
Retail bedding dealer's license.....	20	4
Toy manufacturer's license.....	120	40
Wholesale toy dealer's license.....	120	40
Retail toy dealer's license.....	20	4

(b) A person who has paid the required fee and who is duly licensed as a furniture manufacturer, a furniture repairer, a bedding manufacturer or a bedding renovator under this chapter shall not be required to pay, in addition, the fee prescribed herein for a disinfestor's license.

(c) A person who has paid the required fee and who is duly licensed as a retail furniture dealer or a retail bedding dealer under this chapter shall not be required to pay, in addition, the fee prescribed herein for a retail toy dealer's license.

(d) A person who has paid the required fee and who is duly licensed as a wholesale furniture dealer or a wholesale

bedding dealer under this chapter shall not be required to pay, in addition, the fee prescribed herein for a wholesale toy dealer's license.

SEC. 36. Section 19170.5 of said code is amended to read:

19170.5. Licenses issued under this chapter expire at 12 p.m. on August 31, 1962, and thereafter, at 12 p.m. on August 31 of each even-numbered year, if not, in each instance renewed. To renew his license, a licensee shall, on or before the date on which it would otherwise expire, apply for renewal on a form prescribed by the board, and pay the fee prescribed by Section 19170. If the licensee fails to renew his license before its expiration, a delinquency fee of twenty percent (20%) shall be added to the renewal fee. If the renewal fee and delinquency fee are not paid within five years after expiration of the license, the licensee shall be subject to such penalties as are provided elsewhere in this chapter.

SEC. 37. Section 19171.6 of said code is amended to read:

19171.6. The board shall prescribe the procedure for licensing of any applicants for proration not clearly defined elsewhere in this chapter.

SEC. 38. Section 19174 of said code is amended to read:

19174. All fees collected under this chapter shall be reported to the State Controller and paid to the State Treasurer and credited to the Board of Furniture and Bedding Fund, which fund is hereby created. The Bureau of Furniture and Bedding Inspection Fund is hereby abolished. The unencumbered balance in said fund on the effective date of this act shall on order of the Controller be transferred to the Board of Furniture and Bedding Fund and shall be available for expenditure by the board and the director carrying out their respective functions and duties under this chapter.

SEC. 39. Section 19202 of said code is amended to read:

19202. The board may condemn, withhold from sale, seize or destroy any upholstered furniture or bedding, or any toys stuffed, padded, or lined with filling material, or any filling material which is found to be in violation of this chapter. The board may also withhold from sale any such item in the possession or control of any person not duly licensed and required to be licensed under the provisions of this chapter or of any person whose license is delinquent or subject to suspension or revocation.

SEC. 40. Section 19203 of said code is amended to read:

19203. The tag to be affixed to any article of condemned upholstered furniture, bedding, toys, or any material by an inspector shall be a red tag and shall contain such information as may be required by the board.

SEC. 41. Section 19206 of said code is amended to read:
19206. No person shall interfere with, obstruct or otherwise hinder any inspector of the board in the performance of his duties. The chief, his deputies, and assistants, and all inspectors in the performance of their official duties, shall have the same powers as are possessed by peace officers in this state.

SEC. 42. Section 19208 of said code is amended to read:
19208. The chief or any inspector may cite any person subject to the provisions of this chapter to a hearing before the board to show cause why he should not be subject to disciplinary action or prosecution for any act or omission in violation of this chapter.

SEC. 43. Section 19210 of said code is amended to read:
19210. After a hearing, the board may suspend a license for a period not to exceed six months for a violation of any of the provisions of this chapter or of the rules and regulations of the board, or for a violation of Article 1, Chapter 1 of Part 3 of Division 7 of the Business and Professions Code, relating to false or misleading advertising; provided, however, that the license of a wholesaler or retailer shall not be suspended in the absence of a finding that the wholesaler or retailer knowingly offered for sale or sold articles not conforming to the requirements of this chapter or the rules and regulations of the board.

(a) In lieu of a third suspension, the board may revoke a license.

(b) In any order of suspension or revocation, the board may impose conditions relative to the disposition of articles not conforming to the requirements of this chapter or the rules and regulations of the board, or may impose conditions relative to the completion or fulfillment of any orders or contracts entered into prior to the date of the hearing.

SEC. 44. Section 19215 of said code is amended to read:
19215. As used in this article, unless otherwise indicated, "presiding officer" means the Presiding Officer of the Office of Administrative Procedure.

SEC. 45. Section 19215.1 of said code is amended to read:
19215.1. The acceptance by a nonresident licensee of any of the rights and privileges conferred upon him by this chapter, as evidenced by his engaging within this state, either personally or through an agent or employee, in a business subject to license under this chapter, is equivalent to the appointment by such licensee of the presiding officer as his true and lawful attorney upon whom may be served all lawful process in any disciplinary proceeding conducted against him under this chapter.

SEC. 46. Section 19215.3 of said code is amended to read:

19215.3. Service shall be made by leaving a copy of the accusation, together with a notice of defense and statement to respondent as described in Section 11505 of the Government Code, with a fee of two dollars (\$2) for each licensee to be served, in the hands of the presiding officer or in his office in Sacramento. Such service shall be sufficient service on the licensee subject to compliance with Section 19215.4 of this code.

SEC. 47. Section 19215.4 of said code is amended to read:

19215.4. A notice of such service and a copy of the accusation, together with the notice of defense and statement to respondent, shall forthwith be sent by registered mail by the presiding officer to the licensee at his last known address as furnished by the board. Personal service of such notice, copy of the accusation, notice of defense, and statement to respondent upon the licensee wherever found outside this state shall be the equivalent of such mailing.

SEC. 48. Section 19215.5 of said code is amended to read:

19215.5. Proof of compliance with Section 19215.4 of this code shall be made in the event of service by mail by affidavit of the presiding officer or his authorized employee showing such service by mailing, together with the return receipt of the United States post office bearing the signature of the licensee or his agent. Such affidavit and receipt shall be appended to the original accusation on file with the board. In the event of personal service outside this state such compliance may be proved by the return of any duly constituted public officer qualified to serve process in civil actions in the state or jurisdiction where the licensee is found, showing such service to have been made. Such return shall be appended to the original accusation on file with the board.

SEC. 49. Section 19215.6 of said code is amended to read:

19215.6. The board, or if the proceeding has been assigned to a hearing officer of the Office of Administrative Procedure, such hearing officer, may order such postponements or continuances and grant such extensions of time as may be necessary to afford the licensee reasonable opportunity to defend the proceedings. In no event shall the licensee have less than 30 days after the date of mailing or delivery to him of the copy of the accusation in which to file a notice of defense, nor shall the notice of hearing provided for in Section 11509 of the Government Code or the notice and copy of affidavit referred to in Section 11514 of said code be mailed or delivered less than 20 days prior to the date of hearing, and the time for making a request to cross-examine under said Section 11514 shall be not less than 15 days.

SEC. 50. Section 19215.7 of said code is amended to read:
19215.7. The presiding officer shall keep a record of all process served upon him pursuant to this article which shall show the day and hour of service.

SEC. 51. Section 19222 is added to said code, to read:

19222. The operation of any business, establishment, plant, shop, store, agency or franchise, in violation of this chapter may be enjoined by the superior court of any county upon petition by the board. Proceedings under this section shall be conducted in accordance with Chapter 3, Title 7, Part 2 of the Code of Civil Procedure, except that no undertaking shall be required of the board.

SEC. 52. Section 19223 is added to said code, to read:

19223. Whenever a decision of the board suspending a license for 30 days or less becomes final, whether by failure of the licensee to appeal the decision or by exhaustion of all appeals and judicial review, the licensee may, before the operative or effective date of such suspension, petition the board for permission to make an offer in compromise, to be paid into the State Treasury for deposit in the Board of Furniture and Bedding Fund, consisting of a sum of money in lieu of serving such suspension. Upon the receipt of such a petition, the board may stay the proposed suspension and cause such investigation to be made as it deems desirable and may grant such petition if it is satisfied (a) that the public welfare, health and safety would not be impaired or placed in jeopardy by permitting the licensee to operate during the period set for suspension and that the payment of the sum of money will achieve the desired disciplinary purpose; (b) that the books and records of the licensee are kept in such a manner that the loss of sales which the licensee would have suffered had such suspension gone into effect can be determined with reasonable accuracy therefrom. Such offer in compromise shall be the equivalent of 20 percent of the estimated gross sales for each day of such proposed suspension and such offer in compromise shall be not less than two hundred fifty dollars (\$250) nor more than two thousand dollars (\$2,000).

SEC. 53. Section 19224 is added to said code, to read:

19224. In connection with any petition referred to in Section 19223, the authority of the board is limited to the granting of such stays as are necessary for it to complete its investigation and make its findings and, if it makes such findings, to the granting of an order permanently staying the imposition of the entire suspension or of that portion of the suspension not otherwise conditionally stayed by the decision of the board. If the suspension was imposed as a result of an

accusation filed by another public officer other than the board or any board member thereof acting in his official capacity, the board shall not order such permanent stay of suspension without the written consent of such other public officer.

SEC. 54. Section 19225 is added to said code, to read:

19225. If the board does not make the findings required in Section 19223 and does not order the suspension permanently stayed, the suspension shall be effective on the operative date finally set by the board.

SEC. 55. Section 19000.5 is added to said code, to read:

19000.5. Notwithstanding any other provision of this chapter the director may, to the extent he considers necessary or desirable and through personnel designated by him, perform the ministerial duties vested in or authorized to be performed by the board under this chapter and, in accordance with standards established by the board, do any or all of the following:

(a) Receive applications and related materials, filed pursuant to this chapter, process and evaluate such applications and related materials, and make recommendations to the board concerning their disposition.

(b) Initiate and conduct inspections and investigations necessary for the administration and enforcement of this chapter and make recommendations to the board concerning disposition thereof.

(c) Prescribe the form of applications, licenses, identification cards, labels, and notices.

SEC. 56. Section 19034 of said code, as proposed by Assembly Bill No. 3227 of the 1965 Regular Session, is amended to read:

19034. With the approval of the director, the board may adopt rules and regulations necessary for the administration of this chapter and declaring the policy of the board, and shall determine when any article, not otherwise clearly defined, is "upholstered furniture" or "bedding" under the provisions of this chapter.

SEC. 57. Section 19035 of said code, as proposed by Assembly Bill No. 3227 of the 1965 Regular Session, is amended to read:

19035. There is in the Department of Professional and Vocational Standards a California Board of Furniture and Bedding, which consists of seven members appointed by the Governor. The first members of the board shall be the board members of the former California Advisory Board of Furniture and Bedding who shall serve until expiration of the respective terms for which each of them was heretofore appointed and until such expirations said members shall be

charged with all of the duties and be vested with the authorities pertaining to board members of the Board of Furniture and Bedding.

SEC. 58. Section 19121 of said code, as proposed by Assembly Bill No. 3227 of the 1965 Regular Session, is amended to read:

19121. Filthy or soiled articles of new or used upholstered furniture or bedding cannot be sold, offered or exposed for sale unless the fabric covering them is either properly cleaned or replaced by a new covering and then subjected to disinfestation when so provided for in this chapter.

SEC. 59. Section 19123.4 of said code, as proposed by Assembly Bill No. 3227 of the 1965 Regular Session, is amended to read:

19123.4. Newly manufactured articles of upholstered furniture and bedding which contain any secondhand filling material shall be disinfested before they are offered or exposed for sale, except feather and down-filled articles, Feathers and down must be disinfested loose.

SEC. 60. Section 19123.6 of said code, as proposed by Assembly Bill No. 3227 of the 1965 Regular Session, is amended to read:

19123.6. Every article of upholstered furniture or bedding to which any secondhand material has been added in the process of repairing, shall be disinfested in accordance with the provisions of the disinfestation regulations.

SEC. 61. Section 19124 of said code, as proposed by Assembly Bill No. 3227 of the 1965 Regular Session, is amended to read:

19124. Every person who receives for disinfestation any upholstered furniture or bedding or filling material, shall disinfest all such articles and material in accordance with the disinfestation regulations.

SEC. 62. Section 19132 of said code, as proposed by Assembly Bill No. 3227 of the 1965 Regular Session, is amended to read:

19132. New or disinfested articles of upholstered furniture or bedding or materials shall at all times be kept separate from any secondhand articles or materials that are nondisinfested.

SEC. 63. Section 19170 of said code, as proposed by Assembly Bill No. 3227 of the 1965 Regular Session, is amended to read:

19170. (a) The fee imposed for the issuance and for the renewal of each license granted under this chapter shall be

set by the board, with the approval of the director, at a sum not more nor less than that shown in the following table:

	Maximum fee	Minimum fee
Furniture manufacturer's license-----	\$120	\$40
Wholesale furniture dealer's license---	120	40
Bedding manufacturer's license-----	120	40
Wholesale bedding dealer's license-----	120	40
Supply dealer's license-----	120	40
Furniture repairer's license-----	80	20
Bedding renovator's license-----	80	20
Disinfestor's license -----	80	20
Retail furniture dealer's license-----	20	4
Retail bedding dealer's license-----	20	4

(b) A person who has paid the required fee and who is duly licensed as a furniture manufacturer, a furniture repairer, a bedding manufacturer or a bedding renovator under this chapter shall not be required to pay, in addition, the fee prescribed herein for a disinfestor's license.

SEC. 64. Section 19202 of said code, as proposed by Assembly Bill No. 3227 of the 1965 Regular Session, as amended to read:

19202. The board may condemn, withhold from sale, seize or destroy any upholstered furniture or bedding or any filling material which is found to be in violation of this chapter. The board may also withhold from sale any such item in the possession or control of any person not duly licensed and required to be licensed under the provisions of this chapter or of any person whose license is delinquent or subject to suspension or revocation.

SEC. 65. Section 19203 of said code, as proposed by Assembly Bill No. 3227 of the 1965 Regular Session, is amended to read:

19203. The tag to be affixed to any article of condemned upholstered furniture or bedding, or any material by an inspector shall be a red tag and shall contain such information as may be required by the board.

SEC. 66. Sections 56, 57, 58, 59, 60, 61, 62, 63, 64, and 65 of this act become operative only if Assembly Bill No. 3227 is enacted by the Legislature at its 1965 Regular Session, and in such case at the same time as said Assembly Bill No. 3227 takes effect, at which time Sections 19034, 19035, 19121, 19123.4, 19123.6, 19124, 19132, 19170, 19202, and 19203 of the Business and Professions Code, as amended by Sections 5, 6, 21, 24, 26, 27, 34, 35, 39, and 40, respectively, of this act are repealed.

SEC. 67. Any revenues derived from increases in fees or assessments provided by this act shall not be available for expenditure until appropriated.

EXHIBIT "A"

**Revenue Lost
to the
Bureau of Furniture and Bedding Inspection
if Retailers Exempted**

	<i>Licenses in effect 6-30-63</i>	<i>Fee</i>	<i>Applicable revenue</i>
Retail furniture or bedding-----	7,038	\$20	\$140,760
Retail combination -----	7,188	40	287,520
Total -----	14,226		\$428,280
Projected biennial revenue-----		\$1,084,000	
Less possible loss-----		—428,280	
		\$655,720	
Projected biennial expenditures-----		1,024,000	
Projected deficit if retailers exempted-----		\$368,280	
1962-63 Inspections			
Total -----		22,564	
At retail licensees-----		14,938	
Percent -----		66.2	

EXHIBIT "B-1"

**Bureau of Furniture and Bedding Inspection Fees
Paid by Selected Companies
for
September 1, 1962, to August 31, 1964, Biennium**

	Code	(Furn. (Furn. Rep.) Mfg.)					(Ret. Bed.)		(Bed. Mfg.)		(Ret. Comb.)	
		A	B	C	D	E	H	I	J	K	L	M
MANUFACTURERS	Total fee	\$20	80	120	120	120	20	80	120	120	80	40
Englander Co., Inc.-----	\$240								2			
Kroehler Mfg. Co.-----	240			2								
Purified Down Pdets. Corp.---	120								1			
Sealy Mattress Co. of Calif.	120								1			
Sealy Mattress Co. of Southern Calif.	120								1			
Simmons Co.-----	240			1					1			
Simon Mattress Mfg. Co.---	120								1			

EXHIBIT "B-2"

**Bureau of Furniture and Bedding Inspection Fees
Paid by Selected Companies
for
September 1, 1962, to August 31, 1964, Biennium**

		(Furn. (Furn. Rep.) Mfg.)				(Ret. Red.)		(Bed. Mfg.)		(Ret. Comb.)		
RETAIL CHAINS	Code	A	B	C	D	E	H	I	J	K	L	M
	Total fee	\$20	80	120	120	120	20	80	120	120	80	40
Alpha Beta Acme Mkts.	\$1,940						97					
John Breuner Co.-----	1,180											
Broadway-Hale Stores--	1,940	2	19				19					
Bullocks-----	500		5				5					
W. T. Grant Co.-----	3,380	2					1					83
Macy's-----	560		5				6					1
May Co.-----	800		8				8					
Montgomery Ward & Co.	4,320		8	1			8					85
J. C. Penney Co.-----	6,780		7				7					152
Safeway-----	6,440						318					2
Thrifty Drug Stores----	8,480											212

EXHIBIT "B-3"

**Bureau of Furniture and Bedding Inspection Fees
Paid by Selected Companies
for
September 1, 1962, to August 31, 1964, Biennium**

		(Furn. (Furn. (Ret. (Bed. (Ret. Rep.) Mfg.) Bed.) Mfg.) Comb.)										
CHARITABLE ORGANIZATIONS	Code	A	B	C	D	E	H	I	J	K	L	M
	Total fee	\$20	80	120	120	120	20	80	120	120	80	40
Goodwill Industries----	\$3,980	1	5	3			10	4	4			61
St. Vincent de Paul----	1,660		2				3	1				34
Salvation Army-----	1,920	4	14				13	1				95
Volunteers of America--	920	1					1					22

EXHIBIT "B-4"

**Bureau of Furniture and Bedding Inspection Fees
Paid by Selected Companies
for
September 1, 1962, to August 31, 1964, Biennium**

		(Furn. Rep.)				(Furn. Mfg.)		(Ret. Bed.)		(Bed. Mfg.)		(Ret. Comb.)	
STAMP COMPANIES	Code	A	B	C	D	E	H	I	J	K	L	M	
	Total fee	\$20	80	120	120	120	20	80	120	120	80	40	
Blue Chip Stamp Co.	\$3,160											79	
Orange Stamps-----	840											21	
Sperry & Hutchinson---	3,400											85	
Thrifty Green Stamps--	1,000											25	

EXHIBIT "C-1"

**BUREAU OF FURNITURE AND BEDDING INSPECTION
Schedule of Revenue and Inspections by Source
July 1, 1962, to June 30, 1964**

	<i>Number of licensees</i>	<i>Percent</i>	<i>Amount of revenue</i>	<i>Percent</i>	<i>Number of inspections</i>	<i>Percent</i>
Retail outlets -----	14,226	(72)	444,310	(42)	14,938	(66)
Repairer, renovator, and sterilizer -----	2,318	(12)	196,919	(19)	3,364	(15)
Manufacturing, wholesaler, supply dealer -----	3,244	(16)	403,145	(39)	4,362	(19)
	<u>19,788</u>		<u>1,044,374</u>		<u>22,664</u>	

EXHIBIT "C-2"

**BUREAU OF FURNITURE AND BEDDING INSPECTION
Increase and Decrease
in
Furniture and Bedding Inspection Licenses
By Category between June 30, 1962, and June 30, 1963**

<i>Licenses in effect</i>			
June 30, 1962-----	20,443		
June 30, 1963-----	19,788		
Reduction -----	—655		
<i>Composed of</i>			
Retail furniture or bedding-----	—323	@ \$20	\$—6,460
Retail combination -----	—85	@ \$40	—3,400
Repairers, renovators, sterilizers-----	+129	@ \$80	+10,320
Manufacturing, wholesaler, supply dealer-----	—376	@ \$120	—45,120
	<u>—655</u>		<u>\$—44,660</u>

EXHIBIT "D"

BUREAU OF FURNITURE AND BEDDING INSPECTION

Report of Laboratory Analysis

Fiscal year 1957-58		
Samples analyzed	1,418	
Correctly labeled	859 = 60.6%	
Mislabeled and unfit for use	559 = 39.4%	
Fiscal year 1958-59		
Samples analyzed	1,389	
Correctly labeled	605 = 43.6%	
Mislabeled and unfit for use	784 = 56.4%	
Fiscal year 1959-60		
Samples analyzed	1,446	
Correctly labeled	625 = 43.2%	
Mislabeled and unfit for use	821 = 56.8%	
Fiscal year 1960-61		
Samples analyzed	2,599	
Correctly labeled	1,620 = 62.3%	
Mislabeled and unfit for use	979 = 37.7%	
Fiscal year 1961-62		
Samples analyzed	1,698	
Correctly labeled	1,107 = 65.2%	
Mislabeled and unfit for use	591 = 34.8%	
Fiscal year 1962-63		
Samples analyzed	2,125	
Correctly labeled	1,426 = 67.1%	
Mislabeled and unfit for use	699 = 32.9%	
July 1st through September 1963		
Samples analyzed	495	
Correctly labeled	244 = 49.3%	
Mislabeled and unfit for use	251 = 50.7%	

EXHIBIT "E"

BUREAU OF FURNITURE AND BEDDING INSPECTION

Enforcement Results

	1958-59	1959-60	1961-62	1962-63
Prosecutions	19	33	7	20
Convictions	12	14	7	8
Administrative hearings	6	7	2	3
Licenses suspended	3	6	2	3
Licenses revoked	0	1	0	0
Number of inspections made				22,875
Number of samples taken				910

O

REPORT OF THE

SENATE FACT FINDING COMMITTEE

ON EDUCATION

to the

LEGISLATURE

1965 GENERAL SESSION

MEMBERS OF THE COMMITTEE

Donald L. Grunsky, *Chairman*

Albert S. Rodda, *Vice Chairman*

Hugh P. Donnelly

Fred S. Farr

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1965



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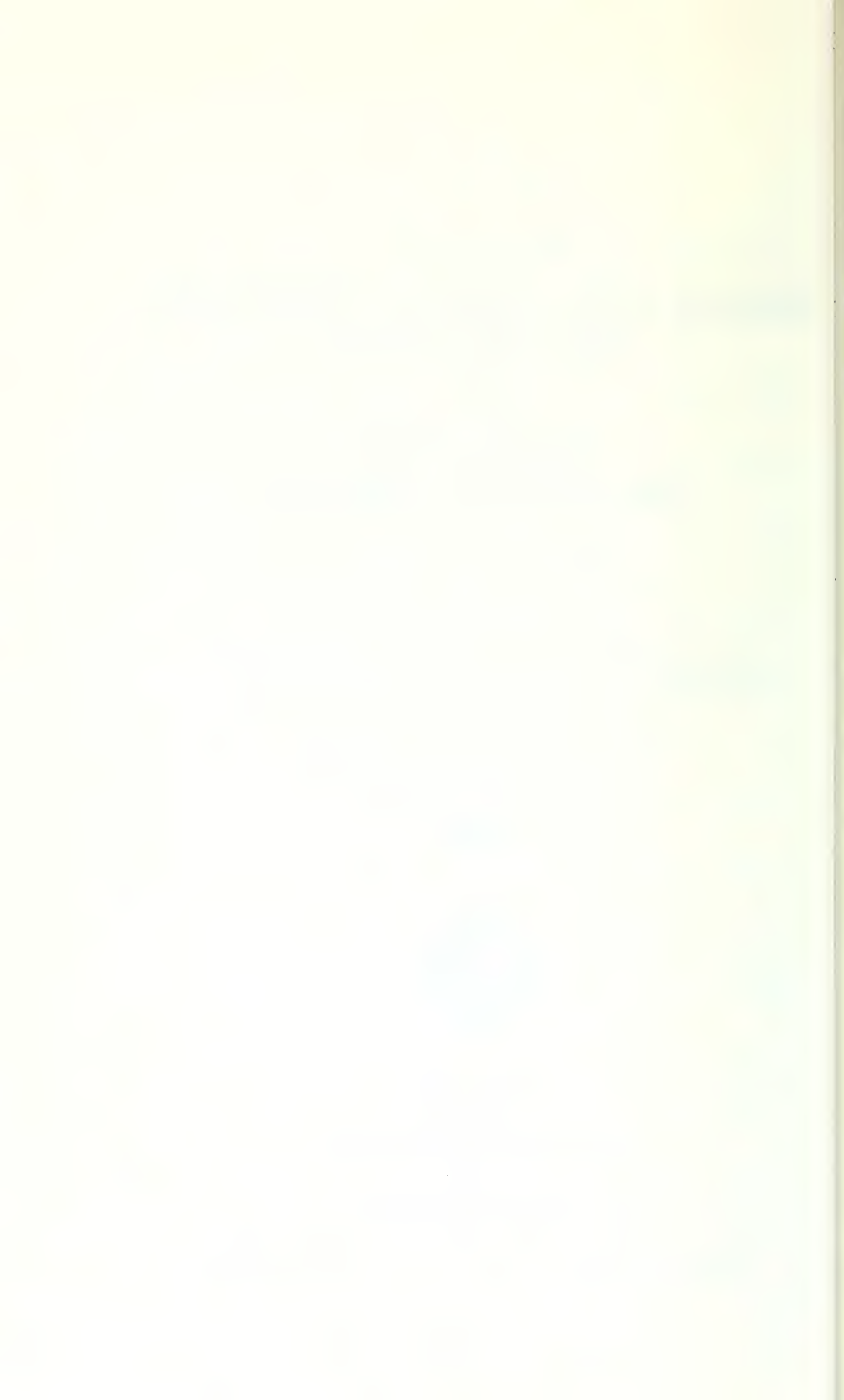
OF THE STATE OF CALIFORNIA

1965

HON. GLENN M. ANDERSON
President of the Senate

HON. HUGH M. BURNS
President pro Tempore

JOSEPH A. BEEK
Secretary of the Senate



LETTER OF TRANSMITTAL

The Honorable Glenn M. Anderson
President of the Senate

Dear Mr. President :

Pursuant to Senate Rule 12.5, the Senate Fact Finding Committee on Education submits this report on its study of problems in the field of education.

The work of the committee was carried out during the interim by five subcommittees appointed October 14, 1963. All recommendations were adopted by the full committee and therefore appear here as full committee reports.

Verbatim transcripts of all hearings are on deposit with the California State Library, the Assembly Legislative Reference Service and the Library of the University of California. And a limited number of transcripts for each hearing are available without charge in the committee office.

Respectfully submitted,

DONALD L. GRUNSKY, *Chairman*
ALBERT S. RODDA, *Vice Chairman*
HUGH P. DONNELLY
FRED S. FARR

JOSEPH A. RATTIGAN
HAROLD L. SEDGWICK
WALTER W. STIERN
HOWARD WAY

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THE STATE'S STRUCTURE FOR POLICY DIRECTION AND SUPERVISION OF THE PUBLIC JUNIOR COLLEGES

Senator Stiern's Higher Education Subcommittee conducted two hearings in 1964, exploring *the state's structure for policy direction and supervision of the public junior colleges*. The first hearing was held July 10 at Foothill College in Los Altos Hills; the second was held December 2 at the State Building in Los Angeles.

The July hearing explored the existing relationship of the junior colleges to the State Board of Education and to the State Department of Education, including the statutory basis of those relationships. At this hearing the committee was interested in learning from the various associations and public agencies, who deal with the junior colleges, the effectiveness of the existing structure for the governance of the junior colleges.

The December hearing provided the various agencies and associations concerned an opportunity to present plans and suggestions for re-organizing the state's structure for governance of the junior colleges. At this hearing, as in July, the State Board of Education and the State Department of Education presented views and recommendations along with other agencies and associations.

The governance of the public junior colleges is a subject that cannot be treated as simply as can the other problems explored by the various subcommittees of the education fact finding committee. A full comprehension of the subject and the problems related to it requires some background knowledge and an understanding concerning the considerations upon which the statement of findings is based.

General Background and Statement of Considerations

The Master Plan for Higher Education made the junior colleges an equal partner in the tripartite system of public higher education in California. The Donahoe Act of 1960 gave the junior colleges primary responsibility for vocational and technical education. The master plan requires the diversion of large numbers of lower division students from the University of California and the state colleges to the junior colleges. Finally, the junior colleges are going to grow at an unprecedented rate, from 473,500 students in the fall of 1964 to 863,000 by 1975 and to about a million students in 1980. The number of campuses required to accommodate these students will grow from the current 74 to over 100 by 1975.

The junior colleges are a major element in the state's system of higher education; they are structured to provide a vocational-technical program tailored to the needs of the individual communities served, as well as providing the lower division of a four-year college program leading to the Baccalaureate degree. Unlike the California State Colleges and the University of California, however, policy direction and supervision over the junior colleges is shared between the State Board of Education and 68 separate local junior college governing boards,

each with its own interests. This situation has given the junior college administrator an unusual amount of freedom of action and has caused the Legislature considerable frustration when attempting to determine the consensus on any issue of importance to the various junior colleges.

The following paragraphs are a brief descriptive outline of the existing structure for policy direction and control over the public junior colleges:

1. *The Legislature* establishes the level of state apportionments, which when combined with local contributions at specified tax levels, assures an effective financial base for the junior college program. To achieve reasonable uniformity of tax efforts, the Legislature has established minimum standards of wealth as one criteria for the formation of a new junior college district. Minimum projected attendance levels are another legislatively established criteria for the establishment of any new junior college district.

The Legislature has, through law, delegated other areas of control and policy direction over the junior colleges to specific public agencies.

2. *The Coordinating Council for Higher Education* is responsible for furnishing definitive studies and surveillance of the junior colleges with respect to the master plan and the elements of higher education policy among the segments. The coordinating council reports directly to the Legislature.

3. *The State Board of Education* is, by law, the agency with authority to prescribe minimum standards for the organization and operation of the junior college districts with regard to calendars, attendance accounting, employment of teachers, course standards, requirements for graduation, and many other areas.

4. *The State Department of Education* is the administrative agency of the state for junior colleges. It apportions funds as provided by law, does the staff work required for course approval by the State Board of Education; and it provides services by consultants on district organization, credential requirements, curriculum development; financing and other areas. The department also participates in the accreditation process of junior colleges. The junior colleges are served by some 18 different bureaus within the department.

5. *Local governing boards*, by law, exercise a high degree of control over the individual colleges; including hiring and assigning personnel, development of curriculum, management of property, planning and construction of facilities and much more.

6. *Junior college policy* is influenced by other than official bodies taking official action: Local governing boards speak to the Legislature through the *California School Boards Association* and directly through their administrators whom they send to Sacramento with instructions to influence, in a specific way, the various legislative proposals that concern junior colleges. *Junior college administrators* speak to their governing boards and to the Legislature through the *California Junior College Association* which has a Department of Education staff member on its board of directors. Junior college faculty members speak to their boards and the Legislature through the *Junior College Faculty As-*

sociation, the *California Teachers Association*, the *California Federation of Teachers* and other associations.

The following are some of the principal considerations that must be taken into account when evaluating the existing policy direction and control structure for the junior colleges:

1. The local autonomy of junior college governing boards is fundamental. The junior college program must reflect the needs and desires of the local people. Recognizing that junior colleges are largely supported by local taxes, there must be allowances for local variations in programs, while maintaining economy of operation and reasonable equality of tax effort among the individual college districts.

2. At the same time, however, the junior colleges must serve a state-wide purpose as an important segment of the state's system of higher education.

The junior colleges must serve the state's interest by affording all youth of the state an opportunity to acquire an education beyond high school. And they must maintain acceptable quality and uniformity of program. Regardless of the content of course offerings and differences between individual junior college programs, students should be able to transfer from one junior college to another without having to repeat basic courses in a field of specialization.

Students who complete two years of transfer work in the junior colleges should meet the requirements for upper division work in the state's four-year collegiate institutions.

Although the individual junior college vocational-technical programs are independently established and are maintained under separate governing boards, they should meet the statewide needs in this area without unnecessary duplication.

With the foregoing background and considerations, the findings of the committee are based upon legislative experience in dealing with the junior colleges and upon information received and recorded at the July and December hearings.

Findings

1. There is an absence of adequate attention to junior colleges by the State Board of Education because of the growing burdens imposed on that board by elementary and secondary education matters—the statements of the board itself to the contrary notwithstanding.

2. There is no official body which exercises effective, continuing supervision over junior college affairs and can communicate junior college needs and policy recommendations to the Legislature.

3. There is no centralized educational authority which has day-to-day relationship with the junior colleges and can effectively guide the development of strong academic standards, coordinated educational planning, and efficient financial management; thus assuring efficient and effective conduct of the junior college program with available state and local funds.

4. There is a growing criticism of the tax burden on property to meet all local educational needs which results in increasing pressure for a larger contribution from the state for junior college current

operating expense and capital outlay costs. At the same time, there is a wide disparity in tax effort and expenditure levels among the junior colleges, with little direct correlation between tax effort and expenditure levels.

5. As the individual junior college districts become larger in geographic area and in student attendance, local autonomy is visibly becoming a matter of autonomy for junior college district administrators.

Conclusion

There is almost unanimous agreement among the associations and agencies, including members of the Legislature concerned, that the existing structure for the governance of the junior colleges is unsatisfactory. There is no consensus, however, even among the membership of some of the individual associations and agencies, regarding the form a new governing structure should take.

For this reason it is unlikely that any definitive action to modify the structure for governance of junior colleges can be accomplished by the 1965 Legislature. Only the reorganization of bureaus and agencies within the Department of Education that the Superintendent of Public Instruction can accomplish on his own authority is likely before 1967.

Recommendations

Members of the committee were unable to agree on recommendations for reorganizing the structure for governance of the public junior colleges.

SUBCOMMITTEE ON HIGHER EDUCATION

LOS ALTOS HILLS, JULY 10

WITNESSES IN ORDER OF APPEARANCE

Mrs. Mary Lou Zaglin, Member, Board of Trustees, Foothill Junior College District

Dr. Calvin C. Flint, President, Foothill College

Mrs. Barbara Calais, Deputy, Office of the Legislative Counsel

Mr. Jerome Evans, Associate Analyst, Office of the Legislative Analyst

Mr. Keith Sexton, Assistant to the Coordinating Council for Higher Education

Mr. Raymond Daba, Member, State Board of Education

Mrs. Elizabeth Deedy, Chairman, Junior College Section, California School Boards Association

Dr. Paul F. Lawrence, Associate Superintendent of Public Instruction and Chief, Division of Higher Education, State Department of Education

Dr. Emil O. Toews, Chief, Bureau of Junior College Education, State Department of Education

Dr. Robert E. Swenson, President, Cabrillo Junior College, Santa Cruz County, testifying as President of the California Junior College Association

- Dr. John N. Given, Legislative Advocate, California Junior College Association
- Dr. Alice M. Rose, Chairman, Junior College Coordinating Council, California Federation of Teachers
- Mr. Wm. P. Smith, Legislative Advocate, California Junior College Faculty Association
- Dr. Henry Tyler, Executive Secretary, California Junior College Association

SUBCOMMITTEE ON HIGHER EDUCATION

DECEMBER 2, 1964, LOS ANGELES

WITNESSES IN ORDER OF APPEARANCE

- Dr. Willard Spalding, Associate Director, Educational Programs, Coordinating Council for Higher Education in California
- Dr. Leland L. Medsker, Professor of Education, Center for Study of Higher Education, University of California at Berkeley
- Dr. Everett T. Calvert, Deputy Superintendent of Public Instruction
- Dr. Paul Lawrence, Associate Superintendent of Public Instruction and Chief, Division of Higher Education, State Department of Education
- Mr. William A. Norris, Member, State Board of Education, and Member, Coordinating Council for Higher Education
- Mrs. Talcott Bates, Member, State Board of Education
- Mr. Robert W. Formhals, Executive Secretary, California School Boards Association
- Mrs. Elizabeth Deedy, Chairman, Junior College Section, California School Boards Association, and Member, Marin Junior College Board of Trustees
- Dr. Robert E. Swenson, President, Cabrillo Junior College, Santa Cruz County, testifying as President of the California Junior College Association
- Mr. William Smith, Legislative Advocate, California Junior College Faculty Association
- Mrs. Alice M. Rose, Chairman, Junior College Coordinating Council, California Federation of Teachers
- Mr. A. Alan Post, Legislative Analyst



SECRETARIAL ALLOWANCES FOR MEMBERS OF THE STATE BOARD OF EDUCATION

Senator Rattigan's Subcommittee on School Finance conducted a hearing on September 17, 1964, in Los Angeles concerning the subject matter of SB 1063, Farr (1963); *Secretarial Allowances for Members of the State Board of Education*. The following findings, conclusions and recommendations are based upon information received and recorded at this hearing and from firsthand observation of the state board in action.

Findings

1. The State Board of Education is unique among nonsalaried statewide policy boards because (A) the State Board of Education does not appoint its own executive officer—this official is the elected Superintendent of Public Instruction, whose policies and views concerning public education are often at odds with those of the board; and (B) the almost universal public interest in education gives the State Board of Education and its individual members, a larger, more active "constituency" than any other such board.

2. The board is making an increasing number of policy decisions rather than allowing these to be made within the Department of Education. Even though the board does rely on the department for many things, there are some matters, such as personnel appointments, which members feel require their personal attention.

3. The board is also studying ways of improving education. It has formed itself into 10 committees for depth studies of such areas as legislation, (the board often supports measures that are opposed by the Superintendent of Public Instruction and vice versa); credentials and accreditation; school finance and economy; textbook adoption procedures; high school standards; basic economic education; the Bill of Rights; vocational education; junior college education and the organization and function of the Department of Education.

These studies, together with additional responsibilities delegated by the Legislature (for example: approval of all school district unification proposals), have greatly increased the demands on board members' time; and there has been a corresponding increase in the amount of letters and other communications received by individual board members.

4. Much of the correspondence received by board members can be turned over to the staff for reply, but, in addition to the problem of time lag, there is often the necessity of followup appointments, conferences and other matters that require more personal contact. Frequently letter writers seek the personal opinion of a board member and deserve the courtesy of an answer.

Eight board members, however, are business or professional men who "bootleg" secretarial help at the expense of their firms; two others are housewives who must hire secretarial help out of their own pockets.

One member reported over \$1,300 in nonreimbursable expenses for 1963.

More importantly, most board members are able to respond to less than half of the mail and other communications they receive.

Conclusions

1. Public service inevitably must take a considerable amount of an individual's time, and will of necessity involve out-of-pocket expense, but this should have some reasonable limit.

2. Because the State Board of Education is unique among state-wide nonsalaried policy boards, providing for reimbursement to members for necessary secretarial and clerical expenses will not, in itself, establish a precedent for providing such expense reimbursements to all such boards. The issue is not one of financial help to board members; it is that of service to the people of California who deserve answers to their questions in an ever-increasing flow of correspondence to all members of the State Board of Education.

Recommendation

Provision should be made for the members of the State Board of Education to be reimbursed for necessary secretarial and clerical expenses incurred in performance of their duties as members of the board.

The above recommendation has been implemented by the introduction of SB 1072 by Senator Farr.

SUBCOMMITTEE ON SCHOOL FINANCE

LOS ANGELES, SEPTEMBER 17

WITNESSES IN ORDER OF APPEARANCE

Mr. Cecile B. Cline, President, California Small School Districts Association; Member, Board of Trustees, Mountain View School District, Los Angeles County

Dr. Daniel A. Collins, Member, State Board of Education (written statement submitted)

Mrs. Margarite Bates, Member, State Board of Education (written statement submitted)

SPECIAL STATE ALLOWANCES FOR UNIVERSITY IMPACTED AREAS

Senator Rattigan's Subcommittee on School Finance conducted a hearing on September 17, 1964, in Los Angeles concerning the subject matter of Assembly Bill 1722, Rumford (1963): *Special State Allowances for University Impacted Areas*. The following findings, conclusions and recommendations are based primarily upon information received and recorded at that hearing.

Findings

1. Pupils from the University of California housing facility comprise 31.5 percent of the pupils in grades kindergarten through seven in the Albany Unified School District. Because these students reside in tax-exempt housing, their attendance constitutes a serious hardship in the form of an excess tax burden which falls chiefly upon homeowners as there is no great amount of industrial development in the district.

2. The Albany district spends slightly more than average for current expense of education per unit of average daily attendance—\$485 as opposed to a statewide average of \$471. This level of support is maintained at considerable sacrifice on the part of the local taxpayers, who pay a unified school district tax rate of \$4.30 per \$100 of assessed valuation as opposed to a statewide median rate of \$2.60 per \$100 assessed valuation. (The Albany district has the second highest tax rate in Alameda County.)

3. An expanded tax base through annexation or reorganization is not a solution open to the Albany district as it is surrounded by unified districts; and, is itself a long-time unified district which would meet today's criteria for becoming a unified district.

4. The Legislature has, in the past, provided for special financial assistance to school districts where attendance is increased due to state water project construction. This precedent invalidates the Department of Finance contention that similar assistance to the Albany schools would be a piecemeal approach to the problem. The principle involved in the Albany schools and in state-impacted schools due to state construction of a dam is the same.

5. The University of California business officials agree that the Albany district has a university-caused problem, and the university has, in the past, budgeted funds for special subventions to that district, only to have the regents remove the funds from the budget on recommendation of the Department of Finance.

Conclusions

1. There is no lack of effort on the part of the Albany taxpayers in meeting the financial needs of their schools. The impaction of the elementary grades by pupils from the University of California student housing project is due to state-created circumstances beyond the con-

trol of the district and constitutes a special burden on the taxpayers of that district which can be alleviated only by legislative action.

2. The precedent for special state financial assistance to state-impacted school districts has been established by assistance grants to districts impacted by state water project construction activity. The Albany situation merits the same consideration; any other similar situation should be examined separately and the decision whether to grant special financial assistance made on the basis of applicable facts.

Recommendation

The Legislature should provide special subventions to the Albany Unified District in a sufficient amount to offset the cost to the district for educating the pupils residing in the nontaxable university student housing project. This may be done by either a special augmentation to the University of California budget or by a statutory authorization for the university to make such subventions from funds available to it for the purpose.

The above recommendation is applicable to AB 2323 by Assemblyman Rumford and Senator Stiern.

SUBCOMMITTEE ON SCHOOL FINANCE

LOS ANGELES, SEPTEMBER 17

WITNESSES IN ORDER OF APPEARANCE

Mr. Kenneth M. Forry, Superintendent, Albany Unified School District (AB 1722)

Hon. W. Byron Rumford, Assemblyman (AB 1722)

Mr. Loren Furtado, Budget Officer, University of California (AB 1722)

Mr. Harold Ware, Assistant Legislative Advocate, California School Board Association (AB 2339)

Dr. Frederick G. Fox, Budget Director, Los Angeles City Schools (AB 2339)

THE CREATION OF EDUCATIONAL TELEVISION REGIONS SUPPORTED IN PART WITH STATE FUNDS

Senator Farr's Subcommittee on Instructional Television conducted a hearing in Salinas on October 23, 1964, concerning the subject matter of Senate Bill 1169, Rodda (1963): *The Creation of Educational Television Regions Supported in Part With State Funds*; and to receive a status report on the development of a statewide instructional television network. The following findings, conclusions and recommendations are based primarily upon the information received and recorded at that hearing.

Findings

1. The fact that instructional television (ITV), properly used, can be an exceptionally effective teaching tool is no longer a matter of argument. The ability of television to give greater results in terms of measured learning than any other single factor, except a talented teacher, that can be added to the classroom has been proven by reliable research. Instructional television is one of the most effective means available for improving the learning situation and for expanding the curriculum of our public schools. For certain courses at the college level and in adult education classes, the television set can, to a very large extent, take the place of the teacher in the classroom.

2. Many school districts that now use television instruction to a good advantage and desire to expand their use of this medium are unable to do so because of the costs involved. Many other districts have been unable to take advantage of television instruction for the same reason.

3. The instructional television pilot project at San Bernardino College has developed reliable evidence indicating that ITV programming and the use of ITV by schools can be greatly expanded when supported at the level of \$1 per user-pupil per year.

4. The development of a statewide ITV network is progressing slowly, due primarily to the lack of funds. The ITV coordinator has been appointed and the Television Advisory Committee has begun formulating plans for the statewide network.

5. The state colleges and the University of California are not currently furnishing the level of leadership they have in the past for developing television as an instructional tool. Neither system has a statewide instructional television coordinator, although both have such a position authorized and are seeking qualified applicants.

6. The enactment of Senate Bill 1169 (referred for interim study) would create an extensive administrative superstructure at the county level that would be expensive to support and would tend to smother ITV with procedure. The act that created the ITV pilot project at San Bernardino College provides a simpler approach to the development of ITV on a regional and statewide basis. This act, already part of the Education Code, could be easily modified to become the instru-

ment for state support of, and general policy direction over, ITV for classroom use.

Conclusions

1. State support, on a matching basis, of classroom use of ITV will enable school districts now using ITV to expand their programming into new curriculum areas and to additional grade levels. State support will also make classroom ITV available to many districts which now cannot take advantage of available ITV programs.

2. Any state subvention of ITV will go farther and be more effective if it is limited to support of procuring classroom ITV programs as opposed to the purchase of equipment and the production of programs.

3. The lack of leadership in ITV on the part of the state colleges and the University of California is due to internal problems of those institutions with no need for legislative action indicated at this time.

Recommendations

1. The state should encourage the further development and use of classroom ITV with a program of state support at the school district level. State support of classroom ITV should be on a matching basis and should not be available for the purchase of equipment or program production by school districts. The initial level of state support should be \$0.50 per user-pupil per year when matched by \$0.50 of local district funds, for a total of \$1 per pupil per year.

2. The Superintendent of Public Instruction should be responsible for establishing rules and regulations for administering any program of state support for classroom ITV. Such rules and regulations should, among other things, encourage cooperation among the districts in using available ITV material and should aid in minimizing duplication of costs and effort on the part of school districts.

3. The Television Advisory Committee through the State Television Coordinator should be the approving agency for the creation of new publicly supported television production facilities. (This agency already has authority to recommend for or against federal licensing of publicly supported over-the-air television transmission facilities.)

The above recommendations have been implemented by the introduction of Senate Bill 635 by Senator Farr and other members of the Fact Finding Committee on Education.

SUBCOMMITTEE ON INSTRUCTIONAL TELEVISION

SALINAS, OCTOBER 23

WITNESSES IN ORDER OF APPEARANCE

Dr. Ed Coffin, Superintendent of Schools, Monterey County

Dr. Lawrence Frymire, Television Coordinator, Television Advisory Committee, Department of General Services (written statement submitted)

Mr. A. A. Lumsdaine, Chairman, President's Statewide Advisory Committee on Instructional Media (written statement submitted)

Dr. Harry J. Skelly, Chief, Bureau of Audio Visual and School Library Education (written statement submitted)

- Mr. Loren Furtado, Budget Officer, University of California (written statement submitted)
- Mr. Les Cohen, Director, Governmental Affairs for the California State Colleges (written statement submitted)
- Mr. R. Harold Hartsough, Assistant Vice President, Pacific Telephone and Telegraph Company (written statement submitted)
- Mr. Les A. Palmiter, Assistant Superintendent, Sacramento County Schools (written statement submitted)
- Mr. Lindy Wade, Station Manager, Santa Clara County TV Station KTEH
- Mr. Victor M. Hyden, Jr., Chairman, VITA
- Mrs. Eleanor Richardson, Consultant, Audio Visual Services, Los Angeles County Schools (written statement submitted)
- Mr. James H. Orsburn, Bureau of School Planning
- Mr. George Lange, Supervisor, Radio and Television Instruction, Los Angeles City Schools
- Dr. Herman Sheffield, President, San Bernardino Valley Junior College
- Mr. James Day, President, KQED, Channel 9
- Mrs. Richard Reynolds, President of KIEX Television, Redding (written statement submitted)

PROCEDURE FOR HEARING WHEN PROBATIONARY TEACHERS ARE NOT REHIRED

Senator Sedgwick's personnel subcommittee conducted a hearing November 6, 1964, in San Diego concerning the subject matter of Senate Bill 1504, Farr (1963): *Procedure for Hearing When Probationary Teachers Are Not Rehired*. The following findings, conclusions and recommendations are based primarily upon the information gained at this hearing and upon reports concerning dismissal of teachers submitted biennially to the Legislature as required by Education Code Section 13443.5.

Findings

1. All of the witnesses appearing before the subcommittee expressed the view that the existing procedure for dismissing a probationary teacher was unsatisfactory and needed certain basic modifications to be workable.

2. The 1961 law requiring school district governing boards to grant probationary teachers the right to a hearing in a dismissal case has not operated to the benefit of teachers or school districts for the following reasons:

A. The law permits a governing board to reach a final decision to dismiss a probationary teacher prior to the granting and scheduling of the hearing. Since enactment of the 1961 law, not a single board has reversed its decision not to rehire a teacher.

B. The law does not require the hearing to be held and concluded before the end of the school year—thus leaving the teacher's employment status in limbo during a time when districts are interviewing prospective teachers for the following school year.

Conclusions

1. Granting a teacher a hearing after the board has reached its decision not to rehire has three effects which operate to prevent an objective judgment on the part of the board:

A. The board is tacitly expected to publicly admit an error in judgment and failure to investigate thoroughly prior to making an important decision.

B. The dismissed teacher is placed in a position of opposition to the body that is judging him.

C. Mitigating circumstances cannot be considered by a hearing officer when ruling on the case before him.

2. The absence of any requirement for boards to initiate and conclude a dismissal hearing prior to May 15 works a hardship on all concerned. Often the hearings pend all summer while the teacher and the board and the school administration are uncertain of the final outcome. The teacher, particularly, is disadvantaged when the hearing is delayed until midsummer or fall. His employment status is in limbo

and he cannot logically seek another teaching position while awaiting the decision on the position he is seeking to retain.

3. Requiring the board to conduct the hearing prior to any decision concerning retention of the teacher would assist in arriving at an objective decision in the following ways:

A. The board would be acting in the capacity of a fact finding body prior to committing itself to any action regarding the services of the teacher in question.

B. The teacher would be placed in opposition to the recommending administrator rather than the board.

C. In a proceeding prior to the fact, mitigating circumstances could be considered by the hearing officer when developing recommendations for board action.

Recommendations

1. The probationary teacher dismissal law should be modified to require a hearing at the teachers request prior to the board voting not to rehire the teacher. This should be initiated when the administrator advises the teacher of his intentions to recommend the teacher not be rehired.

2. Hearings in probationary teacher dismissal cases should be required to be held and completed prior to May 15 of the year the teacher is given notice of intent not to rehire. In all cases, however, the teacher should be given reasonable time to retain counsel, prepare his case and obtain witnesses.

The above recommendations have been implemented by the introduction of AB 230 by Assemblyman Garrigus, which was *approved by the Senate Education Committee and placed on the consent calendar.*

SUBCOMMITTEE ON SCHOOL PERSONNEL

LOS ANGELES, NOVEMBER 5, 6, 7

WITNESSES IN ORDER OF APPEARANCE

Mr. Richard Bartlett, Executive Director, California School Employees Association

Mr. Roy Bell, Assistant Director, State Department of Finance

Mr. William Plosser, Secretary, Northern Section, California Federation of Teachers

Mr. Robert Formhals, Executive Secretary, California School Boards Association

THE FUNCTION OF THE COUNTY SUPERINTENDENT OF SCHOOLS OFFICE

Senator Rodda's Subcommittee on Public School Administration conducted a hearing on November 11, 1964, in San Diego concerning the subject matter of Senate Resolution 125, Rodda (1964): *The Function of the County Superintendent of Schools Office*. The following findings, conclusions and recommendations are based primarily upon information received and recorded at that hearing.

Findings

1. The functions of the county schools office has been considerably affected by the enactment of Assembly Bill 145 (1964). This act has accelerated the rate of school district unification thus diminishing the number of small school districts served by the county superintendent's office. As these small districts become fewer the need for the county direct services to such districts lessens. The county superintendent's office is faced with the alternative of finding other areas where it can effectively serve the educational process or become a useless anachronism left over from the days when California had thousands of small school districts.

2. Some county superintendents are expanding their other services to larger districts through contracts. These services include curriculum development, library services, instructional television programing and coordination and many others. Where these functions are performed by individual districts it is at considerable cost in money and personnel and often with less than satisfactory results.

3. Under developing patterns of administration at the county superintendents' level, any one county schools office may fulfill a given service for all the districts in several counties.

Conclusion

The county superintendent of schools is a constitutional office which could be effectively utilized as a middle level of school administration between the State Department of Education and the local school districts. By assigning greater responsibilities to the county schools office, duplication and overlap of effort by individual school districts could be minimized with commensurate savings in personnel and money.

Recommendation

The county level of school administration should be expanded to fill such functions as curriculum development; in-service training of certificated and classified personnel; library and audiovisual coordination, and educational research (development of techniques in making use of new knowledge and materials at the classroom level) for all except the very largest districts, and these larger districts should coordinate their efforts with the county schools office. This action will require a statutory redefinition of the role of the county schools office.

The above recommendation has been implemented by the introduction of SB 803, 804, and 805 by Senator Rodda and other members of the Fact Finding Committee on Education.

SUBCOMMITTEE ON PUBLIC SCHOOL ADMINISTRATION
SAN DIEGO, NOVEMBER 11

WITNESSES IN ORDER OF APPEARANCE

- Dr. Cecil D. Hardesty, Superintendent, San Diego County Schools
Dr. Ronald Cox, Associate Superintendent of Public Instruction
Dr. Virgil S. Hollis, Superintendent, Marin County Schools
Mr. Robert Stannard, Assistant Superintendent, Administrative Services, Marin County Schools
Mr. Edward Pino, Superintendent, Reed Union School District
Mr. James A. Carroll, San Diego City Unified School District
Mr. Stanley Friese, Assistant Superintendent, Educational Services, Marin County Schools
Mr. Blaine Wishart, Superintendent of Schools, El Dorado County
Dr. Leonard L. Grindstaff, County Superintendent of Schools, Riverside County Schools
Dr. John C. Whinnery, Superintendent of Schools, Montebello Unified School District
Mr. Paul W. Madsen, Member, Santa Clara County Board of Education; Chairman, County Board of Supervisors, California School Board Association
Mr. Robert L. Small, Principal Administrative Analyst, San Diego County

THE ADULT EDUCATION PROGRAM IN THE PUBLIC SCHOOLS

Senator Rodda's Subcommittee on Public School Administration conducted a hearing on November 12 and 13, 1964, in Los Angeles concerning the subject matter of Senate Resolution 118x, Rodda (1964): *The Adult Education Program in the Public Schools*. The findings, conclusions and recommendations are based primarily upon information received and recorded at that hearing, and upon information and impressions gained from field studies made in connection with the hearing.

Findings

1. The adult education programs are soundly based, classes are well taught with a minimum of administrative overhead "backup" personnel servicing the classroom teacher. There is, however, frequently an overlap or duplication of effort between the adult education programs offered by the high school and junior college districts in the same areas.

2. The adult education programs of the state are presently serving people in all walks of life, including housewives who are learning to sew in order to clothe their families without accepting charity. There are classes for immigrants who are learning English. Many elementary school and high school dropouts voluntarily turn to adult education classes to complete their education and improve their job opportunities. The end of every school year sees a growing list of adults who are receiving their elementary or high school diplomas. Adult education also serves the college graduate who is following new interests.

In addition to the practical-type classes, there are adult classes for people who wish to develop their creative talents in writing, in art, in music and in many other areas that make a person's life richer and more productive.

3. In the 1963-64 school year, nearly a million Californians were enrolled in adult education classes and the enrollments are increasing at an increasing rate.

The Stanford Research Institute, in report issued in 1963 titled "Impact of Adult Education," estimated that by 1975 sixty million adults will be taking courses (not including college graduate classes) and in California the adult education enrollment will equal or nearly equal the public school enrollment.

Conclusions

1. The adult education program, as presently constituted, is performing a vital role which will become increasingly important as our technology becomes increasingly complex and automation forces more and more adults to learn new marketable skills. Also, increased leisure, made possible by modern technology, is causing increasing numbers of people to turn to adult education for leisure time (not idle time) learning.

2. The Legislature should prepare for the expansion in adult education that is already underway and make certain society continues to get the most from the money and human resources that will inevitably flow into the program.

Recommendations

1. To facilitate further study and policy direction of the adult education program, legislation should be enacted which will bring together under a single chapter heading in the Education Code, the various adult education provisions that are now scattered throughout the code.

2. The adult education program should be identified separately from other programs of the public schools and all adult courses of study should be approved by the State Department of Education in order to qualify for state apportionments.

3. The authority of local governing boards to issue elementary and high school diplomas to persons who have completed the prescribed course of study for such diplomas should be clarified.

4. The state's level of support for adult education should be continually reviewed as should the overlap between adult education programs in the junior colleges and those in the elementary and secondary schools.

The above recommendations have been implemented by the introduction of Senate Bills 740, 741, 742 and 743 by Senator Rodda and other members of the Fact Finding Committee on Education.

SUBCOMMITTEE ON PUBLIC SCHOOL ADMINISTRATION

LOS ANGELES, NOVEMBER 12-13

WITNESSES IN ORDER OF APPEARANCE

Mr. E. D. Goldman, Assistant Superintendent of Schools, San Francisco Unified School District (in charge of adult and vocational education)

Dr. Agnes Robinson, Assistant to Deputy, Special Programs, Sacramento City Unified Schools

Mr. Calvin Dellefield, Principal, Jefferson Adult School

Mrs. Neil Cox, Represents California Congress of Parents and Teachers

Dr. Zane Meckler, Area Director, American Jewish Committee, San Francisco

Mrs. Pauline Hopkins, Counselor, Los Angeles City School District

Miss Ginger Corey, Television Teacher, Los Angeles City Schools

Mrs. Mary Tinglof, Member, Los Angeles Board of Education

Dr. J. Richard Smith, Assistant Superintendent, Responsible for Adult Education, Los Angeles City Schools

Mr. Edward Stanley, Principal, Adult Evening School, Campbell Union High School

Mrs. David Menkin, Past President, League of Women Voters of Los Angeles

Dr. Raymond McCall, President, San Jose Evening High School

Mr. Roy Stone, Principal, Washington Adult School, Los Angeles Unified School District

Dr. John Given, Legislative Advocate, California Junior College Association

Dr. Thomas A. Blakey, District Director, Orange Coast Junior College

THE TEACHING OF PHYSICAL EDUCATION IN THE PUBLIC SCHOOLS

Senator Rodda's Subcommittee on Public School Administration conducted a hearing December 22, 1964, in San Diego concerning the subject matter of Senate Resolution 250, Farr (1963): *The Teaching of Physical Education in the Public Schools*. The following findings, conclusions and recommendations are based primarily upon information received and recorded at that hearing.

Findings

1. California's program of daily physical education in the public schools has received national acclaim and is recognized as a model for other states. This program may be credited, in part, for the preeminence of California athletes on the United States Olympic team and on many college athletic teams throughout the United States.

2. The physical education program, as constituted in California public schools, is reportedly designed to make beneficial contributions to the social development and the mental attitudes of California children and youth as well as to their physical development. (This finding was not confirmed by field studies or by impartial expert testimony.)

3. Physicians, physical education specialists and school administrators are in almost unanimous agreement that a program of regular vigorous exercise is essential to the good health and normal physical development of growing children and youth. A program of daily physical exercise is of optimum benefit, provided such program is of sufficient duration and is properly structured and carried out.

4. Many school administrators hold the view that the length of class periods in most California secondary schools does not allow students sufficient time for actual physical activity. The time required for changing into gym clothes at the beginning of the physical education period and for showering and changing back into school clothes at the end of the period leaves insufficient time for extended physical activity. If two or more physical education periods could be combined, students would be able to have longer periods of actual physical activity with commensurate benefits in all aspects of the program.

5. Many school administrators, with the California School Boards' Association concurring, hold the view that the daily physical education requirement prevents or greatly interferes with the adoption of flexible class schedules, *i.e.* the scheduling of classes of any given subject two or three days a week rather than every day of the week. Flexible scheduling is becoming increasingly necessary as the curriculum expands and the demands for student time within a limited school day continue to increase.

6. Leaders in California physical education oppose any alteration of the daily physical education requirement. This opposition is based primarily on the concern that a deviation from the daily physical education program will lead to irregular physical education sessions, or

that physical education will be scheduled by some schools as an end-of-the-week, end-of-the-month or end-of-the-semester activity with greatly diminished benefit to the students.

7. The leaders in California physical education are concerned about the following problems:

a. Some schools are making nonauthorized substitutions for physical education at various times during the year.

b. The size of physical education classes are frequently larger than is consistent with the requirements of good instruction and safety.

c. The requirements for the standard elementary teaching credential should include preparation for the teaching of physical education.

Conclusions and Recommendations

1. The physical education program must remain an integral part of the school curriculum and a schedule of regular vigorous exercise suitable to the needs of every age group must be maintained in the public schools.

2. The pressures of an expanding curriculum and the practical limits on the duration of the school day make it necessary that schools be permitted to adopt a flexible class schedule whenever the governing board of the district determines that such scheduling is in the best interests of the students.

3. School districts should be permitted to depart from the daily physical education schedule provided that every eligible student be required to participate in the equivalent of five regular class periods (200 minutes minimum) of physical education in no less than 3 sessions each week.

4. Because the elementary classroom is typically a self-contained unit and the classroom teacher is usually expected to supervise the physical education activities of his or her students, the requirements for the standard credential with a specialization in elementary teaching should include some preparation for the teaching of physical education.

5. Physical education is sufficiently important to warrant student attendance at every scheduled session. School districts which make unauthorized substitution of courses for physical education should be denied average daily attendance credit for the time students attend the substituted classes.

Recommendations 2 and 3 above are contained, in part, in Senate Bill 832 by Senator Miller.

Recommendations 4 and 5 above will require State Board of Education action.

SUBCOMMITTEE ON PUBLIC SCHOOL ADMINISTRATION

SAN DIEGO, DECEMBER 22, 1964

WITNESSES IN ORDER OF APPEARANCE

Dr. C. Carson Conrad, Chief, Bureau of Health Education, Physical Education and Recreation, State Department of Education

Dr. Erle Johnson, President, California Association for Health, Physical Education and Recreation

- Dr. Frank B. Jones, Professor, Health and Physical Education, Sacramento State College
- Dr. Theodore Forbes, Dean of Student Affairs, University of California, San Diego
- Dr. William A. Leovy, Pediatric Member, San Diego Medical Society Committee on School Health; Member, California Medical Association Committee on School Health
- Dr. Albert Klug, Internist and Cardiologist, Representing California Heart Association; Member, Committee on Education
- General Bruno Hochmuth, Marine Corps Recruit Depot, San Diego
- Captain W. R. Belcher, Commands Special Training Platoon, Physical Education, San Diego
- Dr. Everett Chaffee, Associate Superintendent, Los Angeles City Schools
- Thomas J. Hamilton, Representative, California Fitness Committee
- Dr. Norman E. Wollitz, Representing California Elementary School Administrators' Association
- Mrs. Neil Cox, Represents California Congress of Parents and Teachers
- Dr. John M. Cooper, Representing California School Boards Association; School Board Member
- Mr. Russell A. Burnham, California School Boards Association
- Mrs. Shirley Hayes, Teacher, Physical Education, Junior College, Representing California Association for Health, Physical Education and Recreation.
- Dr. Frank L. Scott, Professor, Physical Education, San Diego State College
- Commander Ted Gavett, U.S. Navy, Retired
- Dr. Ann Stitt, Vice President of Girls and Women's Sports

THE TEACHING OF PUBLIC HEALTH IN THE SCHOOLS AND COLLEGES

Senator Rodda's School Administration Subcommittee conducted a hearing in San Diego on December 23, 1964, concerning the substance of Senate Resolution 158, Miller (1963) : *The Teaching of Public Health in the Schools and Colleges*. The following working definition of health education and the findings, conclusions and recommendations are based primarily upon information received and recorded at this hearing.

A working definition of health education is as follows: The process which prepares an individual to make intelligent decisions to protect and improve individual, family and community health. Health education includes the promotion of physical, mental and social well-being. The behavioral changes resulting from good health education help the individual to develop and maintain a state of health needed for a happy and productive life. The healthy student is able to receive the optimum benefit from his educational opportunities.

The body of knowledge with which health education is concerned in the schools is organized into such instructional areas as: nutrition, dental health, mental health, alcohol, tobacco and dangerous drugs, activity and rest, family health, health services and products, chronic and communicable diseases, safety, and community health.

Findings

1. The medical community is in almost unanimous agreement that health education, taught by properly trained professional teachers, is one of the most effective tools of preventative medicine.

2. The major health problems of our state today are different from those which existed several decades ago. We have successfully controlled many of the striking problems of communicable diseases and environmental hazards which plagued earlier generations, but we still have many health problems, both existing and potential.

Today's school-age children and youth are directly affected by and involved in a number of major health problems and hazards including the use of alcohol, narcotics, smoking, emotional instability, sexual experimentation, venereal disease, illegitimacy, forced marriage, quackery and health fads, self-medication, dental caries, obesity, suicide and accidents—all statistically prevalent among today's youth.

The study and solution of these problems together, rather than in isolation, provides the basis for a comprehensive program of health education.

3. Prior to 1961 health education was required in all grades in the elementary school. In 1961, with enactment of the Casey Bill, requirements for health education were revised and now health education is required beginning at 6th grade rather than at grade 1.

4. At the high school level, health education is frequently incorporated into various other subjects such as home economics, physical education, social science, or in the so-called state requirement courses.

The result is inadequate health instruction by other than a properly trained teacher.

5. Under the Licensing of Certified Personnel Law of 1961 (Fisher Bill) and the State Board of Education implementation of that act, elementary teachers can now obtain a standard credential without having had any preparation for the teaching of health science, although they are still required to teach this subject.

Conclusions

1. Sound health education provides, among other things, the foundation on which each individual builds a pattern of behavior consistent with high standards of individual and community health. This area of education belongs in the school curriculum because health knowledge is necessary, is more efficiently learned in school, and no other public agency provides such instruction. It is not practical to leave this important aspect of education to the home, as parents are not usually adequately prepared for the task and have themselves tacitly delegated this responsibility to the schools.

2. The future health of the nation depends to a great extent, on what is done to promote, improve, and preserve the health of today's children and youth. The increasing incidence of major health problems and hazards directly affecting today's school-age children and youth adds urgency to the need for adequate health instruction in the public schools.

3. Teachers who are not prepared in college to teach health science cannot be expected to do an adequate job of health education in the classroom.

Recommendations

1. Health education should be included in the required course of study beginning at grade one and continuing through the elementary grades.

2. One semester of individual and community health should be required at the junior high and high school levels.

3. Health education at the high school level should be taught only by instructors with a major or minor in health science or health education.

4. All teachers qualifying for a standard teaching credential in elementary teaching should be required to have preparation to teach health including safety.

Recommendations 1 and 2 above are contained in Senate Bill 832 by Senator Miller.

Recommendations 3 and 4 are contained in Senate Bill 908 by Senator Rodda.

SUBCOMMITTEE ON PUBLIC SCHOOL ADMINISTRATION

SAN DIEGO, DECEMBER 22

WITNESSES IN ORDER OF APPEARANCE

Dr. B. Otis Cobb, Vice President, California School Health Association
Miss Patricia Hill, Consultant, Public Health and Education, State Department of Education

- Dr. Jerome Grossman, Chief, Bureau of Health Education, California State Department of Public Health
- Dr. Warren A. Ketterer, Head, Venereal Disease Section, Division of Preventative Medical Services, State Department of Public Health
- Dr. Ruth Frary, General Practitioner, Instructor in Marriage and Family Living, Public Junior College, Santa Cruz County
- Dr. Judson Landis, Professor of Family Sociology and Research Associate of the Institute of Human Development, University of California, Berkeley
- Dr. H. P. Groesbeck, Jr., President, San Diego Branch, American Cancer Society
- Mr. Vincent Thorpe, With Office of the Attorney General
- Mr. Robert E. Furlong, Special Consultant, Domestic Relations, Assembly Judiciary Committee
- Mr. Ben C. Gmur, Professor of Health Education, California State College, Los Angeles, Vice President for Health Education
- Dr. Wilford Sutton, School of Public Health, UCLA, representing California College and University Health Educators
- Mr. William H. Wyckoff, Public School Administrator, Acting Legislative Chairman, California School Health Association
- Dr. Edward B. Johns, Professor in School Health Education, School of Public Health, University of California, Los Angeles
- Dr. Everett Chaffee, Associate Superintendent, Los Angeles City Schools
- Dr. Edwin Ropes, representing California and the Southern California State Dental Associations
- Mrs. Lorena Thorup, Member, School Nurses Branch, Public Health Nurses Section, California Nurses' Association
- Mrs. Neil Cox, representing California Congress of Parents and Teachers
- Dr. Harney M. Cordua, representing California Heart Association
- Dr. Joseph Telford, Chairman, Health Planning Commission, San Diego County Community Welfare Council
- Dr. William Lauritsen, Professor, Health Education, San Diego State College, representing State Office of the California Tuberculosis and Health Association
- Mr. Godfrey Tudor, Executive Director, San Diego County Epilepsy Society
- Mr. Russell Burnham, Staff Representative, California School Boards Association
- Dr. John Cooper, Past President, Los Angeles County School Boards Association
- Mrs. Josephine Smith, School Nurse, Los Angeles City, Part-time Professor, Los Angeles State College in Health and Safety, representing California School Nurses Organization
- Mrs. Katherine Martin, Supervisor of Health Education, Alhambra City School Districts



NONPUBLIC SCHOOLS BELOW THE COLLEGE LEVEL

Senator Sedgwick's Subcommittee on School Personnel conducted a hearing in Los Angeles on December 29, 1964, in an effort to determine whether *nonpublic schools, below the college level*, are maintaining minimum acceptable standards and whether their personnel policies and practices are a factor in the maintenance of such standards. The following findings, conclusions and recommendations are based primarily upon information received and recorded at that hearing.

Findings

1. State law requires that pupils in nonpublic schools be taught by persons capable of teaching; that the schools teach the same subjects that are taught in the public schools; that they be taught in the English language, and that attendance records of pupils be kept.

2. There are no statutory requirements to be met by any person, qualified or not, for starting a nonpublic school, yet students in such schools are exempt from public school attendance.

3. Nonpublic schools are not required to register with any state agency for the enforcement of such requirements as the law presently imposes upon them, and no state or local agency has a complete list of the nonpublic elementary and secondary schools in California. The University of California accredited private and parochial schools of California are easily located and have information regarding their standards available to the Legislature. The spurious schools (often referred to as "kitchen cupboard" schools) cannot be easily located.

4. Title II of the recently enacted Federal Aid to Education bill (Elementary and Secondary Education Act of 1965) provides a program of grants to furnish library books, textbooks and other published and printed materials for use in nonpublic elementary and secondary schools. The nonpublic schools must obtain these materials through the state public school system. The title to all such materials must remain with the public agency.

Conclusions

1. Until a comprehensive list of nonpublic schools is developed, the Legislature will be handicapped in its efforts to study the standards or accrediting procedures of these schools.

2. Unless the Department of Education, which is the state agency concerned with administering Title II of the Federal Aid to Education Act, has a listing of the nonpublic schools and some knowledge of the needs of those schools, it will be unable to plan for the acquisition of needed instructional and library materials.

Recommendations

1. All nonpublic elementary and secondary schools should be required to file with the State Department of Education, on an annual basis,

such information as the name of the school, its location, the names of its principal officers, the grades taught, the number of students enrolled and the location of its attendance records. The administrator of any given system of schools should be permitted to file a single report on behalf of all the schools under his control.

2. The Legislature should continue its study of the nonpublic schools and explore, in cooperation with the private and parochial schools of known excellence, the means of assuring that all nonpublic schools below the college level maintain acceptable standards.

The above recommendations have been implemented by the introduction of Senate Bill 776 by Senator Sedgwick and other members of the Fact Finding Committee on Education.

SUBCOMMITTEE ON SCHOOL PERSONNEL

LOS ANGELES, DECEMBER 29, 1964

WITNESSES IN ORDER OF APPEARANCE

Dr. Rixford Snyder, Director of Admissions, Stanford University;
Chairman, Board of Standards, California Association of Independent Schools

Mrs. Katherine Walker, Assistant Director, Office of Relations with
Schools, University of California

Mrs. Sara Rugg, Executive Secretary, California Association of Independent Schools

Miss Elizabeth Edmundson, President, California Association of Independent Schools

Mrs. Alice Powell, Private Elementary School Director

Mr. Joseph Swafford, Representing Private School Teachers Local No.
1426, American Federation of Teachers

Mr. Richard Elliott, Educator (private schools)

PART II

Analysis of Senate Bill 728 (1965), Collier *

* The following analysis is included as an information item only and does not necessarily represent the findings of the committee.



ANALYSIS OF SENATE BILL 728 (Collier)

As Amended April 29, 1965

PREPARED BY: Senate Fact Finding Committee on Education
SUBJECT: Bonus teacher retirement for school service outside California
SOURCE: Association for Retirement Credit for Out-of-State Service (ARCOSS)
OPPOSITION: California Taxpayers Association, California School Boards Association
COST: \$273,267,000 if fully funded and invested at 4 percent interest in 1965 or \$800,000,000¹ if the state's share is not funded but appropriated as the retirement allowances become due and payable.²

ANALYSIS

Senate Bill 728, known as the "ARCOSS BILL," is sponsored by the Association for Retirement Credit for Out-of-State Service. Under its provisions, bonus California teacher retirement credit may be received for services³ in the public schools or colleges of other states; United States possessions and territories, Canada, or in schools supported and administered by the United States government outside California.

Qualifying for Bonus California Retirement Credits

Under the provisions of Senate Bill 728, teachers coming to California from other areas may qualify for California bonus retirement credits as follows:

1. Unlimited bonus California teacher retirement credit will be granted for out-of-California service when matched by one year of service in California public schools for each year of bonus credit received.

2. The out-of-California teacher must first serve five years⁴ in California public schools before receiving any bonus retirement credit for out-of-California service.

3. After five years' service, bonus California retirement credit will be credited on a one-year-for-one-year matching basis. (One year of bonus retirement credit for one additional year of out-of-California service when matched by one additional year of service in California.)

¹ These figures are conservative minimums based only on the known eligible members of the State Teachers' Retirement System as of June 16, 1965. The true cost will inevitably increase as more eligible teachers become known; and as the final compensation of the members increases and their retirement allowances, based on these increases, raise the cost of SB 728.

² The California State Teachers' Retirement System is a partially funded system. The state's share is appropriated as retirement allowances become due not as it accrues. The state's accumulated actuarial debt to that system at last audit was in excess of \$2.8 billion.

³ The term "services" is used here because teaching service would not be required for either the out-of-California service or the in-California service. School administrators in positions requiring certification, if they were members of their home state's teacher retirement system could count their service. Teacher members of the California Teachers' Retirement System, who become administrators, remain in the system and will receive credit.

⁴ None of the five years of service need be as a classroom teacher.

Table I illustrates how bonus California retirement credit would be granted for out-of-California service. Each teacher in the table is assumed to have taught the same length of time in California, and to retire at the age of 65 with retirement allowances based on the same final compensation.⁵

Teacher A will receive 25 years' retirement credit for 25 years' service and draw a monthly retirement allowance of \$274.29; Teacher B will receive 28 years' retirement credit for 25 years' service and will draw \$307.20 monthly retirement allowance; Teacher C, 30 years' retirement credit and \$329.30 monthly allowance; Teacher D, 35 years' credit and \$384.00 monthly; Teacher E, 40 years' credit and \$438.87 monthly; and Teacher F, 45 years' credit and \$493.73 monthly retirement allowance. Although Teacher A and Teacher F taught in the California public schools the same number of years, and received the same salary for their services, *Teacher F will drawn \$219.44 per month more than Teacher A.*

Procedure for Claiming Bonus California Teacher Retirement Credit for Out-of-California Service

Senate Bill 728 outlines the following procedure for claiming bonus retirement credit:

1. Notice of election to claim bonus California retirement credit for out-of-California school service must be filed with the Sacramento Office of the State Teachers' Retirement System on forms approved by the Teachers' Retirement Board.
2. Members of the system on October 1, 1965, will have until April 1, 1966, to file their notice of election.
3. Members entering the system after October 1, 1965, must file their notice of election within two years after becoming members.

The Cost to the Member and Payment of the Member's Share

Members of the California State Teachers' Retirement System claiming bonus retirement credit must pay into the system their "fair share" as follows:

1. The member must pay into the California system \$60 for each year of out-of-California service claimed (this goes into the permanent fund and is an equivalent to what California teachers pay for the same purpose); plus the amount he or she would have paid into the system if the service claimed had been rendered in California. This amount to be computed actuarially according to sex and age and based on the individual member's first year California salary, using the rate in effect July 1, 1951.⁶ (The lower the first year California salary the lower the member's "fair share.")
2. An active member's⁷ share may be made in one payment within 90 days after the last day the notice of election may be filed; or in

⁵ Final compensation is the base salary upon which retirement allowances are calculated. It is defined as the average of the salaries for the three highest consecutive years.

⁶ The State Teachers' Retirement System rates were not actuarially sound in 1951—they were increased in 1958.

⁷ Active members as used here means members who are teaching in the public schools and making regular contributions.

TABLE I
COMPARISON OF THE EFFECT OF SB 728 ON CALIFORNIA RETIREMENT CREDIT
AND RETIREMENT ALLOWANCE OF SEVEN TEACHERS

Teacher	Total out-of-California service (O.C.S.) in years	California retirement credit for O.C.S. after 5 years teaching in California	Total California retirement credit after 5 years teaching in California	Total California retirement credit for combination of out-of-California service and California service after teaching in California for number of years is shown at top of each column			Retirement value based on \$7,900 "final compensation" *	
				10 yrs.	15 yrs.	20 yrs.	Yearly	Monthly
A-----	0	0	5	10	15	20	\$3,591.50	\$274.29
B-----	3	3	8	13	18	23	3,686.48	307.20
C-----	5	5	10	15	20	25	3,949.80	329.30
D-----	10	5	10	20	25	30	4,608.10	384.00
E-----	15	5	10	20	30	35	5,266.40	438.87
F-----	20	5	10	20	30	40	5,924.70	493.73

The number of years teaching service in California schools is the same for each teacher on the above table.

* Retirement earnings assuming each teacher retires at age 65 after 25 years' service in California and that the average of highest three consecutive years' earnings ("final compensation") for each teacher was \$7,900. (The \$7,900 is the 1964-65 average salary for teachers in California.)

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not more than 120 equal monthly payments; in such minimum amounts as the Retirement Board may provide. "Regular"⁸ interest must be paid on any unpaid amount after the 90-day single payment period.

A retired member's share may be made in a single payment on or before April 1, 1965; or it may be credited to the retired member's account from deductions out of his monthly bonus retirement allowance. For example, Member O in Table II is already retired. The "fair share" he must pay into the system to receive a bonus retirement credit for 13.1 years of out-of-California service is \$17,187. Payment of this amount would increase his monthly retirement income (now \$624.08) by an additional \$624.08. Instead of taking from savings or borrowing to pay the \$17,187 in cash, he may elect to let his bonus allowance pay off his "fair share" and interest thereon. This means he would receive only part of his bonus allowance during the first 36 months after October 1, 1965; ($\$17,187 \div 36 \text{ months} = \$477.41 \text{ per month} = \$624.08 - \$477.41 = \$146.67 \text{ per month balance for income and interest payments.}$)

By electing the "time payment" plan, Member O will receive approximately \$146.67 per month bonus allowance plus his regular allowance of \$624.08. After the 36 payments are completed, his monthly retirement income will be \$1,248.16 for having served 13.1 years in the California public schools as a teacher and an administrator. This \$1,248.16 monthly allowance will be paid regularly for as long as he lives, no matter where he lives, and will continue after his death for the life of any dependent heir he may leave behind. And, of course, he is also receiving a retirement allowance from Minnesota for the 30 plus years he was employed in the schools of that state.

Cost to the State for Granting Bonus California Teacher Retirement Credit for Out-of-California School Service

During the summer of 1964, the consulting actuarial firm of Milliman & Robertson, under contract to the Joint Legislative Retirement Committee, conducted a survey and study to determine the probable costs of granting bonus retirement credit to members of the California State Teachers' Retirement System who had out-of-California school service. Senate Bill 728 is based upon the results of that study and the assumptions that went into it.

Enactment of Senate Bill 728 would mean an instant *debt* for California taxpayers of not less than \$273,267,000 *if* the obligation is funded immediately and this sum is successfully invested at not less than 4 percent interest over the actuarial period for the known qualified members in the Teacher Retirement System as of June 16, 1964.

If the liability is not funded, the enactment of SB 728 would mean the instant assumption of a long-term debt of not less than \$800,000,000 for just the qualified members as of June 16, 1964. This would be in addition to the existing continually increasing actuarial debt of \$2.8 billion already built into the teacher retirement system!

The actuarial survey upon which SB 728 is based contains a major flaw! The cost figures shown for the state assume that the 1965 Legislature will appropriate \$273,267,000 and invest that sum at 4 percent

⁸ "Regular" interest is not defined in SB 728.

TABLE II
EXAMPLES OF EFFECT OF SB 728 ON RETIREMENT STATUS OF MEMBERS OF STRS
 (All Prospective Benefits Computed on Actual Salaries of 1963-64 Year)

(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)	
Age at 7-1-65	1963-64 Salary	Benefit on California service only ^a			Total years of out- of-state service	Credited out-of- state service	Member contri- butions	Monthly benefit on out-of-state service ^b	State costs ^c		Total monthly allowance for in and out of Cali- fornia service
		Years	Monthly amount	Monthly cost ^b					Anticipated total payout		
A	57	23	\$967.61	19	19	\$6,248	\$799.33	\$740.18	\$148,766	\$1,766.94	
B	52	26	693.68	18½	18½	6,162	486.91	416.48	84,629	1,180.59	
C	40	35	820.40	6	6	1,147	140.64	126.57	25,997	961.04	
D	61	15	445.35	18	15	9,428	445.35	370.79	76,976	890.70	
E	58	13	594.49	30	13	28,972	594.49	334.78	68,764	1,188.98	
F	60	19	269.42	23	19	6,309	269.42	220.27	49,208	538.84	
G	56	29	575.94	17	17	3,931	337.62	302.31	68,957	913.56	
H	57	16½	291.39	23½	16½	12,733	291.39	175.36	39,175	582.78	
I	62	18½	495.19	17½	17½	4,943	462.18	426.58	95,298	888.76	
J	56	17	158.99	17	17	3,315	158.99	131.39	32,834	317.98	
K	76	6	286.32	41	6	9,810	286.32	176.46	19,587	572.64	
L	59	25	479.00	18	18	5,469	344.88	300.57	67,147	823.88	
M	56	18	276.12	23	18	8,712	276.12	197.87	45,134	552.24	
N	63	19	431.11	18	18	9,480	408.42	341.77	70,951	839.53	
O	68	13.1	624.08	30½	13.1	17,187	624.08	488.62	89,557	1,248.16	

* Retired 6-20-64 at age 55. Values stated at 4-1-66.

^a These calculations presume that the persons will continue service to the end of that school year in which age 65 is attained and that the benefits will be based on the salary for 1963-64. This is a fallacy, as the salaries will be greater, particularly for those who are less than age 62.

^b The calculations in column 8 is based on the 1963-64 salaries and is probably far less than will eventually be payable to those who have not attained age 62.

^c The state costs (not including the annuity provided by member contributions under SB 728, in columns 9 and 10 are based on 1963-64 salaries and are less than will eventually be payable. These figures do illustrate the need to consider the "pay-out" and not the reserve value.

Column (10)—anticipated "pay-out" to be funded by state appropriations.

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interest. The state's current method of financing its share of teacher retirement costs, however, is on the basis of funding the liability as it matures—not as it accrues. Thus the actuarial survey is grossly misleading when it states a "present value" of \$273,267,000. If this bonus retirement allowance program is to be funded in the same manner as the teachers' retirement allowances are currently being funded, no amount of state money will be invested, and 0 percent interest will be earned. If 0 percent interest is earned (which will be the actual case) the "total" cost over the next 40 years will be in excess of \$800,000,000!

The proponents of the SB 728 bonus retirement proposal point out that the first full year costs will be only \$3,800,000. This too is misleading. The actuarial survey determined that the average age of the members entitled to out-of-California bonus retirement credit is 43.31 years. The full cost of the bonus retirement allowances in 15 or 20 years, when these teachers retire, will be \$30,000,000 in new money each year! According to the survey the cost to the state for the first 10 years, before even a fourth of the eligible teachers have retired, will be an average of \$8,400,000 per year. (See Table III.)

Should SB 728 be enacted, there is no way of knowing what amount of future liability the California taxpayer will have to assume. In just the short period of 4½ years between the 1961 and 1964 surveys, the number of Teachers' Retirement System members eligible for out-of-California bonus credit increased 25.5 percent, from 45,789 members to 57,484 members. With just normal growth then, the state's liability could increase approximately 25 percent every four years. With such a generous bonus retirement allowance as a glittering attraction for the older, closer-to-retirement teacher, California probably will be flooded with "mature" teachers with a *superabundance* of experience.

It would be naïve to think of the cost of SB 728 as a mere \$800,000,000 when California is having such a difficult time recruiting state college and University of California teachers as well as a host of occupational specialists needed in our civil service. *If SB 728 is enacted, it is only logical to conclude that the next pressure will be for the same type of benefit for state college members of the State Employees' Retirement System and the academic members of the University of California Retirement System.*

Where will it end? Once SB 728 establishes the precedent, why not retirement bonuses for all California public employees. Then perhaps even Sheriff Jim Clark of Dallas County, Alabama, may become a California peace officer and qualify for a retirement bonus by reason of the "service" he performed in Selma, Alabama, during the 1965 voter registration drives and freedom marches.

RATIONALE

Some Basic Questions Concerning SB 728

In light of the costs connected with SB 728, three basic questions arise: Why do we need to give bonus retirement credit for school service rendered in other states? What problems will such a costly program solve for us? What alternatives do we have to the bonus retirement scheme? Each of these questions is discussed in depth on the following pages.

TABLE III
EMERGING NET COSTS TO STATE FOR 10 FISCAL YEARS CONTRIBUTION AND NUMBER
OF OUT-OF-CALIFORNIA TEACHERS INVOLVED FOR EACH OF 10 YEARS
System No. 1

1965-66 ($\frac{1}{2}$ yr.)	1966-67	1967-68	1968-69	1969-70	1970-71	1971-72	1972-73	1973-74	1974-75
\$1,241,000 2,390 teachers	\$3,844,000 3,359 teachers	\$5,100,000 4,326 teachers	\$6,563,000 5,490 teachers	\$7,961,000 6,652 teachers	\$9,445,000 7,911 teachers	\$10,737,000 9,066 teachers	\$12,141,000 10,219 teachers	\$12,919,000 11,267 teachers	\$14,053,000 12,312 teachers
Total cost for 10 years-----									
Present value of 10 years' cost invested at 4 percent—June 1, 1964-----									
								\$84,004,000	
								\$63,261,000	

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Why Do We Need a Program of Bonus Retirement Credit for Out-of-California School Service?

The facts indicate we do not. California teachers are the highest paid in the nation (see Table IV) and California teacher retirement allowances are the most generous in the United States! California taxpayers owe no teacher a bonus retirement allowance because of inequities in our teacher retirement allowances based on current salaries. *Appendix A indicates that California teacher retirement allowances, based on year-for-year credit are higher than any other state's.* California teacher retirement allowances for 20 years of service in California are almost equal to the allowances paid for the other most generous states for 30 years of service at the same final compensation.

If California already pays the highest allowances in the nation why should we give a recruitment bonus in the form of extra retirement credit to teachers who are already recruited?

TABLE IV
ESTIMATED AVERAGE SALARIES OF CLASSROOM TEACHERS
IN PUBLIC SCHOOLS, 1964-65

1. Alaska (16—\$6,354) -----	\$8,360	28. Missouri -----	\$5,660
2. California -----	7,900	29. Montana -----	5,635
3. New York -----	7,800	30. Kansas -----	5,587
4. Connecticut -----	6,975	31. Vermont -----	5,550
5. Massachusetts -----	6,950	32. Texas -----	5,461
6. Illinois -----	6,809	33. Virginia -----	5,450
7. Maryland -----	6,727	34. New Hampshire -----	5,435
8. Delaware -----	6,700	35. Maine -----	5,200
9. Michigan -----	6,700	36. Louisiana -----	5,175
10. New Jersey -----	6,698	37. Oklahoma -----	5,160
11. Arizona -----	6,670	38. Idaho -----	5,150
12. Indiana -----	6,530	39. North Carolina -----	5,052
13. Nevada -----	6,530	40. Georgia -----	5,050
14. Oregon -----	6,470	41. Nebraska -----	5,000
15. Minnesota -----	6,460	42. Tennessee -----	4,850
16. Washington -----	6,400	43. North Dakota -----	4,800
17. Rhode Island -----	6,251	44. Alabama -----	4,775
<i>United States average</i> -----	6,235	45. Kentucky -----	4,750
18. Pennsylvania -----	6,150	46. West Virginia -----	4,590
19. Florida -----	6,140	47. South Dakota -----	4,475
20. Wisconsin -----	6,125	48. South Carolina -----	4,450
21. New Mexico -----	6,085	49. Arkansas -----	4,200
22. Hawaii -----	6,060	50. Mississippi -----	4,103
23. Ohio -----	6,050	Canal Zone -----	8,142
24. Colorado -----	6,025	Guam -----	4,908
25. Wyoming -----	5,996	Puerto Rico -----	3,940
26. Utah -----	5,945	Virgin Islands -----	4,850
27. Iowa -----	5,747		

"In 1964-65, the average salary of classroom teachers is an estimated \$6,235 (Table 29). Disregarding Alaska, where high living costs reduce the apparent high salary rank to 16th place, 12 states, California, New York, Connecticut, Massachusetts, Illinois, Maryland, Delaware, Michigan, New Jersey, Arizona, Indiana, and Nevada, are paying classroom teachers an average salary of over \$6,500; in California the average is \$7,900. Table 30 shows that nationwide 33.8 percent of the classroom teachers are being paid \$6,500 or more in 1964-65. Four states, South Dakota, South Carolina, Arkansas, and Mississippi, are paying teachers average salaries under \$4,500. Table 27 gives average salaries of elementary-school teachers; and Table 28, those of secondary-school teachers. In these two tables the states are roughly in the order listed in Table 29.

For the country as a whole the average salary being paid the total instructional staff in 1964-65 is estimated at \$6,449. The instructional staff includes classroom teachers, who make up about 92 percent of the total, and principals, supervisors, and others as the remaining 8 percent. Disregarding Alaska, five states, California, New York, Connecticut, Massachusetts, and Maryland, are paying averages over \$7,000. In three states, South Carolina, Arkansas, and Mississippi, instructional staff personnel are being paid less than \$4,700. (See Table 31.) Table 32 shows the relationship of the average salaries in the states to the national average.

In the 10-year period, 1954-55 to 1964-65, average salaries of the instructional staff increased 90.3 percent in Kentucky, but only 33.8 percent in Louisiana (Table 33.)"

SOURCE: Pages 20-23, Research Report 1965-R1; Rankings of the States, 1965; Research Division—National Education Association, Washington, D.C. 65 pp.

Need it or not, the pressure built up in Sacramento for this bonus retirement scheme exceeds anything seen here in recent years. Governor Brown gave his unqualified endorsement to the idea even before SB 728 was introduced. In a letter dated October 23, 1962, to Miss Myrtle Flowers, President of ARCOSS, Governor Brown stated:

"I want you and the members of your organization to know that I agree steps must be taken to remove this inequity. California depends on attracting teachers from out of state to meet its ever-increasing classroom needs, and it is only fair that these teachers be allowed to acquire an adequate retirement fund. . . . I pledge to you and your organization that, if returned to office, I will support legislation to correct this inequitable situation."

A copy of the Governor's letter to Miss Flowers is included as Appendix C.

Nearly every major professional organization connected with school personnel has endorsed SB 728; these organizations include the California Teachers Association, the California Federation of Teachers; the California Association of School Administrators; the California Elementary School Administrators Association; and the California Secondary School Administrators Association, to list a few.

Whether these are willing endorsements is another question—*these organizations would be foolish to oppose SB 728.*⁹ The 57,000-plus dues paying members of ARCOSS make up large membership blocks in the endorsing organizations. This puts them in a position of control that cannot be easily overcome.

There are 23 Senators and 32 Assemblymen listed as coauthors on SB 728, and it has already been given a "do pass" recommendation by the Senate Governmental Efficiency Committee—often called the graveyard of legislation.

The people behind ARCOSS have done an outstanding selling job and have developed an appealing rationale for their cause. The best way to understand this rationale and to evaluate its validity is to study the statements of the spokesman for the ARCOSS organization and analyze them in the light of known facts.

Mr. Shirl Olympius, public relations counsel for ARCOSS, testified before the Joint Legislative Committee on Retirement upon several occasions in 1964. His testimony was directed toward explaining the need for California to give bonus retirement credit for out-of-Califor-

⁹ Although the ARCOSS organization is headquartered at the CTA building in Burlingame, and the CTA has approved the ARCOSS bills, CTA has never sponsored one.

nia school service. He, of course, outlined many benefits that would accrue to California as a result of initiating such a program.

SB 728—The Bonus Retirement Plan, and Recruitment of Out-of-California Teachers

SALES POINT NO. 1

The basic argument Mr. Olympius repeated over and over, is that the bonus retirement bill will help recruit out-of-California teachers.

... "The shortage of teachers that has existed, that now exists, and will continue to exist . . . in California can only be met through recruitment of out-of-state teachers to give us the trained, experienced teachers we need."¹⁰

His implication is that a bonus retirement program is the only answer. But is it?

There is no indication that the supply of teachers from other states is diminishing. Table V indicates the flow of teachers into California is increasing in actual numbers and as a percentage of the total new teachers.

We have no data based on an authoritative study documenting the fact that teachers, with the qualifications California Schools need most, are declining to come here because we lack a bonus retirement plan. The questionnaire used by the consulting actuaries in making the study, paid for by the Joint Legislative Retirement Committee, did contain a four-part question designed to find out what brought the teachers contacted in the survey to California. The tabulated answers to this question were not reported to the committee. (These data have been tabulated, however, and will be discussed in another section of this analysis.)

TABLE V
ESTIMATED RELATIONSHIP OF OUT-OF-CALIFORNIA TEACHERS TO TOTAL NUMBER OF TEACHERS FIRST EMPLOYED IN CALIFORNIA IN VARIOUS YEARS

School Year	Total Teachers* New to California Teaching	Out-of-California Teachers	% (2-1)
57-58	14,990	4,970	33%
58-59	14,830	4,420	30%
59-60	15,080	4,280	28%
60-61	15,300	5,010	33%
61-62	17,900	6,400	36%
62-63	18,250	5,430	30%
63-64	18,700	7,460	38%

* Does not include teachers who move from one California district to another California district.

(Figures rounded to nearest tens or whole percent.)

SOURCE: California State Department of Education.

Perhaps California Is Already Too Dependent Upon Teachers Imported From Other States

Table V raises the question whether California should continue to increase its dependency upon teachers trained in other states. One means of maintaining the quality and character of our public schools is through the teacher training programs in California collegiate institu-

¹⁰ P. 8 and 9. Olympius, Shirl; *Testimony and Summation Before the Joint Legislative Committee on Retirement*; San Diego. October 22, 1964; 22 pp.

tions. *When we increase our dependence upon teachers trained by programs and in institutions and systems over which we have no control or guidance, we surrender a proportionate amount of our control over the quality and character of our schools.*

There is no doubt that any program of bonus California teacher retirement credit for out-of-California school service would be an effective recruiting device, particularly for recruiting older, closer-to-retirement teachers. California school administrators could figuratively "stand on the border and whistle"—and be trampled by the rush of older teachers.

The older, closer-to-retirement teachers with many years invested in their own systems may hesitate to move to California without a bonus retirement to beckon them. The question is, however, *do we want to recruit these older teachers?*

It is interesting to speculate whether an experienced teacher in the 27-to-32 age bracket would be more easily induced to move to California by a reasonable "resettlement" allowance, payable in cash when he reports to work, or by the promise of five extra years' retirement credit, payable 30 to 35 years in the future.

We have not asked and therefore cannot answer the question concerning the qualifications and experience we should look for when recruiting from out of California.

A Look at ARCOSS Leadership and the Appeal of Bonus Retirement Credit

The typical out-of-California teacher is, according to the findings of the actuarial study, 43 years old with about 5.5 years of out-of-California school service. The bonus retirement idea, however, seems to have its greatest appeal to an even older, closer to retirement age group with considerably more than 5.5 years of out-of-California service. This is clearly indicated by the data in Table VI which gives the basic retirement data on the ARCOSS regional and statewide officers—individuals interested enough in a retirement bonus scheme to assume leadership responsibilities.

There are 46 individuals on the list and 27 of them are 56 years old or older; 37 of them are over 50 years old and none of them are under 40 years of age.

ARCOSS officers also run higher than average in years of service in other states; 34 of the 46 will be able to claim 12 years or more of out-of-California service. Their salaries run above the average too. Thirty-two of the 46 earned \$9,000 or more per year for the 1963-64 school year with 20 of the 46 earning \$10,000 or more annually.

Retirement allowances based solely on California service will be substantial among the ARCOSS officers. Twenty-eight of the 46 will receive retirement allowances of \$350 or more; and only one will receive less than \$200 monthly.

This individual (No. 15—Table VI) will receive \$183.96 per month retirement allowance from California where he will teach only nine years before he reaches retirement age. He completed a full 30-year career in Kansas before immigrating to California! Under Kansas law he will receive (or is receiving) a minimum of \$90 monthly for a minimum of \$273.96 per month for service in Kansas and California.

TABLE VI
DATA PERTAINING TO RETIREMENT STATUS OF ARCOSS OFFICERS
 (Benefits Computed on Basis of 1963-64 Salaries)

(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)
Age at 7-1-68	1963-64 salary	Years	Benefit on California service only ^a	Total years of out-of-state service	Credited out-of-state service	Member contributions	Monthly benefit on out-of-state service ^b	Monthly cost ^b	Anticipated total payout	Total monthly allowance for in and out of California service
1		26	\$756.34	18	18	\$6,555	\$523.62	\$406.24	\$93,714	\$1,279.96
2	\$15,264	27	710.79	5	5	1,139	122.55	107.19	23,946	833.34
3		23	370.53	1	1	203	16.11	14.73	3,300	386.64
4	8,320	30	530.40	17	17	10,256	300.56	150.93	33,718	830.96
5	9,350	22	576.18	21	21	8,277	549.99	463.20	95,141	1,126.17
6	13,742	22		11	11	2,598	216.26	196.46	45,284	707.70
7	10,400	25	491.50	33	15	11,935	399.45	294.98	59,994	798.90
8	14,088	15	399.45	11	11	3,812	201.74	165.87	37,453	641.90
9	9,700	24	440.16	21	21	8,114	418.11	360.51	81,403	836.22
10	10,330	21	418.11	9	9	3,421	184.50	127.06	26,098	861.00
11	10,760	33	676.50	20	18	11,605	259.38	130.36	24,192	518.76
12	7,563	18	259.38	16	16	6,651	381.28	322.11	66,876	929.37
13	548.09	17	548.09	17	17	3,468	286.66	259.17	59,739	822.71
14	12,505	27	536.05	15	15	3,205	233.10	210.35	47,981	606.06
15	8,220	24	372.96	30	9	5,962	183.96	141.39	28,730	367.92
16	10,719	9	183.96	3	3	631	66.82	59.07	13,474	792.24
17	725.42	38	725.42	2	2	627	40.32	30.82	6,195	685.44
18	654.12	32	654.12	16	16	3,843	319.52	288.66	58,636	778.83
19	459.31	23	459.31	3	3	1,735	52.40	34.20	7,925	351.80
20	299.40	20	299.40	20	20	7,301	285.40	228.52	51,051	599.34
21	313.94	22	313.94	14	14	3,206	181.30	152.30	34,389	492.10
22	310.80	24	310.80	14	14	4,259	268.35	234.48	41,104	536.70
23	268.35	14.67	268.35	26	16	5,961	193.60	141.74	32,005	411.40
24	6,400	18	217.80	16	16	6,947	376.11	302.12	60,726	788.04
25	411.93	23	411.93	21	21	7,533	217.68	141.72	32,326	562.24
26	9,518	19	344.66	12	12	2,760	366.60	340.04	70,592	1,246.44
27	19,237	24	879.84	10	10	4,733	346.00	311.68	64,705	692.00
28	9,081	20	346.00	21	20					

TABLE VI—Continued
DATA PERTAINING TO RETIREMENT STATUS OF ARCOSS OFFICERS
 (Benefits Computed on Basis of 1963-64 Salaries)

(1) Age at 7-1-68	(2) 1963-64 salary	(3) Years	Benefit on California service only ^a		(5) Total years of out- of-state service	(6) Credited out-of- state service	(7) Member contri- butions	(8) Monthly benefit on out-of-state service ^b	Proposed under SB 728		(11) Total monthly allowance for in and out of Cal- ifornia service
			Amount	Years					Monthly cost ^c	Anticipated total payout	
28-----	40	34	659.60	7	7	7	3,659	135.80	68.31	13,730	795.40
29-----	52	26	395.98	4 $\frac{5}{8}$	4 $\frac{5}{8}$	4 $\frac{5}{8}$	1,527	70.44	53.12	10,911	466.42
30-----	61	24	355.92	21	21	21	4,558	311.03	276.89	666.95	1,098.22
31-----	56	29	740.66	14	14	14	3,483	357.56	323.54	65,743	1,098.22
32-----	54	26	663.26	13	13	13	5,029	331.63	278.49	56,589	994.89
33-----	55	26	401.18	17	17	17	5,680	262.31	204.60	41,575	663.49
34-----	58	27	459.27	18	18	18	4,713	306.18	267.32	61,617	765.45
35-----	58	16	481.92	24	16	16	15,305	481.92	344.72	70,805	963.84
36-----	52	30	461.40	13	13	13	4,200	199.94	151.56	30,464	351.50
37-----	58	19	225.34	12	12	12	4,392	142.32	105.85	24,144	248.17
38-----	55	30	511.80	13	13	13	2,862	221.78	194.66	43,487	415.84
39-----	53	20	350.60	16 $\frac{1}{2}$	16 $\frac{1}{2}$	16 $\frac{1}{2}$	10,601	289.25	171.84	34,540	461.09
40-----	50	31	457.25	10	10	10	2,749	147.50	115.03	25,974	262.53
41-----	58	25	462.00	16	16	16	4,375	295.68	256.75	53,303	552.44
42-----	44	28	502.60	9	9	9	5,194	161.55	81.07	16,652	242.62
43-----	58	26	825.50	16	16	16	4,029	508.00	472.16	98,020	980.16
44-----	47	35	667.80	7 $\frac{1}{2}$	7 $\frac{1}{2}$	7 $\frac{1}{2}$	1,812	143.10	117.90	23,957	261.00
45-----	49	26	644.02	11	11	11	2,237	272.47	243.48	48,939	515.95
46-----	56	25	433.50	9	9	9	2,545	156.06	131.20	26,660	287.26

^a These calculations presume that the persons will continue service to the end of that school year in which age 65 is attained and that the benefits will be based on the salary for 1963-64. This is a fallacy, as the salaries will be greater, particularly for those who are less than age 62.

^b The calculations in columns (8) and (9) are based on the 1963-64 salaries and are probably far less than will eventually be payable to those who have not attained age 62.

^c The State costs (not including the annuity provided by member contributions under SB 728) in columns (9) and (10) are based on 1963-64 salaries and are less than will eventually be payable. These figures do illustrate the need to consider the "pay-out" and not the reserve value. Column (10)—anticipated "pay-out" to be funded by state appropriations.

PREPARED FOR SENATE FACT FINDING COMMITTEE ON EDUCATION.

ALY

SALES POINT NO. 2

**SB 728 and the Annual Teacher-Recruitment Trips
Administrators Make to Other States**

The promoters of the bonus teacher retirement plan want to end the recruitment trips administrators make to other states. SB 728 . . .

"will greatly reduce, and for all practical purposes, eliminate the need and the cost of out-of-state teacher recruitment programs . . . Teacher recruitment costs the California taxpayer a minimum of \$3 million a year . . . Remember that 4,500 out-of-state teachers a year have been flowing into this system. How do they get here? 35,814 of them have come through forms of recruitment. School districts have sent administrators into the highways and byways of the United States begging . . . teachers to come to California. Travel, the hotel bills, the food bills and the salaries alone, . . . are an amazing cost. The enactment of this legislation would assist in eliminating this cost."¹¹

The most obvious thing about the above statement is that the cost of recruitment trips, even if they are twice the \$3½ million quoted above, pales beside the cost of SB 728.

The fact is, however, *only 9 percent of the teachers surveyed by the actuaries were recruited to come to California* (See Table VII). The overwhelming majority came to California on their own; either after first obtaining a teaching job or to look for a teaching position; or for other reasons. *The important point is—they came on their own.*

These teachers and administrators could not have come to California expecting bonus retirement credit for out-of-California service—no such program is, or was, in effect. They must have come for other reasons, such as the highest teachers' salaries in the nation (See Table IV); the most generous retirement system in the nation (See Appen-

TABLE VII

TABULATION OF REASONS WHY TEACHERS CAME TO CALIFORNIA
SHOWN BY NUMBER OF YEARS OF OUT-OF-CALIFORNIA SERVICE
(From Questionnaires Furnished Legislative Interim Committee)

Reason for coming to California	Number of years of out-of-state teaching service					Total	
	1-3	4-6	7-9	10 and over	Others *		
Recruited by a school official	1,954	1,029	695	1,462	506	5,646	9%
Used his own initiative to seek a California position	7,042	4,332	2,537	4,643	1,751	20,305	34
Came to California for purpose of seeking California teaching position	2,186	1,348	809	1,341	392	6,076	10
Moved to California for other purpose but took teaching position after arrival	3,931	7,993	4,505	2,580	2,664	21,673	36
Other reasons	1,780	529	263	560	3,561	6,693	11
Total	16,893	15,231	8,809	10,586	8,874	60,393	100%

* Others (years of service). Did not indicate years of service or the number of years did not register on electronic equipment.

SOURCE: State Department of Finance.

¹¹ *Op. cit.* Olympus p. 10.

dix A); the mandatory teacher tenure law; the fabled California climate, and a host of other attractions California has for the residents of less fortunate states.

The recruitment trip has some possible advantages over taking "pot-luck" by hiring teachers who come here on their own. First, the recruitment trip should enable the junketing administrator to be more selective in terms of personal and professional qualifications possessed by the teachers he seeks out for recruitment. Secondly, the administrator should be able to make a better appraisal of the success the prospective teacher is enjoying in his district of origin.

SALES POINT NO. 3

SB 728 and the California "Double Standard" Regarding Teacher Retirement

SB 728 will, according to Mr. Olympius:

. . . "eliminate the double standard that now exists in the California State Teachers' Retirement Act . . . and . . . eradicate the inequities that now exist in the present system. The California Legislature historically has allowed teachers from other states to credit their out-of-state teaching experience toward their retirement. This practice stopped as of July 1, 1944 . . . and I believe you will agree with me that this legislation will eradicate the inequities that now exist in the present State Teachers' Retirement Act."¹²

This "eliminate the double standard" rationale is a major point with the ARCOSS people. The implication is that teachers who came to California after July 1, 1944, are not treated as fairly as teachers who came before that date. The opposite is true.

Prior to 1944, teacher retirement benefits were very meager; a teacher received a maximum of \$50 monthly after 30 years or more of service. Out-of-California teaching was credited toward the required 30 years service but it meant little insofar as benefits were concerned.

In 1944, the California Teacher Retirement Act was rewritten and teacher retirement benefits became, and still are, the most generous in the nation.

Actually, enactment of SB 728 would create gross inequities and a very real "double standard" to the detriment of teachers who have given a professional lifetime to California schools. Look again at Table I. The difference in retirement allowances between Teacher A who taught 25 years in our schools and Teacher F who also taught 25 years is an undeniable inequity that would be created by SB 728.

But that isn't all. Judging from the data in Table VI, all of the ARCOSS officers will fare better in retirement than many teachers who devoted a lifetime to service in the California public schools but who retired prior to 1944. The basic allowance for these retired California teachers is \$80 per year, per year of service; or about \$276 monthly, after teaching in California for 40 years. (40 years \times \$80 = \$3,200 yearly, or \$276 monthly.) Compare this with the \$183.96 Teacher "O" in Table II will receive as a retirement allowance for

¹² Op. cit. Olympius p. 9.

only nine years' service in California! His allowance is still well above the \$159 monthly national average retirement for public employees.¹³

SALES POINT NO. 4

SB 728 and the "Salary Bonus" Allegedly Paid Teacher Recruits

Mr. Olympius told the Joint Legislative Committee on Retirement:

"... Because the salary spread between what California pays its teachers and what is paid in other states is no longer as great as it was a number of years ago, we no longer have the lure of money—higher wages . . . Therefore, our school officials are having to use "bait." The "bait" is starting salaries beyond that which the teacher is entitled to receive for the number of years he has taught . . . Whether we like the fact or not, this is a common practice. It is being done every day by the majority of the recruitment administrators from California School ¹⁴ districts" . . .

The above statement can only be hearsay. Neither the California Teachers Association nor the State Department of Education could offer any evidence that such bonuses are being given. A glance at Table IV will indicate there is little or no reason for such a practice.

A teacher's salary is usually established by his years of training and years of experience, as determined on a standard salary schedule used for all teachers of a given district.

As a matter of general practice, the school districts in California grant full salary scale credit for most academic credits and limit the amount of experience credited for salary scale purposes. Usually, districts will give year-for-year up to five years' credit for teaching in California and one year for two years, up to five years' credit for out-of-California teaching experience.

Actually, SB 728, which bases the member's "fair share" contribution on the first year's salary in California would strongly encourage an immigrant teacher to accept a low first-year salary.

SALES POINT NO. 5

It Is Only Proper That California Should Bear Some of the Expense for Educating and Training Teachers Who Come Here From Other States

This is another point made by the ARCOSS people.

"Since 1944, 57,484 teachers . . . have pulled up roots in their home areas and answered the siren call of California educators to move to California. California received a bargain—these teachers were educated and trained at no cost to the California taxpayer. . . . We owe these teachers an outstanding debt of gratitude."¹⁵

No mention is made of the fact that if California paid these teachers for their education and training they would be paid double. After all, it is they who received the benefits of a college education and preparation for a career in an honorable and well-paid profession.

Should the legislatures of the other states and territories resolve that California should reimburse them for the teachers we have proselyted,

¹³ Page 3, Census of Governments: 1962 *Retirement Systems of State and Local Governments*; U.S. Department of Commerce; Vol. VI (Topical Studies), No. 1.

¹⁴ Loc. cit. Olympius, p. 11.

¹⁵ Loc. cit. Olympius p. 5.

this would be understandable. *But the teachers themselves have no cause to complain.*

What Can California Expect to Get From a Bonus Retirement Grant to Out-of-California Teachers?

1. With the appeal that bonus retirement credit has for the older, closer-to-retirement teacher, we could find that California taxpayers are supporting *mass numbers of 40-year retirement allowances, based on high California salaries, for teachers who have given only 20 years' service in California schools.*

2. Bringing in older, closer-to-retirement teachers will only *accelerate teacher turnover due to retirement and aggravate the teacher shortage.*

3. *We could make vagabonds of our California teachers.* The young and unfettered teacher with tenure could, as many do now, take periodic leaves without pay and teach in other states or in government-maintained schools for American dependents in almost any country you wish to name. As of now, this wandering urge is held in check by a prudent look to the retirement years; the vagabond teacher collects no generous California retirement credit on his or her wanderings. This deterrent will no longer exist if SB 728 becomes law.

4. *We may find that we are paying generous California retirement allowances for teaching experience that would not be permitted in this state today.* As Appendix B will show, California was among the first states to require a baccalaureate degree for teaching at either the secondary or elementary levels. When we recruit an out-of-California teacher, with 20 years' prior experience in another state, for the 1965-66 school year we could end up paying a bonus retirement allowance for the teaching experience of an 18-year-old with one year of college, floundering through the school year in a one-room school in rural Arkansas or Texas or Mississippi or Michigan or any one of a dozen other states.

As late as 1964, five states and Puerto Rico (Puerto Rico experience would qualify under SB 728) required only two years beyond high school graduation for a regular elementary teaching certificate.

California takes such great care to prepare its teachers properly, it is incongruous to pay a premium for mediocre teaching experience.

What Are the Alternatives to the Bonus Teacher Retirement Plan?

1. *A logical answer to the current teacher shortage is to do more to encourage college students to choose teaching as a career.* Data gathered by the Department of Education show that the proportion of teacher credential candidates in our colleges and universities is declining, with a critical shortage of elementary teacher credential candidates occurring in the 1967-68 school year. For the 1963-64 school year, all colleges and universities in California, accredited for teacher training, "graduated" only 12,153 teacher credential candidates. Only about 80 percent of these newly credentialed teachers actually accepted teaching jobs for the 1964-65 school year.

We should be concerned that 20 percent of those who prepare for a teaching career, through four or more years of college work, elect not to become teachers once they receive their teaching credential.

2. Another possible solution is to *make teaching more attractive to the thousands of Californians who hold valid teaching credentials but*

who are not now teaching. Flexible scheduling may make it possible to attract and use the inactive teacher who might be willing to teach two or three days but would not be willing to teach a full five-day week.

3. A reasonable "resettlement allowance" will probably be an excellent device to attract experienced teachers in the 27-to-32 age bracket. But before giving any such allowance we should first decide what kind of teachers we need, with how much, and what type of experience; then structure the recruitment device to attract precisely those kinds of teachers.

The State Board of Education could be empowered to annually survey the schools to determine the teaching specialties that will be needed for the following school year. Once the requirement list is established, and the California supply of such teachers is known; the board could establish a priority scale that would determine the amount of resettlement allowance, over and above normal moving costs, a district superintendent could offer. *The state should bear the cost of such allowances and the districts should apply for them to the state through the county superintendents of schools; just as they do now for provisional teaching credentials.*

The resettlement allowance should be made available to any person residing in California who holds a valid credential found on the State Board of Education's priority list, but who has not taught in the public schools for the previous two years, or who has not previously taught in this state.

Such a device could be operated in close concert with our teacher training institutions to give us just those teaching specialties that we need but are not supplying from California colleges.

In California teacher-training programs we try to encourage teacher-candidates to prepare for those fields where they will be needed most by the time their training is completed and they are ready to "enter the market." Why offer a nonselective bonus to the horde of older teachers who will inevitably pour across California borders to compete with our own college graduates?

It is doubtful that California needs to offer any kind of a bonus to induce teachers to come here from other states. *But if we decide that a bonus is needed, let us not pay it to those who are already recruited and teaching in California.*

5. Undoubtedly one of the best solutions to the problems of the migrant teacher is that of developing among the states the pattern of providing vested rights to benefits already earned if the teacher terminates service prior to attaining the normal retirement age. In most systems this is 60 or 65 years. If the teacher has completed the minimum years of service required under a particular state's statutes, and leaves his contribution on deposit at termination of service he is protected. The migrant teacher may thus qualify for benefits under several systems. Even though there may be variations between states in the formulas under which his service was credited he will at least receive the benefit he was promised when the service was rendered. Furthermore, his benefits from the several systems in which the member may have served will be financed from his own contributions and from those of the particular taxpayer he served.¹⁶

¹⁶ The National Council on Teacher Retirement (affiliated with the National Education Association) has recommended this solution to the problem.

APPENDIX A

BENEFITS PAYABLE

The states providing credit for out-of-state service are generally those with the less liberal retirement formulas. For comparison purposes there is shown the benefits provided by some of the selected systems on the basis of the case of a male teacher who will retire at age 65, with a total of 38 years of service, of which 18 years were served prior to his moving to the state from which the benefit will be paid. His salaries for the highest five (final) years of service were \$12,000, \$11,500, \$11,000, \$10,500 and \$10,100. This schedule of benefits is unrealistic to the extent that it is inflated for many of the states. Salaries of this size are rare in many localities, while in some of the more prosperous states the salaries are not unlike those paid secondary teachers in the top brackets.

I. STATES WHICH DO NOT CREDIT OUT-OF-STATE SERVICE EXCEPT AS TO BENEFITS WHICH MAY BE PROVIDED FROM MEMBERS' CONTRIBUTIONS

	<i>Total years of credited service</i>	<i>Monthly benefit</i>
California -----	20	\$438.28
Florida -----	20	294.33
New Jersey -----	20	306.10 ¹
Ohio -----	20	303.05

¹ Less member's Social Security benefit.

SOURCE: California State Teacher's Retirement System.

II. STATES WHICH CREDIT OUT-OF-STATE SERVICE BUT REQUIRE CONTRIBUTIONS LARGER THAN THOSE REQUIRED FOR LOCAL SERVICE

	<i>Years of service</i>			<i>Monthly benefit</i>		
	<i>Local</i>	<i>OSS</i>	<i>Total</i>	<i>On OSS</i>	<i>On local service</i>	<i>Total</i>
Arkansas -----	20	10	30	\$58.33	\$121.67	\$180.00 ²
Georgia -----	20	10 ³	30	160.71	321.41	482.12
New Mexico -----	20	5	25	54.25	217.00	271.25
North Dakota -----	20	7	27	35.00	170.00	205.00
Pennsylvania -----	20	10	30	131.17	262.33	393.50 ⁴
Texas -----	20	10	30	92.25	184.50	276.75

² Plus member's social security benefit.

³ If other state credits Georgia service.

⁴ Member is also covered by social security on an integrated basis. This example assumes no social security coverage. It would be reduced if the member was entitled to social security.

III. STATES WHICH CREDIT OUT-OF-STATE SERVICE, AND REQUIRE CONTRIBUTIONS ON THE SAME BASIS AS LOCAL SERVICE

	<i>Years of service</i>			<i>Monthly benefit</i>		
	<i>Local</i>	<i>OSS</i>	<i>Total</i>	<i>On OSS</i>	<i>On local service</i>	<i>Total</i>
Alaska -----	20	10	30	\$137.75	\$275.50	\$413.25
Connecticut -----	20	10	30	91.73	366.84	458.67
Delaware -----	26	4	30	33.33	216.67	250.00 ⁵
Illinois ⁶ -----	20	10	30	153.06	306.11	459.17
Indiana -----	20	8	28	51.45	232.69	284.14 ⁵
Kentucky -----	20	16	36	142.01	321.31	463.32
Massachusetts -----	20	10	30	225.92	451.83	677.75
Michigan ⁷ -----	20	15	35	131.61	175.52	307.13 ⁵

III. STATES WHICH CREDIT OUT-OF-STATE SERVICE, AND REQUIRE CONTRIBUTIONS ON THE SAME BASIS AS LOCAL SERVICE—Cont.

	<i>Years of service</i>			<i>Monthly benefit</i>		
	<i>Local</i>	<i>OSS</i>	<i>Total</i>	<i>On OSS</i>	<i>On local service</i>	<i>Total</i>
Missouri -----	20	10	30	74.31	247.70	322.01
Montana -----	20	10	30	85.87	123.56	209.43 ⁵
Nebraska -----	20	10	30	29.03	52.58	81.61 ⁵
New York ⁸ -----	20	10	30	106.38	301.83	408.21 ⁵
Oklahoma -----	20	5	25	14.08	99.78	113.86 ⁵
South Carolina -----	20	10	30	64.33	128.66	192.99 ⁵
West Virginia -----	20	10	30	62.50	125.00	187.50 ⁵

⁵ Plus member's social security.

⁶ Does not include Chicago.

⁷ Does not include Detroit.

⁸ Does not include New York City.

It is difficult to draw any hard and fast conclusions from these comparisons. They point up, with minor exceptions, that those states in group I, which do not in effect provide for credit on out-of-state service, pay better benefits on their own service than the states which do allow credit for out-of-state service pay for combined in- and out-of-state teaching. The exceptions, which are Georgia and Pennsylvania in group II, have other restrictive provisions in their laws. Georgia credits out-of-state service only if it is credited by the other state and both states require quite large contributions from their members on out-of-state service. These systems report that their provisions for out-of-state service credits present no problems and the requests for such credit are infrequent. Probably the lack of reasonable vesting provisions provide savings far in excess of any prospective cost of credits for teaching in other states.

In group III the exceptions are Alaska, Connecticut, Illinois, Kentucky, Massachusetts, Michigan, Missouri and New York. Here again we find a lack of adequate vesting provisions. It can be said that the granting of credit for out-of-state service is to a great extent at the cost of those who terminate service before having served out the considerable minimums required to vest their retirement rights. Of the entire group probably Alaska is the only one with any extensive immigration, and the recruitment problem is likely acute. Restrictions on membership and vesting have, however, tended to offset much of the cost involved in the granting of the maximum of 10 years of out-of-state service.

APPENDIX B**MINIMUM AGE AND ACADEMIC STANDARDS FOR TEACHER
CERTIFICATION, 1930-1965**

A study of minimum scholastic standards in 1931 resulted in the following conclusions: (1) more than half the states required high school graduation prior to issuance of certificates; (2) several states required one year of professional work beyond high school; (3) Connecticut, Pennsylvania, Utah, and Washington required 2 years of normal school or college; and (4) California required $2\frac{1}{2}$ years of preparation beyond high school.

In 1938, "the presence of a large supply of teachers prepared in teacher-training high schools or in one-year normal school or college curricula" appeared, according to the federal Office of Education, "seriously to retard the elevation of levels of teacher education, even in wealthy states." At this time, the "minimum amounts of preparation required by the several states for elementary teachers' certificates range from unspecified amounts of elementary or secondary school education sufficient to enable the applicant to pass an examination, to four years of college work. An indefinite examination requirement prevails in at least six states, . . ." Minimum age requirements at this time, specified in 37 states, ranged from 17 to 20 years. Typically, the requirement was 18 years of age.

During World War II, a severe nationwide shortage of teachers resulted in the practice of issuing emergency or substandard certificates. In 1943, every state from which returns were received, with the possible exception of Massachusetts, issued teachers' war emergency permits. Eleven states had no minimum standard at all; four required high school graduation; 30 required some college work; 10 required teaching experience; nine required a prior teaching certificate; and 10 required a review course or other preparation. At the height of the teacher shortage, 140,000 teachers were estimated to hold emergency certificates.

Due to rapid increases in school enrollments after World War II, the practice of issuing emergency or substandard certificates has continued to the present time. Only Hawaii, Kansas, and North Dakota report that in 1964 no emergency certificates were issued. Only the following states require a degree: Alaska (with some exceptions), Connecticut, the District of Columbia, Illinois, Indiana, Oklahoma, and Iowa and Minnesota for high school teachers. Most of the other 44 states require from 60 to 90 semester hours of college.

According to Conant, in 1960-61, 8,079 teachers in New York State, exclusive of Buffalo and New York City, were *uncertified*.

SOURCE: California State Department of Education.

TABLE I
PERCENT BY STATES OF ELEMENTARY-SCHOOL TEACHERS
WITH BACHELOR'S DEGREES, 1962-63

State	<i>Percent of elementary school teachers with bachelor's degrees</i>			
	<i>Total staff</i>	<i>New in 1962-63</i>		
Oklahoma	99.8%	100.0%	Kansas	86.2 94.2
Utah	98.9	94.5	Arkansas	85.5 78.6
New Mexico	98.1	95.6	Maryland	79.1 81.9
California ^a	97.2	97.0	Kentucky	77.8 ^b
North Carolina	95.6	92.8	Tennessee	74.8 78.1
Wyoming	94.3	100.0	Wisconsin	74.0 72.9
Colorado	93.4	97.1	West Virginia	73.7 ^b
Alaska	92.6	91.1	Ohio	71.9 72.0
South Carolina	91.6	94.9	Virginia	71.0 80.8
Mississippi	91.1	90.9	Idaho	57.4 53.2
Louisiana	91.0	^b	Vermont	56.8 86.7
Florida	90.4	82.3	Iowa	50.5 55.3
Missouri	90.4	^b	North Dakota	40.5 43.3 ^c
Connecticut	90.1	96.0	Nebraska	38.9 37.7
Hawaii	90.0	100.0	South Dakota	28.0 21.6
Indiana	88.9	96.5		
Alabama	88.2	85.2		
Oregon	87.7	86.7		
Delaware	87.6	91.2		
District of Columbia	86.5	100.0		
Georgia	86.4	^b		

^a Data for 1961-62.

^b Data not available.

^c Data incomplete; figure shown comprises 256 of 303 districts.

TABLE II
NUMBER OF STATES REQUIRING DEGREE FOR REGULAR ELEMENTARY
SCHOOL CERTIFICATION, 1930-1965

Year	States and states added	Cumulative number
1930	California, District of Columbia	2
1935	Rhode Island, Delaware	4
1940	Arizona, Maryland, North Carolina, Pennsylvania, Connecticut, Indiana, Louisiana	11
1945	Hawaii, New York, Ohio,* Utah, Virginia, Washington, Illinois	18
1950	New Hampshire, New Jersey, Georgia	21
1955	Florida, Vermont, South Carolina, Tennessee, Alabama, Idaho, Oregon, Texas	29
1960	Massachusetts, Michigan, Mississippi, Nevada, New Mexico, Oklahoma, West Virginia, Kansas, Iowa, Kentucky	39
1961	Alaska,* Colorado, Minnesota, Missouri	43
1962	Wyoming	44
1963	Arkansas, Maine	46
1964	Same. All <i>except</i> Montana, Nebraska, North Dakota, Puerto Rico, South Dakota, Wisconsin.	
1965		

(Montana planned for '66, South Dakota '68, and Wisconsin '72)

* Ohio and Alaska somewhat questionable, according to Armstrong and Stinnett.

TABLE III
NUMBER OF STATES REQUIRING DEGREE FOR REGULAR ELEMENTARY AND
SECONDARY SCHOOL CERTIFICATION, 1900-1964

Year	Elementary	Secondary
1900	0	2 (including Calif.)
1910	0	3
1920	0	10
1930	2 (Calif. and D.C.)	23
1940	11	40
1950	21	42
1960	39	51
1964	46	52

TABLE IV

COLLEGE REQUIREMENTS FOR ELEMENTARY CERTIFICATION OF STATES NOT
REQUIRING DEGREE FOR REGULAR CERTIFICATION, 1964

<i>State</i>	<i>Requirement</i>
Montana	"Provisional certification" on 2 years' college elementary education program.
Nebraska	"Provisional certification" on "partial completion of teacher education program" (40 to 60 semester-hours)
North Dakota	"Second grade professional certification" on two-year teacher training course.
Puerto Rico	Normal diploma
South Dakota	"Two-year elementary certification" on two-year elementary teacher training course.
Wisconsin	"Two-year license" and "five-year nonrenewable certification" on graduation from a Wisconsin two- or three-year teacher training course.

TABLE V

MINIMUM AGE REQUIREMENTS FOR REGULAR TEACHING
CERTIFICATES, 1937 AND 1964

<i>Age</i>	<i>No. states, 1937</i>	<i>No. states, 1964</i>
17	4	2
18	30	28
19	1	3
20	2	1
None	11	18
Totals	48	52

NOTE: 1964 figures include D.C. (none) and Puerto Rico (18).

TABLE VI

COLLEGE REQUIREMENTS BY STATES FOR REGULAR
CERTIFICATION, 1950, 1960, 1964

<i>State</i>	<i>1950</i>	<i>1960</i>	<i>1964</i>	<i>State</i>	<i>1950</i>	<i>1960</i>	<i>1964</i>
Alabama	96	B	B	Montana	60	64	64
Alaska	90	90	B	Nebraska	HS	40	40
Arizona	B	B	B	Nevada	31	B	B
Arkansas	30	B	B	New Hampshire	B	B	B
California	B	B	5 yrs.	New Jersey	B	B	B
Colorado	60	60	B	New Mexico	60	B	B
Connecticut	B	B	B	New York	B	B	B
Delaware	B	B	B	North Carolina	B	B	B
Dist. of Columbia	B	B	B	North Dakota	32	32	64
Florida	60	B	B	Ohio	93	B	B
Georgia	60	B	B	Oklahoma	78	B	B
Hawaii	B	B	B	Oregon	90	B	B
Idaho	64	B	B	Pennsylvania	B	B	B
Illinois	B	B	B	Puerto Rico	NT	67	68
Indiana	B	B	B	Rhode Island	B	B	B
Iowa	45	B	B	South Carolina	60	B	B
Kansas	45	B	B	South Dakota	30	60	60
Kentucky	64	B	B	Tennessee	60	B	B
Louisiana	B	B	B	Texas	30	B	B
Maine	64	96	B	Utah	B	B	B
Maryland	B	B	B	Vermont	60	B	B
Massachusetts	(local)	B	B	Virginia	B	B	B
Michigan	30	60	B	Washington	B	B	B
Minnesota	60	90	B	West Virginia	64	B	B
Mississippi	30	B	B	Wisconsin	60	64	64
Missouri	60 *	64 *	B	Wyoming	64	B	B

* Co. Cert. on 16 sem. hrs.

TABLE VII
MINIMUM AGE BY STATES FOR REGULAR CERTIFICATION, 1964

<i>State</i>	<i>Age</i>	<i>State</i>	<i>Age</i>
Alabama	17	Montana	18
Alaska	18	Nebraska	none
Arizona	18	Nevada	18
Arkansas	18	New Hampshire	none
California	18	New Jersey	18
Colorado	none	New Mexico	18
Connecticut	18	New York	18
Delaware	none	North Carolina	18
District of Columbia	none	North Dakota	18
Florida	20	Ohio	none
Georgia	none	Oklahoma	none
Hawaii	none	Oregon	18
Idaho	18	Pennsylvania	18
Illinois	19	Puerto Rico	18
Indiana	none	Rhode Island	19
Iowa	18	South Carolina	18
Kansas	none	South Dakota	18
Kentucky	18	Tennessee	18
Louisiana	none	Texas	18
Maine	17	Utah	none
Maryland	18	Vermont	19
Massachusetts	none	Virginia	18
Michigan	18	Washington	18
Minnesota	none	West Virginia	18
Mississippi	18	Wisconsin	none
Missouri	none	Wyoming	none

TABLE VIII
STATES REQUIRING NINTH GRADE OR BELOW FOR ELEMENTARY SCHOOL CERTIFICATION, 1927

New Mexico	Mississippi	South Carolina
Kansas	Kentucky	Georgia
Oklahoma	Tennessee	Florida
Texas	Alabama	Minnesota
Arkansas	West Virginia	Massachusetts

TABLE IX
STATES GRANTING TEACHING CERTIFICATES ON BASIS OF STATE, COUNTY, OR LOCAL EXAMINATIONS, 1948

<i>State</i>	<i>Any additional requirements</i>
Arkansas	
District of Columbia	Degree
Florida	30 semester-hours
Illinois	
Massachusetts	
Missouri	
Nebraska	
North Dakota	
South Dakota	
South Carolina	
Tennessee	
Texas	
(Iowa)	(examinations discontinued during biennium)
(Kansas)	(examinations discontinued during biennium)
(Wyoming)	(examinations discontinued during biennium)

TABLE X
MINIMUM REQUIREMENTS BY STATES IN YEARS ABOVE HIGH SCHOOL
FOR LOWEST-GRADE CERTIFICATION, 1937 AND 1947

<i>State</i>	<i>1937</i>	<i>1947</i>	<i>State</i>	<i>1937</i>	<i>1947</i>
Alabama	HS	HS	Montana	2	2
Arizona	4	2	Nebraska	HS	HS NT
Arkansas	—	—	Nevada	1	1
California	("temporary" not listed)		New Hampshire	3	3
Colorado	2	2	New Jersey	3	3
Connecticut	4	4	New Mexico	1	2
Delaware	4	4	New York	3	4
Dist. of Columbia	4	4	North Carolina	2	4
Florida	—	30 s.h.	North Dakota	—	—
Georgia	HS	2	Ohio	2	3
Idaho	2	2	Oklahoma	2 yrs HS	2
Illinois	1	60 s.h.	Oregon	2½	3
Indiana	2	4	Pennsylvania	3	4
Iowa	NT HS	NT HS	Rhode Island	4	4
Kansas	—	NT HS	South Carolina	1	2
Kentucky	2	2	South Dakota	1	1 summer
Louisiana	3	2	Tennessee	—	—
Maine	2	2	Texas	—	—
Maryland	2	4	Utah	3	4
Massachusetts	(local)	(local)	Vermont	2	2
Michigan	1	1	Washington	3	4
Minnesota	1	1	West Virginia	1	2
Mississippi	—	½	Wisconsin	1	2
Missouri	HS	HS	Wyoming	1	1

APPENDIX C

EDMUND G. BROWN
GOVERNOR

State of California
GOVERNOR'S OFFICE
SACRAMENTO



October 23, 1962

Miss Myrtle Flowers
President, "ARCOSS"
9522 Cedar Avenue
Bellflower, California

Dear Miss Flowers:

It has been brought to my attention recently that your organization, "ARCOSS," has decided to seek certain amendments to the State Teachers' Retirement Act during the 1963 legislative session. The purpose of these amendments will be to remove certain inequities in the present law pertaining to teachers receiving retirement credit for their service in states other than California.

I want you and the members of your organization to know that I agree steps must be taken to remove this inequity. California depends on attracting teachers from out of state to meet its ever-increasing classroom needs, and it is only fair that these teachers be allowed to acquire an adequate retirement fund.

I pledge to you and your organization that, if returned to office, I will support legislation to correct this inequitable situation.

My best wishes to your membership.

Sincerely

A handwritten signature in dark ink, appearing to read 'Edmund G. Brown'.

EDMUND G. BROWN, Governor

o

Preliminary Report of

Senate General Research Committee

SUBCOMMITTEE ON REAPPORTIONMENT

Members of the Subcommittee

SENATOR STEPHEN P. TEALE, *Chairman*

SENATOR EUGENE G. NISBET, *Vice Chairman*

SENATOR STANLEY ARNOLD

SENATOR RANDOLPH COLLIER

SENATOR JOHN F. McCARTHY

SENATOR VIRGIL O'SULLIVAN

SENATOR AARON W. QUICK

SENATOR THOMAS M. REES

SENATOR VERNON L. STURGEON

SENATOR ROBERT D. WILLIAMS

*

Arthur D. Johnson, *Consultant*

Bernard Teitelbaum, *Statistician*

Harry K. Grafe, *Counsel*

Kathryn Marquis, *Secretary*



Published by the

SENATE

of the State of California

1965

GLENN M. ANDERSON
President of the Senate

Hugh M. Burns
President Pro Tempore

Joseph A. Beek
Secretary of the Senate

* Vacancy, vice Senator Edwin J. Regan, resigned January 3, 1965, to accept appointment as Justice, District Court of Appeal, Third District.

LETTER OF TRANSMITTAL

May 13, 1965

Honorable Glenn M. Anderson
President of the Senate

Dear Mr. President:

We submit herewith a preliminary report detailing the work of the Subcommittee on Reapportionment in attempting to comply with the order of the Federal District Court to enact no later than July 1, 1965, a plan of reapportionment for the California State Senate in conformity with the decisions of the United States Supreme Court in the Apportionment Cases of June 15, 1964.

Respectfully submitted,

STEPHEN P. TEALE, Chairman
EUGENE G. NISBET, Vice Chairman
STANLEY ARNOLD
RANDOLPH COLLIER
JOHN F. McCARTHY

VIRGIL O'SULLIVAN
AARON W. QUICK
THOMAS M. REES
VERNON L. STURGEON
ROBERT D. WILLIAMS

*

*Vacancy, vice Senator Edwin J. Regan resigned January 3, 1965, to accept appointment as Justice District Court of Appeal, Third District.



SENATE COMMITTEE ON RULES RESOLUTION NO. 21

Relative to the creation of the Subcommittee on the Subject of Reapportionment

Resolved by the Senate Committee on Rules, That pursuant to Senate Rule No. 12.5, there is hereby created a subcommittee of the Senate General Research Committee to be known as the Subcommittee on Reapportionment; and be it further

Resolved, That the subcommittee will consist of eleven members: Senator Stephen P. Teale, who shall be Chairman, and the following ten Senators:

Arnold, Collier, McCarthy, Nisbet, O'Sullivan, Quick, Rees, Regan, Sturgeon, Williams; and be it further

Resolved, That the subcommittee shall study the political impact of Senate reapportionment in compliance with the U.S. Supreme Court decision and other problems that could be created by reapportionment; and be it further

Resolved, That the sum of Seven Thousand Five Hundred Dollars (\$7,500), or so much thereof as may be necessary, is hereby made available from the Contingent Fund of the Senate for the expenses of the subcommittee created by this resolution and its members, and for any charges, expenses, or claims it may incur under said resolution, to be paid from said contingent fund and disbursed, after certification by the chairman of the subcommittee, upon warrants drawn by the State Controller upon the State Treasurer.

ADOPTED: September 11, 1964.

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I. SCOPE OF THE REPORT

This preliminary report will summarize the work of the Subcommittee to date in its efforts to develop a plan of Senate apportionment that will comply with the December 3, 1964, order of the Federal District Court in *Silver v. Jordan* (unpublished) and with the decisions of the United States Supreme Court in its Apportionment Cases of June 1964.¹

II. LEGISLATIVE APPORTIONMENT AND THE FEDERAL COURTS

At the outset, a brief tracing of treatment of challenged state legislative apportionment schemes by the federal judiciary is in order. For more than 100 years, the federal judiciary in general and the United States Supreme Court in particular had declined to entertain such challenges, basing their abstention primarily on the principle that the issue the courts were asked to resolve was one lying within that sacrosanct domain of non-justiciable "political questions." That era of abstention ended on March 26, 1962, and the breaking of that barrier produced a shockwave that was to be felt in most of the state capitols of the Union. The case was *Baker v. Carr*,² and the Supreme Court ruled in essence that a challenged state legislative apportionment scheme which is alleged to violate the Equal Protection Clause of the 14th Amendment to the Federal Constitution is a matter over which the federal courts have jurisdiction and raises a justiciable constitutional issue upon which the federal courts may afford relief. The state defendant was Tennessee, whose legislature had not been reapportioned since 1901. Other than deciding the three questions of jurisdiction, justiciability, and standing to sue, in plaintiff's favor, the court issued no additional dogma in *Baker v. Carr*.

But the Court had plunged into the thicket which Justice Frankfurter had staunchly warned against entry.³ Although the majority justices in *Baker* held a good-faith expectation that their ruling would be sufficient in itself to compel voluntary reapportionment action by the states, that result was not to be. Instead, the razing of the dam of abstention loosed a veritable flood of litigation, and by November 1, 1962, the apportionment status of no less than 30 state legislatures had been challenged in federal and state courts. It became obvious that the Court would soon be afforded the opportunity to expound further on the contours of federal constitutional requisites in state legislative apportionment.

A forewarning of what was to come was evidenced by the Court's decision in *Gray v. Sanders*,⁴ on March 18, 1963, when the Court announced its now-famous one-person, one-vote ruling. The issue was not one of legislative apportionment, but rather whether Georgia's county-unit system of weighted voting in electing statewide officers (Governor,

¹ *Reynolds v. Sims*, 377 U.S. 533 (Alabama); *WMCA v. Lomenzo*, 377 U.S. 633 (New York); *Maryland Committee For Fair Representation v. Tawes*, 377 U.S. 656 (Maryland); *Davis v. Mann*, 377 U.S. 678 (Virginia); *Roman v. Sincock*, 377 U.S. 695 (Delaware); *Lucas v. 44th General Assembly*, 377 U.S. 713 (Colorado).

² 369 U.S. 186.

³ *Colegrove v. Green*, 328 U.S. 549, 553-554.

⁴ 372 U.S. 368.

United States Senator, Attorney General, etc.) debased voting rights in violation of the Equal Protection Clause of the 14th Amendment. The Court held that the challenged Georgia county-unit system was discriminatory in that it resulted in some residents having greater or lesser voting power merely because of their homesite. The Court said that the concept of political equality from the signing of the Declaration of Independence to this time can mean only one thing—one person, one vote.

The decisions in *Baker v. Carr* and *Gray v. Sanders* blazed the path for the Court to rule in *Wesberry v. Sanders*,⁵ on February 17, 1964, that the one-person, one-vote principle applies in United States House of Representatives districting within states, as well as to elections of statewide officers. Again the culpable state was Georgia.

As the conclusion of the Supreme Court's 1963-64 term drew near, there remained for decision 15 cases of challenges against states' legislative apportionments. The holdings of the lower courts were consistent only in their lack of uniformity. Some lower courts had ruled that the one-person, one-vote tenet need only apply to one house of a bicameral legislature, by analogy to the scheme of representation in the United States Congress; other judges had held that both houses of a bicameral legislature must be apportioned substantially on a population basis; and almost each individual lower court had its own particular concept as to what constituted malapportionment.

The stage was set for what has been termed the seismic disturbance of June 15, 1964, for it was on that date that the Court announced its decisions in the Apportionment Cases. Basically, the Court ruled that the Equal Protection Clause of the 14th Amendment requires that *both* houses of a bicameral state legislature must be apportioned substantially on a population basis.⁶ The Court acknowledged that "Mathematical exactness or precision is hardly a workable constitutional requirement."⁷ However, the Court's interpretation of the 14th Amendment requires the state to "make an honest and good faith effort to construct districts, in both houses of its legislature, as nearly of equal population as is practicable."⁸

After announcing its rule of law, the Court asserted that deviations from that basic rule are justified only if "relevant to the permissible purposes of legislative apportionment."⁹ The Court then listed a number of "thou shalt nots" which it declared to be impermissible bases for deviation: reliance on the so-called federal-plan analogy;¹⁰ to insure effective representation for sparsely-settled areas;¹¹ to give weight to such factors as history or economic or other types of group interests;¹² to prevent legislative districts from becoming so large that the availability of access of residents to their representatives is impaired;¹³ to have different bases of representation in the two houses of a bicameral legislature;¹⁴ to balance urban and rural power.¹⁵

⁵ 376 U.S. 1.

⁶ *Reynolds v. Sims*, 377 U.S. at 568.

⁷ *Id.* at 577.

⁸ *Id.* at 577.

⁹ *Id.* at 565.

¹⁰ *Id.* at 571. The federal-plan analogy was the most harshly treated of the arguments in justification made by the state defendants. The Court declared that such analogy is "irrelevant" to legislative apportionment, which taken literally means the analogy is not admissible as evidence, and if improperly admitted cannot be the basis for a decision.

¹¹ *Id.* at 571.

¹² *Id.* at 579-580.

¹³ *Id.* at 580.

¹⁴ *Id.* at 576.

¹⁵ *Davis v. Mann*, 377 U.S. at 692.

Virtually the only factor the Court prospectively recognized as justification for deviation from the strict rule is the use of political subdivisions as bases for district formation. The foundations indicated by the Court for such recognition are that indiscriminate districting "without any regard for political subdivision or natural or historical boundary lines, may be little more than an invitation to partisan gerrymandering,"¹⁶ and local governmental entities "are frequently charged with various responsibilities incident to the operation of state government."¹⁷ But, the Court warned that recognition by the state of local political subdivisions in districting must not submerge the basic equal-population principle or dilute that principle in any significant way.¹⁸

In only the Colorado case of *Lucas v. 44th General Assembly*¹⁹ was the challenged apportionment one that had been created and adopted by popular initiative. Although the Court acknowledged that a majority of Colorado voters in every county of that state had voted in favor of a non-population-based Senate apportionment plan,²⁰ the Court declared that the fact a state's apportionment scheme is adopted through use of the initiative or referendum will not save such plan if it fails to provide for population-based representation in both houses.²¹ The Court took the position that availability in a state of the initiative or referendum merely has the narrow effect of justifying a court "to stay its hand temporarily while recourse to such a remedial device is attempted or while proposed initiated measures relating to legislative apportionment are pending and will be submitted to the state's voters at the next election."²²

The Court was careful to point out that its establishing as a rule of law the credo that both houses of a state legislature must be apportioned substantially on a population basis, is not intended to abolish bicameralism in the states. "Different constituencies can be represented in the two houses. One body could be composed of single-member districts while the other could have at least some multi-member districts. The length of terms of the legislators in the separate bodies could differ. The numerical size of the two bodies could be made to differ, even significantly, and the geographical size of districts from which legislators are elected could also be made to differ. And apportionment in one house could be arranged so as to balance off minor inequities in the representation of certain areas in the other house."²³

In outlining procedure to be followed by the lower courts in legislative apportionment cases, the Court characterized as "the unusual case" in which a court would be justified in allowing any further election to be held under a state apportionment scheme that has been ruled constitutionally invalid.²⁴ The Court recognized, however, that the duty of legislative apportionment is a responsibility of the states' legislatures, and that they should be given adequate opportunity to take requisite action, and the courts should act in the legislatures' stead only if such action is not taken in timely fashion.²⁵ Insofar as possible, the lower courts were

¹⁶ *Reynolds v. Sims*, 377 U.S. at 578-579.

¹⁷ *Id.* at 580.

¹⁸ *Id.* at 580.

¹⁹ 377 U.S. 713.

²⁰ *Id.* at 731.

²¹ *Id.* at 736-737.

²² *Id.* at 737.

²³ *Reynolds v. Sims*, 377 U.S. at 576-577.

²⁴ *Id.* at 585.

²⁵ *Id.* at 586.

directed to tailor any relief they may order to the apportionment provisions of the states' constitutions.²⁶

As to fashioning any standard or test to guide the lower courts in determining the extent of permissible deviation from the one-person, one-vote principle, the Court elected not to formulate any fixed guidelines. The Court asserted that "it is neither practical nor desirable to establish rigid mathematical standards for evaluating the constitutional validity of a state legislative apportionment scheme under the Equal Protection Clause. Rather the proper judicial approach is to ascertain whether, *under the particular circumstances existing in the individual state* whose legislative apportionment is at issue, there has been a faithful adherence to a plan of population-based representation, with such minor deviations only as may occur in recognizing certain factors that are free from any taint of arbitrariness or discrimination."²⁷

In testing the schemes challenged in the Apportionment Cases, the Court relied on two factors. One is the maximum population variance ratio, which simply stated is the comparison between the state's most heavily populated district and its least populated district. The other is the minimum percentage of the total population of the state which, under its apportionment plan, can elect a majority of the challenged legislative body. This is determined by tallying the population in districts, beginning with that of the lowest rank on the district-population scale, until districts with a majority of seats are included in the count. The total population in such districts is then computed against the entire state population to reach the minimum percentage figure. In Table I (infra) we have listed the figures under both tests for 17 of the estimated more than 40 states whose apportionment plans have been challenged in the federal and state courts. We would note, however, that the figures shown in the table are informative, but not necessarily controlling, in the light of the Court's statement regarding rigid standards, as quoted above.

The foregoing in essence summarizes the major principles of the Apportionment Cases. On June 22, 1964, one week after those landmark decisions, by per curiam orders the Court disposed of the remaining nine cases in which state legislative apportionment schemes had been challenged.²⁸

²⁶ *Id.* at 584.

²⁷ *Roman v. Sincock*, 377 U.S. at 710; emphasis ours.

²⁸ *Swann v. Adams*, 378 U.S. 553 (Florida); *Meyers v. Thigpen*, 378 U.S. 554 (Washington); *Nolan v. Rhodes*, 378 U.S. 556 (Ohio); *Williams v. Moss*, 378 U.S. 558 (Oklahoma); *Germano v. Kerner*, 378 U.S. 560 (Illinois); *Marshall v. Hare*, 378 U.S. 561 (Michigan); *Hearne v. Smylie*, 378 U.S. 563 (Idaho); *Pinney v. Butterworth*, 378 U.S. 564 (Connecticut); *Hill v. Davis*, 378 U.S. 565 (Iowa).

III. FEDERAL COURT LITIGATION AND THE CALIFORNIA STATE SENATE

As early as August 30, 1962, a three-judge Federal District Court convened in Los Angeles ruled that it had jurisdiction and that a justiciable issue was presented, in a challenge of California State Senate apportionment founded on the Equal Protection Clause of the 14th Amendment. The court's authority rested on *Baker v. Carr*.²⁹ However, because there was then pending an initiative measure, Proposition 23, which was to be voted on at the 1962 general election, and which if adopted would have reapportioned the Senate, the court granted no relief, but retained jurisdiction. The voters on November 6, 1962, defeated Proposition 23, and the litigation resumed. After several procedural technicalities were resolved, the suit was pressed in earnest in the latter part of 1964. The motion of the Senate to become a party intervenor in the action was granted by the court.

On December 3, 1964, the Federal District Court in a 2-1 per curiam order held that the "present plan of Senate apportionment by districts in California is unconstitutional, being an invidious discrimination of citizens' rights and violative of the Equal Protection Clause of the 14th Amendment to the U.S. Constitution, as interpreted by the Supreme Court of the United States."³⁰

The court took note of and agreed with the Supreme Court's assertion that "legislative reapportionment is primarily a matter for legislative consideration and determination, and that judicial relief becomes appropriate only when a legislature fails to reapportion according to federal constitutional requisites in a timely fashion after having had an adequate opportunity to do so."³¹ The court then issued this stern warning: "If the California Legislature once ordered fails to act, and to act with promptness, we, ever conscious of our oath to uphold the Constitution of the United States, will unhesitatingly take appropriate action to correct the inequity."³²

Although the Federal District Court had before it several questions for resolution and for which relief was requested (including the matter of interpretation of the apportionment provisions of the California Constitution), the court confined its ruling and relief to the singular point of alleged malapportionment of the Senate: "This court, having determined that the primary objective of any order or decree at this time should be to effectively induce the 1965 session of the California Legislature to properly reapportion itself as its first order of business, makes no order at this time other than the following: (1) It is the order of this court that the California State Legislature reapportion the California State Senate consistent with this opinion, and the several existing United States Supreme Court decisions on the subject, so that the *Reynolds* doctrine of 'districts of substantial equality in population' exists. (2) Should the California State Legislature fail to discharge its duty to

²⁹ Footnote 2, *supra*.

³⁰ *Silver v. Jordan*, unpublished. See Appendix "A", *infra*, for text of Federal District Court order.

³¹ *Reynolds v. Sims*, 377 U.S. at 586.

³² *Silver v. Jordan*, Appendix "A", *infra*.

fairly, adequately and validly redistrict State Senatorial Districts within the State of California, by not later than July 1, 1965, this court will, before or after that date, hold further hearings or motions; devise redistricting plans; and make such further orders or take such further steps as may be necessary or appropriate (either upon its own motion, or on the motion of any party or intervenor), and to that end we retain full jurisdiction of this case for such purposes, and all others."³³

An appeal from that lower court judgment has been filed with the Supreme Court by the defendant state officials and by the Senate as intervenor.³⁴ One does not have the "right" to have an appeal heard by the Supreme Court, rather this is a matter of selective choice by the Court. If the Court, upon review of appellants' jurisdictional statement, finds there has been presented a substantial federal constitutional question which warrants resolution by the Court, "probable jurisdiction" is noted by the justices and the matter is then briefed and argued and decided by the Court either in a full-blown decision or by per curiam order.

The Supreme Court on June 1, 1965, in a terse per curiam order, affirmed the decision of the district court, thus dismissing the appeal (*Jordan v. Silver*, _____ U.S. _____).

³³ *Silver v. Jordan*, Appendix "A", *infra*.

³⁴ *Jordan v. Silver*, No. 935, October Term, 1964.

IV. THE WORK OF THE SUBCOMMITTEE

Planning for Senate reapportionment, first as a possibility and later as an imminent prospect, in fact antedates the December 3, 1964, order of the Federal District Court in *Silver v. Jordan*.³⁵ The Senate itself initiated in 1961, a thorough study of Senate apportionment by a so-called "blue ribbon" commission of nine members, five of whom were appointed by the Governor, and the remaining four were two members from each the Senate and Assembly. The vehicle for that study was Senate Bill No. 146 of the 1961 General Session, which was authored by nine senators, seven from northern California and two from the southern population centers. This bill was enacted as Chapter 607 of the Statutes of 1961. That Study Commission on Senate Apportionment held seven hearings throughout the State and its staff dipped deeply into the historical background of Senate apportionment, as foundational material for its *Report*, submitted in January, 1962.

The Commission concluded that there had been demonstrated neither a compelling need nor a strong desire for overall Senate reapportionment, but that additional Senate representation be accorded Los Angeles County and other heavily-populated counties whose numbers of residents exceed 1,500,000. This recommended dispensation was grounded primarily on the workload factor, i.e., the extreme difficulty of representation by one senator of more than 1,500,000 constituents.³⁶

The recommendation of the Commission was introduced as Assembly Constitutional Amendment No. 5 at the 1962 First Extraordinary Session of the Legislature, but a week later that recommendation was amended out of the measure and a radically different Senate reapportionment scheme was written in, instead, by the Assembly. As so rewritten, the proposed constitutional amendment was adopted by the Assembly, but the Senate refused to approve the new plan and it died in committee in the upper house. The Senate, on April 12, 1962, taking note of the U.S. Supreme Court's landmark decision in *Baker v. Carr*, announced on March 26, 1962,³⁷ and pointing out that the "blue-ribbon" commission's recommendation had met an inglorious fate, adopted Senate Concurrent Resolution No. 14, co-authored by 10 northern California senators, calling for creation of a joint legislative committee to study apportionment of both houses of the legislature. The Assembly refused adoption of this proposal.

More recently, but prior to the *Silver v. Jordan* decision, the Senate began marshalling data and reference material to be used in formulating a reapportionment plan. On September 11, 1964, the Senate Rules Committee created the Subcommittee on Reapportionment of the Senate General Research Committee, for that purpose. Following the *Silver v. Jordan* ruling, the Senate General Research Committee (composed of all members of the Senate) met on December 19 and 20, 1964, to receive a preliminary report from the Reapportionment Subcommittee and to discuss methods and means of complying with the court order.

³⁵ See Appendix "A" for text.

³⁶ *Report of Study Commission on Senate Apportionment*, pp. 40-47.

³⁷ Footnote 2, *supra*.

With the convening of the 1965 General Session of the Legislature, the Senate Committee on Rules, mindful of the emphasis placed by the federal court on the requirement that reapportionment be made the first order of business by the legislature, determined that a Special Standing Committee on Reapportionment be created, to have all powers "vested in Senate Standing Committees by law, the Rules of the Senate, and the Joint Rules of the Senate and Assembly."³⁸

We undertook the chore of fashioning a reapportionment plan with all the relish of a condemned man who is required to build his own gallows and weave the noose for his own neck. Regardless of the distastefulness of the task, we nevertheless were determined to endeavor to make that honest and good faith effort mandated by the court. That the project would be permeated with problems, we had some forewarning in the light of Justice Frankfurter's dissent in *Baker v. Carr*.³⁹

"... [T]his Court today catapults the lower courts of this country [into a mathematical quagmire] without so much as adumbrating the basis for a legal calculus as a means of extrication. Even assuming the indispensable intellectual disinterestedness on the part of judges in such matters, they do not have accepted legal standards or criteria or even reliable analogies to draw upon for making judicial judgments. To charge courts with the task of accommodating the incommensurable factors of policy that underlie these mathematical puzzles is to attribute, however flatteringly, omniscience to judges. The Framers of the Constitution persistently rejected a proposal that embodied this assumption and Thomas Jefferson never entertained it."⁴⁰ Justice Frankfurter's expression of concern for the capability of the judiciary to cope with apportionment problems applies, we submit, with at least equal vitality to legislators, who admittedly are non-omniscient.

Noting that the majority justices in *Baker* had indicated a proper legislative apportionment plan should rule out factors such as geography, economic diversity, urban-rural considerations, historical districting precedents, and accessibility, to some extent, the dissent pointedly foretold with keen accuracy the dilemma presently confounding California and numerous sister states: "To some extent—aye, there's the rub."⁴¹

And Justice Frankfurter sharply warned that there are more factors inextricably interwoven into the fabric of legislative apportionment than mere nice mathematical equations, calling attention to necessarily-related issues that, he said, cannot summarily be dismissed: "Apportionment by its character is a subject of extraordinary complexity involving . . . considerations of geography, demography, electoral convenience, economic and social cohesion or divergencies among particular local groups, communications, the practical effect of political institutions like the lobby and the city machine, ancient traditions and ties of settled usage, respect for proven incumbents of long experience and proven status, mathematical mechanics, census compiling relevant data, and a host of others. . . . And . . . in every strand of this complicated, intricate web of values meet the contending forces of partisan politics."⁴²

³⁸ Senate Resolution No. 22, introduced January 11, 1965 (p. 101, Senate Daily Journal for said date), and adopted January 19, 1965 (p. 162, Senate Daily Journal for said date); Committee appointed, see p. 168, Senate Daily Journal, January 19, 1965.

³⁹ Footnote 2, *supra*.

⁴⁰ *Baker v. Carr*, 382 U.S. 391, at 738.

⁴¹ *Id.* at 739.

⁴² *Id.* at 767-768.

Although the broadsword of the Apportionment Cases⁴³ struck down most of the considerations alluded to by Justice Frankfurter, we as legislators must report that they are present in the very real sense. The result is that our task is made more difficult in that we are required to submerge these practical considerations into a plan the basis for which is required to be a matter of arithmetic, with some secondary recognition of local political subdivision boundaries. Suffice to say we encountered at the outset some real and practical problems without the need of setting up strawmen to confuse the issue.

A. The Difficulties and Efforts Toward Solutions

The following is a recapitulation of the difficulties which have been faced in fashioning a Senate reapportionment plan, not, to be sure, in chronological order and not necessarily in order as to degree of profundity; and the avenues of approach toward solution of these problems.

1. The Conflict Between the Court's Order and the California Constitution. Hardly had we begun our labors than it became apparent that we could not comply with the court order in *Silver v. Jordan*⁴⁴ without abridging at least some of the provisions of the California Constitution regarding Senate apportionment. Said provisions are contained in Article IV, Sections 4, 5, and 6 of the State Constitution.⁴⁵ Enumerated among the requirements therein are the following: (a) the Senate shall consist of 40 members to be elected by districts; (b) senators shall serve four-year terms; (c) one-half of the Senate shall be elected every two years; (d) a senator must be an inhabitant and citizen of the State for three years and of his district for one year preceding his election; (e) the State shall be divided into 40 Senate districts; (f) Senate districts shall be composed of contiguous territory; (g) one senator shall be chosen from each Senate district; (h) Senate districts shall be numbered 1 through 40, commencing at California's northern boundary and ending at the southern boundary; (i) no county or city and county shall be divided in formation of Senate districts; (j) no part of a county or of a city and county shall be united with any other county or city and county in formation of Senate districts; (k) the decennial federal census shall be the basis of fixing and adjusting Senate districts; (l) at the first regular session after each decennial federal census the legislature shall adjust Senate districts;⁴⁶ (m) no county or city and county shall contain more than one Senate district; (n) counties of small population shall be grouped not to exceed three in any Senate district; (o) should the legislature fail to carry out its mandate to reapportion Senate districts following any decennial federal census, a Reapportionment Commission of specified State officials shall perform such reapportionment function; (p) any legislative reapportionment is subject to referendum, whether enacted by the legislature or fashioned by the Reapportionment Commission; (q) persons not eligible to become U.S. citizens under federal naturalization laws shall not be counted as part of the population in reapportionment of legislative districts.

Each of these 17 provisos of the foundational law of California must be given due consideration, singularly and collectively in formulating a re-

⁴³ Footnote 1, *supra*.

⁴⁴ See Appendix "A", *infra*, for text.

⁴⁵ See Appendix "B", *infra*, for full text.

⁴⁶ Seemingly relying on the doctrine *expressio unius est exclusio alterius*, the California Supreme Court has twice ruled that this provision empowers the Legislature to adjust legislative districts only once after each decennial federal census: *Dowell v. McLees*, 199 C. 144 (1926); *Wheeler v. Herbert*, 152 C. 224 (1907).

apportionment plan. The oath we swore as legislators so demands. Yet, we cannot help but concede that by giving full weight and merit to all of said provisions, compliance with the federal court order would be rendered impossible. We realize that at least some of these mandates are prospectively invalid, if their continued efficacy would prevent adoption of a Senate apportionment scheme that will comport with the Equal Protection Clause of the 14th Amendment. The nice question is: which provisions are thus in jeopardy? The answer is one a layman should not be so presumptuous as to propose. Or is the matter of resolve rightly within the province of the legislature. Ultimately, although we may seek the opinion and guidance of counsel, the answer will have to be provided by the courts.

We foresee an intricate unraveling task for the judiciary in this respect. There appear factors to which the test of legal severability must be applied, not only to the various parts of the whole relating solely to Senate apportionment, but also in light of the construction of these Sections, wherein specifications relating to Senate apportionment are in several instances joined in the conjunctive with provisions regarding Assembly apportionment, rather than being separated in the disjunctive.⁴⁷ Another element for consideration, depending on the answers given to the questions of basic validity under the Equal Protection Clause of the 14th Amendment and of severability may be whether the doctrine of revivor will come into play so as to restore the provisions that existed prior to adoption of the present language by popular approval of the initiative of 1926, or whether the decreed invalidity will create a lacuna allowing the legislature an unfettered freedom of choice in devising a new scheme of Senate apportionment.

The issue of construction and interpretation of the pertinent provisions of the State Constitution was laid before the federal court in *Silver v. Jordan*, but that court chose to abstain from ruling thereon. We do not criticize the court for its posture in this respect, as that choice seems to be in harmony with the directives of the U.S. Supreme Court.⁴⁸ For this Committee, the question was how to proceed. We turned to litigation involving other states for precedent.

The legal skirmish over Colorado's Senate apportionment was a case in point. After the Supreme Court on June 15, 1964, invalidated the Colorado scheme of Senate apportionment that had been adopted by use of the initiative in that state,⁴⁹ the lower federal court on remand made three unpublished rulings at the state's request for guidance. The lower court ruled that the initiative proposition was non-severable as to its provisions regarding the Senate (which the Supreme Court had invalidated) and those regarding lower house districting (which had not been in issue in the litigation, and which the Supreme Court noted in a dictum was "at least arguably apportioned substantially on a population basis") must both fail. The lower court ruled further that, according to its interpretation of the Colorado Constitution, there was no proscription against creation of two or more districts within a county. Also, the court ruled that sufficient time remained for the legislature to enact a new apportionment plan prior to the 1964 general election.

⁴⁷ See Appendix "B", infra, for full text of these Sections.

⁴⁸ Per curiam order in the Pennsylvania case, *Scranton v. Drew*, 379 U.S. 40; and per curiam order in the Colorado case, *44th General Assembly v. Lucas*, 379 U.S. 693.

⁴⁹ *Lucas v. 44th General Assembly*, 377 U.S. 713.

Almost immediately, the Colorado Legislature was called into special session and within a matter of days enacted Senate Bill No. 1, which shifted seven Senate and 10 House seats from sparsely settled counties to the more populous counties. The measure created individual districts within those counties to which two or more seats were allocated. On July 8, 1964, the Federal District Court, in another unpublished ruling, held that, for purposes of the 1964 election, the apportionment plan enacted in Senate Bill No. 1 comported with the Equal Protection Clause, all parties to the suit having so agreed. The federal court had also been asked to enjoin the Colorado state courts from hearing and deciding a suit challenging Senate Bill No. 1 under the Colorado Constitution. The federal court denied the request for injunction, as it was unwilling to assume the state court would take action contrary to that taken by the federal court.

Within a few days after the federal court had given its approval to Senate Bill No. 1, the Colorado Supreme Court invalidated that enactment as contravening the state constitution.⁵⁰ The Colorado Constitution provides, *inter alia*, "No county shall be divided in the formation of a senatorial or representative district."⁵¹ Under Senate Bill No. 1, one senator was allotted to each district, and, as an example, the statute provided for "nine senatorial districts" within Denver city and county (not, as the Colorado Supreme Court pointed out, nine senators from Denver), and defined the boundaries for each such district. The state court held the provision creating two or more districts within counties to be contrary to the quoted language in Article V, Section 47 of the Constitution. The state court further ruled that the purposes of Senate Bill No. 1 could not be carried out without the invalidated provision and therefore the entire enactment must fail.⁵² Nonetheless, the Colorado Supreme Court postponed the effective date of its judgment until January, 1965, so that the 1964 election could be conducted under the provisions of Senate Bill No. 1, as had been ordered by the federal court.

The Colorado Supreme Court held that, although federal questions are for federal courts to decide, the testing of a state law against a state constitution is a state question over which state courts have jurisdiction.⁵³ This maxim received the approval of the U.S. Supreme Court. After the state court's decision was announced, the state officials utilized the July 8, 1964, ruling of the Federal District Court as a vehicle to seek clarification from the U.S. Supreme Court. By *per curiam* order of February 1, 1965, the Supreme Court *affirmed* the decision of the lower federal court insofar as that court decided federal questions; but, insofar as it "decides other questions it is *vacated* and the cause is remanded for further consideration in light of *White v. Anderson*."⁵⁴

In the closing stages of its 1965 Session, the Colorado Legislature during the first week of May, enacted a revision of Senate Bill No. 1. The enactment, according to Colorado Attorney General Duke Dunbar, maintained the identical apportionment as had been created by Senate

⁵⁰ *White v. Anderson*, 394 P. 2d 333.

⁵¹ Article V, Section 47, Colorado Constitution, third sentence.

⁵² *White v. Anderson*, 394 P. 2d, at 337-338.

⁵³ *Id.* at 334.

⁵⁴ *44th General Assembly v. Lucas*, 379 U.S. 693; emphasis ours. Four justices in a concurring opinion wrote: "It is our understanding that the Court's disposition of this case leaves it open to the district court to abstain on the issue of severability of the various provisions of [the apportionment scheme invalidated by the Supreme Court on June 15, 1964], pending resolution of that issue with reasonable promptitude in further state court proceedings. We deem it appropriate explicitly to state our view that this is the course which the district court should follow. On that basis we join the Court's opinion."

Bill No. 1, but provides for at-large representation and election of legislators in those counties entitled to two or more members. The new enactment thus eliminates the sub-districting feature of Senate Bill No. 1, which the state courts had held to contravene the Colorado Constitution.

Another version of the conflict between federal and state court construction of apportionment provisions of a state constitution is illustrated by litigation arising out of Pennsylvania's legislative districting. Suits were already pending in both the federal and state courts when the Pennsylvania Legislature in January, 1964, passed new Apportionment Acts.⁵⁵ Pleadings in both suits were quickly amended to challenge the new enactments, as well as the state constitutional apportionment provisions upon which they were based.⁵⁶ The Federal District Court proceeding moved more swiftly than did the state court litigation. On April 9, 1964, the federal court held the Acts and the challenged Sections of the Pennsylvania Constitution were invalid under the Equal Protection Clause of the 14th Amendment.⁵⁷ The only portion of the state constitutional apportionment provisions the federal court left standing was the requirement that counties cannot be divided in forming Senate districts, except if a county is entitled to two or more senators, a feature which the court viewed as prohibiting fractionalizing of counties and which the court held to be a desirable restriction.

That district court decision was appealed to the U.S. Supreme Court; however, before the latter ruled on the merits of the appeal, but after the Supreme Court decided the Apportionment Cases of June 15, 1964,⁵⁸ the proceeding in the Pennsylvania state courts culminated in a decision which differed from the ruling of the lower federal court. On September 29, 1964, the Pennsylvania Supreme Court held the Acts to be invalid, but interpreted the challenged state constitutional provisions as *not* being invalid under the Equal Protection Clause of the 14th Amendment.⁵⁹ The Pennsylvania court asserted that this case "presents one of the most important constitutional questions ever raised in the history of this Commonwealth."⁶⁰ The state court felt it was the proper tribunal to decide these state constitutional issues and fashion any necessary remedies, and that this was necessitated to assure proper and continuing respect for federal-state judicial relationships.⁶¹

Although the Pennsylvania court concurred with the lower federal court that the apportionment scheme created by the Acts failed to comport with the requirements of the 14th Amendment's Equal Protection Clause, the state court pointed out that the dual facts, that the primary election had already been conducted under said scheme and that precious little time remained for the legislature to develop a new plan prior to the general election, necessitated holding that general election also under said scheme.⁶²

Turning to the challenged provisions of the Pennsylvania Constitution, the state court confected a compromise. The Pennsylvania court ruled that the legislature in fashioning a new apportionment plan must in all respects give primary consideration to the formation of districts of sub-

⁵⁵ 25 P.S., Sections 2217 and 2221, referred to hereinafter as the "Acts".

⁵⁶ P.S. Constitution, Article 2, Sections 16 and 17.

⁵⁷ *Drew v. Seranton*, 229 F. Supp. 310.

⁵⁸ Footnote 1, *supra*.

⁵⁹ *Butcher v. Bloom*, 415 Pa. 438, 203 A. 2d 556.

⁶⁰ *Id.* at 559.

⁶¹ *Id.* at 559-560.

⁶² *Id.* at 568-569.

stantially equal population in compliance with the Equal Protection Clause, and must also, insofar as possible, adhere to the provisions of the state constitution.⁶³

The state court felt that basically the pertinent state constitutional provisions would lend themselves to creation of a plan of apportionment founded on equally populated districts, and ruled that only such provisions as are in harmony with the 14th Amendment should be considered as mandatorily binding upon the legislature.⁶⁴ Implicitly, any provisions not in such harmony would only be considered permissive. In addition, the state court allowed the legislature until September 1, 1965, to adopt a constitutionally valid reapportionment plan.⁶⁵

On November 16, 1964, the appeal from the lower federal court ruling⁶⁶ was decided by the U.S. Supreme Court.⁶⁷ In a per curiam order, the Supreme Court summarized the history and results of the litigation in the federal and state courts, and then *vacated* the judgment of the lower federal court, remanding the matter to that forum "for further consideration in light of the decisions supervening since the entry of the judgment of the district court."⁶⁸

Although that per curiam order is somewhat cryptic, particularly in view of the Court's use of the words "decisions *supervening*," nonetheless the ruling is logically inferable as being harmonious with the holding in *44th General Assembly v. Lucas*,⁶⁹ wherein the Court vacated that portion of the lower federal court's judgment which decided non-federal questions. There were two "decisions supervening" the lower federal court ruling in *Drew v. Scranton*.⁷⁰ One was that rendered in the landmark Apportionment Cases;⁷¹ the other was that of the Pennsylvania court in *Butcher v. Bloom*.⁷² As the lower federal court's ruling was not inconsistent with that of the Supreme Court in the Apportionment Cases, the predominant decision supervening is that of the Pennsylvania court. Hence, *Scranton v. Drew*⁷³ seems to be additional authority for the principle that questions of state constitutional interpretation and construction are primarily for state courts to resolve.

More distinctly is that principle evidenced by the legislative apportionment litigation involving the State of New York, wherein reapportionment legislation was approved by the lower federal court which had ordered redistricting, and then was invalidated by the state courts as contravening the New York Constitution.

In *WMCA v. Lomenzo*⁷⁴ the U.S. Supreme Court ruled that New York's bicameral legislature was malapportioned. Upon remand, the Federal District Court allowed the 1964 election for legislators to proceed under that malapportioned scheme, but those elected could serve only until December 31, 1965.⁷⁵ The district court also fixed an April 1, 1965, deadline by which the New York Legislature would have to enact a valid

⁶³ *Id.* at 570-571.

⁶⁴ *Id.* at 573.

⁶⁵ *Ibid.*

⁶⁶ Footnote 57, *supra*.

⁶⁷ *Scranton v. Drew*, 379 U.S. 40.

⁶⁸ *Ibid.*

⁶⁹ Footnote 54, *supra*.

⁷⁰ 229 F. Supp. 310.

⁷¹ Footnote 1, *supra*.

⁷² 415 Pa. 438, 203 A. 2d 556.

⁷³ 379 U.S. 40.

⁷⁴ 377 U.S. 633, one of the six Apportionment Cases of June 15, 1964; see Footnote 1, *supra*.

⁷⁵ In *Hughes v. WMCA*, 379 U.S. 694, the Supreme Court affirmed by per curiam order, the one-year term of legislators prescribed by the lower court. The district court's edict had been challenged by the state as an excess of that court's authority in disregarding the requirement of the New York Constitution that legislators be elected for two-year terms.

apportionment plan. Two commissions were appointed by the Governor to study proposals for reapportionment, one a citizens' committee, and the other a joint legislative committee. The 1964 election in New York produced a shift in the partisan composition of the legislature, and on December 15, 1964, the substantially lame-duck legislature was called into special session to consider reapportionment legislation.

By December 23, 1964, the New York Legislature had passed not one, but four reapportionment measures, all of which were to become operative January 1, 1965.⁷⁶ These are referred to, in order of that legislature's preference, as Plans D, C, B, and A. All four plans were submitted to the Federal District Court early in January, for review. Each of the four provided for a 65-member Senate, but they varied widely as to numerical size of the Assembly. According to the report of the Joint Legislative Committee on Reapportionment, Plan D was intended to be the law of New York; but if that plan were held invalid, Plan C would become operative; and if that plan were held invalid, Plan B would become operative; and if that plan were held invalid, Plan A would become operative.⁷⁷

Plan D provided for a 174-member Assembly which would cast a total of 150 votes; 127 members would have a full vote each and 47 members would cast fractional votes ranging from $\frac{3}{4}$ to $\frac{1}{6}$. Under Plan C, there would be a 186-member Assembly which would cast 165 votes; 147 members would each have a full vote and 39 members would cast fractional votes ranging from $\frac{3}{4}$ to $\frac{1}{6}$. Under Plan B, there would be a 180-member Assembly and each member would cast one vote. Under Plan A, there would be a 165-member Assembly and each member would cast one vote. Apportionment of seats under Plans D and B was based on the 1962 New York vote for governor, including blank and void ballots. Apportionment under Plans C and A was based on New York's 1960 citizen population.

The Federal District Court disallowed Plans D, C, and B, and approved Plan A.⁷⁸ Plans D and B were stricken down because the apportionment based on the 1962 vote would work to the disfavor of metropolitan areas and to the advantage of the already over-represented less populous areas. Plan C was invalidated because the fractional-voting provision would have the effect of giving less populous areas proportionately greater representation than they should be accorded under the one-person, one-vote concept. The two study commissions had recommended fractional voting so as to assure every county (with two exceptions) at least one member of the Assembly without the seats in that house being increased to over 1000.⁷⁹

The district court found Plan A presented an apportionment scheme which evidenced only minor deviations from precise equality among districts. Under that plan, the maximum population variance ratio in Senate districts was 1.15 to 1, and in Assembly districts was 1.21 to 1. The minimum that could elect a Senate majority would be 49.4% of the New York population, and 49.3% could elect a majority of the Assembly.⁸⁰ It was this substantial equality of population in districting that led the district court to conclude that Plan A should stand against a challenge

⁷⁶ Chapters 976, 977, 978, 979, and 981, New York Laws, 1964.

⁷⁷ Joint Legislative Committee Report, p. 16.

⁷⁸ *WMCA v. Lomenzo*, 238 F. Supp. 916.

⁷⁹ Joint Legislative Committee Report, pp. 9-13; Citizens' Committee Report, pp. 29-31, 39-40.

⁸⁰ Cf. Table I, for the mathematical factors in the New York apportionment scheme invalidated by the United States Supreme Court.

that it constituted a partisan-inspired and partisan-benefitting gerrymander. The district court also expressed doubt that partisan gerrymander is a type of discrimination protected against by the 14th Amendment.

Also before the federal court were a number of challenges alleging all four plans were invalid when tested against the New York Constitution, however none of these attacks were directed at the numerical size of the Assembly. It was argued on behalf of the State of New York that the decision of the United States Supreme Court⁸¹ and a July, 1964, ruling of the district court had invalidated all legislative apportionment provisions of the New York Constitution. The district court refused to accept that contention, and declined to rule on state constitutional questions, noting that a suit was then pending in the state courts on such issues. The federal court asserted that "these claims raise difficult questions of state law interpretation," and that "this is clearly an appropriate case for abstention by the federal courts." The district court also denied a request for injunction to halt the state court proceedings.

In a supplementary order of February 16, 1965, the Federal District Court clarified its position with respect to the apportionment provisions of the New York Constitution, ruling, inter alia, that invalidity attaches "only to the extent that [such] provisions are in unavoidable conflict" with the Supreme Court's June 15, 1964, decision⁸² and earlier district court judgments.⁸³

As had been noted by the federal court, all four plans were also under attack in the New York state courts on grounds that all four violated the state constitution and that they produced districting which amounted to numerous partisan gerrymanders. The state constitutional basis relied on most heavily was Article III, Section 2, which prescribes in part that the Assembly "shall consist of 150 members," and which makes no provision for increasing the number of seats in that house.

On March 25, 1965, the New York Supreme Court at Special Term⁸⁴ held all four plans invalid under Article III, Section 2 of the New York Constitution.⁸⁵ The court ruled that said section of the state constitution was still in full force, not having been effected by any of the federal court decisions. Accordingly, as all four schemes provided for Assembly membership of more than 150, all must fail under the state constitution's 150-member limit. Although none of the four fixed the numerical size of the Senate in contravention of the constitution's provisions, the court decreed that the schemes of Senate apportionment in those plans must also fail because of a still-valid state constitutional requirement that reapportionment and redistricting of the Senate and Assembly shall be "by the same law."⁸⁶

Although it must be classified as dictum, in light of the court's plenary disposition of the broader issue of state constitutional validity, the court also found that plaintiff had made out a prima facie case of partisan gerrymander with respect to a number of districts that would be created under the four plans. The court acknowledged that such finding was tentative and that if it became necessary to rule on the gerrymander question, full trial would have to be held on this issue; however, the court

⁸¹ *WMCA v. Lomenzo*, 377 U.S. 633.

⁸² Footnote 81, *supra*.

⁸³ *WMCA v. Lomenzo*, 238 F. Supp. 916.

⁸⁴ Under the New York state judicial hierarchy, the Supreme Court is the trial court, on a level approximating that of California's Superior Court.

⁸⁵ *In re Orans' Petition*, 257 N.Y.S. 2d. 839.

⁸⁶ Article III, Section 5, New York State Constitution.

asserted that partisan gerrymander is prohibited in New York by the language of Article III, Sections 4 and 5, of the state constitution.

On April 14, 1965, the New York Court of Appeals affirmed the decision of the lower court.⁸⁷ The Court of Appeals declared: "We hold to be in full effect the flat, positive and unmistakable command of the state constitution that there be 150 members of the State Assembly."⁸⁸ Since each of the four plans violates that command, each plan and all five statutes⁸⁹ are invalid. It follows that it is up to the legislature now to enact a new districting-apportionment statute. As soon as reasonably possible thereafter, a constitutional convention should be called into being."

Taking note of the Federal District Court's emphasis in its order of February 16, 1965,⁹⁰ that New York constitutional apportionment provisions are invalid only if in "unavoidable conflict" with decisions of the Supreme Court and the lower federal courts, the New York Court of Appeals found inescapable the conclusion that "nothing in the federal decisions abolishes the 150-member provision of our state constitution." That the legislature is bound to follow that mandate of the New York Constitution was clearly stated by the Court of Appeals: "No one doubts that, absent 'unavoidable conflict' with federal constitution[al] law . . . our Article III as enacted by the people of New York State not only subsists but is controlling on the legislature in passing any reapportionment redistricting laws." This theme was restated in a sharper key in a concurring opinion which berated as "revolutionary" the notion that New York could "derive a power over the reconstruction of its own government from the intimations of the judicial branch of the Federal Government," as had been suggested by the defendant state officials.

In the light of the state court litigation, the federal court had extended to May 5, 1965, the deadline by which the New York Legislature would have to adopt a valid reapportionment plan. On May 5, the legislature had not complied with that federal court order, and it was not until that date that the reorganized Joint Legislative Reapportionment Committee unveiled its new proposal. The initial reaction to that proposal was a negative one, and it has drawn sharp criticism from both political parties and from several ethnic groups.

On May 10, 1965, the Federal District Court reconvened to review the New York situation. In view of the imminence of state legislative elections this year, the court had to choose from among four possible courses of action: that the court devise its own plan of reapportionment; that it reassert its approval of Plan A, notwithstanding the invalidation of that plan by the state courts; that this year's elections be allowed to be conducted under the apportionment plan invalidated by the Supreme Court last summer; or that additional time be granted to the legislature to enact a valid plan.

The federal court, ruling from the bench, reasserted its acceptance of Plan A, even though that plan had been voided by the state courts, and ordered that the 1965 legislative election be based thereon. Whether this latest court action will go unchallenged is an open question. A request to the state courts to enjoin the holding of the election under that state-

⁸⁷ *In re Orans' Petition*, ____ N.Y.S. 2d. ____; see New York Times, April 15, 1965, *Excerpts From Opinions on Re-apportionment*.

⁸⁸ Article III, Section 2, New York State Constitution.

⁸⁹ Footnote 76, *supra*.

⁹⁰ Footnote 83, *supra*.

court-invalidated plan could be forthcoming. The legislature, in the short time remaining before adjournment, could enact one or more new plans. Appeal from the federal court's new ruling could be pursued to the Supreme Court.

Quite obviously, some 11 months after the Supreme Court's landmark decisions, the reapportionment picture in New York is one of turmoil. There appears no immediate resolution of the existing conflicts, and when that point of resolve is reached, ugly scars may be left on the body of federal-state relations.

Nor is the foregoing trilogy the extent of federal-state court problems involving state constitutional apportionment provisions. A storm of federal-state court conflict is apparently brewing in Arkansas, where the federal district court, which had before it a challenge of the state constitutional provisions regarding legislative apportionment, refused to defer judgment to the state courts, where similar litigation was pending, commenting (cavalierly, it would seem) that no "useful purpose would be served" thereby.⁹¹ The federal court proceeded to hold invalid the challenged provisions of the Arkansas Constitution, then noted that in so ruling it had raised "serious questions of state constitutional law which, if answered ultimately, must be answered by the supreme court of Arkansas." Therefore the federal court determined "to go no further at this time than to declare the existing apportionment scheme unconstitutional, leaving it to the state, including the judicial branch of its government, to bring about a valid reapportionment as best it can."

Patently, the Arkansas scheme of legislative apportionment fails to measure up to the "substantially equal population" principle of districting decreed by the Supreme Court in the Apportionment Cases.⁹² A 1956 amendment to the state constitution had the effect of "freezing" the then-existing Senate districts, which were based on the state's population as recorded by the 1950 decennial federal census. Arkansas has experienced a total population decline since 1950, and this, combined with a significant shift of people from rural areas to urban centers, results in a substantial imbalance among present Senate district populations. The 1956 amendment to the Arkansas constitution also set the size of the lower house at 100 members, permanently allocating one seat to each of the state's 75 counties and leaving only 25 "free" seats to be distributed among the most populous counties after each federal census.⁹³

Nonetheless, by pre-empting the decisional field, the federal court, as it finally acknowledged, created "serious questions of state constitutional law" which the state courts presumably will now have to resolve. Scant apparent purpose was served by the federal court's determination to be first at the finish line, and in view of the discordant federal-state relationship existent in Arkansas in recent years, it seems that the federal court's anti-abstention attitude will do little to improve that situation. As of the writing of this report, no Arkansas state court decision had been reported in this matter.

Contrast the Arkansas decision with the caution and restraint exercised by the Federal District Court sitting in Missouri, which was asked to invalidate a 1961 state law (not a state constitutional provision) creating United States House of Representatives districts in Missouri.⁹⁴ The same

⁹¹ *Yancey v. Faubus*, 238 F. Supp. 290.

⁹² Footnote 1, *supra*.

⁹³ *Yancey v. Faubus*, footnote 91, *supra*.

⁹⁴ *Preisler v. Secretary of State of Missouri*, 238 F. Supp. 187.

plaintiffs had earlier brought a similar action in the state courts, and the Missouri Supreme Court held the statute was constitutional.⁹⁵ Instead of seeking United States Supreme Court review of that judgment, plaintiffs brought a parallel suit in the lower federal court.

"Thus this three-judge Federal District Court is placed in the judicially-unavoidable role of reviewing a decision of the highest court of the State of Missouri without previous review thereof by the Supreme Court of the United States." After noting that the disparity in population among Congressional districts in Missouri "is presumptive malapportionment," the district court deferred its final decision on the issue and retained jurisdiction in order to afford the Missouri Legislature an opportunity to reexamine the state's Congressional districting, and the federal court assumed the legislature will do so without being so ordered.

The district court asserted: "The federal courts are disinclined to rule on matters peculiarly and primarily of state concern. A healthy respect for the division of powers between the central government and the states is conducive to harmonious and effective government on all levels. We must have a scrupulous regard for the rightful independence of state governments, and should refrain from acting where proper recourse may be had to a branch or tribunal of the state government."⁹⁶

We have recounted somewhat expansively the litigation concerning the foregoing five states in an effort to demonstrate the pervasiveness of the problem of literally being bound to serve two masters: the federal court carrying out the edict of the U.S. Supreme Court in ordering reapportionment on the basis of substantially equally populated districts, on the one hand; and the legislative apportionment mandates of the state constitution, adopted by and evidencing the will of the people of the state, and diverse in qualitative and quantitative requirements, on the other hand.

Mindful of this whipsawing dilemma, we elected to approach the mechanics of redistricting with a cautious regard for the pertinent provisions of the California Constitution.⁹⁷ We deemed it wise to attempt to abridge those state constitutional directives as slightly as possible. Yet, we are fully aware that abridgment to some degree is a necessity, and this becomes a precursor of possible (or more likely, probable) litigation in the California courts, challenging the plan of reapportionment on the basis of infringement of the provisions of the state constitution.

To obviate any such challenge after a plan of reapportionment is dutifully fashioned and approved by the federal court, we determined that the most efficacious course would be to initiate action now to obtain an interpretive ruling by the California Courts on the question of validity of the relevant provisions of the state constitution in the light of the federal court's reapportionment order of December 3, 1964. To that end, suit for declaratory relief was filed in the Superior Court in Sacramento on April 21, 1965, by the Senate and six of its members.⁹⁸

In praying for an interpretive decision, the Senate's pleading in that suit points out: "Until it is authoritatively and finally determined by the appropriate courts of the State of California which, if any, of said provisions of the Constitution of the State of California relating to the composition of and election of members of the said Senate are independent

⁹⁵ *Preisler v. Hearn*, 362 S.W. 2d 552.

⁹⁶ *Preisler v. Secretary of State of Missouri*, footnote 94, *supra*, citing *Magraw v. Donovan*, 163 F. Supp. 187.

⁹⁷ Appendix "B", *infra*.

⁹⁸ *McAtter, et. al. v. Silver*, Sacramento County Superior Court No. 158464.

of and severable from the others, and which of them, if any, may be ignored, disregarded or violated by the Legislature in devising and adopting any plan of redistricting or reapportionment of the said Senate, it is impracticable and virtually impossible to devise, agree upon or enact any plan redistricting or reapportioning the said Senate."

Hearing on defendant's motion to dismiss, which was treated as a general demurrer, resulted in a judgment sustaining the demurrer without leave to amend, thus being tantamount to a dismissal. The Senate is considering whether to file an appeal.

Moreover, we believe that the Federal District Court, as a sound utilization of its equity powers, should be willing to grant a stay of its July 1, 1965, deadline, if necessary, to permit the state court litigation to be completed. Otherwise, the federal court's order could have the effect of requiring the California Legislature to perform an idle act, which is a result at variance with one of the fundamental equitable maxims.

It is our view that, ultimately the need will be for amendment of the relevant sections of the California Constitution.⁹⁹ The fundamental provisions governing legislative apportionment in this state historically and traditionally have been part of our constitution. Once the California courts have construed the existing state constitutional features in the light of the federal court order (and assuming *arguendo* that said order is undisturbed by the U.S. Supreme Court) early consideration should be given to amendment to comport with those court rulings. Conclusion of the present reapportionment project will endure at most only until the 1971 Session of the Legislature, when apportionment will be required to be adjusted on the basis of the 1970 decennial federal census. By that time, at least, the California Constitution should be redrawn so as to facilitate a reapportionment that will be beyond the reach of the present dilemma of conflict.

We also voice our support for an amendment to the U.S. Constitution that would permit one house of a bicameral state legislature to be apportioned on a basis other than strict population, provided such proposition be approved by the state electorate. Members of the California Senate have appeared before Senator Bayh's Subcommittee of the U.S. Senate Judiciary Committee to urge approval of such an amendment, and appearances will also be made before the Judiciary Committee of the House of Representatives once hearings are begun by that body. A number of proposed amendments have been introduced at the present session of Congress, encompassing various approaches to temper the doctrine established by the Supreme Court in the Apportionment Cases.¹⁰⁰ We acknowledge that the specifics of some of those proposals may be in need of amelioration, yet we believe the problem of finding suitable contours, within which the right of choice by the people can be preserved, is not an insurmountable one.

Our support of such a proposed amendment should not be misconstrued as a self-serving effort to perpetuate our careers as legislators. We have no vested right to our offices, or should we have. We are principled in our support by our adherence to the proposition that the people of a state are entitled to some voice in determining the form the legislative branch of their government is to take, and we submit that this is a basic right co-equal with the right to cast an equally-weighted vote in state legislative

⁹⁹ Appendix "B", *infra*.

¹⁰⁰ Footnote 1, *supra*.

elections. It is our belief that such a right inescapably exists in a republican form of government, as was guaranteed to the states by our Founding Fathers in our original federal constitution.¹⁰¹ Regrettably, the Supreme Court seems to have neglected to consider that Guaranty Clause in attempting to reduce state government to a matter of simple arithmetic in its decisions in the Apportionment Cases.¹⁰² We believe there is great and enduring truth in the words written by Madison many years ago, that it is of the essence of a republican form of government that it "derives all its powers . . . from the great body of the people."¹⁰³

In reviewing the decisions by the Court in the paramount cases of *Baker v. Carr*¹⁰⁴ and *Reynolds v. Sims*¹⁰⁵ we wonder if the emphasis accorded by the Court upon the evil of malapportionment was not misplaced. In neither of those cases was wilful malfeasance the root from which the suits grew. Instead, it was an unrelenting course of non-feasance from which these suits stemmed. At the bottom of both cases was non-reapportionment, and if malapportionment existed, it followed from apathy of the legislature, rather than from concerted legislative action to cause such a result. Both the Tennessee (*Baker v. Carr*) and the Alabama (*Reynolds v. Sims*) state constitutions required reapportionment after each decennial federal census. But neither state had reapportioned its legislature since 1901.¹⁰⁶ It would seem that the imperative ingredient to be added to any proposed federal constitutional amendment is the requirement for periodic re-examination of a state's apportionment scheme, particularly as to the one house of the legislature which the amendment would implicitly demand be apportioned on a population basis.

Our support of a federal constitutional amendment that would be tantamount to a reversal of the Court's decisions in the Apportionment Cases is an indication of respectful dissent, and not of raging disloyalty. And we submit that there is ample historical precedent for such a method of reversal by the legislative branches of the central and state governments.¹⁰⁷ As has been noted by Burnham Enersen, past president of The State Bar of California, no less than three times during this nation's history has the Constitution been amended to nullify the effect of a Supreme Court ruling.¹⁰⁸ The 11th Amendment reversed a decision by the Court that a state could be sued by a citizen of another state.¹⁰⁹ The 14th Amendment itself produced a reversal of the Court's holding that slaves and their descendants could not be U.S. citizens.¹¹⁰ And the 16th Amendment reversed the Court's decision that the 1894 federal income tax law was unconstitutional.¹¹¹

We view a federal constitutional amendment as outlined above as the means of restoring the sound democratic principle of affording the people

¹⁰¹ Article IV, Section 4: "The United States shall guarantee to every State in this Union a republican form of government. . . ."

¹⁰² Footnote 1, supra.

¹⁰³ Federalist, No. 39, pp. 190-191.

¹⁰⁴ 369 U.S. 186.

¹⁰⁵ 377 U.S. 533.

¹⁰⁶ It is true the Alabama Legislature voted both a proposed constitutional amendment and a standby statute to reapportion both houses, but such legislative action occurred only after suit had been filed in federal court, *Reynolds v. Sims*, footnote 105, supra.

¹⁰⁷ Article V of the U.S. Constitution provides that that body of fundamental law may be amended by Congress, by two-thirds vote of both houses, proposing an amendment to the states, and upon ratification thereof by the legislatures of three-fourths of the states or by conventions in three-fourths of the states. Amendments may also be initiated by the legislatures of two-thirds of the states calling for a convention for such purpose, and any amendment proposed thereby would have to be ratified the same as an amendment proposed by Congress.

¹⁰⁸ Speech before the Annual Sacramento Host Breakfast, September 11, 1964.

¹⁰⁹ *Chisholm v. Georgia*, 2 Dall. 419.

¹¹⁰ *Dred Scott Case*, 60 U.S. 393.

¹¹¹ *Pollock v. Farmers Loan and Trust Company*, 157 U.S. 429.

a choice in forming the type of representative state government under which they are to live and be governed. It is our incessant hope that our sister states and the members of Congress will share that view.

2. Consideration of Other Constitutionally-Protected Rights. It appears axiomatic that the umbrella of federal constitutional protection of numerous individual rights was not removed by the Supreme Court's establishment in the Apportionment Cases¹¹² of the right to cast an equally-weighted vote in state legislative elections. Too numerous to catalog in this report are the myriad rights decreed by the Court to be under that protective cloak. The Constitution is replete with broad bases of protection against the wide sweep of so-called "state action": the Privileges and Immunities Clause of the 14th Amendment; the Due Process Clause of the 14th Amendment; the Equal Protection Clause of the 14th Amendment; the racial voting rights under the 15th Amendment; and the equal suffrage voting rights under the 19th Amendment, to cite the major areas.

A cyclopedic work would be required to categorize the specifics under each of those broad headings. For the purposes of our project, attention was focused on the mandates prohibiting discrimination on account of race, color, national origin, religion, creed, economic status, or sex. We deemed it essential in fashioning any reapportionment plan that the scheme developed not transgress any of these listed rights. A plan of reapportionment which creates districts of substantially equal population, but which appears to be discriminatory on one or more of the foregoing bases would almost certainly be challenged in the courts. To be sure, we cannot foreclose the possibility of suit being filed, but we can draft our plan so as to be safe from override as the result of any such challenge. It is this latter course that we determined to follow.

To this end, this Subcommittee and the Special Standing Committee held hearings in Sacramento on March 5 and March 22, 1965, to hear testimony from residents of Los Angeles County and the counties of the greater San Francisco Bay Area as to suggested considerations that should be given those factors in creating districts in their locales. Interestingly, the most often suggested consideration was that districting should recognize "communities of interest." There was general agreement that partisan politics should not be considered in district formation. Negro leaders made a strong appeal for consideration that would permit the possible election of one or more members of their race under the reapportionment plan.

The Subcommittee's statisticians and the staff of Senator Thomas M. Rees studied in detail the patterns of various ethnic residencies in counties that would be entitled to two or more senators under any reapportionment scheme. A unique situation concerning concentration of Negro residency was found to exist in Los Angeles County. A survey of U.S. Census Bureau census tract data compiled in the 1960 decennial enumeration, revealed that 82% of the total number of Negro residents in Los Angeles County were concentrated in 160 of the 1304 census tracts in the county. The existence of that core area presents a number of possible approaches in districting. One course would be the drawing of boundaries so as to make that core area a district of its own. Although this would make for a somewhat underpopulated district when the one-person, one-vote principle and the maximum population variance ratio are tested state-

¹¹² Footnote 1, *supra*.

wide, it would assure in large measure the election of a member of that racial group. The approach to be avoided is one of fragmenting that core area and placing its residents into such a number of integrated districts that this ethnic group would be a sharply minor fractional part of the total population of each of those integrated districts. An approach of this nature would seem constitutionally suspect, at least, as an impermissible dilution and debasement of the vote of that ethnic group.¹¹³

Although we are mindful of the careful consideration that must be accorded ethnic interests in fashioning districts, the practical application of such consideration poses a real difficulty in attempting to create districts of substantially equal population. The Subcommittee's statisticians found it apparent that any attempt to begin districting in the middle of any county to maximize (or even to minimize) the voting strength of any minority, results in serious population variances in the overall plan of districting throughout the state. We were compelled to conclude that each and every applicable constitutional right cannot be completely protected if reapportionment is to produce districts of substantially equal population. The approach with the most merit seems to be one that will minimize any infringement of the rights we have cited, even though such a course will culminate in an apportionment something in disparity from districts of substantially equal population.

We submit that the Supreme Court has indicated the propriety of such an approach, in its instructions to the lower courts that, "the proper judicial approach is to ascertain whether, under the particular circumstances existing in the individual state whose legislative apportionment is at issue, there has been a faithful adherence to a plan of population-based representation, with such minor deviations only as may occur in recognizing certain factors that are free from any taint of arbitrariness or discrimination."¹¹⁴

Throughout our reapportionment project, we have exercised care to make certain that any plan will be "free from any taint of . . . discrimination." We are aware that Michigan's reapportionment scheme is being challenged in federal court as allegedly discriminatory to Negro residents in parts of that state. Although it is certainly possible that suit may be filed attacking California's ultimate plan, we are determined that such plan will be one which the courts will rule to be non-discriminatory.¹¹⁵

3. Consideration of Partisan Political Factors. As Justice Frankfurter asserted, in warning in his dissent in *Baker v. Carr* that the fabric of legislative apportionment is made up of many threads that cannot be ripped out to reduce the cloth to a matter of mathematics, "And . . . in

¹¹³ Cf. *Gomillion v. Lightfoot*, 364 U.S. 339, holding prospectively invalid under the 15th Amendment an Alabama statute redefining the boundaries of the City of Tuskegee which had the alleged effect of removing from the city all but five of its 400 Negro voters while not removing a single white resident. The Court, through Justice Frankfurter, said that such allegation, if true, would establish that the Negroes had been fenced out of town so as to deprive them of their municipal vote.

¹¹⁴ *Roman v. Sincock*, 377 U.S. 695, at 710.

¹¹⁵ In addition to the informational deposits from publications and census tract data compiled by the Bureau of the Census, U.S. Department of Commerce, in the 1960 census, the following is a partial bibliography of reference material used by the Subcommittee's staff: *South Central Economic Planning Area: Demographic and Socio-Economic Analysis*, by the Research Department, Welfare Planning Council, Los Angeles Region, 1964; *Comparative Statistical Analysis of Population by Race for Metropolitan Counties, Los Angeles County*, by Los Angeles County Commission on Human Relations (based on U.S. Census Bureau reports), undated; *Population Estimate and Housing Inventory*, by City of Los Angeles Planning Commission Research Section, 1964; *Population by Tract and Race, City of Los Angeles*, by Los Angeles County Commission on Human Relations (based on 1960 U.S. Census Bureau final report), 1963; *Background for Planning* (in Los Angeles County), by Research Department, Welfare Planning Council, Los Angeles Region, 1963; *Negro Population Characteristics, Los Angeles County*, a map by Willbur McCann, economic consultant, published by Brewster Mapping Service, Los Angeles (based on 1960 U.S. Census Bureau reports), 1961. An even more detailed analysis of the ethnic, religious, and economic patterns of Los Angeles County's population was made by the staff of Senator Thomas M. Rees, who represents that county (see *infra*.)

every strand of this complicated, intricate web of values meet the contending forces of partisan politics.”¹¹⁶ As legislators, we can attest to the veracity of that assessment by the late justice. The problem encountered by this Subcommittee concerns the extent of consideration of partisan political factors that may be given in formulating a reapportionment plan. Again, we looked to the results of litigation involving reapportionment in other states.

We have cited the New York situation.¹¹⁷ The Michigan reapportionment enactment is being challenged in federal court as having produced an alleged partisan political gerrymander. In Delaware, after the U.S. Supreme Court invalidated the then-existing scheme of legislative apportionment,¹¹⁸ the Legislature in early July, 1964, enacted a plan of reapportionment. Plaintiffs in the original action challenged in federal court the new enactment, alleging the new scheme does not conform to the Supreme Court’s principle of substantially equally populated districts, and that the plan gerrymandered the City of Wilmington in favor of one political party so as to deny representation to another party.¹¹⁹

The three-judge federal court, after denying the motion of the state officials to dismiss, took evidence in two parts: first on the issue whether districts were substantially equal in population, and second on the issue of gerrymander. The court “assumed” this second issue is relevant under the Equal Protection Clause of the 14th Amendment and under the 15th Amendment.¹²⁰ Evidence on that issue was admitted by the court over objections of state officials; however, the court reserved its ruling on relevancy and admissibility until a later time. Eleven days were consumed in the taking of testimony and the introduction of numerous exhibits bearing on the two issues. Final arguments and briefs were made and filed with the court on September 14, 1964, at which time the judges noted the imminence of the November 3, 1964, election, pointing out that Delaware’s pre-election machinery was already in full gear. In view of the shortage of time and the voluminous exhibits which the court would have to examine and consider, the judges ruled only that the election could be held under the plan of apportionment produced by the new enactment, and that judgment would be rendered later on the two issues. As of this writing, no judgment had yet been reported.

The question whether the U.S. Constitution affords protection against a sheer partisan-political gerrymander is still an open one. There is, however, an implication in the Supreme Court’s decision in *Reynolds v. Sims*¹²¹ that such gerrymandering in an apportionment scheme may draw reproval by the Court. In setting out reasons why a state would be permitted to use political subdivisions as bases for legislative districts, the Court noted that, “indiscriminate districting without any regard for political subdivision or natural or historical boundary lines, may be little more than an open invitation to partisan gerrymandering.”¹²² Although that statement is dictum rather than part of the law of the case, it may be the precursor of the vista to which the Court will expand the ever-flexible wing of constitutional protection. Unless the comment was purely

¹¹⁶ 82 S. Ct., at 767-768; see footnote 42, *supra*.

¹¹⁷ See footnote 85, *supra*.

¹¹⁸ *Roman v. Sincoc*, 377 U.S. 695, and see footnote 1, *supra*.

¹¹⁹ *Sincoc v. Roman*, 233 F. Supp. 615.

¹²⁰ *Id.* at 618.

¹²¹ 377 U.S. 533, and see footnote 1, *supra*.

¹²² *Id.* at 578-579.

a gratuitous one, the Court may drive deeper into the thicket¹²³ if presented with a reapportionment case that is demonstrably an example of partisan gerrymandering.

By drawing upon history, tradition, and our state constitution, and utilizing county lines as the basic means of district demarcation, we believe the problem of gerrymander can be obviated in California's Senate reapportionment plan. It is only when we reach the point of districting within any county entitled to two or more senators that the possibility for gerrymander arises. In composing districts within counties, a system of adherence to city boundaries, insofar as possible, should avoid any gerrymander.

4. Consideration of Assembly Apportionment and Districting. In three of the six Apportionment Cases¹²⁴ the Supreme Court made reference to a possible balancing of minor deviations from a strict population basis between the districts from which representatives are elected to the two houses of a state legislature. In pointing out that its basic ruling that both houses of a state legislature must be apportioned substantially on a population basis was not intended to abolish bicameralism, the Court said that "apportionment in one house could be arranged so as to balance off minor inequities in the representation of certain areas in the other house."¹²⁵ In noting that a challenge had been made against Colorado's plan of Senate apportionment, but not against the Colorado House of Representatives, the Court asserted that, "in determining whether a good faith effort to establish districts substantially equal in population has been made, a court must necessarily consider a state's legislative apportionment scheme as a whole."¹²⁶

The Court further declared: "Only after an evaluation of an apportionment plan in its totality can a court determine whether there has been sufficient compliance with the requisites of the Equal Protection Clause. Deviations from a strict population basis, so long [as] rationally justifiable, may be utilized to balance a slight overrepresentation of a particular area in one house with a minor underrepresentation of that area in the other house. But, on the other hand, disparities from population-based representation, though minor, may be cumulative instead of offsetting where the same areas are disadvantaged in both houses of a state legislature, and may therefore render the apportionment scheme at least constitutionally suspect."¹²⁷

Although those statements must be considered as dicta, the Court made a similar assertion as part of its ruling in another case. In the Maryland apportionment litigation, all parties had apparently conceded before the lower courts that a recent apportionment of the House of Representatives was not being challenged. However, the Supreme Court would not accept that concession.

"Regardless of possible concessions made by the parties and the scope of the consideration of the courts below, in reviewing a state legislative apportionment case, this Court must of necessity consider the challenged scheme as a whole in determining whether the particular state's apportionment plan, in its entirety, meets federal constitutional requisites. It is simply impossible to decide upon the validity of the apportionment of

¹²³ See footnote 3, *supra*.

¹²⁴ *Feibush v. I.*, *supra*.

¹²⁵ *Reynolds v. Sims*, 377 U.S. at 577.

¹²⁶ *Lucas v. 44th General Assembly*, 377 U.S. at 735, fn. 27

¹²⁷ *Ibid*.

one house of a bicameral legislature in the abstract, without also evaluating the actual scheme of representation employed with respect to the other house. Rather the proper, and indeed indispensable, subject for judicial focus in a legislative apportionment controversy is the overall representation accorded to the state's voters, in both houses of a bicameral state legislature."¹²⁸

In essence, the Court thereby held that there must be consideration of the constitutional validity of a bicameral legislative apportionment scheme as a whole, and by the court's own motion if necessary. Therefore, we cannot be oblivious to the existing system of Assembly apportionment in our efforts to devise a plan of Senate reapportionment. We are mindful, of course, of the general requirement of the California Constitution that the Assembly be apportioned on the basis of population.¹²⁹ We are also aware that the Assembly was reapportioned by the legislature in 1961, on the basis of the 1960 decennial federal census, as our Constitution requires. As we played a part in the legislative process by which that reapportionment became law, we assume it complies with both the state and federal constitutions.

The relationship to existing Assembly districts of any plan of Senate reapportionment has been given careful consideration with regard to the aggregate legislative representation that would be accorded the residents of California. Although we may have been tempted to propose some adjustment in Assembly districting, we have not done so, for several reasons. Historically, Assembly reapportionment has been a subject to be dealt with by the Assembly in the first instance. Moreover, litigation is presently pending, seeking to invalidate the present Assembly apportionment scheme and to force reapportionment of that house.¹³⁰

If any of the pending suits result in judgments favoring the plaintiffs, Assembly reapportionment would be required, and balancing of representation between the two houses would be called for. Pending the outcome of the litigation challenging Assembly make-up, we have looked to existing apportionment of the lower house in our awareness of the Supreme Court's mandate that Senate districts as realigned must be compared with Assembly districts to avoid the compounding of overrepresentation or underrepresentation in the two houses as to any given area.

5. Consideration of U.S. House of Representatives Districting in California. We have studiously avoided any substantial consideration of Congressional districting in California in attempting to fashion a plan of Senate reapportionment. Our avoidance is based on several reasons. Under the provisions of Article IV, Section 27 of the California Constitution, Congressional districting is tied closely to Assembly districting, but not to Senate districting. Legislation is now pending before Congress to permit a variance of 15% upward or downward from the "ideal" population for House of Representatives districts in each state (i.e., the figure obtained by dividing the total population of the state by the number of House of Representatives seats allotted to that state).¹³¹ And although the Supreme Court has held that the principle of substantially equally populated districting applies to Congressional as well as legislative

¹²⁸ *Maryland Committee for Fair Representation v. Taves*, 377 U.S. at 673.

¹²⁹ Article IV, Section 6, California Constitution, see Appendix "B", *infra*.

¹³⁰ One such action was dismissed by a federal court in March, 1965, on the ground that the plaintiff could not show he resided in an Assembly district, the residents of which were underrepresented or discriminated against by the existing apportionment plan: *Silver v. Jordan*, D. C., S. D. California, unpublished.

¹³¹ H. R. 5505, 89th Congress, 1st Session, passed the House of Representatives on March 16, 1965, and now awaiting action by the U.S. Senate.

districts,¹³² the Court has also said that while consideration to political subdivisions will be recognized as justifying minor deviation in population in legislative districting, such exception to the basic standard does not hold true as to Congressional districting.¹³³ We submit that in view of the distinguishable factors concerning Congressional districting, we were warranted in eliminating consideration of such districting in our efforts to draft a plan of Senate reapportionment.

6. Considerations as to Districting in Counties Entitled to Two or More Senators. We have earlier cited some of the problems bearing on the riddle: to district or not to district in counties that will be accorded two or more members.¹³⁴ When our reapportionment project was in its infancy stage we determined that county lines should be recognized in forming districts. This conclusion appears in concert with the view expressed by the Supreme Court in *Reynolds v. Sims*,¹³⁵ as indicated above, and also comports with the mandate of Article IV, Section 6 of the California Constitution.¹³⁶ In reaching that conclusion we examined and then discarded the possibility of fractionalizing or fragmenting counties in designing districts (i.e., districts composed of an entire county or counties and part of an adjoining county or parts of adjoining counties; and districts composed of part of one county joined with part of an abutting county). In fact the first statewide districting map prepared by our staff featured such arrangements and produced only a *de minimus* population variance from the ideal among the districts. That proposal also produced almost a unanimous negative response from the members of the Senate. The primary objection voiced by an overwhelming majority of members was the plan's lack of recognition of county lines, which has been the historical, traditional, and state constitutional basis for demarcation in California.

We next turned our thoughts to construction of at least some flotalial districts. As defined by the Supreme Court, "the term 'flotalial district' is used to refer to a legislative district which includes within its boundaries several separate districts or political subdivisions which independently would not be entitled to additional representation but whose conglomerate population entitles the entire area to another seat in the particular legislative body being apportioned."¹³⁷ A hypothetical example would be four adjacent counties, each of which has a population that would entitle it to 1.25 members. By making each county a separate district, each would be allocated one member. But by combining the four into one flotalial district, five members would be awarded to such district on an at-large basis insofar as election and representation would be concerned.

The proposal of forming flotalial districts also encountered opposition from a majority of the Senators and was criticized as a radical departure from California's historical and constitutional scheme of Senate districting.

Once we had determined to build our plan on the basis of county lines as district boundaries, we found that some 14 counties each comprised a sufficient number of residents so as to justify being single-county, single-member districts. Of the remaining 44 counties, six were found to be heavily enough populated to justify being single-county districts entitled

¹³² *Wesberry v. Sanders*, 376 U.S. 1, discussed, *supra*.

¹³³ *Reynolds v. Sims*, 377 U.S. at 578-579.

¹³⁴ See p. 29 for discussion of other constitutional rights, and p. 30 for discussion of partisan political considerations.

¹³⁵ 377 U.S. at 578-579, and see footnote 16, *supra*.

¹³⁶ See Appendix "B" *infra*.

¹³⁷ *Davis v. Mann*, 377 U.S. at 686, fn. 2.

to two or more senators each. The remainder of the 38 counties, then, would have to be grouped into multi-county, single-member districts. In arranging groupings our foremost aim was to create districts that would each contain a population as near the "ideal" as possible. Notwithstanding our primary consideration of the principle of substantially equally populated districts, it became apparent that some significant variances would result.

Two factors militated against nice equality. One was our decision to abide by our state constitutional requirement that districts contain contiguous counties. To depart from the concept of contiguity would produce a veritable "crazy quilt," which in itself could render the plan at least constitutionally suspect if not unconstitutionally discriminatory.¹³⁸ The other factor was the according of some recognition to the concept of communities of interest. In correspondence received by members and in suggestions and recommendations advanced by witnesses before this Committee, there has been a decided preponderance in support of favorable consideration of communities of interest in creating districts. We have not been deaf to such suggestions. Thus, we have avoided combining counties whose interests, economies, and local problems needing state legislative assistance are heterogeneous.

Some 18 versions of complete Senate reapportionment were prepared by our staff before one was accorded approval by a majority of the members of the Senate. Even then, approval was not unanimous by the Senate as a whole or by the members of this Committee. The feature of that plan drawing the most criticism was its provision for at-large representation and election in counties entitled to two or more senators. Although such criticism was mild with respect to five of those six counties, as to the sixth—Los Angeles County—the reprobation was vigorous. However, it was not through arbitrariness or caprice that this at-large feature came about. The Committee and its staff gave studied consideration to various methods of allocating Senate representation within those counties. But the information gathered by and submitted to the Subcommittee did not enable us to reconcile the expressed desires of residents of those counties—and this was particularly true as to Los Angeles County—with the mechanical difficulties of fitting individual plans into an overall statewide scheme that would be acceptable to the courts. Frankly, and again this was particularly notable with respect to Los Angeles County, no general agreement was evidenced to the Subcommittee as to delineation of district boundaries within such counties.

That multi-member districts are permissible in an apportionment scheme which in its totality adheres to the dogma of substantial equality of population, is twice indicated by the Supreme Court in the leading case of *Reynolds v. Sims*.¹³⁹ "One body could be composed of single-member districts while the other could have at least some multi-member districts."¹⁴⁰ "Single-member districts may be the rule in one state, while another state might desire to achieve some flexibility by creating multi-member or floterial districts."¹⁴¹ And the Court in January, 1965, let stand a Georgia statute which provided for creation in counties entitled to two or more senators of districts merely for the purpose of residence

¹³⁸ See concurring opinions of Justice Clark in *Reynolds v. Sims*, 377 U.S. at 588, and in *Baker v. Carr*, 369 U.S. at 253-258.

¹³⁹ 377 U.S. 533.

¹⁴⁰ *Id.* at 576-577.

¹⁴¹ *Id.* at 579.

qualification of candidates, but which required at-large voting for all senators within such counties.¹⁴²

In a dictum in the Colorado case, the Supreme Court commented on the possible practical undesirability of at-large voting and representation in multi-member counties insofar as residents of such counties are concerned; however, the Court did not rule that such arrangement is constitutionally impermissible. "We do not intimate that apportionment schemes which provide for the at-large election of a number of legislators from a county or any political subdivision, are constitutionally defective. Rather, we merely point out that there are certain aspects of electing legislators at large from a county as a whole that might well make the adoption of such a scheme undesirable to many voters residing in multi-member counties."¹⁴³

That a good faith effort was made to construct districts within Los Angeles County is evidenced by the energy expended by Senator Rees and his staff. In the first days of the 1965 Session of the Legislature, letters requesting assistance were sent by Senator Rees to the mayors and city councilmen of the 76 cities in Los Angeles County, to the 31 assemblymen representing that county, to the county board of supervisors, to county political party chairmen, to chambers of commerce in the county, and to leaders of minority groups in the county. Through Los Angeles news media, requests were made for suggestions from the general public.

Some 48 constructive replies were received from individual cities in the county, responses were also forthcoming from many public officials, and a number of resolutions were dispatched by governmental and non-governmental bodies presenting detailed suggestions. At least 15 conferences were held with local governmental bodies and local officials. Meetings were had with the staffs of the planning departments of the City of Los Angeles, the County of Los Angeles, and the State Planning Office, to acquire information regarding population distribution, land use and population density, growth trends, and ethnic distribution within the county. Assistance was rendered by Dr. Dwain Marvick of U.C.L.A. and Dr. Leroy Hardy of Long Beach State College, in setting up a program of computer analysis to minimize the possibility of ethnic and partisan political gerrymandering, and to identify communities of interest.¹⁴⁴

In addition to the information above mentioned, data was compiled on such subjects as: highway and freeway construction (existing and projected); distribution of park and recreation facilities; agricultural land use and interests; natural boundaries and topographical features; political boundaries now existing (Congressional, Assembly, supervisorial, and councilmanic districts); and boundaries of political subdivisions (cities, school districts, and a multitude of types of service districts). From this mountain of data, the various factors were keyed onto maps, and then began the project of delineating possible Senate district lines within the county. Consultations were held on at least 25 occasions with Assembly members representing Los Angeles County. No less than 30 maps were prepared, each containing proposals for districting within the county.

As Senator Rees pointed out to the Special Standing Committee at its April 26, 1965, hearing, each of the numerous relevant factors had to be

¹⁴² *Tackett v. Dorsey*, 379 U.S. 433.

¹⁴³ *Lucas v. 44th General Assembly*, 377 U.S. at 731, fn. 21.

¹⁴⁴ Dr. Hardy was a consultant to the Assembly during its reapportionment project following the 1960 federal census.

weighed separately and then be interrelated and woven into the whole picture of county sub-districting. District configurations were difficult to form because, in part, of competing desires of various groups within the county. Of the 76 cities in the county, 75 indicated opposition to fragmentation of cities in drawing Senate district boundary lines.

On the other hand, the Senator reported an overwhelming opposition by his constituency to at-large voting and representation. Such a plan would disfavor minorities. Campaigning for election on a county-wide basis involves huge expenses amounting to \$1 million or more, which would eliminate all but the wealthiest of candidates or those with moneyed backers.

Finally, on May 6, 1965, after the bill carrying the proposed Senate reapportionment plan had cleared the Special Standing Committee, the Senate by vote of 32 to 3 adopted amendments to that measure, proposed by Senator Rees, to create separate districts within Los Angeles County.¹⁴⁵ As finally developed, those districts are based primarily on substantial equality of population, but with recognition of communities of interest within the county, and with the ever-present care to minimize infringement upon constitutionally-protected right.

¹⁴⁵ Senate Daily Journal, May 6, 1965, p. 2063; and see Senate Bill No. 6, as amended in Senate on said date.

V. REAPPORTIONMENT TODAY IN CALIFORNIA AND OUR SISTER STATES

The California State Senate has passed and sent to the Assembly the measure containing the plan of Senate reapportionment.¹⁴⁶ The reception given the plan by that house will soon be known. We trust the Assembly will take note of the honest and good faith effort expended by the Senate in producing this proposal, and that the members of that body will put aside personal desires and ambitions, as we have had to do, and will honor that plan with a strong vote of approval.

Although the plan is not without its imperfections, we hold the sincere conviction that it will merit the approval of the court. Our points of justification will be reported at a later date. It is not gamesmanship in which we are involved, but government, and the stakes are high. For it has come to pass that the most powerful force in many state governments today is the federal judiciary. That is true in California, as it is the federal court which will ultimately determine the mode of representative state government which California is to have. It is no idle threat that the federal court will devise a plan of its own making if this legislature fails to act.

Earlier this year, the Montana Legislature adjourned after failing to enact a reapportionment plan. The Nevada Legislature failed to act on reapportionment in advance of court-ordered redistricting, which appears imminent. The Maryland Legislature failed to enact a new system of apportionment to replace the scheme invalidated by the Supreme Court.¹⁴⁷ The voters in Ohio have turned down a reapportionment proposal in the form of a state constitutional amendment. The New York Legislature failed to meet the May 5, 1965, federal court deadline to enact a reapportionment plan, the scheme adopted at a special legislative session having been invalidated by the state's highest court.¹⁴⁸ In some, if not all, of these states, court action will fill the void left by the legislature. We must not allow a like situation to occur in California. We owe those, who we as legislators represent, no less.

By way of final comment, we believe one cannot help but note the turmoil in state governments which today exists as the outgrowth of the Apportionment Cases.¹⁴⁹ We have recounted herein only a few examples. We again assert that if there is to remain any true vitality in the Guaranty Clause of the United States Constitution,¹⁵⁰ the people of the states must have a right of choice in the form of representative state government under which they are to live. We insist that it is essential in a dynamic democracy that the people of the several states have that right of decision, to be exercised by them according to the very principle enunciated by the Court: one-person, one-vote. It behooves the Congress to restore that right by submitting to the states an amendment to the Constitution.

¹⁴⁶ Senate Daily Journal, May 10, 1965, p. 2121.

¹⁴⁷ *Maryland Committee for Fair Representation v. Tawes*, 377 U.S. 656, and see footnote 1, supra.

¹⁴⁸ *In re Orans' Petition* _____ N.Y.S. 2d. _____, and see footnote 87, supra.

¹⁴⁹ Footnote 1, supra.

¹⁵⁰ Article IV, Section 4, see footnote 101, supra.

Taken in their proper perspective, the Apportionment Cases are not instances of discrimination practiced upon a minority, but rather they indicate that it is a *majority* of residents and voters in the subject states (i.e., those whose homesites are in the more populous areas) whose right to cast an equally-weighted vote is diluted and debased under a scheme stigmatized as malapportionment. Those cases cannot with legal accuracy be equated with decisions and principles of constitutional law regarding the deprivation of rights of minorities.

We submit that in California and a number of other states the circumstances categorized by the courts as malapportionment exists because the majority have chosen to confer their rights upon a minority of the residents and voters. We believe that this is a fundamental example of the concept of "majority rule" and is fully in concert with the spirit of our Constitution. We feel it is the duty of the Congress to initiate the requisite action to insure that this vital democratic principle becomes an explicit part of our Constitution.

TABLE I *

State	Legislative body	Maximum population variance ratio	Minimum percentage to elect majority
ALABAMA ¹	House	16 to 1	25.7
	Senate	41 to 1	25.1
NEW YORK ²	House	12.7 to 1	37.5
	Senate	2.6 to 1	38.1
MARYLAND ³	House	6 to 1	35.6
	Senate	32 to 1	14.1
VIRGINIA ⁴	House	4.36 to 1	40.5
	Senate	2.65 to 1	41.1
DELAWARE ⁵	House	12 to 1	28.0
	Senate	15 to 1	21.0
COLORADO ⁶	(House)	(1.7 to 1)	(45.1)
	Senate	3.6 to 1	33.2
CONNECTICUT ⁷	House	424 to 1	12.0
	Senate	8 to 1	32.0
FLORIDA ⁸	House	23 to 1	26.9
	Senate	26.4 to 1	15.2
IDAHO ⁹	House	11 to 1	44.0
	Senate	102 to 1	16.6
ILLINOIS ¹⁰	House	4.6 to 1	39.9
	Senate	10.5 to 1	28.7
IOWA ¹¹	House	18 to 1	27.4
	Senate	9 to 1	35.6
MICHIGAN ¹²	House	2 to 1	44.0
	Senate	4 to 1	43.0
OHIO ¹³	House	15 to 1	28.4
	Senate	1.9 to 1	46.0
OKLAHOMA ¹⁴	House	5.4 to 1	30.2
	Senate	26.4 to 1	24.5

TABLE I—Continued

State	Legislative body	Maximum population variance ratio	Minimum percentage to elect majority
WASHINGTON ¹⁵	House	4.65 to 1	38.0
	Senate	7.25 to 1	35.6
WISCONSIN ¹⁶	House	2.35 to 1	45.4
	Senate	1.36 to 1	48.4
GEORGIA ¹⁷	House	2 to 1	42.3
	Senate	1.8 to 1	48.2

* Figures cited herein are taken from decisions of the courts unless otherwise noted.

¹ This apportionment scheme, as well as two other proposals, was invalidated by the U.S. Supreme Court, *Reynolds v. Sims*, 377 U.S. 533.

² These would have been the mathematical factors under New York's apportionment formula on the basis of the 1960 census. At the time suit was brought, New York had not yet reapportioned its legislature on the basis of the 1960 census. The New York formula which would have produced these factors was invalidated by the Supreme Court, *WMCA v. Lomenzo*, 377 U.S. 635.

³ This apportionment scheme was invalidated by the Supreme Court, *Maryland Committee for Fair Representation v. Tawes*, 377 U.S. 656.

⁴ This apportionment scheme was invalidated by the Supreme Court, *Davis v. Mann*, 377 U.S. 678.

⁵ This apportionment scheme was invalidated by the Supreme Court, *Roman v. Sincok*, 377 U.S. 695.

⁶ Colorado's scheme of State Senate apportionment was invalidated by the Supreme Court, *Lucas v. 44th General Assembly*, 377 U.S. 713. Apportionment of the Colorado House of Representatives was not in issue in that litigation. The Supreme Court noted that the Colorado House was "arguably apportioned" so as to comport with the requirements of the 14th Amendment.

⁷ These figures are based on data presented in 22 Congressional Quarterly Weekly Report 1219. This apportionment scheme was invalidated by the Federal District Court, and was affirmed by per curiam order of the Supreme Court, *Pinney v. Butterworth*, 378 U.S. 564.

⁸ These figures are based on data presented in 22 Congressional Quarterly Weekly Report 1219. This apportionment scheme was invalidated by the Supreme Court, *Swann v. Adams*, 378 U.S. 553.

⁹ These figures are based on data presented in 22 Congressional Quarterly Weekly Report 1219. This apportionment scheme was invalidated by the Supreme Court, *Hearne v. Smylie*, 378 U.S. 563.

¹⁰ These figures are based on data presented in 22 Congressional Quarterly Weekly Report 1219. This apportionment scheme was invalidated by the Supreme Court, *Germano v. Kerner*, 378 U.S. 560.

¹¹ This apportionment scheme was invalidated by the Supreme Court, *Hill v. Davis*, 378 U.S. 565. The appeal to the Supreme Court did not include a challenge of a temporary plan enacted by the Iowa Legislature and approved by the Federal District Court as an interim arrangement to be used for the 1964 election. Under that interim plan the maximum variance figures are 2.28 to 1 for House districts and 3.2 to 1 for Senate districts; the minimum percentage of the total population that can elect a House majority is 48.3%, and that can elect a Senate majority is 38.9%. However, that interim plan was challenged after the 1964 election, and the Federal District Court ruled that the plan is prospectively invalid and is inoperative for all future Iowa legislative elections, *Davis v. Cameron*, 238 F. Supp. 462. The District Court held the disparities in Iowa's Senate apportionment are too great to be allowed to stand; but the court declined to pass on the question whether the House plan is constitutionally valid, noting that "It is arguably close." Nonetheless, the court ruled that the Senate and House plans, which were enacted in one statute, are not severable, and the entire measure must fail because of invalidity of that part containing the Senate plan.

¹² These figures are based on data presented in 22 Congressional Quarterly Weekly Report 1219, and as estimated in *The Politics of Reapportionment* by Lamb, p. 290. This apportionment scheme was invalidated by the Supreme Court, *Marshall v. Hare*, 378 U.S. 561, and *Beadle v. Scholle*, 377 U.S. 990.

¹³ These figures are based on data presented in 22 Congressional Quarterly Weekly Report 1219. This apportionment scheme was invalidated by the Supreme Court, *Nolan v. Rhodes*, 378 U.S. 556.

¹⁴ These figures are based on data presented in 22 Congressional Quarterly Weekly Report 1219. This apportionment scheme was invalidated by the Federal District Court, and was affirmed by per curiam order of the Supreme Court, *Williams v. Moss*, 378 U.S. 558. The District Court noted that under the plan, the minimum percentage figure would vary every two years during this decade, the figures for House majorities ranging from 28.5% to 33.5%. The House figure shown in the Table is that for the first election.

¹⁵ This apportionment scheme was invalidated by the Supreme Court, *Meyers v. Thigpen*, 378 U.S. 554. In February, 1965, the Washington Legislature enacted a new plan, which was approved by the Federal District Court on March 10, 1965, and the court dismissed the litigation, *Thigpen v. Kramer* (unpublished). Under the plan approved by the District Court, the maximum variance figures are 1.61 to 1 for House districts and 1.45 to 1 for Senate districts; the minimum percentage of the Washington population that can elect a House majority is 47.7% and that can elect a Senate majority is 47.2%.

¹⁶ This apportionment scheme was developed and adopted by the Wisconsin State Supreme Court, *State ex rel. Reynolds v. Zimmerman*, 128 N. W. 2d 16, and has not been challenged in the federal courts. The Wisconsin Constitution requires apportionment of Senate and Assembly districts on the basis of population, but that recognition be given to county lines in districting. The Wisconsin Legislature was unable to develop a state-constitutionally valid reapportionment following the 1960 census, and the State Supreme Court on May 14, 1964, handed down its decision in which

it created this plan. Under the plan and the state constitution, Senate districts are composed of whole Assembly districts.

¹⁷ This apportionment scheme was ruled invalid by the Federal District Court, *Toombs v. Fortson*, _____ F. Supp. _____, April 1, 1965. The court asserted that a uniform formula should be developed for the testing of state apportionment plans, notwithstanding the Supreme Court's admonition to the contrary in *Roman v. Sincock*, 377 U.S. 695. The District Court elected to disregard any consideration of the maximum population variance ratio and the minimum percentage of the state's population that can elect a majority of the legislative body, and adopted instead a "15% rule." Such rule is the proposed measuring stick for allowable variances in population of U.S. House of Representatives districts in the Celler Bill presently pending in Congress. Under this rule, a plan is presumably valid if every district has a population which does not vary by more than 15% above or below the "ideal" population for each district. The "ideal" is determined by dividing the number of seats in the legislative body into the total state population. The District Court found that of 141 House districts, 73 were within the 15% tolerance and 68 districts deviated from the "ideal" by more than 15%. Of 54 Senate districts, the court found 48 were within the 15% tolerance and 6 deviated from the "ideal" by more than 15%. Although the District Court invalidated the scheme as a permanent apportionment plan, it allowed the scheme to stand as an interim arrangement and the court allowed the Georgia Legislature until May 1, 1968, to formulate a constitutionally-valid plan.

APPENDIX A

IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA
CENTRAL DIVISION

PHILL SILVER, as a citizen of the
United States and of the State of
California, etc.,

Plaintiff,

vs.

FRANK M. JORDAN, in his official
capacity as Secretary of State of
California, et al.,

Defendants.

No. 62-953 MC

PER CURIAM ORDER

Since the historic pronouncement by the Supreme Court of the United States in *Baker v. Carr*, 369 U.S. 186 (decided March 26, 1962), the federal courts of the United States have been literally flooded with suits by voters, alleging either "the debasement" of their vote by state legislative action, or by the failure or alleged inability of the state legislature to act pursuant to constitutional requirements, which in either event have resulted in "invidious discrimination" against the litigant, and others in his class, which amounts to or results in a violation of the equal protection clause of the Fourteenth Amendment to the United States Constitution. This is one of those cases.

Plaintiff, Phill Silver, filed this class action on July 16, 1962, as a citizen of the United States and of California, and as an elector and registered voter of Los Angeles County, on his own behalf and on behalf of all other citizens, electors, and registered voters of the State of California, similarly situated. The defendants are sued in their representative capacities as State officials, performing duties in respect to State elections.

The complaint alleged a deprivation of rights under the California Constitution and under the Equal Protection Clause of the Fourteenth Amendment. It is asserted, and we hold, that this court has jurisdiction under the Civil Rights Act, 42 U.S.C. §§ 1983, 1988, and 28 U.S.C. § 1343(3). Relief is prayed for under 28 U.S.C. §§ 2201-2202.

Since relief was sought under the Federal Declaratory Judgment Act (28 U.S.C. §§ 2201-2202), a three-judge District Court was convened. The plaintiff prayed for injunctive relief to enjoin the 1962 General Election as it applied to the election of State Senators. Plaintiff alleged that the present apportionment of the California State Senate (Cal. Const., Art. IV, Sec. 6, as amended in 1926) deprived him and all others similarly situated of due process of law and the equal protection of the law. Furthermore, he alleged that his right to equal suffrage in a free and equal

election had been deprived in violation of both the California Constitution and the Fourteenth Amendment of the U.S. Constitution.

On August 30, 1962, this court handed down its opinion and order (Civil Action No. 62-953 MC) holding that it had jurisdiction, *Baker v. Carr*, *supra* at 204-208, and that the subject matter of this suit was justiciable, not a non-justiciable political question regarding the relationship between the judiciary and its co-ordinate branches of the Federal Government. *Baker v. Carr*, *supra* at 208-236, especially at 217. All of defendants' motions to dismiss were denied. However, this court, while retaining jurisdiction, denied any injunctive relief at that time, as there was then available to the plaintiff a State remedy, namely, the Initiative Measure on the 1962 General Election Ballot, Proposition 23, which, if passed, would have reapportioned the State Senate.

II

The California Constitution of 1849 and the revised Constitution of 1879 provided for representation on the basis of population in both houses of the Legislature (*Cal. Const.* 1849, Art. IV, §§ 28-29; *Cal. Const.* 1879, Art. IV, § 6) and vested the entire lawmaking power of the State in that body. (*Cal. Const.* 1849, Art. IV, § 29; *Cal. Const.* 1879, Art. IV, § 6).

In response to Governor Hiram Johnson's call to allow the people the right to check any abuse of power by the Legislature, the Legislature in 1911 submitted to the voters of the state a constitutional amendment, which was passed by the electorate, reserving to them the right to initiate and enact laws, which is the initiative, and to prevent laws enacted from becoming effective, which is the referendum. (*Cal. Const.* Art. IV, § 1; Hichborn, *Story of the California Legislature of 1911*, p. 93).

After the 1920 decennial census, the 1921, 1923 and 1925 sessions of the State Legislature failed to enact any reapportionment scheme, as demanded by the U.S. Constitution, Art. I, § 2. The people of the State responded to the inaction of the legislators and on the 1926 election ballot they qualified two proposals by initiative for the consideration of the electorate. Proposition 20 would have retained the apportionment of the two houses as they then existed, namely, on a population basis; whereas, Proposition 28 presented the so-called "Federal Plan" to the electorate, which would retain the Assembly's apportionment on a population basis, but the State Senate was to be apportioned largely on a geographic basis. Proposition 28 was based on existing representation in the Congress of the United States. Proposition 28 was adopted, and Proposition 20 was rejected. Thus, since 1926, California has retained this "Federal Plan" in its apportionment of seats in the California Legislature. It is this amendment to Art. IV, § 6 of the California Constitution, which the plaintiff challenges here. Since the adoption of Proposition 28 in 1926, the State Legislature has never failed to comply with the Federal requirement of apportioning its seats every ten years in accordance with the Federal Census.

Presently, the State of California is divided into forty senatorial districts. Furthermore, no county is to have more than one representative in the Senate, and no Senator is to represent more than three counties. (*Cal. Const.* Art. IV, § 6, *Cal. Elections Code* § 30100). There is no controversy here over the constitutionality of the apportionment of seats in the State Assembly, containing 80 members, since the apportionment

in the lower house is based solely on population. (*Cal. Const.* Art. IV, § 6; *Cal. Elections Code* § 30201).

Since the Amendment to Article IV, Section 6 was adopted in 1926, there have been four attempts by the initiative process to revert back to the pre-1926 apportionment. But the electorate in 1928, 1948, 1960 and most recently in 1962, has rejected these initiatives. Since 1951 there have been numerous bills introduced in the State Legislature for the apportionment of the State Senate on a population basis, but all of these attempts have been killed by the Senate or died without any action by both houses.

III

It is pertinent to note the various population disparities which exist in the present apportionment of seats in the California State Senate under Art. IV, § 6, as amended in 1926. For example, according to the last Federal Census (1960), the population of the 38th Senatorial District, comprising Los Angeles County, is 6,380,771. The population of the 28th Senatorial District, comprising Mono, Inyo, and Alpine Counties, is 14,294. This is a ratio of almost 450:1. Other great disparities exist with respect to other Senatorial Districts, i.e., 40th Senatorial District, San Diego County, 100:1 as compared to District 28; 16th Senatorial District, Alameda County, 90:1 as compared to District 28, 14th Senatorial District, San Francisco County, 60:1 as compared with District 28; 35th Senatorial District, Orange County, 50:1 as compared to District 28, to name a few. Thus about one-third of the total population of the State of California today controls more than two-thirds of the representation in the State Senate. (See U.S. Census of Population, 1960, California, U.S. Department of Commerce, Bureau of the Census, p. 23).*

IV

Intervention of the State Senate

The California State Senate's motion to intervene as a substantially interested party was granted because it would be directly affected by the decree of this court. *Fed. R. Civ. P.* 24(a)(2); *Calif. Const.* Art. IV, §§ 1, 4, 5 and 6; *People v. U.S.*, 180 F.2d 596 (9 Cir.); *Kozak v. Wells*, 278 F.2d 104; *Ex Parte D. O. McCarthy*, 29 Cal. 395.

V

Legal Effect Upon This Suit of the Various Litigation Initiated in the California Supreme Court by Applications for Writs of Mandamus, Which Were All Denied

In *Yorty and Bonelli v. Anderson*, 60 C.2d 312, 33 Cal. Rptr. 97, 384 P.2d 417 (1963); *Yorty and Bonelli v. Jordan*, Sac. No. 7543 (appealed to the U.S. Supreme Court, October 1964 Term, Case No. 250, and dismissed for want of jurisdiction on October 12, 1964, _____ U.S. _____); and *Yorty and Bonelli v. Jordan*, Sac. No. 7582, the plaintiffs sought a writ of mandate from the Supreme Court of the State of California to compel a reapportionment of the Senate of the Legislature of the State of California on a population basis.

* Committee note: According to the source utilized by the court, the 1960 Los Angeles County population is 6,038,771, making for a maximum ratio of about 422.5 to 1.

In denying a writ in the last named case, the Supreme Court of California said:

"The petition to intervene and the petition for the writ of mandate are denied for the reason that any determination by this court on the question of legislative reapportionment would be premature until such time as the Legislature has had an opportunity to consider the matter and to take such action as it may deem to be required pursuant to the expression of the United States Supreme Court in *Reynolds v. Sims*, _____ U.S. _____, and companion cases."

None of these cases have any effect on the present suit, for in *Yorty v. Anderson*, *supra*, the case was determined on a non-federal question, i.e., the plaintiff had misjoined the wrong party as defendant. The proper party defendant should have been the Secretary of State, not the members of the Reapportionment Commission, which had no jurisdiction to reapportion the Legislature, unless the Legislature failed to act, which it had not. The other two cases, resulting in denials of petitioners' request, were denied without any opinion. It is apparent that none of these cases have directly reached the federal constitutional question of an alleged denial of petitioner's rights under the Equal Protection Clause of the Fourteenth Amendment, and, as such, they have no relation to our decision here.

VI

Delay

Although the plaintiff herein originally sought injunctive relief, which this court temporarily denied, his position subsequently changed. Despite the fact no initiative petitions proposing reapportionment of the California Senate had been filed with the State by June 25th, 1964 (the last day for filing such initiative proceedings) and that none of the twelve proposed amendments to the California Constitution, appearing on the November 3rd, 1964 election ballot, related to reapportionment of the California Senate, it was stipulated (Supplementary Stipulation of Facts No. 3, par. XXI): "The plaintiff does not seek any injunctive or mandatory relief in connection with the November 3, 1964 general election."

This court deemed it proper, in view of the lack of demand for injunctive relief, to obtain the benefit of the argument of plaintiff, and original defendants, and more particularly that of the intervening Senate, as to the meaning and effect of the group of cases on this novel and revolutionary legal theory, decided by the Supreme Court of the United States on June 15, 1964. *Reynolds v. Sims*, 377 U.S. 533; *WMCA, Inc. v. Lomenzo*, 377 U.S. 633; *Maryland Committee v. Tawes*, 377 U.S. 656; *Davis v. Mann*, 377 U.S. 695; *Lucas v. Colorado General Assembly*, 377 U.S. 713.

These cases dispose of each position taken by the intervening plaintiffs. They establish the existence of "malapportionment" in California Senate election districts, on the facts present before us. But they did not require immediate action by this court, for all reiterate the principle that in awarding relief for malapportionment of election districts, a District Court should consider many factors, including the proximity of the forthcoming election, the complexities of the election laws, etc., and above all should rely on general equitable principles.

VII

Diffusion of Political Power Between Thinly and Heavily
Populated Counties Is Not Permissible

Defendants contend that population is not the only basis for an apportioning of seats in a bicameral legislature; as such, California's so-called "Federal Plan" is constitutionally valid. (*Cal. Const.*, Art. IV, Sec. 6, as amended in 1926). The defendants contend that such was the rule as laid down in *Baker v. Carr*, *supra*. *Baker* held only that the petitioners had stated a cause of action, and thus the Supreme Court remanded the cause to the District Court in Tennessee for a hearing on the merits. In *Grey v. Sanders*, 372 U.S. 368 (1963), the court held that the Georgia County Unit System was unconstitutional as it "watered-down" the weight of the votes of certain Georgia voters simply because of their residence. Such discrimination cannot be justified, for the Equal Protection Clause as well as the Fifteenth and Nineteenth Amendments demand "One-Man, One-Vote." Thus it was apparent that the "handwriting was on the wall" with the *Grey* decision, and the pinnacle was reached in the landmark Reapportionment Cases of June 1964.

In considering whether or not the State's legislative apportionment method amounts to an invidious discrimination violative of rights asserted under the Equal Protection Clause, the crucial point is that these rights purportedly violated are individual and personal in nature. *Reynolds v. Sims*, 377 U.S. 533, 561, affirming and remanding 208 F.Supp. 431 (M.D. Ala., 1962). Even though the court's holding may result in a reapportionment of the California State Senate, this court must predominantly concern itself in ascertaining if the plaintiff and others similarly situated have been so invidiously discriminated against as to constitute a prohibited dilution of their constitutionally protected right to vote. The court stated in *Reynolds v. Sims*, *supra*:

"Legislators are elected by voters, not trees or acres. Legislators are elected by voters, not farms or cities or economic interests. As long as ours is a representative form of government, and our legislators are those instruments of government elected directly by and directly representative of the people, the right to elect legislators in a free and unimpaired fashion is a bedrock of our political system." 377 U.S. at 562; *WMCA, Inc. v. Lomenzo*, 377 U.S. 633, reversing and remanding 208 F.Supp. 368 (S.D.N.Y. 1962); *Maryland Committee v. Tawes*, 377 U.S. 656, reversing and remanding 229 Md. 406, 184 A. 2d 715; *Davis v. Mann*, 377 U.S. 678, affirming and remanding 213 F.Supp. 577 (E.D. Va. 1962); *Roman v. Sincock*, 377 U.S. 695, affirming and remanding 215 F.Supp. 169 (Del. 1963); *Lucas v. Colorado General Assembly*, 377 U.S. 713, reversing and remanding 219 F.Supp. 922 (Colo. 1963).

In California the Twenty-Eighth Senatorial District, Inyo, Mono and Alpine Counties, had a population of 14,294 according to the 1960 Federal Census, contrasted with the 38th Senatorial District, Los Angeles County, with a population of 6,380,771. The disparity here in favor of the residents of the 28th District is almost 450 to 1.* It is invidious discrimination against the residents of Los Angeles County and is debasement of their right to vote and deprives them of the Equal Protection of the Laws as

* See Committee note, *supra*.

guaranteed by the Fourteenth Amendment. *Reynolds v. Sims*, *supra*. The votes of the voters of Los Angeles County simply do not count as much as the votes of the voters of Alpine, Mono and Inyo Counties. It takes 450 Los Angeles County voters to equal one vote cast by a voter in the 28th District. In *Maryland Committee v. Tawes*, *supra*, the ratio was 32 to 1 in the State Senate in the variance of allocation of seats between the most populous and least populous counties, and 12 to 1 in the House. In *Davis v. Mann*, *supra*, the population variance in the State Senate was 2.65 to 1, and in the House, 4.36 to 1. In *Roman v. Sincock*, *supra*, the population variance was 15 to 1 for the Senate, and in the House, 35 to 1. Lastly, in *Lucas v. Colorado General Assembly*, *supra*, the population variance, after the enactment of the Constitutional referendum by the voters in 1962, adopting an apportionment which divided the seats on population and other factors in the State Senate and population in the House, in the Senate was 3.6 to 1 and in the House, 1.7 to 1. In all these cases the court held, in line with the *Reynolds* doctrine of apportionment on a "Substantially-Equal" Population Basis, that they all failed to meet the requisites of this rule and were, therefore, unconstitutional under the Equal Protection Clause of the Fourteenth Amendment.

The court held in *Wesberry v. Sanders*, 376 U.S. 1: "We do not believe that the framers of the Constitution intended to permit the same vote-diluting discrimination to be accomplished through the device of districts containing widely varied numbers of inhabitants. To say that a vote is worth more in one district than in another would . . . run counter to our fundamental ideas of democratic government . . ." 376 U.S. 1, at 8. Thus the court held in *Reynolds v. Sims*, *supra*, that population is the central point for determination and the main basis for judgment in legislative apportionment controversies.

"A citizen, a qualified voter, is no more nor no less so because he lives in the city or on the farm. This is the clear and strong command of our Constitution's Equal Protection Clause. This is an essential part of the concept of a government of laws and not men. This is at the heart of Lincoln's vision of 'government of the people, by the people, [and] for the people.' The Equal Protection Clause demands no less than substantially equal state legislative representation for all citizens, of all *places* as well as of all races." 377 U.S. at 568 (Emphasis added.).

Then Chief Justice Warren, writing for the majority, held:

" . . . as a basic constitutional standard, the Equal Protection Clause requires that seats in a bicameral state legislature must be apportioned on a population basis. Simply stated, an individual's right to vote for state legislators is unconstitutionally impaired where its weight is in a substantial fashion diluted when compared with votes of citizens living in other parts of the State." 377 U.S. at 568.

Defendants' contention that population is not the only basis for apportioning of seats in the State Senate and that a diffusion of political power between urban and rural areas is permissible cannot be sustained, as such a position is the antithesis of the doctrine which *Reynolds v. Sims*, *supra*, and all its companion cases have established.

The reliance on *MacDougall v. Green*, 335 U.S. 281, by the defendants is futile in light of *Reynolds v. Sims*, *supra*, and its companion cases. They have completely misinterpreted *Baker v. Carr*, *supra*, where the majority in citing *MacDougall* did not give their approval, but rather clearly disapproved it, for the court stated:

"In *MacDougall v. Green*, 335 U.S. 281, the District Court dismissed for want of jurisdiction, which had been invoked under 28 U.S.C. § 1343(3), a suit to enjoin enforcement of the requirement that nominees for state-wide elections be supported by a petition signed by a minimum number of persons from at least 50 of the State's 102 counties. *This Court's* disagreement with that action is clear since the Court affirmed the judgment after a review of the merits and concluded that the particular claim there was without merit." 369 U.S. at 203. (Emphasis added.)

Clearly, by the Court's own language it has disapproved the earlier *MacDougall v. Green*, *supra*, holding, for it held that "this Court" disagrees with the earlier holding. Therefore, although not expressly overruled, *MacDougall v. Green*, *supra*, is now obsolete in light of *Baker v. Carr*, *supra*, and *Reynolds v. Sims*, *supra*.

California's Senatorial apportionment under Art. IV, § 6, amended in 1926, is invidiously discriminatory, being based on no constitutionally valid policy; therefore it is invalid under the Equal Protection Clause of the Fourteenth Amendment, since it substantially dilutes one's right to vote solely because of where one happens to reside. *Reynolds v. Sims*, *supra*; *Maryland Committee v. Tawes*, *supra*; *Davis v. Mann*, *supra*; *Roman v. Sincok*, *supra*; *WMCA v. Lomenzo*, *supra*; and *Lucas v. Colorado General Assembly*, *supra*; *Paulson v. Meier*, 232 F.Supp. 183 (No. Dak., S.W., July 1964); and *League of Nebraska Municipalities v. Marsh*, 232 F.Supp. 411 (Nebr., July 1964).

Any reliance by the defendants on *Scholle v. Hare*, 367 Mich. 176 (116 N.W. 2d 350), and its subsequent companion cases, under the 1963 Michigan Constitution, Art. IV, §§ 2-6, in 372 Mich. 418 (126 N.W. 2d 731), (see latter case's two supplemental opinions in 372 Mich. 461 (126 N.W. 2d 731) and 128 N.W. 2d 350) is now futile. This is necessarily so, for the Supreme Court in a per curiam decision, 32 U.S.L. Week 3442; 82 S.Ct. 1912; based on *Reynolds v. Sims*, 377 U.S. 533, and *Lucas v. Colorado General Assembly*, 377 U.S. 713, reversed and remanded for further hearings consistent with the *Reynolds'* rule, *Marshall v. Hare*, 227 F.Supp. 989 (E.D. Mich., 1964), the exact same case, which had been instituted in the District Court. The discrepancy in representation in Michigan was about 4 to 1; like all the other reapportionment decisions handed down last June, it, too, was invalid under the *Reynolds'* doctrine.

VIII

Available Political Remedies, as the Initiative and Referendum, Have No Constitutional Significance

Any reliance on the political remedies of initiative and referendum (*Cal. Const.* Art. IV, § 1) has no constitutional relevance. Even though a majority of the electorate may have voted to retain the present apportionment scheme in California under Art. IV, § 6, as amended in 1926,

such a vote cannot be sustained, if it deprives others of the Equal Protection of the Laws under the Fourteenth Amendment. *Reynolds v. Sims*, *supra*, and *Lucas v. Colorado General Assembly*, *supra*. The Court in *Lucas v. Colorado General Assembly*, *supra*, was explicit on this point:

"... While a court sitting as a court of equity might be justified in temporarily refraining from the issuance of injunctive relief in an apportionment case in order to allow for resort to an available political remedy, such as initiative and referendum, individual constitutional rights cannot be deprived, or denied judicial effectuation, because of the existence of a nonjudicial remedy through which relief against the alleged malapportionment, which the individual voters seek, might be achieved. An individual's constitutionally protected right to cast an equally weighted vote cannot be denied even by a vote of a majority of a State's electorate, if the apportionment scheme adopted by the voters fails to measure up to the requirements of the Equal Protection Clause. Manifestly, the fact that an apportionment plan is adopted in a popular referendum is insufficient to sustain its constitutionality or to induce a court of equity to refuse to act.... A citizen's constitutional rights can hardly be infringed simply because a majority of the people choose to do so. We hold that the fact that a challenged legislative apportionment plan was approved by the electorate is without federal constitutional significance, if the scheme adopted fails to satisfy the basic requirements of the Equal Protection Clause, as delineated in our opinion in *Reynolds v. Sims*. And we conclude that the fact that a practicably available political remedy, such as initiative and referendum exists under state law provides justification only for a court of equity to stay its hand temporarily while recourse to such a remedial device is attempted or while proposed initiated measures relating to legislative apportionment are pending and will be submitted to the State's voters at the next election." 377 U.S. at 736-737.

Therefore, it is clear that the mere fact that California voters have consistently rejected any reapportionment of the State Senate on a population basis by the initiative process in the elections of 1928, 1948, 1960 and 1962 is immaterial. The rejection cannot be immune from constitutional attack on the ground that it violates the plaintiff's and all others similarly situated right to vote without having such right being substantially diluted by the mere fact of their residence, which is in direct violation of the rights guaranteed under the Fourteenth Amendment. *Reynolds v. Sims*, *supra*, and *Lucas v. Colorado General Assembly*, *supra*.

IX

Can California's Great Diversity of Peoples, Resources, Interest and Activities Override the Equal Protection Principle?

It is the position of the defendants that California's apportionment of its State Senate (Art. IV, § 6, as amended in 1926) is constitutionally rational in light of the State's size, diversity, interests and activities. This argument had it been made prior to *Baker v. Carr*, *supra*, and its progeny, would have been highly persuasive. But these other factors

cannot be sustained where the deviation is so clearly invidious, as is the case here in California (almost 450 to 1 in two districts). *Reynolds v. Sims*, *supra*; *Lucas v. Colorado General Assembly*, *supra*; *Davis v. Mann*, *supra*; *Roman v. Sincok*, *supra*; *Maryland Committee v. Tawes*, *supra*; and *WMCA v. Lomenzo*, *supra*. The rule laid down in *Reynolds* and its companion cases will allow for a slight deviation from the "Substantially Equal Population" Doctrine, where such is incident to the effectuation of a rational state policy. The Court in *Reynolds v. Sims*, *supra*, held:

"... neither history alone, nor economic or other sorts of group interests, are permissible factors in attempting to justify disparities from population-based representation. Citizens, not history or economic interests, cast votes. Considerations of area alone provide an insufficient justification for deviations from the equal-population principle. Again, people, not land or trees or pastures, vote. Modern developments and improvements in transportation and communications make rather hollow, in the mid-1960's, most claims that deviations from population-based representation can validly be based solely on geographical considerations. Arguments for allowing such deviations in order to insure effective representation for sparsely settled areas and to prevent legislative districts from becoming so large that the availability of access of citizens to their representatives is impaired are today, for the most part, unconvincing." 377 U.S. at 579-580.

Thus any reliance on California's large area, diverse interests, history, sectional differences, that districts would be too large in area, and the like, are immaterial, since California's State Senate is strictly apportioned on an area basis (Art. IV, § 6, as amended in 1926) without any consideration to the substantially-equal population doctrine by *Reynolds v. Sims*, *supra*, and its companion cases.

X

Federal Scheme Analogy

Furthermore, defendants contend that the present apportionment of the California State Senate (Art. IV, § 6, as amended 1926) can, nevertheless, be sustained because it is patterned after the Federal Congress. Factually, the similarity is clear, for in California the Assembly is apportioned strictly on a population basis (*Cal. Const.* Art. IV, § 6), analogous to the House of Representatives (U.S.C., *Const.* Art. I, § 2, cl. 3), whereas, the State Senate, being apportioned on an area basis with no more than one Senator for each county, is analogous to the United States Senate, where each State is entitled to two Senators regardless of population (Seventeenth Amendment of the U.S. Constitution). But, legally, this analogy is inapposite and irrelevant to State Legislative Districting schemes. The Court in *Reynolds v. Sims*, *supra*, adopted the opinion of the lower court on this matter, which had held that the Alabama counties were merely involuntary political units of the State created by statute to aid in the administration of the State Government. *Sims v. Reynolds*, 208 F. Supp. 431 (M.D. Ala. 1961). The Court held that the federal analogy argument is generally the last hope when it is clear that a state's

apportionment is, as is California's, invidiously maladjusted. The Supreme Court holds our Founding Fathers did not intend to establish any pattern for state legislative apportionment when the representation in the Federal Congress was adopted. *Reynolds v. Sims*, *supra*; *Maryland Committee v. Tawes*, *supra*; *Roman v. Sincock*, *supra*; *Davis v. Mann*, *supra*; and *Lucas v. Colorado General Assembly*, *supra*. The Court in *Reynolds* proceeded:

"... The fact that almost three-fourths of our present States were never in fact independently sovereign does not detract from our view that the so-called federal analogy is inapplicable as a sustaining precedent for state legislative apportionments. The developing history and growth of our republic cannot cloud the fact that, at the time of the inception of the system of representation in the Federal Congress, a compromise between the larger and smaller states on this matter averted a deadlock in the Constitutional Convention which had threatened to abort the birth of our Nation. . . .

Political subdivisions of States—Counties, cities, or whatever—never were and never have been considered as sovereign entities. Rather, they have been traditionally regarded as subordinate governmental instrumentalities created by the State to assist in the carrying out of state governmental functions. . . . The relationship of the States to the Federal Government could hardly be less analogous." 377 U.S. at 574-575.

Defendant makes further mention that the different basis of apportionment in the California Legislature is necessary to maintain the proper checks and balances between the two houses of the legislature, as is the case in the Federal Congress. This again might be a forceful argument were this a case of first impression, but this argument is of no avail in light of the Court's holding that the Federal Analogy is inapposite and irrelevant to state legislative schemes. This is seen from the Court's holding in *Reynolds*:

"We do not believe that the concept of bicameralism is rendered anachronistic and meaningless when the predominant basis of representation in the two state legislative bodies is required to be the same—population. A prime reason for bicameralism, modernly considered, is to insure mature and deliberate consideration of, and to prevent precipitate action on, proposed legislative measures. Simply because the controlling criterion for apportioning representation is required to be the same in both houses does not mean that there will be no differences in the composition and complexion of the two bodies. Different constituencies can be represented in the two houses. One body could be composed of single-member districts while the other could have at least some multimember districts. The length of terms of the legislators in the separate bodies could differ. The numerical size of the two bodies could be made to differ, even significantly, and the geographical size of districts from which legislators are elected could also be made to differ. And apportionment in one house could be arranged so as to balance off minor inequalities in the representation of certain areas in the other house. In summary, these and other factors could be, and are presently in many States, utilized to

engender differing complexions and collective attitudes in the two bodies of a state legislature, although both are apportioned substantially on a population basis." 377 U.S. at 576-577.

XI

Conclusion

The present plan of Senate apportionment by districts in California is unconstitutional, being an invidious discrimination of citizens' rights and violative of the Equal Protection Clause of the XIV Amendment to the United States Constitution, as interpreted and determined by the Supreme Court of the United States.

XII

Relief

Equitable principles must guide this court in whatever relief it determines is just and appropriate under the circumstances of this case. (*Baker v. Carr, supra; Reynolds v. Sims, supra.*)

This court asserts and agrees that "legislative reapportionment is primarily a matter for legislative consideration and determination, and that judicial relief becomes appropriate only when a legislature fails to reapportion according to federal constitutional requisites in a timely fashion after having had an adequate opportunity to do so." *Reynolds v. Sims, supra* at 586.

At the same time, this court feels required to state (as a three-judge court in this circuit has heretofore said with respect to reapportionment of both houses of the State Legislature of the State of Washington):

"In the legal climate of today, no citizen may acquire a right to a legal status created by an unremitting legislative disregard of sacred constitutional rights." *Thigpen v. Meyers*, 211 F. Supp. 826 (1962).

If the California State Legislature once ordered fails to act, and to act with promptness, we, ever conscious of our oath to uphold the Constitution of the United States, will unhesitatingly take appropriate action to correct the inequity.

This court, having determined that the primary objective of any order or decree at this time should be to effectively induce the 1965 session of the California State Legislature to properly reapportion itself as its first order of business, makes no order at this time other than the following:

(1) It is the order of this court that the California State Legislature reapportion the California State Senate consistent with this opinion, and the several existing United States Supreme Court decisions on the subject, so that the *Reynolds'* doctrine of "districts of substantial equality in population" exists.

(2) Should the California State Legislature fail to discharge its duty to fairly, adequately and validly redistrict State Senatorial Districts within the State of California, by not later than July 1, 1965, this court will, before or after that date, hold further hearings, or motions; devise redistricting plans; and make such further orders or take such further

steps as may be necessary or appropriate (either upon its own motion, or on the motion of any party or intervenor), and to that end we retain full jurisdiction of this case for such purpose, and all others.

/S/ STANLEY W. BARNES
Judge, U.S. Court of Appeals

/S/ M. D. CROCKER
Judge, U.S. District Court

I dissent, and reserve the right to subsequently file a dissenting opinion.

/S/ CHARLES H. CARR
Judge, U.S. District Court

APPENDIX B

Election and Terms of Senators—Qualifications of Members of Legislature

SEC. 4. Senators shall be chosen for the term of four years, at the same time and places as Members of the Assembly, and no person shall be a Member of the Senate or Assembly who has not been a citizen and inhabitant of the State three years, and of the district for which he shall be chosen one year, next before his election.

(Constitution of 1849, Art. IV, Secs. 4, 5, revised 1879.)

Number of Senators and Assemblymen—Election by Districts

SEC. 5. The Senate shall consist of 40 members, and the Assembly of 80 members, to be elected by districts, numbered as hereinafter provided. One-half of the Senators shall be elected every two years, those from the odd-numbered districts being elected when the number of the year is divisible by four.

(Amendment adopted November 8, 1960.)

Senatorial and Assembly Districts

SEC. 6. For the purpose of choosing Members of the Legislature, the State shall be divided into 40 senatorial and 80 assembly districts to be called senatorial and assembly districts. Such districts shall be composed of contiguous territory, and assembly districts shall be as nearly equal in population as may be. Each senatorial district shall choose one Senator and each assembly district shall choose one Member of Assembly. The senatorial districts shall be numbered from 1 to 40, inclusive, in numerical order, and the Assembly districts shall be numbered from 1 to 80 in the same order, commencing at the northern boundary of the State and ending at the southern boundary thereof. In the formation of assembly districts no county, or city and county, shall be divided, unless it contains sufficient population within itself to form two or more districts, and in the formation of senatorial districts no county, or city and county, shall be divided, nor shall a part of any county, or of any city and county, be united with any other county, or city and county, in forming any assembly or senatorial district. The census taken under the direction of the Congress of the United States in the year 1920, and every 10 years thereafter, shall be the basis of fixing and adjusting the legislative districts; and the Legislature shall, at its first regular session following the adoption of this section and thereafter at the first regular session following each decennial federal census, adjust such districts, and reapportion the representation so as to preserve the assembly districts as nearly equal in population as may be; but in the formation of senatorial districts no county or city and county shall contain more than one senatorial district, and the counties of small population shall be grouped in districts of not to exceed three counties in any one senatorial district; provided, however, that should the Legislature at the first regular session following the adoption of this section or at the first regular session following any decennial federal census fail to reapportion the assembly and senatorial districts, a Reap-

portionment Commission, which is hereby created, consisting of the Lieutenant Governor, who shall be chairman, and the Attorney General, State Controller, Secretary of State and State Superintendent of Public Instruction, shall forthwith apportion such districts in accordance with the provisions of this section and such apportionment of said districts shall be immediately effective the same as if the act of said Reapportionment Commission were an act of the Legislature, subject, however, to the same provisions of referendum as apply to the acts of the Legislature.

Population

Each subsequent reapportionment shall carry out these provisions and shall be based upon the last preceding federal census. But in making such adjustments no persons who are not eligible to become citizens of the United States, under the naturalization laws, shall be counted as forming a part of the population of any district. Until such districting as herein provided for shall be made, Senators and Assemblymen shall be elected by the districts according to the apportionment now provided for by law.

(Amendment adopted November 3, 1942.)

O

STATEMENT OF INTENT AND JUSTIFICATION IN FORMULATING AND ADOPTING THE PLAN OF SENATE REAPPORTIONMENT CONTAINED IN SENATE BILL NO. 6

(As Amended on May 6, 1965, and as Passed by the Senate
on May 10, 1965)

A Report of the Subcommittee on Reapportionment of the Senate General Research Committee

MEMBERS OF THE SUBCOMMITTEE

Senator Stephen P. Teale, *Chairman*

Senator Eugene G. Nisbet, *Vice Chairman*

Senator Stanley Arnold

Senator Randolph Collier

Senator Virgil O'Sullivan

Senator Aaron W. Quick

Senator Thomas M. Rees

Senator Vernon L. Sturgeon

Senator Robert D. Williams

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President pro Tempore

JOSEPH A. BEEK
Secretary of the Senate

* Vacancy, Vice Senator Edwin J. Regan, resigned January 3, 1965, to accept appointment as Justice, District Court of Appeal, Third District.

LETTER OF TRANSMITTAL

June 10, 1965

Honorable Glenn M. Anderson

PRESIDENT OF THE SENATE

DEAR MR. PRESIDENT:

We submit herewith, as a report of the Subcommittee on Reapportionment, the Statement Of Intent And Justification In Formulating And Adopting The Plan Of Senate Reapportionment Contained In Senate Bill No. 6 (as Amended on May 6, 1965, and as Passed by the Senate on May 10, 1965).

Respectfully submitted,

STEPHEN P. TEALE, Chairman
EUGENE G. NISBET, Vice Chairman
STANLEY ARNOLD
RANDOLPH COLLIER
VIRGIL O'SULLIVAN

AARON W. QUICK
THOMAS M. REES
VERNON L. STURGEON
ROBERT D. WILLIAMS

*

* Vacancy, Vice Senator Edwin J. Regan, resigned January 3, 1965, to accept appointment as Justice, District Court of Appeal, Third District.
(NB. Senator John F. McCarthy, a member of the Subcommittee, did not sign this report.)

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I. PRELIMINARY STATEMENT

The July 1 deadline for compliance with the federal district court order in *Silver v. Jordan* now being near at hand, we the members of the Senate feel compelled to assert as a matter of record our intentions, justifications, and purposes in conceiving and adopting what we forthrightly and earnestly believe is a reapportionment plan which comports with the court's mandate. The plan to which we refer is that contained in Senate Bill No. 6, as amended in the Senate on May 6, 1965, and as passed by the Senate on May 10, 1965 (Senate Daily Journal, May 10, 1965, p. 2121), the provisions of which in their entirety are incorporated herein. We submit that said reapportionment proposal is constitutionally acceptable in light of the bases of justification we will recite below.

The federal district court in *Silver v. Jordan*, after announcing its objective to effectively induce the Legislature to undertake Senate reapportionment "as its first order of business," ordered: (1) that the Legislature reapportion the Senate on the basis of "districts of substantial equality in population," and (2) should the Legislature "fail to discharge its duty to fairly, adequately and validly" reapportion the Senate "by not later than July 1, 1965, this court will, before or after that date, hold further hearings, or motions; devise redistricting plans; and make such further orders or take such further steps as may be necessary or appropriate (either upon its own motion or on the motion of any party or intervenor)."

Notwithstanding the fact that the Senate, as intervenor in that suit, prosecuted an appeal (together with the defendant state officials) we *did* make reapportionment our first order of business. Even prior to the court's quoted order of December 3, 1964, a Subcommittee on Reapportionment of the General Research Committee had been created (resolution of the Senate Rules Committee, dated September 11, 1964), and a staff was retained to begin compiling and analyzing the multitude of statistical and background data that necessarily had to be considered before the cornerstone of any plan could be laid. And once the 1965 General Session began, the subject of reapportionment was accorded its proper status by the creation of a special standing committee to carry forward the project of formulating a plan to hear all measures on that subject. (See Senate Daily Journal, January 19, 1965, p. 162, Senate Resolution No. 22.)

The Supreme Court has issued a stern commandment to the states that they must "make an honest and good faith effort" to construct districts "as nearly of equal population as is practicable." (*Reynolds v. Sims*, 377 U. S. at 577.) We sincerely believe that mandate has been fulfilled by this Senate. Detailed evidence of the considerable thought, labor, and effort expended in the production of Senate Bill No. 6 has already been chronicled in the *Preliminary Report* of the Subcommittee on Reapportionment, which was submitted on May 13, 1965 (see Senate Daily Journal, May 13, 1965, pp. 2242-2243, for Letter of Trans-

mittal and Motion to Print Report). We will not recount those details, but rather we incorporate herein by reference that *Preliminary Report* as being probative that the requisite "honest and good faith effort" has been made.

It has been our intention and purpose to redistribute Senate representation in California on a population basis, giving secondary consideration only to such factors as have been deemed permissible by the Supreme Court. In Senate Bill No. 6 we frankly feel that this intention and purpose has been consummated.

II. THE DECISIONAL LAW

Necessarily the starting point in fashioning a plan of reapportionment is the decisional law rendered by the Supreme Court in the Apportionment Cases (*Reynolds v. Sims*, 377 U. S. 533, Alabama; *WMCA v. Lomenzo*, 377 U. S. 633, New York; *Maryland Committee for Fair Representation v. Tawes*, 377 U. S. 656, Maryland; *Davis v. Mann*, 377 U. S. 678, Virginia; *Roman v. Sincock*, 377 U. S. 695, Delaware; *Lucas v. 44th General Assembly*, 377 U. S. 713, Colorado). Shorn of their legalistic trappings, the Court's basic pronouncements were these:

1. The Equal Protection Clause demands that both houses of a bicameral legislature be apportioned on the basis of districts of substantially equal population (*Reynolds v. Sims*, 377 U. S. at 568).
2. Exact or precise equality of population among districts is not a constitutional requisite (*Id.* at 577).
3. The state must make an honest and good faith effort to construct districts of substantial equality (*Ibid.*).
4. Consideration of local political subdivision boundaries, and composing districts of contiguous and compact territory, will be recognized as factors justifying "minor" deviations, so long as the equal-population principle is not submerged or significantly diluted (*Id.* at 578-580).
5. There is no uniform standard or rigid formula for judicially determining whether an apportionment plan is constitutionally valid (*Roman v. Sincock*, 377 U. S. at 710).
6. Each state's case must be weighed on its own particular set of facts to ascertain whether there has been faithful adherence to the equal-population principle with such minor deviations as may occur in recognizing factors that are free from any taint of arbitrariness or discrimination (*Ibid.*).
7. The equal-population principle is not intended to abolish bicameralism and certain distinctions in the composition of the two houses and their constituencies are permissible (*Reynolds v. Sims*, 377 U. S. at 576-577).
8. The fact a state's legislative apportionment plan is adopted by means of the initiative or referendum will not save that scheme if it fails to meet the test of population-based representation in both houses (*Lucas v. 44th General Assembly*, 377 U. S. at 736-737).

Apart from the foregoing, and several additional considerations which will be alluded to, *infra*, the Court deemed it "expedient not to attempt to spell out any precise constitutional tests. What is marginally permissible in one state may be unsatisfactory in another, depending on the particular circumstances of the case. Developing a body of doctrine on a case-by-case basis appears to us to provide the

most satisfactory means of arriving at constitutional requirements in the area of state legislative apportionment." (*Reynolds v. Sims*, 377 U. S. at 578.) As of this point in time the Supreme Court has not had before it any permanent plan of reapportionment which has been accorded final approval by a lower court, and, as we will show, the case-by-case approach of the lower federal courts has thus far failed to produce any pattern of doctrinal uniformity. Consequently, we are apparently still in the embryonic stage of apportionment constitutional dogma.

In its decisions in the Apportionment Cases, the Court declared that "divergences from a strict population standard" would be permissible with respect to apportionment plans for "either or both" houses of a legislature if "based on legitimate considerations incident to the effectuation of a rational state policy." (Id. at 579.) The Court quickly admonished, however, that "neither history alone, nor economic or other sorts of group interests" will justify disparities (Id. at 579-580). "Considerations of area alone" likewise lack justifiability (Id. at 580). Geographical considerations were characterized as "hollow" arguments in light of this day's developments in transportation and communications (Ibid.). And the Court found "unconvincing," contentions that divergences should be permitted "to insure effective representation for sparsely settled areas and to prevent legislative districts from becoming so large that the availability of access of citizens to their representatives is impaired" (Ibid.).

The most thoroughly demolished argument of the states as a plea for justification for deviations was that of reliance on the so-called federal plan analogy. The Court ruled that such analogy is "inapposite and irrelevant to state legislative districting schemes" (Id. at 573), which taken literally means that the analogy is not admissible as evidence, and if improperly admitted cannot be the basis for a decision.

Being mindful of these rulings, adumbrations, and admonitions by the Court and of the lacuna of any means to vouchsafe the states and the courts in formulating and reviewing reapportionment plans, it was necessary to devote considerable contemplation and deliberation to the myriad factors interwoven into the fabric of legislative districting. We could not overlook the Court's arithmetic approach in its review of apportionment cases, yet we profess doubt as to the ultimate evaluation of the factor of pure mathematics in view of the Court's disposition against rigid standards and fixed formulas (*Roman v. Sincock*, 377 U. S. at 710).

III. THE FACTOR OF ARITHMETIC

The two mathematical factors examined by the Court are: (1) the maximum population variance ratio, which simply stated is the comparison between the most heavily populated district and the least populous district; and (2) the minimum percentage of the state's total population which, under the apportionment scheme, theoretically can elect a majority of the challenged legislative body.

Applying these tests to California's existing Senate apportionment, and using 1960 federal census figures, the maximum population variance ratio among Senate districts is 422.5 to 1 (comparing Los Angeles County's 6,038,771 population to the 28th District's Inyo, Mono, and Alpine total population of 14,294); and the minimum percentage of the total State population that can elect a Senate majority is 10.7%. That maximum population variance ratio is the widest deviation found in any of the 50 states' Senate apportionment schemes, and that minimum percentage figure is the second lowest of any of the 49 bicameral state senates (Nevada's 8% being the lowest).

Although we feel that these two tests are less than accurate barometers of malapportionment in that they over-simplify some and ignore many of the complex factors inextricably interwoven into any pattern of apportionment, our research indicates a lack of agreement or even any concerted study by political scientists to produce a more meaningful mathematical test. As was stated by Senator Joseph A. Rattigan in his concurring remarks in the *Report* of the California Study Commission on Senate Apportionment (1962), arithmetic "is not argumentation." He cogently noted: "The point here is that Los Angeles County is either under-represented in the State Senate or it isn't. If it isn't, the proof lies in Los Angeles and in Sacramento, not by contrast with mountain areas. The melodramatic display of '422.5 to 1' is demonstrative but not probative: it illustrates an argument without amounting to one." (pp. 54-55)

That the tremendous variance exists in California is the result of two factors: one is the fact that the counties of Alpine, Mono, and Inyo, for manifold reasons, have not become heavily populated; the other, and sometimes overlooked, is that Los Angeles is the most heavily populated county in the entire nation, and has a populace within its boundaries exceeding that of 42 individual states in the Union.

The Court's reliance on the minimum-percentage-necessary-to-elect-a-majority test also may produce a misleading result. Inherent as a factor in that test is the numerical size of the challenged legislative house. Thus, California has a 40-member Senate with 21 being a majority. Accordingly, the "ideal" in California would be 21/40, or 52.5%. Given a house the size of Georgia's lower house, 205, the ideal percentage would be 103/205 or 50.2%. In other words, there is no constant figure that can be applied uniformly to every legislative body in every state.

In any event, the Supreme Court has properly recognized that exact equality and mathematical precision are hardly constitutional requirements. On the other hand, although the Court has recognized the inherent necessity of some variation from exact equality in the practical fashioning of a State's population-based apportionment plan, the very nebulousness of the adjective "some" poses a quandary. As was noted by the dissent of Justice Frankfurter in *Baker v. Carr*: "To some extent—aye, there's the rub." (82 S. Ct. 691, at 739.)

Attention has been focused throughout the formulative stages of the California Senate plan on the reactions of the lower federal courts to reapportionments that have been accomplished in other states. For example, in *Thigpen v. Kramer*, an unpublished decision, the federal district court on March 10, 1965, gave approval to the redistricting of both houses of the Washington legislature, and *dismissed* the long-standing suit. Under that Washington scheme, the maximum population variances are 1.45 to 1 (Senate), and 1.6 to 1 (House), and the minimum population percentages necessary to elect a majority are 47.2% (Senate) and 47.7% (House). In submitting its plan to the court the state noted that the Supreme Court had left undisturbed in *Lucas v. 44th General Assembly* (377 U.S. 713) the apportionment of Colorado's lower house even though there had been a maximum variance of 1.7 to 1 and some 45.1% of the Colorado population could elect a House majority. The federal district court in *Thigpen*, although approving the Washington plan and dismissing the suit, expressed its hope and trust that when reapportionment is again undertaken following the 1970 census, further improvement will be achieved toward equality of district populations.

On April 1, 1965, the federal district court reviewing Georgia reapportionment refused to approve as constitutionally valid the plan submitted to it, but allowed that plan to stand as a temporary apportionment. The court in *Toombs v. Fortson* (----- F. Supp. -----) allowed the legislature until the end of its 1968 session to adopt a constitutionally valid plan. Although the litigation involved only the Georgia House, the court found Senate districting invalid as well. Among Senate districts the maximum variance is 1.81 to 1, and the minimum percentage that can elect a Senate majority is 48.2%. The reason the plan was found wanting by the court was that six of the 54 districts varied upward or downward by more than 15% from the mathematical average district population. The maximum variance in House districts in Georgia is 2.003 to 1, and the minimum population that can elect a House majority is 42.341%. Only 73 of the 205 House districts were found to be within 15% of the "ideal" district population. The court noted that the Supreme Court has not established a formula to guide the lower courts and the states, and the three judges ruled that until such a formula is handed down, they will follow the 15% rule, which, they noted, has been written into the Congressional districting bill under consideration by our national legislature. Use of the 15% test in Georgia's legislative districts would result in a maximum population variance of 1.353 to 1.

The state's reliance in *Thigpen* on the ratio and percentage applicable to the Colorado House is reliance on dictum, as apportionment of the House was not an issue before the Supreme Court in *Lucas*. In

Toombs, the district court admits that it relied on a dictum of the Supreme Court that a 2 to 1 variance is impermissible.

In Iowa, a federal district court had approved an unchallenged temporary reapportionment plan for use in the 1964 election, under which the maximum variance figures were 2.23 to 1 in House districting, and 3.2 to 1 in Senate districting. The minimum percentage that could elect a House majority was 48.3%, and that could elect a Senate majority was 38.9%. Following the 1964 election, that interim plan was challenged and the federal district court ruled that the scheme is prospectively invalid and is inoperative for any future Iowa legislative election (*Davis v. Cameron*, 238 F. Supp. 462). The court expressly held the disparities in the provisional Iowa Senate apportionment are too great to be allowed to stand. But the court declined to pass on the question whether the House apportionment is constitutionally valid, noting that "*It is arguably close.*" (Emphasis ours.) Nonetheless, the court was disposed to rule that the Senate and House plans, which were enacted in the same statute, are not severable and the entire statute must fail because of invalidity of that part containing the Senate plan.

The federal court in that Iowa case indicated it was adhering to the Supreme Court's admonition in *Roman v. Sincok* (377 U.S. at 710) that legislative apportionment does not lend itself to rigid formulas and instead each case must be judged on its own particular circumstances. Moreover, the federal court refused to overturn the Iowa statute on the challenged ground that it created several multi-member districts, pointing out that creation of such districts "is not in itself invalid." And the court declined to fix a deadline by which a valid reapportionment would have to be adopted, asserting its faith that the Iowa Legislature would accomplish this task sufficiently in advance of the 1966 elections.

We submit that *Thigpen*, *Toombs*, and *Davis* are something more than mere variations on a theme; their very dissimilarity of arithmetic approach compels this Senate and the *Silver* court to embrace the Supreme Court's command in *Roman* that each legislative apportionment case is to be examined "*under the particular circumstances existing in the individual state,*" and "it is neither practical nor desirable to establish rigid mathematical standards for evaluating the constitutional validity of a state legislative apportionment scheme." (377 U.S. at 710, emphasis ours.) That tenet in *Roman* achieved the status of a ruling on an issue and is not obiter dictum. The Court made its pronouncement as an explicit disapproval of the ruling of the court below, which had attempted to create a presumption that any plan having a variance ratio of less than 1.5 to 1 would be prima facie constitutionally valid.

It is that language in *Roman* which is the only "rule" on mathematics announced by the Supreme Court, and it must be followed instead of relying on some dictum (*Thigpen*), or proposed legislation regarding Congressional districting (*Toombs*). And it was with the purpose of being guided by such ruling that Senate Bill No. 6 was developed and adopted by us. Therefore, Senate Bill No. 6 should not be judged simply and solely on the mathematic computations that may be drawn therefrom. It is patently too superficial to reach a final conclusion from the arithmetic aspects of a maximum variance of 2.6

to 1 and a 39.9% minimum percentage that can elect a majority under the plan. (On the basis of 1965 California population estimates by the State Department of Finance, the minimum percentage increases to 41.35%.) As we have indicated, these factors of mathematics are demonstrative but not probative; they illustrate an argument without amounting to one.

We sincerely believe that "under the particular circumstances existing" in California, the reapportionment plan of Senate Bill No. 6 as amended on May 6, 1965, and as passed by this Senate on May 10, 1965, complies with the order of the court in *Silver v. Jordan* and merits the approval of that tribunal. We now turn to "the particular circumstances" which compel this result.

IV. CONSIDERATION AS TO POLITICAL SUBDIVISIONS AND THEIR BOUNDARIES AS JUSTIFICATION FOR POPULATION DISPARITIES

A fundamental factor incorporated into Senate Bill No. 6 is the recognition of political subdivision boundaries in districting. That this is permissible has been affirmed by the Supreme Court: "A state may legitimately desire to maintain the integrity of various political subdivisions, insofar as possible, and provide for compact districts of contiguous territory in designing a legislative apportionment scheme. Valid considerations may underlie such aims. Indiscriminate districting, without any regard for political subdivision or natural or historical boundary lines, may be little more than an open invitation to partisan gerrymandering." (*Reynolds v. Sims*, 377 U.S. at 578-579.)

And the Court proceeded to indicate that recognition of political subdivisions in an apportionment scheme would be a permissible basis for disparity among district populations: "A consideration that appears to be of more substance in justifying some deviations from population-based representation in state legislatures is that of insuring some voice to political subdivisions, as political subdivisions. Several factors make more than insubstantial claims that a state can rationally consider according political subdivisions some independent representation in at least one body of the state legislature, as long as the basic standard of equality of population among districts is maintained. Local governmental entities are frequently charged with various responsibilities incident to the operation of state government. In many states much of the legislature's activity involves the enactment of so-called local legislation, directed only to the concerns of particular political subdivisions. And a state may legitimately desire to construct districts along political subdivision lines to deter the possibilities of gerrymandering." (Id. at 580-581.)

To be sure, the Court cautioned that, if a state's districting system which gives recognition to political subdivisions and their boundaries is to be constitutionally valid, there must not be a submergence of the principle of equal-population. We believe that balance has been achieved in this Senate's plan.

In California, the recognizing of political subdivision (county) boundaries is both a constitutional requisite and a matter of historical tradition. Article IV, Section 6 of the state constitution provides, *inter alia*: "nor shall a part of any county, or of any city and county, be united with any other county, or city and county, in forming any assembly or senatorial district." We believe that requirement of our constitution is still in full force and effect, and we have constructed our plan accordingly.

Ultimately, there must be a judicial interpretation of the provisions of Article IV, Section 6 of the California Constitution in the light of *Silver v. Jordan* and the Supreme Court's Apportionment Cases. The

Reapportionment Subcommittee's *Preliminary Report* considers this factor in detail. As noted therein, the Senate filed an action in the California courts in an expeditious effort to obtain such interpretation. On May 19, 1965, the Superior Court in Sacramento sustained defendant's demurrer without leave to amend (*McAteer et. al. v. Silver*, Sacramento Superior Court No. 158464); however, the Senate is taking an appeal from that ruling. It appears imperative that the California courts render judgment at the earliest possible moment construing the pertinent provisions of the state constitution. (See *Scranton v. Drew*, 379 U. S. 40; *44th General Assembly v. Lucas*, 379 U. S. 693; and *People ex rel. Engle v. Kerner*, -----Ill. 2d. -----, 205 N. E. 2d. 33.)

Until such an interpretative ruling is forthcoming, we have elected to abridge the apportionment provisions of the California Constitution as slightly as need be in producing a districting system of substantial population equality. To this end we were influenced considerably by the reapportionment experiences in Colorado and New York (see the above-cited *Preliminary Report*). Consequently, we have fashioned a plan in Senate Bill No. 6 that breaches only four of the provisions of Article IV, Section 6: (1) the 40-district requirement (Senate Bill No. 6 creates 35 districts); (2) the limitation of one senator per district (Senate Bill No. 6 provides for five two-senator districts); (3) the limitation of one district per county (Senate Bill No. 6 creates 12 districts in Los Angeles County); (4) the maximum of three counties per district (Senate Bill No. 6 creates a five-county district, a seven-county district, and a 14-county district).

Quite clearly our plan avoids the interdiction of the Court that "permitting deviations from population-based representation does not mean that each local governmental unit or political subdivision can be given separate representation, regardless of population," or does it in any way approach that impermissible result (*Reynolds v. Sims*, 377 U. S. at 581). And, although unquestionably it would be possible to more nearly arrive at the 1 to 1 ideal if counties were fragmented or fractionalized (i.e., joining part of a county with part of another county or with an entire adjacent county), we think there are compelling reasons militating against such scheme of configuration.

One factor, of course, is the state constitutional prohibition barring that mode of districting. And, although counties do not bear the same sovereign relation to the state as the states bear to the Union, counties in California are governmental entities of substantial status. As has been summarized by one constitutional law professor: "Counties are the building blocks of American political life, thought, and action. In addition to the obvious virtues of stability and continuity, and indeed as a result of them, counties are the basic units for political party organization, for state administration, for planning, zoning, and regional arrangements, for civic federation organization, for social organization, and for business and industrial organization in most instances. In their own right counties provide an increasingly broad range of services and controls." (Dixon, 51 *American Bar Association Journal* 323, April, 1965.)

In California, the legislative branch of state government is primarily concerned with local entities, evidence of which is the fact that ap-

proximately 60% of the measures considered by the legislature relate to local matters. Moreover, the State Budget adopted each year by the legislature to a large degree provides for subventions to local governments.

It is the counties in California, as units of government, that carry out many of the programs of the state, particularly in the realm of the elective process itself, and in the fields of welfare, public health, and mental health. In these respects, counties are the functional units of government, executing and performing at the local level the state-wide policies adopted by the legislature. Yet, the California counties are far from mere adjutants of state government, and county governments possess the attributes of home rule on a par with that of city governments (discussed *infra*). This twofold county function necessitates a close working relationship between the state and its counties to insure on the one hand that state programs will be adequately administered at the local level, and on the other hand to prevent the erosion of the home rule concept.

That close relationship in California has predominantly been one between the counties and the State Senate. As a result of, or perhaps because of such relationship, the counties have been regarded by the Senate as the mirrors of and spokesmen for numerous interests and groups within their boundaries. Thus, insofar as the Senate is concerned, the counties provide the articulation for those interests and groups. Consequently, unless sufficient weight is accorded these local governments as local governments in an apportionment scheme, such interests and groups would face the alternative of either having no audible voice in the legislature, or of having to form local pressure organizations to regain articulation. Neither of these results seems compatible with good government.

We feel that this relationship between the Senate and the counties evinces an attitude of the Senate of being representative of the people, both directly as legislators elected by the people, and indirectly by being guided, advised, and informed by elected representatives of local governments. We believe this latter concept of representation should be retained insofar as possible and we feel this underlies the Court's recognition of "insuring some voice to political subdivisions as political subdivisions" as justification for "some deviations from population-based representation."

In arranging groupings of counties, although substantial equality of population was the basic criterion, three additional elements were considered: contiguity of territory, community of interest, and balancing Senate representation with respect to existing Assembly districts.

That contiguity of territory is a permissible basis for minor population deviations in districting has been acknowledged by the Supreme Court in *Reynolds* (377 U. S. at 578-579). Moreover, a scheme of non-contiguous territorial districting could produce a crazy-quilt result, perhaps causing the plan to "be found invalid on that basis alone." (Id. at 568.)

To be sure, the Court has not made the express assertion that the concept of community of interest will serve as justification for minor disparities among district populations. However, we believe that it is logical and reasonable to infer from the particular language chosen

by the Court that the community of interest factor is a recognizable element. The Court has said that, "neither history *alone*, nor economic or other sorts of group interests" nor considerations "of area *alone*" will justify "deviations from the equal-population principle." (Id. at 579-580, emphasis ours.) And the Court has stated further: "So long as the divergences from a strict population standard are based on legitimate considerations incident to the effectuation of a *rational state policy*, some deviations from the equal-population principle are constitutionally permissible with respect to the apportionment of seats in either or both of the two houses of a bicameral state legislature." (Id. at 579, emphasis ours.)

We draw from the Court's language the conclusion that, if an apportionment plan is fundamentally one of substantially equally populated districts and the disparities reflect rational grounds (which must not be *solely* such factors as economic or other group interests or history or area), the proposal will be constitutionally acceptable. We have followed that guidepost in drafting Senate Bill No. 6.

It seemed imperative that the groupings of counties be based on rationality, rather than arbitrarily confected clusters which would more closely approximate the population ideal. Consequently, in determining district demarcations we were attentive insofar as practicable to combining counties wherein there existed a similarity of interests and problems needing legislative assistance or solution.

An example of a district within whose contours are found communities of interest is the new First District created by Senate Bill No. 6, which stretches some 600 miles along the great spine of the Sierra to form a predominantly mountain-counties district with a total population in the 14 counties of 199,112. This district could have been made more populous by either one of two devices: by adding more far nothern counties, which would have produced a giant district of such proportions as to defy any semblance of adequate and effective representation by its lone member, and to render the representative virtually inaccessible to the residents during much of the winter season (as now drawn, its area exceeds that of several individual states); or by invading the valley counties, which have interests and problems needing legislative assistance and solution that are divergent from those of the mountain counties. Accordingly, as drawn this district is rationally conceived, and to arbitrarily add population under either of the foregoing alternatives would be a departure from that rational approach.

Another secondary element employed in Senate Bill No. 6 is that of balancing the reapportionment of the Senate against existing Assembly districting. Throughout the Apportionment Cases, the Court indicated that recognition of this balancing factor is not only proper, but more likely is a necessity. In *Reynolds*, the Court said that "apportionment in one house could be arranged so as to balance off minor inequities in the representation of certain areas in the other house." (377 U. S. at 577.) And in the Colorado case, after noting that a challenge has been made against that state's plan of Senate apportionment, but not against Colorado's lower house, the Court asserted that "in determining whether a good faith effort to establish districts substantially equal in population has been made, a court must necessarily consider a state's legislative apportionment scheme as a whole.

Only after an evaluation of an apportionment plan in its totality can a court determine whether there has been sufficient compliance with the requisites of the Equal Protection Clause." (*Lucas v. 44th General Assembly*, 377 U. S. at 735, fn. 27.)

In the Maryland apportionment litigation all parties had apparently conceded before the lower courts that a recent apportionment of the lower house was not in issue. However, the Court would not accept that concession. "Regardless of possible concessions made by the parties and the scope of the consideration of the courts below, in reviewing a state legislative apportionment case, this Court must of necessity consider the challenged scheme as a whole in determining whether the particular state's apportionment plan, in its entirety, meets federal constitutional requisites. It is simply impossible to decide upon the validity of the apportionment of one house of a bicameral legislature in the abstract, without also evaluating the actual scheme of representation employed with respect to the other house. Rather the proper, and indeed indispensable, subject for judicial focus in a legislative apportionment controversy is the overall representation accorded to the state's voters, in both houses of a bicameral state legislature." (*Maryland Committee for Fair Representation v. Taves*, 377 U. S. at 673.)

Although not universally true under Senate Bill No. 6, there are no less than six instances of levelling off minor inequalities in the reapportionment plan for the Senate as against imbalances in existing Assembly districting. The Fifth District (Napa, Solano, and Marin counties) is statistically 15% under-represented in the Assembly and would be over-represented by 13% in the Senate under Senate Bill No. 6. The Eighth District (Sacramento County) is statistically 17% over-represented in the Assembly and would be under-represented by 21% in the Senate. The Tenth District (Alameda County) is statistically 8% over-represented in the Assembly and would be 13% under-represented in the Senate. The Twelfth District (Santa Clara County) is statistically 8% under-represented in the Assembly and would be 22% over-represented in the Senate. The Thirteenth District (Santa Cruz, Monterey, and San Benito counties) is statistically 27% under-represented in the Assembly and would be 31% over-represented in the Senate. The Thirty-Fourth District (Orange County) is statistically 16% under-represented in the Assembly and would be 11% over-represented in the Senate. And, although we have not undertaken to do so, a somewhat minor shifting of Assembly districting would produce balancing factors as to several other Senate districts created by Senate Bill No. 6.

A problem which gave us considerable pause was that of the advisability, desirability, and necessity of creating separate districts within those counties entitled to two or more senators under the plan. As provided by Senate Bill No. 6 there are six multi-member counties, five of which are each allocated two senators (Alameda, San Francisco, Santa Clara, Orange, and San Diego), with 12 senators allotted to Los Angeles County. Only from the latter was there any substantial demand or enthusiasm for sub-districting within the county. Therefore, the bill calls for at-large election and representation in each of the two-senator counties, but creates 12 districts in Los Angeles County.

The Supreme Court twice indicated in *Reynolds* that provision for multi-member districts is permissible in an apportionment scheme that otherwise complies with the precept of substantial equality of population. "One body could be composed of single-member districts while the other could have at least some multi-member districts." (377 U.S. at 577.) "Single-member districts may be the rule in one state, while another state might desire to achieve some flexibility by creating multi-member or floterial districts." (Id. at 579.) The Court reaffirmed this position early in 1965 when it let stand a Georgia statute which created, in counties entitled to two or more senators, districts merely as means of residence qualification for candidates, but which required at-large voting and representation for all senators within such counties. (*Fortson v. Dorsey* 379 U.S. 433.) Under the particular facts of the Colorado case, the Court felt disposed to comment on the possible practical undesirability of at-large voting and representation in multi-member counties insofar as residents of such counties are concerned; but, the Court did not rule that such arrangement is constitutionally impermissible. (*Lucas v. 44th General Assembly* 377 U.S. at 731, fn. 21.)

Our purpose in according at-large status to those senatorial seats in the five two-senator counties was not to dilute or debase the voting strength or representative rights of any group or interest, but rather to avoid any such dilution or debasement. Profound difficulties were experienced in attempts to carve districts in those counties so as not to infringe on other rights protected under the 14th Amendment, and in avoiding gerrymandering.

That there is precedent for a combination of at-large and sub-districting arrangements in multi-member counties is seen in the provisional Georgia lower house reapportionment statute, which allocates 24 seats to Fulton County and provides for election of 21 of those representatives from districts and of the other three by at-large voting by the entire county. This feature of that enactment has not been found invalid.

As to districting in Los Angeles County, the problems encountered are detailed in the above-cited *Preliminary Report* and need not be echoed here. Again, the basic criterion was equality of population, with additional consideration accorded to the factors of recognizing political subdivision boundaries within the county, and to communities of interest. Only one of the 76 cities in the county indicated it did not object to being fragmented or fractionalized in formation of Senate districts (Long Beach). Many of the remaining municipalities reported that the existing system of Assembly districting in the county, which fragments some cities into as many as three districts, is both confusing and unsatisfactory.

Moreover, in view of the reasons stated by the Court why recognition may be given to political subdivision boundaries, it was found that by following city lines insofar as was practicable, there was eliminated the possibility of partisan gerrymandering. In addition, such procedure minimized possible infringement of other constitutionally protected rights. Another factor in support of this approach was that it was favored by the cities themselves and by their inhabitants.

It is with some pride that we note the 12 districts in Los Angeles County fragment only six of the 76 cities: City of Commerce, City

of Industry, Compton, the city of Los Angeles, Irwindale, and Long Beach. The City of Industry has a population of only 749; Irwindale has 1,670 residents; and City of Commerce's population is 9,555.

Just as was true in grouping counties into districts, communities of interest were considered, to the extent permissible, in grouping cities into districts in Los Angeles County, as had been urged by the cities. Obviously, this was not universally possible, in light of the requisite adherence to the principle of substantial equality of population and to the concept of recognizing municipal boundaries. We should point out that some technical corrections are required in the descriptions of boundaries of the 12 Los Angeles county districts in Senate Bill No. 6, so as to avoid splitting of census tracts, and that the numbering system of those districts should be rearranged to obviate identical numbering in certain areas of Senate districts and Congressional districts, which could cause voter confusion.

V. RETENTION OF THE BASIC CONCEPT OF BICAMERALISM

What we have set forth to this point should be sufficient in and of itself to warrant acceptance of the Senate reapportionment plan in Senate Bill No. 6, yet there are additional circumstances which compel approval of the proposal. One such factor is the basic concept of bicameralism itself—a concept which the Court declared is not rendered “anachronistic and meaningless” by the doctrine of population equality in districting. “A prime reason for bicameralism, modernly considered, is to insure mature and deliberate consideration of, and to prevent precipitate action on, proposed legislative measures. Simply because the controlling criterion for apportioning representation is required to be the same in both houses does not mean that there will be no differences in the composition and complexion of the two bodies. Different constituencies can be represented in the two houses. One body could be composed of single-member districts while the other could have at least some multi-member districts. The length of terms of the legislators in the separate bodies could differ. The numerical size of the two bodies could be made to differ, even significantly, and the geographical size of districts from which legislators are elected could also be made to differ. And apportionment in one house could be arranged so as to balance off minor inequities in the representation of certain areas in the other house.” (*Reynolds v. Sims* 377 U.S. at 576-577.)

Several of these elements are patent in the Senate Bill No. 6 plan, as we have noted, and we now turn to other aspects of bicameralism. In building the framework of Senate Bill No. 6 we decided not to construct a duplicate or exact carbon copy of the Assembly districting scheme. Our rationale for choosing this approach was that the extant qualitative degree of representativeness of bicameralism in California be retained to the fullest measure that is constitutionally permissible.

Most assuredly, Senate apportionment in this state could be devised simply as a scheme of fabricating each senatorial district to include two whole Assembly districts. The result would likely be two Assemblies; one called the Assembly and the other the Senate; one composed of 80 members who would serve two-year terms, and the other composed of 40 members who would serve four-year terms. And there the differences in the two bodies would end. This, we submit, is not that “modernly considered” bicameralism of which the Court speaks, that will “insure mature and deliberate consideration of, and . . . prevent precipitate action on, proposed legislative measures.” (*Ibid.*)

At best, to adopt such a scheme would be to flirt with the unknown, whereas to retain any significant semblance of current California bicameralism is to preserve at least in some degree a system that has proved itself to be beneficial to virtually every group and interest, and which has served the state well through her continued and phenomenal growth by evidencing the ability to abundantly absorb that growth, by a dem-

onstrated attitude of progressive legislation, and by producing a continuing prosperity for California and for her people. The qualitative aspect of bicameral representation in California cannot, we submit, be entirely dissected from the quantitative factor of equally populated districts.

Although the Court in the Apportionment Cases viewed the basic issue as one of voting rights (the right of each individual to cast in legislative elections a substantially equally-weighted vote), the Court did not entirely overlook the qualitative aspect of representation. The Court made the sweeping assertion that if one house of a bicameral state legislature is apportioned on a population basis, and the other house on a basis other than of population, the result would be obstruction of majority desires instead of compromise.

"If such a scheme were permissible, an individual citizen's ability to exercise an effective voice in the only instrument of state government directly representative of the people might be almost as effectively thwarted as if neither house were apportioned on a population basis. Deadlock between the two houses might result in compromise and concession on some issues. But in all too many cases the more probable result would be frustration of the majority will through minority veto in the house not apportioned on a population basis, stemming directly from the failure to accord adequate overall legislative representation to all of the state's citizens on a nondiscriminatory basis." (*Reynolds v. Sims* 377 U.S. at 576.)

Whereas that interdiction by the Court appears well-founded in the case in which it was uttered (The Alabama Legislature having violated its own state's constitution by failing to take any reapportionment action for more than 60 years, and there being no provision in Alabama by which the majority could articulate its desires through use of the initiative process), we submit that such declaration lacks validity when tested against the facts as they exist in California. In the context in which that statement in *Reynolds* was made, the "majority" referred to by the Court appears to be the residents of the populous centers who are under-represented as the result of an apportionment based other than on equality of population. In other words, that "majority" is the citizenry of the urban or metropolitan areas, and the "minority" is the citizenry of the rural, sparsely settled areas.

The Final Calendar of Legislative Business (the official state record of legislative action) for each Session since the existing plan of California legislative apportionment has been in force, contains a multitude of evidence vividly illustrating that the Court's declaration is inapposite and unfounded when viewed in the light of California's facts. That evidence will show it is plainly not true that the existing plan of bicameral apportionment in this state has resulted in "frustration of the majority will through minority veto in the house not apportioned on a population basis."

This is the conclusion of no less an authority on urban needs, problems, and desires than the League of California Cities, which has stated in its *Legislative Review* of July 18, 1961: "Both offensively and defensively the so-called rural Senate and its committees showed more understanding of and sympathy toward bills of interest to cities than did the urban Assembly. Contrary to popular belief this is not

unusual. This year, more than ever before, the Assembly showed an alarming disregard for the principles of home rule and the needs of cities. This is not true of all Assemblymen nor is the outstanding Senate record true as to all Senators but it is a completely accurate statement as to a majority of the members of each house. The proof is in the final history."

Certainly we do not intimate that the Senate has been the sole source or origin of legislation beneficial to the urban areas and their residents. Numerous are the statutes of this nature that have been initiated by the Assembly—yet in every instance Senate approval was a condition precedent to enactment.

Turning from the positive to the negative, the record will show that the large majority of proposals that would have infringed upon the right of cities to control their internal affairs and that would have weakened the concept of home rule, have originated in the Assembly, and when approved by that house have been defeated in the Senate. Such proposals have included bills designed to pre-empt certain fields of taxation, to preclude local exercise of the police power, to restrict the right of municipalities to enact their own land-use regulations, and to extend the scope of exemptions from taxation, which would have narrowed the property and sales and use tax bases that are the main sources of local government revenue.

As has been stated by spokesmen for the League of California Cities: "There can be no greater threat to urban and metropolitan municipal home rule than to make our cities dependent upon the state for adequate revenues with which to provide a minimum standard of municipal services. In short, the record is clear that the concentration of power in the state and the regulation of the right of cities to control their own affairs stems from legislators who represent metropolitan areas."

The force of these circumstances becomes more substantial when it is seen that the California situation is the antithesis of the apparent malady-ridden pattern of most state governments, which serious study has indicated could be cured only by legislative reapportionment. Advisors both to President Eisenhower and to President Kennedy have blamed malapportionment as a substantial reason for the "near eclipse" of state government. (See, 1955 Report to the President, and 1962 Report on Apportionment of State Legislatures, by the Advisory Commission on Intergovernmental Relations.) Scholars in the fields of government and law have asserted that there is a failing of state governments generally to attend to municipal needs, with the result that the federal government has had to assume the responsibility in the absence of state action. Malapportionment is again made the villain. "The strong tendency toward direct federal-municipal cooperation in handling the problems of urban life, which threatens to subvert the federal structure, will not be arrested until revitalized state governments demonstrate that they are interested in these problems and are able to take appropriate action." (Auerbach, 1964 Supreme Court Review, 72.)

Those sweeping indictments are simply not true as to California in light of the undeniable facts extant in this state. If more proof of the inaccuracy of such assertions is needed, it was supplied as recently as

June 1, 1965, when the mayors of 18 California cities voted their *opposition* to a resolution adopted by the United States Conference of Mayors, supporting the decisions in the Apportionment Cases on the ground that "state legislatures have been so constituted to assure underrepresentation of cities and urban areas where most of the population lives."

If, as the Supreme Court has declared, bicameralism was not rendered "anachronistic or meaningless" by the rulings in the Apportionment Cases, then we submit that "under the particular circumstances existing" in California judicial notice must be taken of the qualitative aspect of this state's existing bicameralism, and of the fact that there has not been "frustration of the majority will through minority veto in the house not apportioned on a population basis."

We do not ask that the present system of Senate apportionment be preserved intact. We wish that we could make such a plea, but that door has been closed to us by the Supreme Court. We request only that the probative value of these particular circumstances regarding bicameralism be weighed along with all the other factors in judging the merits of the plan encompassed in Senate Bill No. 6. We maintain that upon such a review, this plan should be accorded approval.

VI. THE LEGAL SIGNIFICANCE OF CALIFORNIA'S HISTORICAL FACTS

There is yet another circumstance which we could not overlook in devising a plan of Senate reapportionment, and that is the historical background of legislative representation in California. The Court has declared that "neither history alone," nor several other factors standing by themselves will justify disparities from the principle of equal population. (*Reynolds v. Sims* 377 U.S. at 579.) It appears to follow from the Court's use of the qualifier "alone" that historical factors are not to be summarily dismissed either in fashioning or evaluating an apportionment plan.

In the interest of brevity we will refrain from the voluminous exposition that could be made as to significant historical facts, and rather we will confine ourselves to only a few pertinent points from the multitude of relevant occurrences that date back to at least 1823. From that year to this very point in time there have been north-south differences in California, and many of these were far more than trivial, petty jealousies. For example, in 1837, the controversy over whether the provincial custom house (which was the main source of revenue) should be located in the north or the south boiled over to the point of armed conflict. Historians tell us an armed skirmish was fought at San Buena Ventura, in which one life was lost. Another encounter on this issue luckily ended without any fatalities.

It is a matter of record that when the first California Constitution was being drafted in 1848, the southern California delegation sought to sever that part of the incipient state from the north and to become a separate territory rather than entering the Union at that time as a state. Only two years earlier, as an outgrowth of the Bear Flag Revolt, there had been formed in the central part of what is now this state the "California Republic", which was founded on the lofty ideals that this "new government would guarantee civil and religious liberty, would detect and punish crime, would encourage industry, virtue, and literature, and would leave unshackled commerce, agriculture, and mechanism." (*California*, John Walton Caughey, 1953 ed., pp 231-232.) William B. Ide, who proclaimed that Republic, summed up his political credo, saying that "a government to be prosperous and happying in its tendency must originate with its people . . . that its citizens are its guardians, its officers are its servants, and its glory their reward." (*Ibid.*)

Perhaps most momentous in perspective was the sage decision of that small band who gathered at Monterey in 1848 as the architects of California's first constitution, when they determined that this new state would be a "free state." The single terse but vital clause in that constitution: "Neither slavery nor involuntary servitude, unless for the punishment of crimes, shall ever be tolerated in this state," was almost to result in Congressional denial of our statehood, and was to

have a telling impact on the course of our Nation's subsequent history. For at the time California was seeking to become the thirty-first state, there existed in the Union an equilibrium between "free" and "slave" states. Admission of California as a "free state" would destroy that balance and provide the catalyst for more rapidly terminating slavery in the south, a fact of which southern congressmen were vividly aware. Consequently, the 1850 session of Congress was to be what historians characterize as one of the stormiest ever, with the southern slavery supporters engaged in a death-throe attempt to block California's admission, and it required months of bombastic wrangle before there was worked out a complex compromise under which California finally achieved statehood.

And with our admission came the destruction of the equilibrium between "free" and "slave" states, foreshadowing the end of slavery and marking the first long step toward establishing equal rights of the Negro. We are not so bold as to even speculate what our country's future course might have been had not those 48 men at Monterey possessed the infinite wisdom and courage to stand on the side of freedom and against slavery. Whether there would even be a 14th Amendment for the courts to enforce today had their choice been a different one, is a matter for conjecture.

Statehood did not, however, produce serenity either within California or the Nation. In California throughout the 1850s there was a strong undercurrent of feeling in favor of a division of the state. "In 1851 a 'Convention to Divide the State of California' was called to meet in Los Angeles. The men who summoned this convention asserted that state government had proved a 'splendid failure,' that Los Angeles in particular was tasting its bitter fruits in political neglect, paralyzed commerce, insupportable taxation, and the complete lack of protection against Indian depredations. Separation, 'friendly and peaceful but still complete,' they asserted to be an imperative necessity. Other efforts followed, and in 1859 Andres Pico secured legislative approval for the incorporation of the counties from San Luis Obispo south as the Territory of Colorado. A two-thirds vote of approval in the counties affected was assured, but before congressional approval could be gained, the Civil War broke out to block the step completely." (Id. at 283-284.)

And although the outbreak of the Civil War aborted the splitting of the state, the advent of that mortal conflict spurred the concept of transforming California into an independent "Pacific Republic." The principal progenitor of that proposal was Congressman John C. Burch, who rallied Californians, in the event of fratricidal war, to "call upon the enlightened nations of the earth to acknowledge our independence, and to protect us." Governor John B. Weller also advocated that California not cast its fortunes either with North or South, but found on the shores of the Pacific "a mighty republic, which may in the end prove the greatest of all." (*California, A History*, Andrew F. Rolle, 1963 ed., pp. 317-318.)

California's gold, it was argued, would make her self-sufficient and would gain her a favorable reception into the family of nations. Her bargaining position could make passionate suitors of both the North and the South as rivals for her trade. Her population was an admixture

of emigrants from the South as well as from the North and in large part the recency of their arrival had not dispelled loyal ties with their former ways of life. The argument was made that no Californian should be compelled, because of choice of residence here, to join in a battle against the home of his origin, his family and friends. Furthermore, the argument ran, the Civil War was not California's war; she was territorially isolated from both the Union and the Confederacy. Secession was urged as the reasonable remedy to this dilemma.

Had it not been for the strong leadership of Governor Leland Stanford, augmented by the vigorous oratory of two members of the clergy, Thomas Starr King and Myron C. Briggs, it is well possible that California's tenure as a state could have been short-lived.

Moving forward, we find that the 1870s in California are characterized as years of economic discomfort and general discontent, and the period was one of political upheaval and insistence upon reform, all of which combined to produce the new constitution of 1879. That constitution, like its predecessor, provided for apportionment of both houses of the legislature on the basis of population. Yet, historians are in general agreement that state government during that period was something which Californians viewed with less than pride.

"The speeches [at the constitutional convention of 1878-1879] indicated that most delegates regarded the legislature as a necessary evil, and an expensive one at that. Perhaps it should be remarked that no consideration was given to the problem of ways and means of choosing a better legislature. The only action taken was to attempt to hedge about more carefully the kind of legislature usually elected, to prevent it from doing too much damage." (*Motivation and Political Technique in the Constitutional Convention of 1878-1879*, Carl Brent Swisher, p. 96.)

For the remainder of the 19th Century and well into the first decade of the 20th, state government was severely attacked for its venality in unscrupulousness and wastefulness—and for its subservience to the "machine." "The legislature progressively and inexcusably padded its payroll. Legislative elections of United States Senators were handled on a frankly partisan basis with every indication of venality. Machine control of nominating conventions was particularly galling, notably at Santa Cruz in 1906, when the Republicans summarily shelved Pardee in favor of a more compliant tool." (Caughey, p. 461.)

The clamor for reform was answered by the "new-broom" legislature of 1911, which enacted a wide range of progressive statutes and in fact became so engrossed with its reform machinery that it failed to carry out its constitutional duty of reapportionment on the basis of the 1910 census. Governor Hiram W. Johnson called a special session in late 1911 for that purpose. By that time, Los Angeles had become the most populous county in the state with 504,000 people; San Francisco was second with some 417,000; and Alameda was third with 256,000; no other county had even nearly 100,000.

Rural legislators at that special 1911 session painfully remembered a "big city agreement" over a tidelands measure at the earlier regular session. That tidelands bill had granted to Los Angeles title to submerged lands, and harbor fees and wharfage charges, which could be used for harbor development. As a matter of principle, San Fran-

cisco was opposed to development of a rival California harbor, but San Francisco legislators joined with Los Angeles for passage of the bill—at a price. San Francisco's votes for the tidelands bill were traded for Los Angeles' promise to hold to a minimum San Francisco's loss of legislative seats in the reapportionment, and the two groups of metropolitan area legislators would vote to take representation from the rural counties instead. On the basis of the 1910 census, southern California stood to gain substantially by reapportionment; hence the bill became the vehicle for a bargain by which Los Angeles would help San Francisco retain the latter's legislative representation, at the expense of the rural counties. The big-city combine was unconscionable to the remainder of the state, as the alliance would result in depriving central and northern California of seats which otherwise should have been taken from San Francisco. This, the non-metropolitan legislators adamantly refused to accept, and they took their stand at the special session, forcing a reapportionment compromise.

In the years following 1911, California's population continued to increase, with southern California's growth out-pacing that of the north. The 1920 census recorded 39.3% of the state's population residing in southern California, as against only 16.6% in 1890. It is a matter of record that the 1921 legislature failed to carry out its constitutional mandate of reapportionment, but it is an often overlooked fact that Congress was also remiss in failing to redistribute seats in the House of Representatives on the basis of the 1920 census.

“When the census of 1920 established the increase in California population at 44.1%, the natural expectation was that the state would be allotted three or four additional congressmen and that in local reapportionment Los Angeles and southern California would be the chief gainers. Successive Congresses, however, neglected to act, and their remissness gave the legislature excuse not to reapportion its own districts.” (Caughey, pp. 506-507.)

After the 1925 legislature adjourned without enacting a reapportionment measure (and Congress still had not redistributed House seats), the people made use of the initiative, submitting two divergent proposals. One would have retained apportionment of both houses of the legislature on the basis of population, and would have created a commission to take reapportionment action should the legislature fail. This, the electorate turned down. The other proposal was adopted by the voters, establishing the present pattern of Senate apportionment. The 1927 legislature enacted reapportionment statutes, reallocating Assembly seats and creating new Senate districts to carry out the provisions of the 1926 constitutional amendment. But a referendum petition qualified for the 1928 ballot challenging the Senate districting measure. The voters defeated this movement to prevent the enactment from going into effect. And in 1948, 1960, and 1962, the electorate defeated initiatives that would have altered the existing scheme of Senate apportionment.

That there are north-south differences in California is a matter of historical fact, and that these differences will always exist is inherent in our geography and demography. The bulk of natural resources and agriculture are in the north, whereas the volume of population is in

the south. These differences are basic, and from those roots, other divergences grow.

We submit that California's history must be accorded some weight in reviewing the proposal that has been designed, even though history, standing alone, is not justification for deviation from the equal-population principle. Nowhere in the Apportionment Cases did the Court give consideration to the possibility that a bicameral legislature, both houses of which are population-based, could be racked by unscrupulousness and wastefulness, could be venally subservient to machine domination, could be inexorably compliant tool of boss rule, and would collusively and conspiratorily bargain to debase and dilute the representative and voting rights of the minority of the state's residents. Yet these are not mere possibilities. They in fact were occurrences in California during the period that both houses were population-based.

To insure that such occurrences are not repeated, we believe it is compelling that such historical facts be recognized as a sound basis for some small departure from the population-equality principle. This recognition will also serve to produce a continued form of bicameralism which guarantees "mature and deliberate consideration of, and [prevention of] precipitate action on, proposed legislative measures." (*Reynolds v. Sims* 377 U.S. at 576.)

VII. SUMMARY AND CONCLUSION

Those then are the "particular circumstances existing" in California which mandate attention in evaluating the plan contained in Senate Bill No. 6 as amended May 6, 1965, and as passed by the Senate on May 10. To summarize, we feel there has been demonstrated the requisite honest and good faith effort to construct districts of substantially equal population. The disparities that occur are founded on permissible and justifiable bases, as deemed so by the Court. District configurations have been adapted to local political subdivision boundaries, and include contiguous territory and have been constructed of as compact territory as is practicable in giving precedence to the population standard.

The distinctions in composition of the two houses and their constituencies recognized by the Court as permissible considerations to retain the concept of bicameralism have been incorporated into the plan for that purpose. On the other hand, there are no disparities based on history alone, or solely on economic or other sorts of group interests, on considerations of area alone.

Each step along the way has been taken with reasoned deliberation, and we feel that it has been clearly demonstrated that the "divergences from a strict population standard are based on legitimate considerations incident to the effectuation of a rational state policy." (*Reynolds v. Sims* 377 U.S. at 579.) There is nowhere to be found in the plan, we submit, a scintilla of arbitrariness or discrimination.

And not the least among our reasons for adoption of this plan is the plain fact that it is the *only* reapportionment plan for which there is support by a majority vote of the Senate.

This brings us finally to the arithmetic factor, and the determination whether that nebulous noun, "minor," has been satisfied. We suggest that it has, particularly when the context of that word is used in the light of the individual factors eligible for consideration and the rationality of those elements. Moreover, we would point to the tremendous difference in arithmetic between the present scheme—with a maximum variance ratio of 422.5 to 1, and this plan—2.6 to 1.

We again point to the fact that the Court has firmly resisted the imposition of fixed standards or rigid formulas as means of evaluating apportionment plans. This, we believe, points in the direction of the traditional legal yardstick for testing cases under the Equal Protection Clause: whether the classification is a rationally justifiable one. "The constitutional safeguard is offended only if the classification rests on grounds wholly irrelevant to the achievement of the state's objective. . . . A statutory discrimination will not be set aside if any state of facts reasonably may be conceived to justify it." (*McGowan v. Maryland* 366 U.S. 420, 425-426.) "All that is prohibited is 'invidious discrimination' bearing no rational relation to any permissible policy of the state." (*Williamson v. Lee Optical Co.* 348 U.S. 483. Cf. *Morey v. Doud* 354 U.S. 457.)

We feel that as the "case by case" approach progresses, more and more will the traditional test of a rational relation to a legitimate legislative objective, emerge as the dominant factor in apportionment matters as it has in all other Equal Protection Clause issues other than the racial discrimination cases. And under that sound legal test, there can be no question but that the plan in Senate Bill No. 6 merits acceptance and approval.

At the very least, in the light of the honest and good faith effort and the considerable improvement over the existing scheme, this plan is sustainable as a provisional or interim arrangement. (Cf. *Reynolds v. Sims* 377 U.S. at 586-587.) If permitted to be used for the 1966 elections, this would follow the precedent established by the lower court in *Reynolds*, as "moderate action . . . designed to break the stranglehold by the smaller counties" on the Senate. (Id. at 552.)

In its conception and its adoption, the Senate Bill No. 6 plan represents far more than "moderate action" by this Senate, and we sincerely believe that it complies with the court's order sufficiently to stand until further reapportionment is mandatory under the state constitution following the 1970 census.

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STATEMENT OF INTENT AND JUSTIFICATION IN FORMULATING AND ADOPTING THE PLAN OF SENATE REAPPORTIONMENT CONTAINED IN SENATE BILL NO. 6

(As Amended on May 6, 1965, and as Passed by the Senate
on May 10, 1965)

A Report of the Subcommittee on Reapportionment of the Senate General Research Committee

MEMBERS OF THE SUBCOMMITTEE

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Senator Eugene G. Nisbet, *Vice Chairman*

Senator Stanley Arnold

Senator Randolph Collier

Senator Virgil O'Sullivan

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Senator Thomas M. Rees

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Secretary of the Senate

* Vacancy, Vice Senator Edwin J. Regan, resigned January 3, 1965, to accept appointment as Justice, District Court of Appeal, Third District.



LETTER OF TRANSMITTAL

June 10, 1965

Honorable Glenn M. Anderson
PRESIDENT OF THE SENATE

DEAR MR. PRESIDENT:

We submit herewith, as a report of the Subcommittee on Reapportionment, the Statement Of Intent And Justification In Formulating And Adopting The Plan Of Senate Reapportionment Contained In Senate Bill No. 6 (as Amended on May 6, 1965, and as Passed by the Senate on May 10, 1965).

Respectfully submitted,

STEPHEN P. TEALE, Chairman
EUGENE G. NISBET, Vice Chairman
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* Vacancy, Vice Senator Edwin J. Regan, resigned January 3, 1965, to accept appointment as Justice, District Court of Appeal, Third District.
(NB. Senator John F. McCarthy, a member of the Subcommittee, did not sign this report.)

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I. PRELIMINARY STATEMENT

The July 1 deadline for compliance with the federal district court order in *Silver v. Jordan* now being near at hand, we the members of the Senate feel compelled to assert as a matter of record our intentions, justifications, and purposes in conceiving and adopting what we forthrightly and earnestly believe is a reapportionment plan which comports with the court's mandate. The plan to which we refer is that contained in Senate Bill No. 6, as amended in the Senate on May 6, 1965, and as passed by the Senate on May 10, 1965 (Senate Daily Journal, May 10, 1965, p. 2121), the provisions of which in their entirety are incorporated herein. We submit that said reapportionment proposal is constitutionally acceptable in light of the bases of justification we will recite below.

The federal district court in *Silver v. Jordan*, after announcing its objective to effectively induce the Legislature to undertake Senate reapportionment "*as its first order of business*," ordered: (1) that the Legislature reapportion the Senate on the basis of "districts of substantial equality in population," and (2) should the Legislature "fail to discharge its duty to fairly, adequately and validly" reapportion the Senate "by not later than July 1, 1965, this court will, before or after that date, hold further hearings, or motions; devise redistricting plans; and make such further orders or take such further steps as may be necessary or appropriate (either upon its own motion or on the motion of any party or intervenor)."

Notwithstanding the fact that the Senate, as intervenor in that suit, prosecuted an appeal (together with the defendant state officials) we *did* make reapportionment our first order of business. Even prior to the court's quoted order of December 3, 1964, a Subcommittee on Reapportionment of the General Research Committee had been created (resolution of the Senate Rules Committee, dated September 11, 1964), and a staff was retained to begin compiling and analyzing the multitude of statistical and background data that necessarily had to be considered before the cornerstone of any plan could be laid. And once the 1965 General Session began, the subject of reapportionment was accorded its proper status by the creation of a special standing committee to carry forward the project of formulating a plan to hear all measures on that subject. (See Senate Daily Journal, January 19, 1965, p. 162, Senate Resolution No. 22.)

The Supreme Court has issued a stern commandment to the states that they must "make an honest and good faith effort" to construct districts "as nearly of equal population as is practicable." (*Reynolds v. Sims*, 377 U. S. at 577.) We sincerely believe that mandate has been fulfilled by this Senate. Detailed evidence of the considerable thought, labor, and effort expended in the production of Senate Bill No. 6 has already been chronicled in the *Preliminary Report* of the Subcommittee on Reapportionment, which was submitted on May 13, 1965 (see Senate Daily Journal, May 13, 1965, pp. 2242-2243, for Letter of Trans-

mittal and Motion to Print Report). We will not recount those details, but rather we incorporate herein by reference that *Preliminary Report* as being probative that the requisite "honest and good faith effort" has been made.

It has been our intention and purpose to redistribute Senate representation in California on a population basis, giving secondary consideration only to such factors as have been deemed permissible by the Supreme Court. In Senate Bill No. 6 we frankly feel that this intention and purpose has been consummated.

II. THE DECISIONAL LAW

Necessarily the starting point in fashioning a plan of reapportionment is the decisional law rendered by the Supreme Court in the Apportionment Cases (*Reynolds v. Sims*, 377 U. S. 533, Alabama; *WMCA v. Lomenzo*, 377 U. S. 633, New York; *Maryland Committee for Fair Representation v. Tawes*, 377 U. S. 656, Maryland; *Davis v. Mann*, 377 U. S. 678, Virginia; *Roman V. Sincock*, 377 U. S. 695, Delaware; *Lucas v. 44th General Assembly*, 377 U. S. 713, Colorado). Shorn of their legalistic trappings, the Court's basic pronouncements were these:

1. The Equal Protection Clause demands that both houses of a bicameral legislature be apportioned on the basis of districts of substantially equal population (*Reynolds v. Sims*, 377 U. S. at 568).
2. Exact or precise equality of population among districts is not a constitutional requisite (*Id.* at 577).
3. The state must make an honest and good faith effort to construct districts of substantial equality (*Ibid.*).
4. Consideration of local political subdivision boundaries, and composing districts of contiguous and compact territory, will be recognized as factors justifying "minor" deviations, so long as the equal-population principle is not submerged or significantly diluted (*Id.* at 578-580).
5. There is no uniform standard or rigid formula for judicially determining whether an apportionment plan is constitutionally valid (*Roman v. Sincock*, 377 U. S. at 710).
6. Each state's case must be weighed on its own particular set of facts to ascertain whether there has been faithful adherence to the equal-population principle with such minor deviations as may occur in recognizing factors that are free from any taint of arbitrariness or discrimination (*Ibid.*).
7. The equal-population principle is not intended to abolish bicameralism and certain distinctions in the composition of the two houses and their constituencies are permissible (*Reynolds v. Sims*, 377 U. S. at 576-577).
8. The fact a state's legislative apportionment plan is adopted by means of the initiative or referendum will not save that scheme if it fails to meet the test of population-based representation in both houses (*Lucas v. 44th General Assembly*, 377 U. S. at 736-737).

Apart from the foregoing, and several additional considerations which will be alluded to, *infra*, the Court deemed it "expedient not to attempt to spell out any precise constitutional tests. What is marginally permissible in one state may be unsatisfactory in another, depending on the particular circumstances of the case. Developing a body of doctrine on a case-by-case basis appears to us to provide the

most satisfactory means of arriving at constitutional requirements in the area of state legislative apportionment." (*Reynolds v. Sims*, 377 U. S. at 578.) As of this point in time the Supreme Court has not had before it any permanent plan of reapportionment which has been accorded final approval by a lower court, and, as we will show, the case-by-case approach of the lower federal courts has thus far failed to produce any pattern of doctrinal uniformity. Consequently, we are apparently still in the embryonic stage of apportionment constitutional dogma.

In its decisions in the Apportionment Cases, the Court declared that "divergences from a strict population standard" would be permissible with respect to apportionment plans for "either or both" houses of a legislature if "based on legitimate considerations incident to the effectuation of a rational state policy." (Id. at 579.) The Court quickly admonished, however, that "neither history alone, nor economic or other sorts of group interests" will justify disparities (Id. at 579-580). "Considerations of area alone" likewise lack justifiability (Id. at 580). Geographical considerations were characterized as "hollow" arguments in light of this day's developments in transportation and communications (Ibid.). And the Court found "unconvincing," contentions that divergences should be permitted "to insure effective representation for sparsely settled areas and to prevent legislative districts from becoming so large that the availability of access of citizens to their representatives is impaired" (Ibid.).

The most thoroughly demolished argument of the states as a plea for justification for deviations was that of reliance on the so-called federal plan analogy. The Court ruled that such analogy is "inapposite and irrelevant to state legislative districting schemes" (Id. at 573), which taken literally means that the analogy is not admissible as evidence, and if improperly admitted cannot be the basis for a decision.

Being mindful of these rulings, adumbrations, and admonitions by the Court and of the lacuna of any means to vouchsafe the states and the courts in formulating and reviewing reapportionment plans, it was necessary to devote considerable contemplation and deliberation to the myriad factors interwoven into the fabric of legislative districting. We could not overlook the Court's arithmetic approach in its review of apportionment cases, yet we profess doubt as to the ultimate evaluation of the factor of pure mathematics in view of the Court's disposition against rigid standards and fixed formulas (*Roman v. Sincock*, 377 U. S. at 710).

III. THE FACTOR OF ARITHMETIC

The two mathematical factors examined by the Court are: (1) the maximum population variance ratio, which simply stated is the comparison between the most heavily populated district and the least populous district; and (2) the minimum percentage of the state's total population which, under the apportionment scheme, theoretically can elect a majority of the challenged legislative body.

Applying these tests to California's existing Senate apportionment, and using 1960 federal census figures, the maximum population variance ratio among Senate districts is 422.5 to 1 (comparing Los Angeles County's 6,038,771 population to the 28th District's Inyo, Mono, and Alpine total population of 14,294); and the minimum percentage of the total State population that can elect a Senate majority is 10.7%. That maximum population variance ratio is the widest deviation found in any of the 50 states' Senate apportionment schemes, and that minimum percentage figure is the second lowest of any of the 49 bicameral state senates (Nevada's 8% being the lowest).

Although we feel that these two tests are less than accurate barometers of malapportionment in that they over-simplify some and ignore many of the complex factors inextricably interwoven into any pattern of apportionment, our research indicates a lack of agreement or even any concerted study by political scientists to produce a more meaningful mathematical test. As was stated by Senator Joseph A. Rattigan in his concurring remarks in the *Report* of the California Study Commission on Senate Apportionment (1962), arithmetic "is not argumentation." He cogently noted: "The point here is that Los Angeles County is either under-represented in the State Senate or it isn't. If it isn't, the proof lies in Los Angeles and in Sacramento, not by contrast with mountain areas. The melodramatic display of '422.5 to 1' is demonstrative but not probative: it illustrates an argument without amounting to one." (pp. 54-55)

That the tremendous variance exists in California is the result of two factors: one is the fact that the counties of Alpine, Mono, and Inyo, for manifold reasons, have not become heavily populated; the other, and sometimes overlooked, is that Los Angeles is the most heavily populated county in the entire nation, and has a populace within its boundaries exceeding that of 42 individual states in the Union.

The Court's reliance on the minimum-percentage-necessary-to-elect-a-majority test also may produce a misleading result. Inherent as a factor in that test is the numerical size of the challenged legislative house. Thus, California has a 40-member Senate with 21 being a majority. Accordingly, the "ideal" in California would be $21/40$, or 52.5%. Given a house the size of Georgia's lower house, 205, the ideal percentage would be $103/205$ or 50.2%. In other words, there is no constant figure that can be applied uniformly to every legislative body in every state.

In any event, the Supreme Court has properly recognized that exact equality and mathematical precision are hardly constitutional requirements. On the other hand, although the Court has recognized the inherent necessity of some variation from exact equality in the practical fashioning of a State's population-based apportionment plan, the very nebulousness of the adjective "some" poses a quandary. As was noted by the dissent of Justice Frankfurter in *Baker v. Carr*: "To some extent—aye, there's the rub." (82 S. Ct. 691, at 739.)

Attention has been focused throughout the formulative stages of the California Senate plan on the reactions of the lower federal courts to reapportionments that have been accomplished in other states. For example, in *Thigpen v. Kramer*, an unpublished decision, the federal district court on March 10, 1965, gave approval to the redistricting of both houses of the Washington legislature, and dismissed the long-standing suit. Under that Washington scheme, the maximum population variances are 1.45 to 1 (Senate), and 1.6 to 1 (House), and the minimum population percentages necessary to elect a majority are 47.2% (Senate) and 47.7% (House). In submitting its plan to the court the state noted that the Supreme Court had left undisturbed in *Lucas v. 44th General Assembly* (377 U.S. 713) the apportionment of Colorado's lower house even though there had been a maximum variance of 1.7 to 1 and some 45.1% of the Colorado population could elect a House majority. The federal district court in *Thigpen*, although approving the Washington plan and dismissing the suit, expressed its hope and trust that when reapportionment is again undertaken following the 1970 census, further improvement will be achieved toward equality of district populations.

On April 1, 1965, the federal district court reviewing Georgia reapportionment refused to approve as constitutionally valid the plan submitted to it, but allowed that plan to stand as a temporary apportionment. The court in *Toombs v. Fortson* (----- F. Supp. -----) allowed the legislature until the end of its 1968 session to adopt a constitutionally valid plan. Although the litigation involved only the Georgia House, the court found Senate districting invalid as well. Among Senate districts the maximum variance is 1.81 to 1, and the minimum percentage that can elect a Senate majority is 48.2%. The reason the plan was found wanting by the court was that six of the 54 districts varied upward or downward by more than 15% from the mathematical average district population. The maximum variance in House districts in Georgia is 2.003 to 1, and the minimum population that can elect a House majority is 42.341%. Only 73 of the 205 House districts were found to be within 15% of the "ideal" district population. The court noted that the Supreme Court has not established a formula to guide the lower courts and the states, and the three judges ruled that until such a formula is handed down, they will follow the 15% rule, which, they noted, has been written into the Congressional districting bill under consideration by our national legislature. Use of the 15% test in Georgia's legislative districts would result in a maximum population variance of 1.353 to 1.

The state's reliance in *Thigpen* on the ratio and percentage applicable to the Colorado House is reliance on dictum, as apportionment of the House was not an issue before the Supreme Court in *Lucas*. In

Toombs, the district court admits that it relied on a dictum of the Supreme Court that a 2 to 1 variance is impermissible.

In Iowa, a federal district court had approved an unchallenged temporary reapportionment plan for use in the 1964 election, under which the maximum variance figures were 2.23 to 1 in House districting, and 3.2 to 1 in Senate districting. The minimum percentage that could elect a House majority was 48.3%, and that could elect a Senate majority was 38.9%. Following the 1964 election, that interim plan was challenged and the federal district court ruled that the scheme is prospectively invalid and is inoperative for any future Iowa legislative election (*Davis v. Cameron*, 238 F. Supp. 462). The court expressly held the disparities in the provisional Iowa Senate apportionment are too great to be allowed to stand. But the court declined to pass on the question whether the House apportionment is constitutionally valid, noting that "*It is arguably close.*" (Emphasis ours.) Nonetheless, the court was disposed to rule that the Senate and House plans, which were enacted in the same statute, are not severable and the entire statute must fail because of invalidity of that part containing the Senate plan.

The federal court in that Iowa case indicated it was adhering to the Supreme Court's admonition in *Roman v. Sincock* (377 U.S. at 710) that legislative apportionment does not lend itself to rigid formulas and instead each case must be judged on its own particular circumstances. Moreover, the federal court refused to overturn the Iowa statute on the challenged ground that it created several multi-member districts, pointing out that creation of such districts "is not in itself invalid." And the court declined to fix a deadline by which a valid reapportionment would have to be adopted, asserting its faith that the Iowa Legislature would accomplish this task sufficiently in advance of the 1966 elections.

We submit that *Thigpen*, *Toombs*, and *Davis* are something more than mere variations on a theme; their very dissimilarity of arithmetic approach compels this Senate and the *Silver* court to embrace the Supreme Court's command in *Roman* that each legislative apportionment case is to be examined "*under the particular circumstances existing in the individual state,*" and "it is neither practical nor desirable to establish rigid mathematical standards for evaluating the constitutional validity of a state legislative apportionment scheme." (377 U.S. at 710, emphasis ours.) That tenet in *Roman* achieved the status of a ruling on an issue and is not obiter dictum. The Court made its pronouncement as an explicit disapproval of the ruling of the court below, which had attempted to create a presumption that any plan having a variance ratio of less than 1.5 to 1 would be prima facie constitutionally valid.

It is that language in *Roman* which is the only "rule" on mathematics announced by the Supreme Court, and it must be followed instead of relying on some dictum (*Thigpen*), or proposed legislation regarding Congressional districting (*Toombs*). And it was with the purpose of being guided by such ruling that Senate Bill No. 6 was developed and adopted by us. Therefore, Senate Bill No. 6 should not be judged simply and solely on the mathematic computations that may be drawn therefrom. It is patently too superficial to reach a final conclusion from the arithmetic aspects of a maximum variance of 2.6

to 1 and a 39.9% minimum percentage that can elect a majority under the plan. (On the basis of 1965 California population estimates by the State Department of Finance, the minimum percentage increases to 41.35%.) As we have indicated, these factors of mathematics are demonstrative but not probative; they illustrate an argument without amounting to one.

We sincerely believe that "under the particular circumstances existing" in California, the reapportionment plan of Senate Bill No. 6 as amended on May 6, 1965, and as passed by this Senate on May 10, 1965, complies with the order of the court in *Silver v. Jordan* and merits the approval of that tribunal. We now turn to "the particular circumstances" which compel this result.

IV. CONSIDERATION AS TO POLITICAL SUBDIVISIONS AND THEIR BOUNDARIES AS JUSTIFICATION FOR POPULATION DISPARITIES

A fundamental factor incorporated into Senate Bill No. 6 is the recognition of political subdivision boundaries in districting. That this is permissible has been affirmed by the Supreme Court: "A state may legitimately desire to maintain the integrity of various political subdivisions, insofar as possible, and provide for compact districts of contiguous territory in designing a legislative apportionment scheme. Valid considerations may underlie such aims. Indiscriminate districting, without any regard for political subdivision or natural or historical boundary lines, may be little more than an open invitation to partisan gerrymandering." (*Reynolds v. Sims*, 377 U.S. at 578-579.)

And the Court proceeded to indicate that recognition of political subdivisions in an apportionment scheme would be a permissible basis for disparity among district populations: "A consideration that appears to be of more substance in justifying some deviations from population-based representation in state legislatures is that of insuring some voice to political subdivisions, as political subdivisions. Several factors make more than insubstantial claims that a state can rationally consider according political subdivisions some independent representation in at least one body of the state legislature, as long as the basic standard of equality of population among districts is maintained. Local governmental entities are frequently charged with various responsibilities incident to the operation of state government. In many states much of the legislature's activity involves the enactment of so-called local legislation, directed only to the concerns of particular political subdivisions. And a state may legitimately desire to construct districts along political subdivision lines to deter the possibilities of gerrymandering." (Id. at 580-581.)

To be sure, the Court cautioned that, if a state's districting system which gives recognition to political subdivisions and their boundaries is to be constitutionally valid, there must not be a submergence of the principle of equal-population. We believe that balance has been achieved in this Senate's plan.

In California, the recognizing of political subdivision (county) boundaries is both a constitutional requisite and a matter of historical tradition. Article IV, Section 6 of the state constitution provides, *inter alia*: "nor shall a part of any county, or of any city and county, be united with any other county, or city and county, in forming any assembly or senatorial district." We believe that requirement of our constitution is still in full force and effect, and we have constructed our plan accordingly.

Ultimately, there must be a judicial interpretation of the provisions of Article IV, Section 6 of the California Constitution in the light of *Silver v. Jordan* and the Supreme Court's Apportionment Cases. The

Reapportionment Subcommittee's *Preliminary Report* considers this factor in detail. As noted therein, the Senate filed an action in the California courts in an expeditious effort to obtain such interpretation. On May 19, 1965, the Superior Court in Sacramento sustained defendant's demurrer without leave to amend (*McAtteer et. al. v. Silver*, Sacramento Superior Court No. 158464); however, the Senate is taking an appeal from that ruling. It appears imperative that the California courts render judgment at the earliest possible moment construing the pertinent provisions of the state constitution. (See *Scranton v. Drew*, 379 U. S. 40; *44th General Assembly v. Lucas*, 379 U. S. 693; and *People ex rel. Engle v. Kerner*, _____ Ill. 2d. _____, 205 N. E. 2d. 33.)

Until such an interpretative ruling is forthcoming, we have elected to abridge the apportionment provisions of the California Constitution as slightly as need be in producing a districting system of substantial population equality. To this end we were influenced considerably by the reapportionment experiences in Colorado and New York (see the above-cited *Preliminary Report*). Consequently, we have fashioned a plan in Senate Bill No. 6 that breaches only four of the provisions of Article IV, Section 6: (1) the 40-district requirement (Senate Bill No. 6 creates 35 districts); (2) the limitation of one senator per district (Senate Bill No. 6 provides for five two-senator districts); (3) the limitation of one district per county (Senate Bill No. 6 creates 12 districts in Los Angeles County); (4) the maximum of three counties per district (Senate Bill No. 6 creates a five-county district, a seven-county district, and a 14-county district).

Quite clearly our plan avoids the interdiction of the Court that "permitting deviations from population-based representation does not mean that each local governmental unit or political subdivision can be given separate representation, regardless of population," or does it in any way approach that impermissible result (*Reynolds v. Sims*, 377 U. S. at 581). And, although unquestionably it would be possible to more nearly arrive at the 1 to 1 ideal if counties were fragmented or fractionalized (i.e., joining part of a county with part of another county or with an entire adjacent county), we think there are compelling reasons militating against such scheme of configuration.

One factor, of course, is the state constitutional prohibition barring that mode of districting. And, although counties do not bear the same sovereign relation to the state as the states bear to the Union, counties in California are governmental entities of substantial status. As has been summarized by one constitutional law professor: "Counties are the building blocks of American political life, thought, and action. In addition to the obvious virtues of stability and continuity, and indeed as a result of them, counties are the basic units for political party organization, for state administration, for planning, zoning, and regional arrangements, for civic federation organization, for social organization, and for business and industrial organization in most instances. In their own right counties provide an increasingly broad range of services and controls." (Dixon, 51 *American Bar Association Journal* 323, April, 1965.)

In California, the legislative branch of state government is primarily concerned with local entities, evidence of which is the fact that ap-

proximately 60% of the measures considered by the legislature relate to local matters. Moreover, the State Budget adopted each year by the legislature to a large degree provides for subventions to local governments.

It is the counties in California, as units of government, that carry out many of the programs of the state, particularly in the realm of the elective process itself, and in the fields of welfare, public health, and mental health. In these respects, counties are the functional units of government, executing and performing at the local level the state-wide policies adopted by the legislature. Yet, the California counties are far from mere adjutants of state government, and county governments possess the attributes of home rule on a par with that of city governments (discussed *infra*). This twofold county function necessitates a close working relationship between the state and its counties to insure on the one hand that state programs will be adequately administered at the local level, and on the other hand to prevent the erosion of the home rule concept.

That close relationship in California has predominantly been one between the counties and the State Senate. As a result of, or perhaps because of such relationship, the counties have been regarded by the Senate as the mirrors of and spokesmen for numerous interests and groups within their boundaries. Thus, insofar as the Senate is concerned, the counties provide the articulation for those interests and groups. Consequently, unless sufficient weight is accorded these local governments as local governments in an apportionment scheme, such interests and groups would face the alternative of either having no audible voice in the legislature, or of having to form local pressure organizations to regain articulation. Neither of these results seems compatible with good government.

We feel that this relationship between the Senate and the counties evinces an attitude of the Senate of being representative of the people, both directly as legislators elected by the people, and indirectly by being guided, advised, and informed by elected representatives of local governments. We believe this latter concept of representation should be retained insofar as possible and we feel this underlies the Court's recognition of "insuring some voice to political subdivisions as political subdivisions" as justification for "some deviations from population-based representation."

In arranging groupings of counties, although substantial equality of population was the basic criterion, three additional elements were considered: contiguity of territory, community of interest, and balancing Senate representation with respect to existing Assembly districts.

That contiguity of territory is a permissible basis for minor population deviations in districting has been acknowledged by the Supreme Court in *Reynolds* (377 U. S. at 578-579). Moreover, a scheme of non-contiguous territorial districting could produce a crazy-quilt result, perhaps causing the plan to "be found invalid on that basis alone." (Id. at 568.)

To be sure, the Court has not made the express assertion that the concept of community of interest will serve as justification for minor disparities among district populations. However, we believe that it is logical and reasonable to infer from the particular language chosen

by the Court that the community of interest factor is a recognizable element. The Court has said that, "neither history *alone*, nor economic or other sorts of group interests" nor considerations "of area *alone*" will justify "deviations from the equal-population principle." (Id. at 579-580, emphasis ours.) And the Court has stated further: "So long as the divergences from a strict population standard are based on legitimate considerations incident to the effectuation of a *rational state policy*, some deviations from the equal-population principle are constitutionally permissible with respect to the apportionment of seats in either or both of the two houses of a bicameral state legislature." (Id. at 579, emphasis ours.)

We draw from the Court's language the conclusion that, if an apportionment plan is fundamentally one of substantially equally populated districts and the disparities reflect rational grounds (which must not be *solely* such factors as economic or other group interests or history or area), the proposal will be constitutionally acceptable. We have followed that guidepost in drafting Senate Bill No. 6.

It seemed imperative that the groupings of counties be based on rationality, rather than arbitrarily confected clusters which would more closely approximate the population ideal. Consequently, in determining district demarcations we were attentive insofar as practicable to combining counties wherein there existed a similarity of interests and problems needing legislative assistance or solution.

An example of a district within whose contours are found communities of interest is the new First District created by Senate Bill No. 6, which stretches some 600 miles along the great spine of the Sierra to form a predominantly mountain-counties district with a total population in the 14 counties of 199,112. This district could have been made more populous by either one of two devices: by adding more far northern counties, which would have produced a giant district of such proportions as to defy any semblance of adequate and effective representation by its lone member, and to render the representative virtually inaccessible to the residents during much of the winter season (as now drawn, its area exceeds that of several individual states); or by invading the valley counties, which have interests and problems needing legislative assistance and solution that are divergent from those of the mountain counties. Accordingly, as drawn this district is rationally conceived, and to arbitrarily add population under either of the foregoing alternatives would be a departure from that rational approach.

Another secondary element employed in Senate Bill No. 6 is that of balancing the reapportionment of the Senate against existing Assembly districting. Throughout the Apportionment Cases, the Court indicated that recognition of this balancing factor is not only proper, but more likely is a necessity. In *Reynolds*, the Court said that "apportionment in one house could be arranged so as to balance off minor inequities in the representation of certain areas in the other house." (377 U. S. at 577.) And in the Colorado case, after noting that a challenge has been made against that state's plan of Senate apportionment, but not against Colorado's lower house, the Court asserted that "in determining whether a good faith effort to establish districts substantially equal in population has been made, a court must necessarily consider a state's legislative apportionment scheme as a whole.

Only after an evaluation of an apportionment plan in its totality can a court determine whether there has been sufficient compliance with the requisites of the Equal Protection Clause." (*Lucas v. 44th General Assembly*, 377 U. S. at 735, fn. 27.)

In the Maryland apportionment litigation all parties had apparently conceded before the lower courts that a recent apportionment of the lower house was not in issue. However, the Court would not accept that concession. "Regardless of possible concessions made by the parties and the scope of the consideration of the courts below, in reviewing a state legislative apportionment case, this Court must of necessity consider the challenged scheme as a whole in determining whether the particular state's apportionment plan, in its entirety, meets federal constitutional requisites. It is simply impossible to decide upon the validity of the apportionment of one house of a bicameral legislature in the abstract, without also evaluating the actual scheme of representation employed with respect to the other house. Rather the proper, and indeed indispensable, subject for judicial focus in a legislative apportionment controversy is the overall representation accorded to the state's voters, in both houses of a bicameral state legislature." (*Maryland Committee for Fair Representation v. Tawes*, 377 U. S. at 673.)

Although not universally true under Senate Bill No. 6, there are no less than six instances of levelling off minor inequalities in the reapportionment plan for the Senate as against imbalances in existing Assembly districting. The Fifth District (Napa, Solano, and Marin counties) is statistically 15% under-represented in the Assembly and would be over-represented by 13% in the Senate under Senate Bill No. 6. The Eighth District (Sacramento County) is statistically 17% over-represented in the Assembly and would be under-represented by 21% in the Senate. The Tenth District (Alameda County) is statistically 8% over-represented in the Assembly and would be 13% under-represented in the Senate. The Twelfth District (Santa Clara County) is statistically 8% under-represented in the Assembly and would be 22% over-represented in the Senate. The Thirteenth District (Santa Cruz, Monterey, and San Benito counties) is statistically 27% under-represented in the Assembly and would be 31% over-represented in the Senate. The Thirty-Fourth District (Orange County) is statistically 16% under-represented in the Assembly and would be 11% over-represented in the Senate. And, although we have not undertaken to do so, a somewhat minor shifting of Assembly districting would produce balancing factors as to several other Senate districts created by Senate Bill No. 6.

A problem which gave us considerable pause was that of the advisability, desirability, and necessity of creating separate districts within those counties entitled to two or more senators under the plan. As provided by Senate Bill No. 6 there are six multi-member counties, five of which are each allocated two senators (Alameda, San Francisco, Santa Clara, Orange, and San Diego), with 12 senators allotted to Los Angeles County. Only from the latter was there any substantial demand or enthusiasm for sub-districting within the county. Therefore, the bill calls for at-large election and representation in each of the two-senator counties, but creates 12 districts in Los Angeles County.

The Supreme Court twice indicated in *Reynolds* that provision for multi-member districts is permissible in an apportionment scheme that otherwise complies with the precept of substantial equality of population. "One body could be composed of single-member districts while the other could have at least some multi-member districts." (377 U.S. at 577.) "Single-member districts may be the rule in one state, while another state might desire to achieve some flexibility by creating multi-member or floterial districts." (Id. at 579.) The Court reaffirmed this position early in 1965 when it let stand a Georgia statute which created, in counties entitled to two or more senators, districts merely as means of residence qualification for candidates, but which required at-large voting and representation for all senators within such counties. (*Fortson v. Dorsey* 379 U.S. 433.) Under the particular facts of the Colorado case, the Court felt disposed to comment on the possible practical undesirability of at-large voting and representation in multi-member counties insofar as residents of such counties are concerned; but, the Court did not rule that such arrangement is constitutionally impermissible. (*Lucas v. 14th General Assembly* 377 U.S. at 731, fn. 21.)

Our purpose in according at-large status to those senatorial seats in the five two-senator counties was not to dilute or debase the voting strength or representative rights of any group or interest, but rather to avoid any such dilution or debasement. Profound difficulties were experienced in attempts to carve districts in those counties so as not to infringe on other rights protected under the 14th Amendment, and in avoiding gerrymandering.

That there is precedent for a combination of at-large and sub-districting arrangements in multi-member counties is seen in the provisional Georgia lower house reapportionment statute, which allocates 24 seats to Fulton County and provides for election of 21 of those representatives from districts and of the other three by at-large voting by the entire county. This feature of that enactment has not been found invalid.

As to districting in Los Angeles County, the problems encountered are detailed in the above-cited *Preliminary Report* and need not be echoed here. Again, the basic criterion was equality of population, with additional consideration accorded to the factors of recognizing political subdivision boundaries within the county, and to communities of interest. Only one of the 76 cities in the county indicated it did not object to being fragmented or fractionalized in formation of Senate districts (Long Beach). Many of the remaining municipalities reported that the existing system of Assembly districting in the county, which fragments some cities into as many as three districts, is both confusing and unsatisfactory.

Moreover, in view of the reasons stated by the Court why recognition may be given to political subdivision boundaries, it was found that by following city lines insofar as was practicable, there was eliminated the possibility of partisan gerrymandering. In addition, such procedure minimized possible infringement of other constitutionally protected rights. Another factor in support of this approach was that it was favored by the cities themselves and by their inhabitants.

It is with some pride that we note the 12 districts in Los Angeles County fragment only six of the 76 cities: City of Commerce, City

of Industry, Compton, the city of Los Angeles, Irwindale, and Long Beach. The City of Industry has a population of only 749; Irwindale has 1,670 residents; and City of Commerce's population is 9,555.

Just as was true in grouping counties into districts, communities of interest were considered, to the extent permissible, in grouping cities into districts in Los Angeles County, as had been urged by the cities. Obviously, this was not universally possible, in light of the requisite adherence to the principle of substantial equality of population and to the concept of recognizing municipal boundaries. We should point out that some technical corrections are required in the descriptions of boundaries of the 12 Los Angeles county districts in Senate Bill No. 6, so as to avoid splitting of census tracts, and that the numbering system of those districts should be rearranged to obviate identical numbering in certain areas of Senate districts and Congressional districts, which could cause voter confusion.

V. RETENTION OF THE BASIC CONCEPT OF BICAMERALISM

What we have set forth to this point should be sufficient in and of itself to warrant acceptance of the Senate reapportionment plan in Senate Bill No. 6, yet there are additional circumstances which compel approval of the proposal. One such factor is the basic concept of bicameralism itself—a concept which the Court declared is not rendered “anachronistic and meaningless” by the doctrine of population equality in districting. “A prime reason for bicameralism, modernly considered, is to insure mature and deliberate consideration of, and to prevent precipitate action on, proposed legislative measures. Simply because the controlling criterion for apportioning representation is required to be the same in both houses does not mean that there will be no differences in the composition and complexion of the two bodies. Different constituencies can be represented in the two houses. One body could be composed of single-member districts while the other could have at least some multi-member districts. The length of terms of the legislators in the separate bodies could differ. The numerical size of the two bodies could be made to differ, even significantly, and the geographical size of districts from which legislators are elected could also be made to differ. And apportionment in one house could be arranged so as to balance off minor inequities in the representation of certain areas in the other house.” (*Reynolds v. Sims* 377 U.S. at 576-577.)

Several of these elements are patent in the Senate Bill No. 6 plan, as we have noted, and we now turn to other aspects of bicameralism. In building the framework of Senate Bill No. 6 we decided not to construct a duplicate or exact carbon copy of the Assembly districting scheme. Our rationale for choosing this approach was that the extant qualitative degree of representativeness of bicameralism in California be retained to the fullest measure that is constitutionally permissible.

Most assuredly, Senate apportionment in this state could be devised simply as a scheme of fabricating each senatorial district to include two whole Assembly districts. The result would likely be two Assemblies; one called the Assembly and the other the Senate; one composed of 80 members who would serve two-year terms, and the other composed of 40 members who would serve four-year terms. And there the differences in the two bodies would end. This, we submit, is not that “modernly considered” bicameralism of which the Court speaks, that will “insure mature and deliberate consideration of, and . . . prevent precipitate action on, proposed legislative measures.” (*Ibid.*)

At best, to adopt such a scheme would be to flirt with the unknown, whereas to retain any significant semblance of current California bicameralism is to preserve at least in some degree a system that has proved itself to be beneficial to virtually every group and interest, and which has served the state well through her continued and phenomenal growth by evidencing the ability to abundantly absorb that growth, by a dem-

onstrated attitude of progressive legislation, and by producing a continuing prosperity for California and for her people. The qualitative aspect of bicameral representation in California cannot, we submit, be entirely dissected from the quantitative factor of equally populated districts.

Although the Court in the Apportionment Cases viewed the basic issue as one of voting rights (the right of each individual to cast in legislative elections a substantially equally-weighted vote), the Court did not entirely overlook the qualitative aspect of representation. The Court made the sweeping assertion that if one house of a bicameral state legislature is apportioned on a population basis, and the other house on a basis other than of population, the result would be obstruction of majority desires instead of compromise.

"If such a scheme were permissible, an individual citizen's ability to exercise an effective voice in the only instrument of state government directly representative of the people might be almost as effectively thwarted as if neither house were apportioned on a population basis. Deadlock between the two houses might result in compromise and concession on some issues. But in all too many cases the more probable result would be frustration of the majority will through minority veto in the house not apportioned on a population basis, stemming directly from the failure to accord adequate overall legislative representation to all of the state's citizens on a nondiscriminatory basis." (*Reynolds v. Sims* 377 U.S. at 576.)

Whereas that interdiction by the Court appears well-founded in the case in which it was uttered (The Alabama Legislature having violated its own state's constitution by failing to take any reapportionment action for more than 60 years, and there being no provision in Alabama by which the majority could articulate its desires through use of the initiative process), we submit that such declaration lacks validity when tested against the facts as they exist in California. In the context in which that statement in *Reynolds* was made, the "majority" referred to by the Court appears to be the residents of the populous centers who are under-represented as the result of an apportionment based other than on equality of population. In other words, that "majority" is the citizenry of the urban or metropolitan areas, and the "minority" is the citizenry of the rural, sparsely settled areas.

The Final Calendar of Legislative Business (the official state record of legislative action) for each Session since the existing plan of California legislative apportionment has been in force, contains a multitude of evidence vividly illustrating that the Court's declaration is inapposite and unfounded when viewed in the light of California's facts. That evidence will show it is plainly not true that the existing plan of bicameral apportionment in this state has resulted in "frustration of the majority will through minority veto in the house not apportioned on a population basis."

This is the conclusion of no less an authority on urban needs, problems, and desires than the League of California Cities, which has stated in its *Legislative Review* of July 18, 1961: "Both offensively and defensively the so-called rural Senate and its committees showed more understanding of and sympathy toward bills of interest to cities than did the urban Assembly. Contrary to popular belief this is not

unusual. This year, more than ever before, the Assembly showed an alarming disregard for the principles of home rule and the needs of cities. This is not true of all Assemblymen nor is the outstanding Senate record true as to all Senators but it is a completely accurate statement as to a majority of the members of each house. The proof is in the final history."

Certainly we do not intimate that the Senate has been the sole source or origin of legislation beneficial to the urban areas and their residents. Numerous are the statutes of this nature that have been initiated by the Assembly—yet in every instance Senate approval was a condition precedent to enactment.

Turning from the positive to the negative, the record will show that the large majority of proposals that would have infringed upon the right of cities to control their internal affairs and that would have weakened the concept of home rule, have originated in the Assembly, and when approved by that house have been defeated in the Senate. Such proposals have included bills designed to pre-empt certain fields of taxation, to preclude local exercise of the police power, to restrict the right of municipalities to enact their own land-use regulations, and to extend the scope of exemptions from taxation, which would have narrowed the property and sales and use tax bases that are the main sources of local government revenue.

As has been stated by spokesmen for the League of California Cities: "There can be no greater threat to urban and metropolitan municipal home rule than to make our cities dependent upon the state for adequate revenues with which to provide a minimum standard of municipal services. In short, the record is clear that the concentration of power in the state and the regulation of the right of cities to control their own affairs stems from legislators who represent metropolitan areas."

The force of these circumstances becomes more substantial when it is seen that the California situation is the antithesis of the apparent malady-ridden pattern of most state governments, which serious study has indicated could be cured only by legislative reapportionment. Advisors both to President Eisenhower and to President Kennedy have blamed malapportionment as a substantial reason for the "near eclipse" of state government. (See, 1955 Report to the President, and 1962 Report on Apportionment of State Legislatures, by the Advisory Commission on Intergovernmental Relations.) Scholars in the fields of government and law have asserted that there is a failing of state governments generally to attend to municipal needs, with the result that the federal government has had to assume the responsibility in the absence of state action. Malapportionment is again made the villain. "The strong tendency toward direct federal-municipal cooperation in handling the problems of urban life, which threatens to subvert the federal structure, will not be arrested until revitalized state governments demonstrate that they are interested in these problems and are able to take appropriate action." (Auerbach, 1964 Supreme Court Review, 72.)

Those sweeping indictments are simply not true as to California in light of the undeniable facts extant in this state. If more proof of the inaccuracy of such assertions is needed, it was supplied as recently as

June 1, 1965, when the mayors of 18 California cities voted their *opposition* to a resolution adopted by the United States Conference of Mayors, supporting the decisions in the Apportionment Cases on the ground that "state legislatures have been so constituted to assure underrepresentation of cities and urban areas where most of the population lives."

If, as the Supreme Court has declared, bicameralism was not rendered "anachronistic or meaningless" by the rulings in the Apportionment Cases, then we submit that "under the particular circumstances existing" in California judicial notice must be taken of the qualitative aspect of this state's existing bicameralism, and of the fact that there has not been "frustration of the majority will through minority veto in the house not apportioned on a population basis."

We do not ask that the present system of Senate apportionment be preserved intact. We wish that we could make such a plea, but that door has been closed to us by the Supreme Court. We request only that the probative value of these particular circumstances regarding bicameralism be weighed along with all the other factors in judging the merits of the plan encompassed in Senate Bill No. 6. We maintain that upon such a review, this plan should be accorded approval.

VI. THE LEGAL SIGNIFICANCE OF CALIFORNIA'S HISTORICAL FACTS

There is yet another circumstance which we could not overlook in devising a plan of Senate reapportionment, and that is the historical background of legislative representation in California. The Court has declared that "neither history alone," nor several other factors standing by themselves will justify disparities from the principle of equal population. (*Reynolds v. Sims* 377 U.S. at 579.) It appears to follow from the Court's use of the qualifier "alone" that historical factors are not to be summarily dismissed either in fashioning or evaluating an apportionment plan.

In the interest of brevity we will refrain from the voluminous exposition that could be made as to significant historical facts, and rather we will confine ourselves to only a few pertinent points from the multitude of relevant occurrences that date back to at least 1823. From that year to this very point in time there have been north-south differences in California, and many of these were far more than trivial, petty jealousies. For example, in 1837, the controversy over whether the provincial custom house (which was the main source of revenue) should be located in the north or the south boiled over to the point of armed conflict. Historians tell us an armed skirmish was fought at San Buena Ventura, in which one life was lost. Another encounter on this issue luckily ended without any fatalities.

It is a matter of record that when the first California Constitution was being drafted in 1848, the southern California delegation sought to sever that part of the incipient state from the north and to become a separate territory rather than entering the Union at that time as a state. Only two years earlier, as an outgrowth of the Bear Flag Revolt, there had been formed in the central part of what is now this state the "California Republic", which was founded on the lofty ideals that this "new government would guarantee civil and religious liberty, would detect and punish crime, would encourage industry, virtue, and literature, and would leave unshackled commerce, agriculture, and mechanism." (*California*, John Walton Caughey, 1953 ed., pp 231-232.) William B. Ide, who proclaimed that Republic, summed up his political credo, saying that "a government to be prosperous and happy in its tendency must originate with its people . . . that its citizens are its guardians, its officers are its servants, and its glory their reward." (*Ibid.*)

Perhaps most momentous in perspective was the sage decision of that small band who gathered at Monterey in 1848 as the architects of California's first constitution, when they determined that this new state would be a "free state." The single terse but vital clause in that constitution: "Neither slavery nor involuntary servitude, unless for the punishment of crimes, shall ever be tolerated in this state," was almost to result in Congressional denial of our statehood, and was to

have a telling impact on the course of our Nation's subsequent history. For at the time California was seeking to become the thirty-first state, there existed in the Union an equilibrium between "free" and "slave" states. Admission of California as a "free state" would destroy that balance and provide the catalyst for more rapidly terminating slavery in the south, a fact of which southern congressmen were vividly aware. Consequently, the 1850 session of Congress was to be what historians characterize as one of the stormiest ever, with the southern slavery supporters engaged in a death-throe attempt to block California's admission, and it required months of bombastic wrangle before there was worked out a complex compromise under which California finally achieved statehood.

And with our admission came the destruction of the equilibrium between "free" and "slave" states, foreshadowing the end of slavery and marking the first long step toward establishing equal rights of the Negro. We are not so bold as to even speculate what our country's future course might have been had not those 48 men at Monterey possessed the infinite wisdom and courage to stand on the side of freedom and against slavery. Whether there would even be a 14th Amendment for the courts to enforce today had their choice been a different one, is a matter for conjecture.

Statehood did not, however, produce serenity either within California or the Nation. In California throughout the 1850s there was a strong undercurrent of feeling in favor of a division of the state. "In 1851 a 'Convention to Divide the State of California' was called to meet in Los Angeles. The men who summoned this convention asserted that state government had proved a 'splendid failure,' that Los Angeles in particular was tasting its bitter fruits in political neglect, paralyzed commerce, insupportable taxation, and the complete lack of protection against Indian depredations. Separation, 'friendly and peaceful but still complete,' they asserted to be an imperative necessity. Other efforts followed, and in 1859 Andres Pico secured legislative approval for the incorporation of the counties from San Luis Obispo south as the Territory of Colorado. A two-thirds vote of approval in the counties affected was assured, but before congressional approval could be gained, the Civil War broke out to block the step completely." (Id. at 283-284.)

And although the outbreak of the Civil War aborted the splitting of the state, the advent of that mortal conflict spurred the concept of transforming California into an independent "Pacific Republic." The principal progenitor of that proposal was Congressman John C. Burch, who rallied Californians, in the event of fratricidal war, to "call upon the enlightened nations of the earth to acknowledge our independence, and to protect us." Governor John B. Weller also advocated that California not cast its fortunes either with North or South, but found on the shores of the Pacific "a mighty republic, which may in the end prove the greatest of all." (*California, A History*, Andrew F. Rolle, 1963 ed., pp. 317-318.)

California's gold, it was argued, would make her self-sufficient and would gain her a favorable reception into the family of nations. Her bargaining position could make passionate suitors of both the North and the South as rivals for her trade. Her population was an admixture

of emigrants from the South as well as from the North and in large part the recency of their arrival had not dispelled loyal ties with their former ways of life. The argument was made that no Californian should be compelled, because of choice of residence here, to join in a battle against the home of his origin, his family and friends. Furthermore, the argument ran, the Civil War was not California's war; she was territorially isolated from both the Union and the Confederacy. Secession was urged as the reasonable remedy to this dilemma.

Had it not been for the strong leadership of Governor Leland Stanford, augmented by the vigorous oratory of two members of the clergy, Thomas Starr King and Myron C. Briggs, it is well possible that California's tenure as a state could have been short-lived.

Moving forward, we find that the 1870s in California are characterized as years of economic discomfort and general discontent, and the period was one of political upheaval and insistence upon reform, all of which combined to produce the new constitution of 1879. That constitution, like its predecessor, provided for apportionment of both houses of the legislature on the basis of population. Yet, historians are in general agreement that state government during that period was something which Californians viewed with less than pride.

"The speeches [at the constitutional convention of 1878-1879] indicated that most delegates regarded the legislature as a necessary evil, and an expensive one at that. Perhaps it should be remarked that no consideration was given to the problem of ways and means of choosing a better legislature. The only action taken was to attempt to hedge about more carefully the kind of legislature usually elected, to prevent it from doing too much damage." (*Motivation and Political Technique in the Constitutional Convention of 1878-1879*, Carl Brent Swisher, p. 96.)

For the remainder of the 19th Century and well into the first decade of the 20th, state government was severely attacked for its venality in unscrupulousness and wastefulness—and for its subservience to the "machine." "The legislature progressively and inexcusably padded its payroll. Legislative elections of United States Senators were handled on a frankly partisan basis with every indication of venality. Machine control of nominating conventions was particularly galling, notably at Santa Cruz in 1906, when the Republicans summarily shelved Pardee in favor of a more compliant tool." (Caughey, p. 461.)

The clamor for reform was answered by the "new-broom" legislature of 1911, which enacted a wide range of progressive statutes and in fact became so engrossed with its reform machinery that it failed to carry out its constitutional duty of reapportionment on the basis of the 1910 census. Governor Hiram W. Johnson called a special session in late 1911 for that purpose. By that time, Los Angeles had become the most populous county in the state with 504,000 people; San Francisco was second with some 417,000; and Alameda was third with 256,000; no other county had even nearly 100,000.

Rural legislators at that special 1911 session painfully remembered a "big city agreement" over a tidelands measure at the earlier regular session. That tidelands bill had granted to Los Angeles title to submerged lands, and harbor fees and wharfage charges, which could be used for harbor development. As a matter of principle, San Fran-

cisco was opposed to development of a rival California harbor, but San Francisco legislators joined with Los Angeles for passage of the bill—at a price. San Francisco's votes for the tidelands bill were traded for Los Angeles' promise to hold to a minimum San Francisco's loss of legislative seats in the reapportionment, and the two groups of metropolitan area legislators would vote to take representation from the rural counties instead. On the basis of the 1910 census, southern California stood to gain substantially by reapportionment; hence the bill became the vehicle for a bargain by which Los Angeles would help San Francisco retain the latter's legislative representation, at the expense of the rural counties. The big-city combine was unconscionable to the remainder of the state, as the alliance would result in depriving central and northern California of seats which otherwise should have been taken from San Francisco. This, the non-metropolitan legislators adamantly refused to accept, and they took their stand at the special session, forcing a reapportionment compromise.

In the years following 1911, California's population continued to increase, with southern California's growth out-pacing that of the north. The 1920 census recorded 39.3% of the state's population residing in southern California, as against only 16.6% in 1890. It is a matter of record that the 1921 legislature failed to carry out its constitutional mandate of reapportionment, but it is an often overlooked fact that Congress was also remiss in failing to redistribute seats in the House of Representatives on the basis of the 1920 census.

"When the census of 1920 established the increase in California population at 44.1%, the natural expectation was that the state would be allotted three or four additional congressmen and that in local reapportionment Los Angeles and southern California would be the chief gainers. Successive Congresses, however, neglected to act, and their remissness gave the legislature excuse not to reapportion its own districts." (Caughey, pp. 506-507.)

After the 1925 legislature adjourned without enacting a reapportionment measure (and Congress still had not redistributed House seats), the people made use of the initiative, submitting two divergent proposals. One would have retained apportionment of both houses of the legislature on the basis of population, and would have created a commission to take reapportionment action should the legislature fail. This, the electorate turned down. The other proposal was adopted by the voters, establishing the present pattern of Senate apportionment. The 1927 legislature enacted reapportionment statutes, reallocating Assembly seats and creating new Senate districts to carry out the provisions of the 1926 constitutional amendment. But a referendum petition qualified for the 1928 ballot challenging the Senate districting measure. The voters defeated this movement to prevent the enactment from going into effect. And in 1948, 1960, and 1962, the electorate defeated initiatives that would have altered the existing scheme of Senate apportionment.

That there are north-south differences in California is a matter of historical fact, and that these differences will always exist is inherent in our geography and demography. The bulk of natural resources and agriculture are in the north, whereas the volume of population is in

the south. These differences are basic, and from those roots, other divergences grow.

We submit that California's history must be accorded some weight in reviewing the proposal that has been designed, even though history, standing alone, is not justification for deviation from the equal-population principle. Nowhere in the Apportionment Cases did the Court give consideration to the possibility that a bicameral legislature, both houses of which are population-based, could be racked by unscrupulousness and wastefulness, could be venally subservient to machine domination, could be inexorably compliant tool of boss rule, and would collusively and conspiratorily bargain to debase and dilute the representative and voting rights of the minority of the state's residents. Yet these are not mere possibilities. They in fact were occurrences in California during the period that both houses were population-based.

To insure that such occurrences are not repeated, we believe it is compelling that such historical facts be recognized as a sound basis for some small departure from the population-equality principle. This recognition will also serve to produce a continued form of bicameralism which guarantees "mature and deliberate consideration of, and [prevention of] precipitate action on, proposed legislative measures." (*Reynolds v. Sims* 377 U.S. at 576.)

VII. SUMMARY AND CONCLUSION

Those then are the "particular circumstances existing" in California which mandate attention in evaluating the plan contained in Senate Bill No. 6 as amended May 6, 1965, and as passed by the Senate on May 10. To summarize, we feel there has been demonstrated the requisite honest and good faith effort to construct districts of substantially equal population. The disparities that occur are founded on permissible and justifiable bases, as deemed so by the Court. District configurations have been adapted to local political subdivision boundaries, and include contiguous territory and have been constructed of as compact territory as is practicable in giving precedence to the population standard.

The distinctions in composition of the two houses and their constituencies recognized by the Court as permissible considerations to retain the concept of bicameralism have been incorporated into the plan for that purpose. On the other hand, there are no disparities based on history alone, or solely on economic or other sorts of group interests, on considerations of area alone.

Each step along the way has been taken with reasoned deliberation, and we feel that it has been clearly demonstrated that the "divergences from a strict population standard are based on legitimate considerations incident to the effectuation of a rational state policy." (*Reynolds v. Sims* 377 U.S. at 579.) There is nowhere to be found in the plan, we submit, a scintilla of arbitrariness or discrimination.

And not the least among our reasons for adoption of this plan is the plain fact that it is the *only* reapportionment plan for which there is support by a majority vote of the Senate.

This brings us finally to the arithmetic factor, and the determination whether that nebulous noun, "minor," has been satisfied. We suggest that it has, particularly when the context of that word is used in the light of the individual factors eligible for consideration and the rationalness of those elements. Moreover, we would point to the tremendous difference in arithmetic between the present scheme—with a maximum variance ratio of 422.5 to 1, and this plan—2.6 to 1.

We again point to the fact that the Court has firmly resisted the imposition of fixed standards or rigid formulas as means of evaluating apportionment plans. This, we believe, points in the direction of the traditional legal yardstick for testing cases under the Equal Protection Clause: whether the classification is a rationally justifiable one. "The constitutional safeguard is offended only if the classification rests on grounds wholly irrelevant to the achievement of the state's objective. . . . A statutory discrimination will not be set aside if any state of facts reasonably may be conceived to justify it." (*McGowan v. Maryland* 366 U.S. 420, 425-426.) "All that is prohibited is 'invidious discrimination' bearing no rational relation to any permissible policy of the state." (*Williamson v. Lee Optical Co.* 348 U.S. 483. Cf. *Morey v. Doud* 354 U.S. 457.)

We feel that as the "case by case" approach progresses, more and more will the traditional test of a rational relation to a legitimate legislative objective, emerge as the dominant factor in apportionment matters as it has in all other Equal Protection Clause issues other than the racial discrimination cases. And under that sound legal test, there can be no question but that the plan in Senate Bill No. 6 merits acceptance and approval.

At the very least, in the light of the honest and good faith effort and the considerable improvement over the existing scheme, this plan is sustainable as a provisional or interim arrangement. (Cf. *Reynolds v. Sims* 377 U.S. at 586-587.) If permitted to be used for the 1966 elections, this would follow the precedent established by the lower court in *Reynolds*, as "moderate action . . . designed to break the stranglehold by the smaller counties" on the Senate. (Id. at 552.)

In its conception and its adoption, the Senate Bill No. 6 plan represents far more than "moderate action" by this Senate, and we sincerely believe that it complies with the court's order sufficiently to stand until further reapportionment is mandatory under the state constitution following the 1970 census.

O

LET US TEACH

FINAL REPORT ON

AN ANALYSIS OF THE HELPFULNESS OF CERTAIN ASPECTS OF THE SCHOOL PROGRAM TO CLASSROOM TEACHING

A Report of the Senate Factfinding Committee
on Governmental Administration

MEMBERS OF THE COMMITTEE

SENATOR STANLEY ARNOLD, *Chairman*

SENATOR JOHN C. BEGOVICH, *Vice Chairman*

SENATOR THOMAS M. REES

SENATOR GEORGE MILLER, JR.

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GLENN M. ANDERSON
President of the Senate

HON. HUGH M. BURNS
President pro Tempore

JOSEPH A. BEEK
Secretary of the Senate



LETTER OF TRANSMITTAL

Sacramento, January 28, 1965

HON. GLENN M. ANDERSON
President of the Senate

Dear Mr. President :

The Senate Factfinding Committee on Governmental Administration hereby submits the fourth in a series of reports started in 1959 dealing with public schools.

The first, "The Costs of Classroom Instruction" (1959), showed that the ratio of teaching to nonteaching certificated personnel in California had decreased from

24 to 1 in 1922-23, to

7.2 to 1 in 1957-58.

Put another way, this showed that nonteaching certificated personnel had increased to 14 times their number in the same (25-year) period that teaching staff was increasing $3\frac{1}{4}$ times its number.

The second report in the series, "An Analysis of School District Expenditures for Certificated Personnel Salaries," resulted in legislation setting a minimum percent of school districts' current expenses of education which was to be spent for teachers' salaries.

The third, a "Preliminary Report on an Analysis of the Helpfulness of Certain Aspects of the School Program to Classroom Teaching," showed that a small, but representative, sample of classroom teachers felt that most nonteaching certificated personnel would offer better service to education if they were teaching.

This, the final report, is based on questionnaires sent to 20,000 classroom teachers and voluntarily returned by mail by 15,020 of them. It substantiates in every important respect the findings of the preliminary report, and embellishes and goes beyond, in many other respects. We trust this study will be of appreciable help to Legislators whose concern for education leads them to wonder "What would the classroom teachers think?" The study provides many, though not all, of the answers.

Respectfully submitted,

STANLEY ARNOLD, *Chairman*

JOHN C. BEGOVICH, *Vice Chairman*
GEORGE MILLER, JR.
VIRGIL O'SULLIVAN

THOMAS M. REES
STEPHEN P. TEALE
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LET US TEACH

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LET US TEACH

I. INTRODUCTION

15,020 of the random sample of 20,000 California classroom teachers to whom this committee sent mail questionnaires voluntarily completed and returned them by mail.¹ They form the basis of this report entitled, "Let Us Teach."

With virtual unanimity the classroom teachers responded that, if given reasonable class sizes, uninterrupted classrooms, and fewer non-teaching duties, they could do immeasurably better at that which most of them seem to want desperately to do—teach.

A preliminary report by this committee² was based on a similar, but not identical, questionnaire to 1,020 teachers. Even with a 78-percent return, that report was criticized because of the size of the sample. The preliminary report reflected a highly critical attitude by teachers toward unwieldy class sizes and excessive administration and supervision.

One of the many letters received by the committee following publication of the preliminary report states:

"You might be interested in knowing, although this is of course quite subjective validation of the committee's findings, that in a series of interviews with teachers and administrators which I and several other members of a local citizens' committee have been conducting on curriculum and educational policies and procedures, we were told in person substantially what your written anonymous responses contained. These were teachers in all subject matter areas on the secondary level with a wide range of experience and the resemblance between their statements to us (in a very informal setting) and the replies to your questions is astounding. *Cut down on class size, reduce the range of differences in a given class, and LEAVE US ALONE—forget the gimmicks, even leave us out of democratically oriented educational planning sessions so we'll have time to do our own studying and to keep up with our subjects, was the gist of their reaction.* They also spoke with deep wistful feelings about the devious arithmetic used in calculating pupil-teacher ratios where teachers who were trapped in attendance office routines half a day were still counted as if they had been bending over the hot kiddies full time."

This report, based on 15,020 responses, upholds the preliminary report in every important respect and embellishes its findings in many.

One vital difference, in addition to sheer numbers, is that in this report the committee was able to tabulate and make separate findings based on 9,526 voluntary written responses to the final, open-ended question (No. 32) which asked, "Is there any specific thing which

¹ Richard Hurlburt, of the California Poll, "Phenomenal!"

² "An Analysis of the Helpfulness of Certain Aspects of the School Program to Classroom Teaching," 1963.

you think calls for state action to help teachers do a better job of teaching?"

The responses to this question were tabulated separately from the machine-scored questions. The concerns mentioned by teachers in response to that unstructured question bolster and enrich the pattern established in the first 31 questions, and by the preliminary report. The numerical breakdown by categories in order of frequency of mention is given in Part III. Each category is followed by selected statements written by the teachers themselves. The statements were selected by the tabulators as being most representative of the area of concern being categorized.

Agreement with Legislative Action

Both questionnaires place the classroom teachers of the state in unqualified support of the class-size philosophy of the State Legislature as expressed in the 1964 Education Bill (A.B. 145—Unruh):

"It is the intent and purpose of the Legislature to encourage by every means possible the reduction of class sizes and the ratio of pupils to teachers in all grade levels of the public schools and to urge every effort to this end to be undertaken by the local school administrative authorities."

While in agreement with the philosophy of reducing class size, the opinions expressed by teachers in both polls can be helpful in selecting or directing some of the "every means possible" by which the Legislature hopes to encourage reduction of class size. A comment on the findings of the preliminary report in appropriately repeated here:

"Complete consistency was demonstrated throughout regarding the value to the teachers of assistance by educational specialists, whose duties are to offer advice, guidance, and assistance to teachers. The inference can clearly be drawn, regardless of the type of district considered, that teachers feel strongly that the place for educational specialists is in teaching in the classroom. The contribution by educational specialists outside the classroom seems to be nil, as far as the teachers are concerned. If they were sharing, and thus reducing, the load of those now teaching in the classroom, they would be making an incomparable contribution as far as the teachers are concerned."

Attitudes of classroom teachers toward administration and supervision are of far more than academic interest. American education is unique in the roles and relative influence on education assigned the two groups. In America the quaint tradition has developed whereby the nonteaching education personnel have become spokesmen for education in general.

It is surprising that classroom teachers have with such docility surrendered their role as spokesmen even for what goes on in the classroom. Clearly, from the results of the two polls conducted by this committee, classroom teachers have entirely different priorities and values regarding education as contrasted with the values of the nonteaching educational spokesmen.

It is shocking that these views seem to be obtainable only under the shelter of anonymity as was provided by these questionnaires.

II. FINDINGS AND CONCLUSIONS: QUESTIONS 1-31

A. General Information

Male-female Ratio by Grade Level

Grade level	Men (%)	Women (%)	Total number responding
Elementary	16	84	4,485
High school	66	34	1,765
Unified	60.5	39.5	8,405
Junior college	76	24	342
Total	37	63	14,997

Male-female Ratio by Grade Level (1956-57, Department of Education Survey)

Grade level	Men (%)	Women (%)
Elementary	29	89
High school	63	37
Junior college	76	24
Total	36.8	63.2

How many years have you taught?

	3 years or less	10 years or less	15 years and more
Elementary			
Male	27.2%	78.8%	5.8%
Female	22.8%	55.3%	28.6%
High School			
Male	14.8%	54.9%	18.9%
Female	21.2%	51.3%	33.8%
Junior college			
Male	12.4%	52.3%	22.1%
Female	8.4%	44.0%	40.4%
Unified			
Male	15.99%	63.5%	16.15%
Female	18.54%	54.73%	31.02%
Statewide total	19.1%	57.7%	25.1%
Total number responding			14,993

Conclusions: If length of time remaining in teaching is any measure of satisfaction, or lack of stress, or a combination of both, then clearly, the satisfaction derived from teaching, and lack of stress, would be highest among junior college teachers, and lowest among elementary teachers.

Whether the male-female comparisons offer valid basis for conclusions on satisfaction, or merely reflect opportunity differences in our society, we are not prepared to say. Nevertheless, it is clear that women in all levels have a much higher tendency toward longevity in the classroom than do men.

Were you teaching in the classroom in 1961-62?

	Yes	No	No response	Total
Elementary	4,432	35	27	4,494
High school	1,729	29	9	1,767
Junior college	338	4	2	344
Unified	8,144	223	48	8,415
Statewide total	14,643	291	86	15,020

Explanation. This question was included as a check to determine if the sample actually did consist of teachers in the classroom in the year 1961-62. The number who were not teaching according to this question is insignificant, indicating that the selection of teachers was valid.

B. Turnover

Number not teaching in 1962-63:

Elementary	High school	Junior college	Unified	Total
418	114	10	651	1,193

Number still teaching in 1962-63, but in a different district from 1961-62:

Elementary	High school	Junior college	Unified	Total
253	82	7	179	521

Total of above tables: total of those teaching in 1961-62 who had left that assignment in 1962-63:

Elementary	High school	Junior college	Unified	Total
671	196	17	830	1,714

Percent of those teaching in 1961-62 who had left that assignment in 1962-63:

Elementary	671/4432	= .151 = 15.1%
High school	196/1729	= .113 = 11.3%
Junior college	17/338	= .050 = 5.0%
Unified	830/8144	= .102 = 10.2%
Total	1714/14643	= .117 = 11.7%

If you are not teaching, or are not teaching in the same district as last year (1961-62), why did you leave that district?

	Resigned voluntarily	Asked to resign	Dis- missed	Contract not renewed	Retired	Promoted	Total number
Elementary							
Male	65%	9%	0	4%	1%	20%	77
Female	87%	1%	0	1%	10%	1%	507
High school							
Male	71%	3%	0	3%	5%	18%	76
Female	77%	2%	0	2%	16%	2%	81
Junior college							
Male	50%	13%	0	0	25%	13%	8
Female	67%	0	0	0	17%	17%	6
Unified							
Male	63%	2%	0	1%	14%	20%	136
Female	76%	1%	0	1%	20%	3%	408
State total	77%	2%	0	1%	13%	6%	1,299
	(1,012)	(2)	(1)	(13)	(171)	(79)	1,299

Comments on Turnover. In absolute figures, multiplying the above totals by 10 would indicate that nearly 10,000 teachers per year resign voluntarily from teaching in California. Ignoring for the moment that "resign voluntarily" might mean any number of different things, the total of 10,000 teachers to be replaced each year plus new teachers to be hired by virtue of population expansion represents a problem of staggering proportions. There seems little that can be done about California's population increase. Some understanding, however, must be obtained as to the reason for the "voluntary resignation."

It might also be noted that the small number of promotions (79) should give food for thought to those teachers who may be just biding their time in the classroom until they can escape through promotion. Apparently stability in the ranks of administrators is such as to offer far fewer promotional opportunities than hoped for by would-be administrators who are now teaching.

Male-female comparison of reasons given for leaving teaching:

Retirement

Total	% of sample	(171/1299) = 13.1%
Male	% of males	(26/297) = 8.6%
Female	% of females	(145/1002) = 14.5%

Promotion

Total	% of sample	(79/1299) = 6.0%
Male	% of males	(58/297) = 19.3%
Female	% of females	(21/1002) = 2.1%

Voluntary Resignation

Total	% of sample	(1012/1299) = 77.8%
Male	% of males	(194/297) = 64.6%
Female	% of females	(818/1002) = 81.8%

C. Teaching Conditions

What portion of your teaching assignment in 1961-62 was in the field of your major?

	<i>Elementary</i>	<i>High</i>	<i>Junior college</i>	<i>Unified</i>	<i>Total</i>
0 to $\frac{1}{4}$	21%	16%	9%	20%	19%
$\frac{1}{4}$ to $\frac{1}{2}$	4%	5%	3%	4%	4%
$\frac{1}{2}$ to $\frac{3}{4}$	3%	8%	5%	6%	6%
$\frac{3}{4}$, more	53%	64%	78%	57%	57%
No response	10%	7%	5%	13%	14%
Total	100%	100%	100%	100%	100%

Conclusion. A justification for a portion of the credential revision legislation of the 1961 session (SB 7, Senator Hugo Fisher) is clearly demonstrated by the responses to Question 8.

The statewide total showing only 57 percent of the state's teachers teaching three-fourths or more of their time in the field of their subject matter major is shocking. Followup studies in this area should indicate the success of the 1961 credential revision legislation in making teachers' assignments coincide more with their specialties.

	<i>Elementary</i>	<i>High</i>	<i>Junior college</i>	<i>Unified</i>	<i>Total</i>
0 to $\frac{1}{4}$	31.6%	31.4%	40.6%	32.5%	32.2%
$\frac{1}{4}$ to $\frac{1}{2}$	6.2%	6.1%	5.4%	6.0%	6.1%
$\frac{1}{2}$ to $\frac{3}{4}$	2.7%	4.4%	1.0%	3.6%	3.4%
$\frac{3}{4}$, more	9.5%	14.6%	6.4%	12.5%	11.7%
No response	50.0%	43.5%	46.6%	45.4%	46.6%
Total	100.0%	100.0%	100.0%	100.0%	100.0%

Average pupils taught per period:

Question 9 on the questionnaire:

9. List on the lines below the number of students in each of your classes ~~each period of the day you taught--~~in 1962. If you were an elementary teacher with only one class throughout the day, only one number is necessary.

 Divide the total number of students
 by the total periods taught. -----

The total of the students taught per period was divided by the number of responses for each kind of school district, with the results below:

<i>District</i>	<i>Total of students taught per period</i>	<i>Total responses</i>	<i>Average pupils per period</i>
Elementary			
Male -----	23,810	708	33.6
Female -----	119,582	3,777	31.7
High school			
Male -----	35,919	1,162	30.9
Female -----	19,148	603	31.8
Junior college			
Male -----	7,296	258	28.2
Female -----	2,174	84	25.9
Unified			
Male -----	105,245	3,321	31.7
Female -----	162,669	5,084	32.0
Total -----	475,943	15,020	31.7

Conclusion: The average pupils per period in this table is lower than the true average.

In reaching the average, the divisor was the total number of questionnaires returned, not the total number of responses to this particular question.

Had the latter figure been used, the averages would undoubtedly have been higher.

Pupil-teacher ratios, and average class sizes, tell little about actual class sizes, specific subjects, or for specific districts. An average class size of 30 could mean that some classes run as high as 90, and some as low as 10. Making exceptions for certain kinds of classes where it can be agreed upon that numbers are not a hindrance to the quality of education, it would seem that the only class size policy that really has teeth in it would be a statement to the effect that, "We don't permit any classes over 25."

Did you have a period during the school day in 1961-62 which could be used to prepare for classes?

	<i>Percent answering yes</i>
Elementary	
Male	15
Female	15
High school	
Male	90
Female	92
Junior college	
Male	96
Female	80
Unified	
Male	75
Female	47
Statewide total	53

Did you need such a period (to prepare for classes)?

	<i>Percent answering yes</i>
Elementary	
Male	87
Female	84
High school	
Male	99
Female	99
Junior college	
Male	97
Female	97
Unified	
Male	96
Female	92
Statewide total	92

Conclusion. The results from this and the preceding question substantiate the results from the same questions contained in the preliminary report by this committee. As in the first questionnaire, there was unanimity in the expression of the need for a preparation period, but conspicuous lack of preparation periods for large numbers of teachers on the elementary level.

If you had a preparation period, how many times during the 1961-62 school year did you substitute for another teacher during this period?

	<i>Average number of periods substituted</i>
Elementary	
Male	2.1
Female	0.53
High school	
Male	5.4
Female	4.4
Junior college	
Male	2.3
Female	1.9
Unified	
Male	5.8
Female	4.3
Statewide total	4.52

Conclusion. On a statewide level, 4.52 hours times the number of teachers having a preparation period represents a sizable number of man-days during which teachers offered their time (presumably without compensation) in lieu of substitute teachers.

Was the 1961 law establishing the rights of probationary teachers to request a hearing if not rehired explained to probationary teachers in your district?

	Percent "yes" of total
Elementary (4,494) -----	25
High school (1,767) -----	27
Junior college (344) -----	28
Unified (8,415) -----	17
Total (15,020) -----	21

Conclusion. Prior to 1961, probationary teachers in districts of over 85,000 ada (San Francisco, Los Angeles, and San Diego) had the right, if not rehired, to request a public hearing to determine the reason for the failure to rehire. Probationary teachers in all other districts, prior to 1961, had no legal right to such a hearing or even to be told the reason for their not being rehired.

The responses to this question aren't an accurate, statewide reflection because the total will include answers from Los Angeles, San Diego, and San Francisco, where there was no need to explain legislation which did not affect teachers in those districts. Nevertheless, there is occasion for concern that this, and by implication, other legislation of vital concern to teachers, has not been explained to teachers. The total of "no," plus "don't know" answers is almost four times the "yes" answers statewide. Had there been a conscientious effort at explanation, it is unlikely that the ratio would be so high.

	<i>Estimate the number of daily interruptions from sources outside your classroom in 1961-62</i>	<i>Of these (interruptions), how many do you think were necessary?</i>
Elementary		
Male -----	7	3
Female -----	6	3
High school		
Male -----	22	6
Female -----	18	5
Unified		
Male -----	15	5
Female -----	12	5
Junior college		
Male -----	2	2
Female -----	6	5
Los Angeles		
Male -----	25	13
Female -----	13	6
Statewide total -----	13	5

Conclusion. The figures obtained in this poll on classroom interruptions are admittedly rough, based on the memory of the teacher. It can safely be assumed that they are low. Yet these figures need no refinement, no further exploration as to duration or nature of the interruption to lead to the conclusion that they seriously hamper, and often hamstring, education. Even the teachers, who are notoriously charitable and longsuffering in such matters, felt that less than half of them were necessary

Counselors: Prevalence by types of districts

Q. "Was there a counselor in your district last year?"

*Counselor prevalence;
ratio of "yes" to "no" answers*

Elementary	
Male -----	1.9
Female -----	2.1
High school	
Male -----	45.0
Female -----	48.0
Unified	
Male -----	22.0
Female -----	6.0
Junior college	
Male -----	22.0
Female -----	13.6
Los Angeles	
Male -----	75.0
Female -----	33.0
Statewide total -----	6.2

Conclusion. The counselor prevalence figure has relevance to the graph on the following page.

Comments on Graphs. Confusion regarding the implications of the two graphs shown in juxtaposition will most certainly prevail unless it is stated explicitly what they do—and what they do not—purport to show.

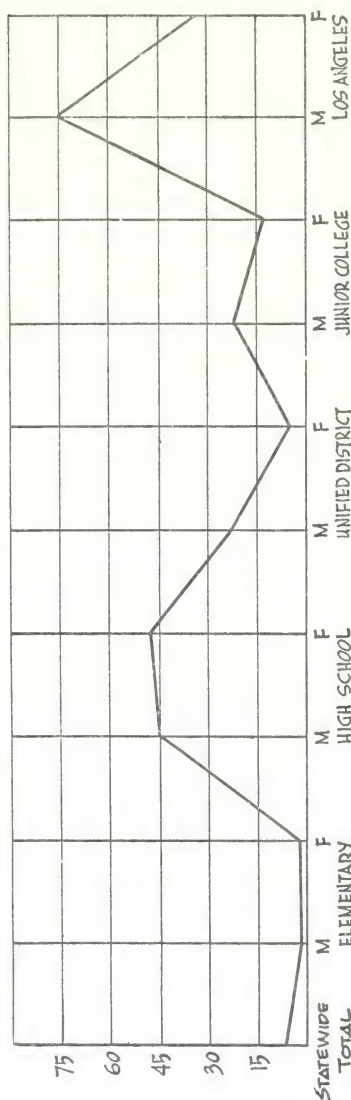
First, the average number of daily classroom interruptions are merely the figures from Question 25 (page 14), graphed in order according to the type of district, and with a male-female comparison.

The ratio of teachers who have counselors in their district to those who do not was obtained by dividing the "no" answers to No. 27 (Was there a counselor in your district last year?) into the "yes" answers. The figure thus obtained was then graphed in the same manner that the figures for classroom interruptions were.

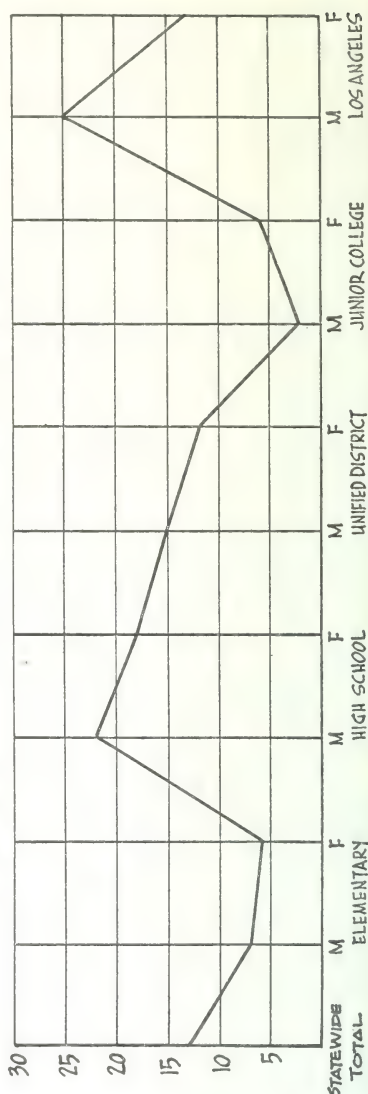
Seeing the two graphs in juxtaposition, one cannot help being impressed by the similarity, or correlation. From these figures it *cannot* be deduced that there is a clear cause and effect relationship between interruptions and counselors.

Conclusion. That there *is* a definite correlation, however, and that this correlation is more than mere coincidence, certainly cannot be gainsaid. Without delving further into the intricacies of this relationship, it is probably sufficient to note that this seems to be part of the pattern which has emerged so forcefully in this and the prior report by this committee. That is, that the very positions whose sole function is to assist teachers to do a better job of teaching are considered by teachers to be of doubtful assistance in most cases, and actually harmful to the teaching situation in some. As stated before, the contribution of the educational specialists would be more welcome by teachers if they, too, were teaching, and thus serving to reduce class size. If this also resulted in fewer classroom interruptions, the entire education system would profit.

RATIO OF TEACHERS WHO HAVE COUNSELORS IN THEIR DISTRICTS TO THOSE WHO DO NOT



AVERAGE NUMBER OF CLASS INTERRUPTIONS PER DAY



D. Teaching Attitudes

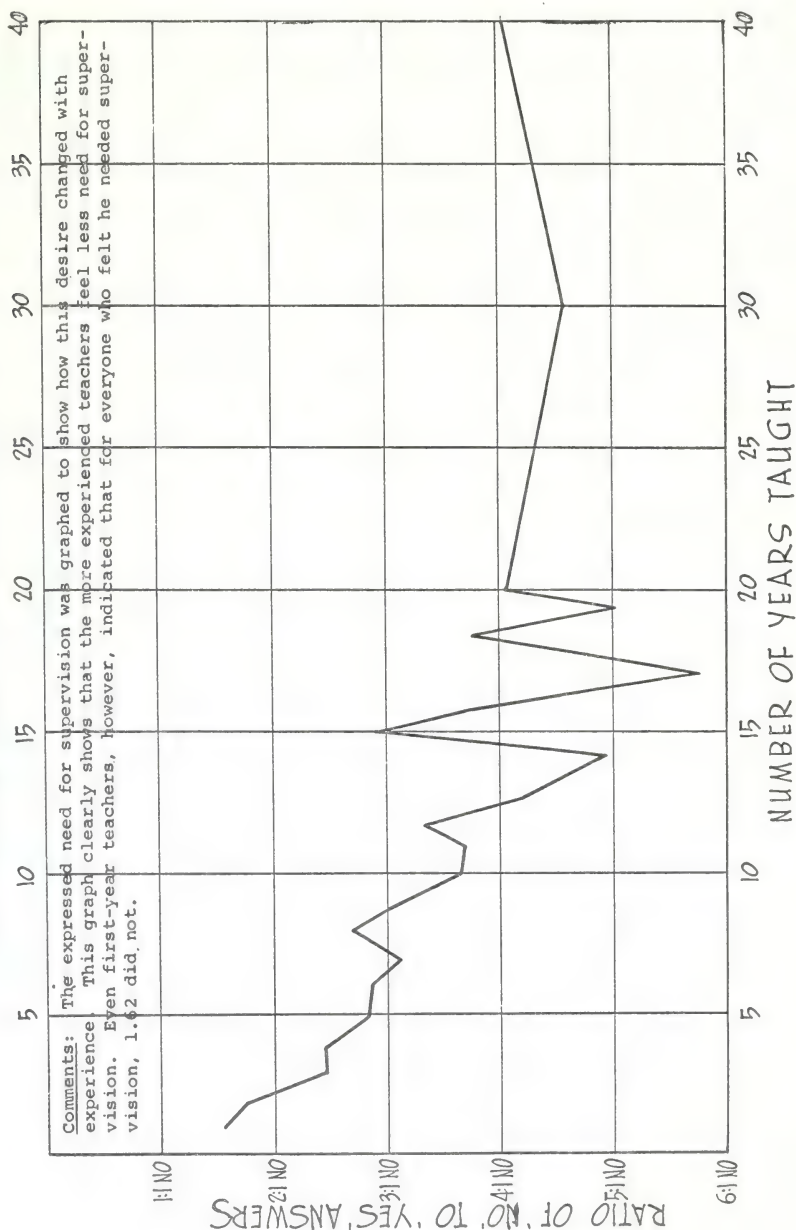
Do you feel administrators lose touch with teaching if they are no longer teaching in the classroom?

	Yes	No	No response	Total responding
Elementary	53%	39%	8%	4,494
High school	64%	30%	6%	1,767
Junior college	68%	24%	8%	344
Unified	57%	35%	8%	8,415
Total	57%	35%	8%	15,020

Do you think it would help education if administrators taught a portion of the schoolday?

	Yes	No	No response	Total
Elementary -----	43%	49%	8%	4,494
High school -----	53%	41%	6%	1,767
Junior college -----	57%	37%	6%	344
Unified -----	48%	45%	7%	8,415
Total -----	47%	45%	8%	15,020

TEACHING EXPERIENCE COMPARED WITH EXPRESSED NEED FOR SUPERVISION



Fifty-seven percent of the teachers think administrators lose touch with teaching (see previous question). Yet, only 47 percent think education would be helped if administrators were to teach a portion of each day. Why the difference? (Note, there was a consistent 10 percent difference between the answers to these two questions on all levels.)

Whatever the reasons, college level teachers were highest and elementary teachers were lowest in their expression of the importance of administrators' teaching a part of each schoolday.

Do you need supervision to aid your teaching?

	Ratio of "no" to "yes"
Elementary -----	2.3 to 1
High school -----	4.4 to 1
Junior college -----	7 to 1
Unified -----	3.2 to 1
Total -----	3.04 to 1

During your teaching career, have you received any help towards becoming a better teacher from your teaching colleagues?

	Yes	No	No response	Total
Elementary -----	94%	4%	2%	4,494
High school -----	91%	7%	2%	1,767
Junior college -----	92%	7%	1%	344
Unified -----	92%	6%	2%	8,415
Total -----	94%	5%	1%	15,020

Who has helped you more during your teaching career to become a better teacher?

(a) STATEWIDE TOTAL

	Superiors	Fellow teachers	Neither	Both	No response	Total
Elementary -----	11%	52%	4%	20%	13%	4,494
High school -----	4%	70%	7%	11%	8%	1,767
Junior college -----	5%	73%	5%	9%	8%	344
Unified -----	11%	56%	5%	19%	9%	8,415
Total -----	10%	57%	5%	18%	10%	15,020

(a) Conclusion. There was a marked difference between the responses to this question of those who had answered "yes" on No. 23—(b)—(indicating they needed supervision) and those who answered "no"—(c). Nevertheless, without exception, even among teachers who indicated they needed supervision, teachers in every category clearly showed that they had received more help from their fellow teachers than from the educational specialists whose primary function is to help teachers. It should be repeated that teachers were not asked whom they liked best, or who their favorite persons were for social purposes. They were asked to indicate who had helped them the most to become a better teacher. It is inconceivable that they would have chosen in such clear measure their teaching colleagues, had they felt the educational specialists to be of appreciable help to them.

(b) THE TOTALS OF THOSE WHO EXPRESSED A "NEED FOR SUPERVISION"

	Superiors	Fellow teachers	Neither	Both	No response	Total
Elementary -----	17%	39%	2%	28%	14%	1,348
High school -----	10%	58%	6%	15%	11%	341
Junior college -----	12%	48%	4%	17%	19%	48
Unified -----	22%	39%	2%	28%	9%	2,000
Total -----	19%	41%	2%	27%	11%	3,737

(b) Conclusion. Fellow teachers still the most helpful, but by the smallest margin (2 to 1) over supervisors in this group—the group which still feels a need for supervision.

Who has helped you more during your teaching career to become a better teacher?

(c) THE TOTALS OF THOSE WHO DID NOT FEEL THEY NEEDED SUPERVISION

	Superiors	Fellow teachers	Neither	Both	No response	Total
Elementary -----	8%	58%	5%	16%	13%	3,146
High school -----	3%	73%	7%	10%	7%	1,426
Junior college -----	3%	77%	6%	7%	7%	296
Unified -----	7%	61%	6%	16%	10%	6,415
Total -----	7%	62%	6%	15%	10%	11,283

(c) Conclusion. The margin favoring fellow teachers over superiors jumps to 9 to 1 in this group—the group which did *not* express a need for supervision.

Students' preference for counseling (on personal problems):

Q. "To which person do you think a student with a personal problem would be more likely to go for advice?"

	Counselor	Favorite teacher	Don't know	No response
Elementary (4,494) -----	6%	70.2%	17.6%	6%
High school (1,767) -----	27.1%	51%	10.5%	11.2%
Junior college (344) -----	18%	61%	15.2%	6.6%
Unified (8,415) -----	12.3%	65.6%	14.9%	7.0%
Total (15,020) -----	12.3%	65.1%	15.2%	7.2%

Conclusion. Even making allowance for a probable built-in bias which would predispose a teacher to assume that students would more likely seek advice from teachers than counselors, there is, nevertheless, remarkable evidence here that the main function of counselors—giving advice to students with personal problems—is more likely to be performed by teachers, rather than counselors.

Personal conversations have been held with teachers, and counselors, to obtain their opinion as to why they think this is so. Very few disagreed that it was so. Their opinion as to why the situation exists seemed to center consistently around three factors.

The first and most widespread comment was that the nature of duties customarily assigned counselors does not permit them the time or the opportunity for counseling. Both teachers and counselors are burdened with "paper shuffling," clerical work, record keeping, test administering, programming, student council, and general "errand boy" duties which preclude any effective counseling they might do.

Second, teachers were more inclined to conclude that, since students spend a great deal more of their time with teachers, day in and day out, that, especially in the times when they are experiencing difficulties, they will be likely to seek out a familiar rather than a strange person for advice.

Finally, some of the counselors and a few of the teachers felt that the responses indicated a biased point of view by teachers. The likelihood of some bias has been mentioned previously.

Do you think it appropriate for the state to take action to reduce class size?

	<i>Yes</i>	<i>No</i>	<i>No response</i>	<i>Total</i>
Elementary -----	80%	15%	5%	4,494
High school -----	78%	16%	6%	1,767
Junior college -----	66%	24%	10%	344
Unified -----	82%	13%	5%	8,415
Total -----	81%	14%	5%	15,020

Conclusion. While there is no pretense made that teachers should be considered experts on the political-legal questions of state versus local control, the above question has significance in demonstrating that teachers have few fears of the bugaboo of state domination regarding action to reduce class size. If they do entertain such reservations it is apparent that their strong inclinations toward smaller class size outweigh such reservations.

III. FINDINGS AND CONCLUSIONS: QUESTION 32

A. Introduction

"Is there any specific thing which you think calls for state action to help teachers do a better job of teaching?" This concluding question (No. 32), open-ended in form, brought forth a wide variety of comments. However, there were some themes which appeared again and again: *class size, pupil supervision, lunch duty, clerical work, salaries, supplies and equipment, state aid, education colleges, preparation time, and special classes and vocational schools* were the 10 most frequently expressed concern of teachers. The solutions offered for these problems were fairly specific, but there were other concerns, such as discipline, personnel practices, and administration, which brought forth a wider range of suggestions, with the result that the statistics on any one item were lower. These areas will be discussed later.

Table 1 presents the 10 suggestions which occurred most frequently and consistently.

B. Table: Ten Most Frequently Mentioned Suggestions for State Action

	(% of Teachers Mentioning Specific Items)				
	<i>All teachers</i>	<i>Elementary</i>	<i>Junior high</i>	<i>High school</i>	<i>Junior college</i>
Smaller classes -----	25%	27%	22%	25%	12%
Less pupil supervision -----	11%	15%	5%	5%	1%
Duty-free lunch -----	10%	15%	5%	2%	1%
More clerical help -----	9%	9%	9%	10%	9%
Higher salaries -----	8%	6%	11%	11%	10%
More supplies and equipment-----	8%	10%	4%	6%	2%
More state aid -----	6%	5%	6%	6%	10%
Improve education colleges-----	5%	4%	6%	7%	8%
More preparation time -----	5%	5%	4%	6%	8%
Special classes and vocational schools -----	5%	4%	7%	6%	2%

C. Explanation of Table

In considering these figures, an important point should be kept in mind. These percentages are deceptively low because they were spread out over a wide range of teachers' problems. If they had been structured into simple "yes" or "no" responses, higher frequencies would have occurred. As it was, however, most teachers mentioned only a few of the possible problems encountered by their profession as a whole. Thus the actual percentage of teachers concerned with a particular area is probably considerably higher than these figures indicate. This is illustrated by the differing results obtained for class size on the same questionnaire: although 25 percent of the teachers asked for smaller classes in their written comments, 81 percent had previously replied "yes" when asked specifically if the state should take action to reduce class size.

Most of the comments appeared quite consistently, being mentioned with similar frequency regardless of sex, grade level, or type of school district. The most pronounced differences between men and women involved money and class size: men were much more likely than women to request raises and were also more likely, at least in elementary and junior high, to ask for increased state aid. On the other hand, women were usually more concerned than men about reducing class size.

In sum, this question was exploratory. It elicited a broad range of teachers' concerns rather than measuring precisely the actual extent of their feelings about any one item. Therefore, detailed statistics have been placed in the appendix, and the bulk of this report will consist of teachers' comments, which convey their concerns more effectively than statistics alone.

D. Comments on Top Ten

1. *Smaller Classes—Typical Comments*

Reduce class load, *reduce class load*, REDUCE CLASS LOAD! Even if teachers could once educate 35 and 40 children in a room (and I doubt that they could) they can't any more, what with the breakdown of family control and self-discipline in the American society. More teachers leave the teaching profession for this one reason than any other—even skinflint salaries.

There are other problems that could be mentioned, but this problem is so preeminent that I won't even mention them for fear of detracting from American education's No. 1 problem. —Junior high man.

It is surprising that in the depression years of the 1930's we could afford fewer pupils per teacher than we can afford today.

—Elementary man.

Close the border.

—Elementary man.

The class load is too large. Our newer schools are not designed for 35 children. The desks must be close together because of the limited space and work areas. I feel my best teaching was done the year I had 23 students. There was time to answer everyone's questions and more individual help was given.

It is very disheartening to send the class home at the end of the day, knowing someone has a question unanswered, or someone doesn't quite understand the assignment. It is impossible to sit down with every child for more than a minute or two, because our time schedule is too full.

—Elementary woman.

Class size and teacher load: appropriate class sizes should be determined for each subject area or grade level, *and* maximum *teacher loads* should likewise be determined for each area. For example, it may be that students can learn English composition just as well in a class of 30 as in a class of 25, but the teacher *cannot teach English* to 5 classes of 30 each! This is just one example, but a glaring one.

—High school woman.

Regarding class sizes—when the ratio is determined, do not allow them to include administrators in the ratio. Including them does not give a true picture of the seriousness of the problem.

—High school man.

Assistance to districts which prove they are unable financially to reduce class sizes to a standard set up by the State, and penalties to others which can but do not meet standards of class sizes. This penalty could be reduction of the ADA.

—High school woman.

If the average teacher has 5 classes a day with an average of 35 pupils per class, that is 175 pupils. If the teacher spends 5 minutes per pupil correcting papers, that is a total of $14\frac{1}{2}$ hours. How often does a teacher have $14\frac{1}{2}$ hours outside of school to go over a pupil's work. . . ?

—Junior high woman.

Our P.E. classes are overcrowded in order to sustain small academic classes and specialized programs—balanced out very skillfully with total students and total teachers in school to give a favorable impression of class sizes!

I have already stated my honest opinion under No. 30 and can only add that we face a serious problem, not only to the students we have in our classes *but* a teacher morale problem when we are faced with class size ranging from 55 to 80 students in a class of physical education. *It can't be done* and it's an injustice to the students and the teacher. We want to do a job *and they won't let us!*

I am 100 percent in favor of our academic program but sincerely feel we deserve a chance to do a teaching job equally as well.

—High school man.

Because at least one theme per week is necessary and required, I spend 30 or more hours per week evaluating student papers. My weekly average on teaching, evaluating, and preparation is about 80–85 hours. If my load is not reduced significantly this year, I plan to leave the field.

A man must have some time for his family, self-improvement, and recreation. I nearly lost my mind and my wife last year. And now I see the AFL-CIO discussing a 35-hour week for laboring types. It makes interesting reading.

—High school man.

I teach English. My students write frequent compositions. My class load makes correcting a monumental chore. All teachers need reduction of class size.

I love teaching; I believe I am an effective teacher. I wonder how long I can continue "to perform" and to do adequate correcting of papers. I am relatively young—34.

—High school man.

2. and 3. *Pupil Supervision and Duty-free Lunch Period—Typical Comments*

(These categories are presented together here because they are closely related, and tend to overlap in teachers' comments.*)

A duty-free lunch period. Few teachers have an opportunity to relax during "lunch period." I have often eaten my lunch while standing yard duty. Sincerely, we need help desperately in these areas. If I can assist please call on me.

—Elementary man.

Lunchtime Supervision. At our school we get a five-week stretch of lunch hour supervision which is unbearable. After many hours of

* Since these categories often overlapped, the procedure in coding was to list the one which predominated. However, in cases where both were expressly mentioned, both categories were counted.

teaching, we then have about 10 minutes to eat and then race out to a yard and supervise. I supervised an area of youngsters which needed three other teachers to be properly supervised; had no time or place to get off my feet. The rest of the teaching day and the rest of my home day I was physically and nervously a wreck.

This was illegal, against board rules, yet had gone on for years, and is cruel and inhuman. —Junior high woman.

Teachers, like all other workers, need an hour duty-free lunch period. I have experienced times when I would go from classroom to noon duty, to 25 minutes for lunch, and then back to the classroom. I have been unable to rest at all. Many times I have been unable to even finish my lunch, or if I did, I would have to rush through it. A teacher *cannot* do a good teaching job without rest or time to eat a sufficient meal. I have even been unable to find time to go to the toilet due to a 25-minute lunch period. How can I or anyone concentrate on their work in these conditions? I know I am not alone. Teachers need a noon *hour* to eat, rest, and prepare lessons without rushing. —Elementary man.

Teachers should not be required to perform police duties during lunch, between classes, etc. It is not possible to be a policeman one minute and a teacher the next; the student-teacher relationship is seriously disturbed. I personally object to the humiliation of having to check restrooms, etc. It is also poor economy to use an \$8,000 teacher for such a minor job. —High school man.

One hour duty-free lunch—with unqualified freedom to leave the premises, if desired, for that hour. If we don't have from 15 to 25 minutes duty during lunch, we have 15 minutes morning recess duty, which eliminates our coffee break. Since we have no cafeteria we must pack our lunch. It is not "desirable" to leave the premises, and on a rainy day we are confined to our room with our students *all day*, unless we request a relief. —Elementary woman.

I am beginning to feel more like a policeman than a teacher. I should have gone to the local force rather than work for a credential. Why isn't something done to relieve us of this? —High school man.

4. *More Clerical Help—Typical Comments*

Teachers are the highest paid file clerks in the state.

—Junior high man.

Registers should be done in the office. Cut down on bookkeeping.

—Elementary man.

Find a way to relieve teachers of money collections and multiple record and form filling.

—Elementary woman.

Another secretary in every elementary and maybe every other school. It seems a great waste to train a teacher for five years to do class lists, fill in blanks, and write in the names of children on state tests. I feel I spend at least one hour a day if not more on this type of activity. *This is wrong.* This time could be used to prepare for special class activities or lesson planning. —Elementary man.

Clerical help—particularly for all the forms, etc., that children take home for signatures. —Junior high woman.

Get rid of clerical duties for teachers. —High school man.

Help reduce paper work. —Junior college man.

There is far too much clerical work in teaching today. If something could be done about this one point I feel most teachers could do a far better job . . . —Junior high man.

5. Higher Salaries—Typical Comments

Raise salary minimum to the point where we can earn as much as skilled or even unskilled laborers, considering time on the job. Unskilled laborers make \$3.75 an hour in the building trades, with no education. —Elementary man.

A better teaching salary to induce people to enter the teaching field and prevent good teachers from leaving teaching.—Elementary man.

Increase statewide salary minimum. —Elementary man.

Make the salary scale such that men teachers would not need to hold down a second job. I have done so for the last 10 years in order to provide the standard of living I wish for my family. This takes away time, energy, and creativity from the basic classroom teaching position. —Elementary man.

The main reason that most male teachers do not do the teaching job that they are capable of doing is their moonlighting. I am in a school of about 70 male teachers. Of these, *only two have no job in addition to their regular day-school teaching.*

I, as a social studies teacher, teach that education is the province of the state. If this be true, and this is a serious questionnaire and not just more snow, the state should work for adequate teacher salaries that are uniform throughout the state. —High school man.

Get salaries and benefits high enough to allow a man to keep his family without moonlighting, weekending, and vacation laboring. I'm tired! —Elementary man.

Increase the amount that *must* be spent by districts on salaries of *classroom* teachers. We are short of funds, texts, materials, and teachers, yet more and more money is devoted to community services and special programs, more and more supervisors, coordinators, and less and less to classroom help. The primary goals of education are reached in the classroom. Teacher-pupil relationships are considered last in our district. —High school man.

6. More Supplies and Equipment—Typical Comments

The supplying of reading workbooks for *each* basic state text reader used at *all* grade levels. —Elementary man.

Personally the most important specific thing the state could do to help teachers do a better job is to supply high quality followup materials for the texts we use in teaching. At present, most teachers work up their own materials. This takes an *enormous* amount of *after-school* time due to our "group" system of teaching. For most subjects we need three or two *levels* of difficulty, therefore three or two levels of different followup material. Most of the day we are not teaching one grade level; we are teaching three levels at once. —Elementary man.

Greater supply of materials—books, construction materials, study aids, etc. As of now, any extra materials the teacher feels are necessary to his teaching program must be purchased by the teacher with personal funds, and should the teacher ask for reimbursement, it cannot be made mandatory.

—Elementary man.

Liberal funds for *equipment*. The state guarantees *supply* money but often these funds are useless without *equipment*. We can buy tapes, but not tape recorders; reeds, but not clarinets.

—Junior college man.

It is impossible to spend every night making materials, etc. Materials that we make up often do not mimeograph clearly because the ditto machine is usually not in good working order.

—Elementary woman.

More workbooks and other types of programed learning materials would be a better investment than the endless expense of ditto paper and man-hours expended in the preparation of lesson enrichment material. Teaching machines would serve a useful purpose in most classroom situations.

—Junior high man.

Modern equipment, like teaching machines and language labs; more tape recorders, record players, records, and manuals for the whole class, and workbooks; visual and audiovisual aids to promote the audio-lingual method of language instruction. Establish language labs in every school . . .

—High school woman.

7. *More State Aid—Typical Comments*

The state's main contribution to education should be that of finance.

—High school man.

It is very evident that California needs state subsidy in education if it is to compete with the educational programs offered in leading states and nations, with adequate educational programs for *all* students.

—Junior high man.

A statewide distribution of school tax money, so we can get buildings, equipment, and reduce class loads.

—High school man.

Make funds available for classrooms and salaries when local bond issues fail, rather than letting schools be closed due to lack of funds—or students put on waiting lists for kindergarten, etc.

—High school woman.

Provide sufficient funds to districts in financial trouble to support salaries and pay for supplies. My budget for supplies was cut three times, this year. First cut was 50 percent. We are unable to give the education that is necessary for lack of supplies. At the moment I do not have one reference book in a highly technical course. *State aid!*

—High school man.

Increased financial aid from the state might release funds at the district level for capital outlay to be used for much needed equipment.

—High school woman.

Make possible more money to districts for materials so that teacher time does not have to be spent on devices and aids. An inequity exists in that school funds come from the General Fund and are not invested, as are the funds for fair grounds. Couldn't the situation be

reversed so that money from parimutuel gambling, liquor, etc., be used for education? I don't mean to be discriminatory, but aren't kids more important than fairs and horseracing? —Elementary woman.

8. *Improve Education Colleges and Courses—Typical Comments*

Theoretical education courses should be drastically curtailed. Practical teaching methods should be substituted. —High school man.

One course (a strong one) in the history and philosophy of education in Europe and the United States is all that is necessary for a prospective teacher. There should, of course, be strong courses in child and adolescent psychology. Method courses, except where they apply to a definite subject and its presentation, are absolutely worthless. A good, practical course in what to expect in youngsters and what to expect in a school situation would be more logical. —High school man.

Repeal about two-thirds of the credential requirements in education methods and replace them with intensive study in major and minor fields. . . . These "basket weaving" courses drive many of the best students away from teaching, and those who stay are taught unrealistic and permissive methods that are more detrimental than helpful in the classroom. —High school woman.

More rigid requirements in such subjects as arithmetic, geography, history, English, and fewer courses in education. —Elementary woman.

The education departments of every college and university I've attended (five of them) are inferior. They are staffed by people who haven't taught in years, if ever, in a public school. I firmly believe that every education professor should teach in a public school at least one semester every five years—full time. —High school man.

California universities offer little true postgraduate extension work. As an example: I teach electronics; there are no such courses I can be given credit for at the postgraduate level, and for teachers this is true of all industrial art courses.

As a result, I take so-called "education" courses. There's a limit to the number of such courses that can be taken without duplication of content.

Postgraduate extension instructors of UC, etc., don't know any more about the subject than most of the students. It takes an exceptional instructor to be able to *teach* a teacher with 10 or 20 years' experience and 75 to 100 hours above his B.A. or B.S. degree, etc.

—High school man.

9. *More Preparation Time—Typical Comments*

With a preparation period, more actual demonstrations could be given and all demonstrations would be better. Good teaching is based on good organization and preparation. —High school man.

The most urgent need, from my point of view, is time to prepare good lessons and time to correct papers. If I do a good job, which I try my best to do, I'm up every night and also have to use a great deal of time during weekends to keep up. Many a Sunday I've been home all day correcting papers. A free period in elementary school—with a specialist in P.E., music, or art taking over—would help a lot.

—Elementary man.

Reduce the number of classes per day a teacher teaches. Five classes are too many. If you want thoughtful people in teaching, give them time to think! —High school man.

Improvement is needed in the use of the preparation period. While almost all of the teachers at my school have such a period, a number, each semester, must give up six weeks of it to cover a study hall, or nine weeks to cover the halls at lunch time. It is impossible, of course, to correct any papers during this time. —High school man.

It is so necessary for a teacher to have a free period for better teaching. I feel it should be a statewide requirement. —High school woman.

10. *Special Classes and Vocational Schools—Typical Comments*

Nonacademic schools for students who actively reject academic schooling. Our main difficulties occur with the student who actively rebels against school, isn't wanted by the parents, isn't wanted by the juvenile authority or principals, and thus is forced to stay in the class where he is surrounded by more than 30 highly impressionable teenagers, and finally finds he can get some sort of recognition from the class by doing disruptive things.

The nonacademic school would give him a chance to do the things he can do and get recognition for doing them well. —High school man.

Special classes for emotionally disturbed children so that the 95 percent who want to learn can, without 5 percent wasting their time and the teachers' energies. —Elementary man.

Establish remedial classes for culturally handicapped students.

—Junior high man.

Provide additional schools for the chronic discipline problems from the first grade through high school. I believe that many excellent teachers leave the field because they are unable to cope with the two or three percent of the students who have been class disrupters through twelve or more years in the public schools. —Junior high man.

Special classes or schools for nonreaders and low IQ students.

—Junior high woman.

The provision of continuation schools for students who refuse to conform to school regulations. I definitely feel it is unfair for those students who desire to learn to be forced to attend classes with students of this type. —Junior high woman.

There are many students enrolled in our "comprehensive" high schools who are not mentally capable nor scholastically prepared to enter the existing schools. They represent tremendous discipline problems; they usurp class time that could well be spent with more capable students.

We need special schools (trade, etc.) that can be of material help to these "potential citizens." In most of our existing institutions, they achieve nothing but frustration and unhappiness—making no positive contribution, now or later, to society. Surely we can provide them with a positive situation that would develop their "talents."

—High school woman.

E. Additional Areas of Concern—Typical Comments

In addition to these 10 specific items, a number of other more general areas were also mentioned: nonteaching duties, teacher assistants, use of pupils' time, pupil standards, curriculum, discipline, special classes and schools, supplies and equipment, textbooks, facilities, teacher training and credentials, teachers' professional status, personnel practices, administration, community relations, salary, tenure, retirement, finance, junior college problems, miscellaneous, and responses to state action.

1. Nonteaching Duties

(In addition to pupil supervision and lunch duty, teachers also complained of other nonteaching duties. Outstanding among these were various types of meetings: PTA, committees, faculty meetings, in-service training, institutes, etc.)

Many extracurricular demands dissipate a teacher's time and energy. Some of them make it necessary to just "muddle along in the classroom" while demands of the nonteaching activity are met.

—Junior high woman.

Eliminate yard duties, hall supervision, club sponsorship, PTA meetings, and extracurricular responsibilities. Teachers devote too many hours to nonteaching duties and paperwork. The teachers do not have time to prepare work, correct papers, and do a good job of teaching.

State legislation is needed to set the responsibilities for teachers. The law should state, "Teachers should teach only," and it would not be legal to make them do other things.

—High school man.

Pay teachers for *all* extracurricular activities, such as supervisory duties (at games, at plays, at noon lunch hours). This will have a twofold benefit: (1) correct an injustice to the teachers (administrators assign extra duties in a *very* promiscuous way); (2) there would be less outside duties assigned, since teachers would *have* to be paid, and no doubt funds would be limited.

—High school man.

Administrators could prepare bulletins for distribution to teachers to read; then curtail the many long, unnecessary meetings where they *read* these same items to their teachers.

—Junior high man.

If we are expected to do a good job, we can't be expected to be all things to all people. Tonight at the PTA money-raising carnival, five teachers are being "dunked" in water. Very professional! Very much detested by those teachers!

—Elementary woman.

2. Teacher Assistants

This includes readers and specialist teachers. (Clerical help has already been covered.) These readers would assist in menial tasks directly connected with teaching: correcting and grading papers, typing ditto sheets, etc. The other category of teacher assistants are specialists who would teach regular classes in such areas as physical education, mathematics, science, music, art, etc. These specialists were mentioned mainly by elementary school teachers.

Teachers in elementary teach all subjects, but most teachers can't teach all subjects well. In elementary, we should teach basic subjects, with special teachers for art, music, science, and P.E.

—Elementary man.

Separate teaching of P.E. and music should be encouraged. You cannot expect the regular teacher to know how to teach *everything* equally well. Neither can you expect a suited or high-heeled teacher to lead in exercises for the President's Physical Fitness Program, however needed it is, and it is.

—Elementary man.

Clerical assistance for teachers (checking exams and homework papers—entering grades). These routine matters use up valuable time that could be spent “preparing” lessons for classes.

—High school woman.

Provide readers for those instructors whose courses necessitate a great deal of paper reading.

—Junior college man.

By far the largest amount of time and effort becomes lost in paper-work details, such as attendance reports, grading examinations, laboratory reports, and homework. This time and effort could and should be conserved for revision and improvements in lecture topics, notes, demonstrations, and calculation examples explained in class.

—Junior college man.

3. Use of Pupils' Time

A number of teachers felt that there were too many interruptions of classes, for reasons ranging from messages to maintenance. Other comments suggested a reduction in extra-curricular activities, restricting them to after-school hours, and perhaps limiting the number of activities an individual student could participate in. High school teachers were especially likely to be concerned with this problem.

If the state could curtail the number of interruptions, assemblies, rallies, social activities, etc., I would be all for it. These interruptions disrupt the atmosphere of quiet, calm, and order which is so necessary for scholarship, and encourage disorder and general chaos. All activities should be after-school activities and not part of the classroom schedule.

—High school woman.

I should welcome action that would do away with *drives* and *reward* assemblies. Regarding drives, they (1) take valuable time (money raised is not commensurate with time spent); (2) convert the classroom into a moneyraising agency; (3) sometimes use pressure tactics.

—High school man.

I don't believe it is in the interest of good education for anyone ever to miss a class because of practicing or participating in some sport. Sports should be limited to after-school hours or weekends, even if it means cutting down the length of game times due to absence of lights.

Physical education is a must! But too many schools use too much school time for sports.

—High school man.

Eliminate painters, window shade adjusters, alterations of any kind, treetrimmers, etc., during school hours—just let us *teach*.

—Elementary woman.

Reduce the number of high school student activities allowed per student, as many do not have time to learn as they are too involved in sports, social clubs, booster activities, etc. —High school woman.

4. *Pupil Standards*

Suggestions in this area fell into two main groups: pupil standards and regulations pertaining to age. Among the former were uniform statewide standards for grading and promotion, facilitated perhaps by standardized examinations given throughout the state. Some teachers wanted promotion to be based on achievement rather than age, and some suggested that certificates of attendance be given instead of high school diplomas to pupils who had not met minimum academic standards.

Lowering the high school compulsory attendance age was recommended by some, while others suggested a higher age for entry into kindergarten and first grade, or readiness tests to determine whether the child was mature enough to attend school.

Set minimum state educational standards, such as New York State Regents. —High school woman.

Promotion in elementary schools on the basis of *age* rather than on ability is extremely frustrating to teachers because students lack incentive and lose all respect for standards. This is disastrous to proper discipline. The influence of this is definitely felt in high school, too! —High school woman.

Reexamine the compulsory school age law. There are too many students 15 and 16 years old who are such discipline problems that they detract from the education of those who wish to learn.

—Junior high man.

Institute state examinations. Stop indiscriminate passing of students regardless of achievement scholastically. Issue certificates of attendance rather than diplomas to those who do not meet scholastic requirements. Make high school graduation a criterion of accomplishment.

—High school man.

5. *Curriculum*

Among the suggestions in this area were more emphasis on subject matter and fundamentals, and less on "frills"; uniform Statewide curricula with courses of study made by experts in the various subjects; modernization and simplification of courses of study, with teachers' having a voice in this revision; upgrading various areas such as arts, social sciences, humanities, and vocations; criticism of further additions to the curriculum without dropping other requirements to make room for them; more flexibility in scheduling to permit variable class sizes for different subjects, departmentalization in grades 4 to 6, longer teaching day and year, etc.

Get back to basic essentials and eliminate the frills. The students shun the hard work and get by with their good grades in the so-called "enrichment" subjects, but without foundation. Senior high students just don't read, spell, or write as fifth graders used to do—and arithmetic is foreign to most of them. —High school woman.

Do something about our already overloaded curriculum. Spanish is now compulsory five times a week and these children don't even know English. No reduction in curriculum was authorized by the state.

—Elementary man.

Figure out how many teaching hours there are in a week, look at the state requirements, and then send this information and its solution to all elementary teachers.

—Elementary man.

Scrutinize carefully the new mathematics concept which is being forced on us. This is "in lieu of" and *not* "in addition to" our already established math program. We have a whole era of "nonreaders" and "nonspellers" as a result of *progressive education*. *Now math??*

P.S. Even the teachers don't understand it! —Elementary man.

I think that there should be more uniform content in the several districts and/or the state. Social studies units vary widely throughout California, with the result that children of traveling or moving parents sometimes encounter repetition.

—Elementary man.

Upper elementary grades, fourth to sixth, should be departmentalized. It is a ridiculous assumption that all elementary teachers are versatile in so many of the subjects taught. Each teacher has strengths and weaknesses. Why not take advantage of them, and not penalize the students?

—Elementary man.

Children should be separated into groups according to ability. A lesson suitable for a child with an IQ of 80 does nothing for a child with an IQ of 100 and above, and certainly a child with a great capacity for learning should not have to wait for the slower learners.

—Elementary woman.

6. Discipline

Teachers wanted more power to discipline unruly pupils, and more support by their administrators when doing so. A number of teachers suggested that chronic troublemakers should not be allowed to disrupt classes and should be removed from regular classes or schools. It was also felt that parents and students should take more responsibility for their behavior, and that, in general, the legal framework for discipline should be strengthened and clarified so that discipline, suspension, and expulsion would be simpler and more effective. Some comments asked that teachers and schools be protected against the threat of lawsuits arising from disciplinary measures.

Give us the right to use the necessary disciplinary methods. We need more respect in the classroom.

—Junior high woman.

Better administrative support with serious discipline problems. The teacher is constantly placed in a ridiculous position by the administrators' lack of action.

—Elementary man.

Allow the teacher to teach and not spend the biggest part of time disciplining. If only we could take the laws we now have and be able as teachers to enforce them, with principals who have the guts to back up a teacher in his actions that are within reason and the law. Either students come into the classroom to learn or out they go.

Yes, I know these children are in great need of help and I'm aware of the fact that they come from some very poor home conditions. Until these children are helped to overcome their problems through counseling, of which we have very little, they will always be a problem in our classrooms. In a good many cases the administrators put the blame on the teachers and make it seem that it's the teacher's lessons and plans or room environment, etc., that is the reason for an unruly classroom.

—Elementary man.

Do not withdraw ADA when a student must be removed for disciplinary reasons. When ADA is withdrawn, many school districts keep their troublemakers in order to keep the ADA. —High school man.

The energy and time spent on discipline problems in and out of the classroom needs immediate, drastic attention. Three-time losers for car theft have no business in a public school classroom. Neither should we have to try to teach those who consistently refuse to learn after an age much lower than we now have.

Something should be done to force parents to assume responsibility for the conduct of their children 24 hours per day. Too many times a parental conference leaves the teacher as the goat—he hasn't provided the proper incentive or motivation, or he is an old crank if he expects students to act like ladies and gentlemen.

—High school man.

More authority to remove recalcitrant students from ordinary classrooms and force parents to participate in psychiatric clinics for the severely disturbed. Perhaps the crimes of violence occurring later on would be avoided. Teachers spot these problems long before others, yet are almost powerless to accomplish any changes as most parents can't or won't take the time to assist these children.

—Elementary man.

Please allow the teacher to exercise discipline in the classroom as it was in the past. The teacher no longer controls the room except by a *strong will* and nothing else. Industrial arts teachers have a very difficult task in controlling their classes when the natural tendency is for the office to program the incorrigibles into our classes, and then tell us that if we *touch* one of them we will be fired.

I have known many good teachers who have left the field because they could not discipline their classes and received *no* help from the front office. Do not leave it to the option of the district whether a teacher can administer corporal punishment.

—Junior high man.

Make it possible for schools to refuse to enroll students who can't benefit from schooling—we have had three teachers beaten by students who were mentally ill.

—Junior high man.

The principle of compulsory education is not psychologically sound for teenagers: education is not a privilege; it's a prison sentence to many of them.

I believe it would be better to frankly face the fact that if we must keep them "off the streets" we'll frankly babysit those who don't work.

—High school woman.

7. *Special Classes and Schools*

Special classes and schools for pupils who do not fit into regular classes have already been discussed. In addition to these, teachers were

also concerned with remedial programs and with improved guidance, counseling, and testing. Other comments protested "dumping" of problem pupils into classes for the mentally retarded, vocations, art, etc. Some teachers wanted more attention paid to underprivileged minority groups. Still others felt that programs for gifted pupils were being neglected.

Crash program for nonreaders. (Start program at primary level.) If local districts are unable to do so, the State should develop an intensive reading program which would improve the reading skill of the slow reader before he is allowed to enter the junior high school. There are too many students who enter senior high school with a grade level of reading that makes the learning of high school subjects a difficult if not impossible task. Too often this leads to failure, rebellion, and eventually dropping out.

—High school woman.

A committee should be set up to study the needs in a realistic vocational program which would enable the student to become a journeyman in 12-14 years of school and on-the-job training. This committee should include members of organized labor, management, civil service, legislators, and teachers.

—Junior high man.

More consideration for gifted students.

—Junior high man.

State support and backing for guidance (counseling) is the Number 1 educational importance to this writer. Funds should be expended to develop this vital area of education. This function of the public schools is not a "frill." Rather, it is a critical division of a school in aiding boys and girls to obtain information, understanding of themselves, and professional guidance in order to become better solvers of problems to which they relate.

—Junior high man.

8. *Supplies and Equipment*

The main category in this area, more and better teaching supplies and equipment, has already been discussed. The scattered themes which remain include such things as protests against giving free pencils and paper to pupils.

9. *Textbooks*

More and better textbooks, and a wider variety to choose from, were some of the aspects mentioned in this category. A number of teachers criticized the state's selection procedures, didn't want to be forced into using state texts, and believed that the choice of books should be left to classroom teachers in the districts. Some complained that they had to give up good older texts for newer, less adequate ones. The state was also criticized for taking too long to fill orders for books. Another suggestion was that pupils should have more responsibility, paying for damaged or lost books, and perhaps even buying or renting them.

Textbooks were mentioned more frequently at the lower levels. Elementary teachers were most disturbed over the quantity of books and, along with junior high teachers, were also more worried than high school or junior college instructors over textbook quality.

Better and more up-to-date textbooks that apply the findings of modern research. . .

—High school woman.

The one state action that can be taken is the abolishment of state-approved textbooks and state printing of same. In the field with which I am familiar, mathematics, the state-approved textbooks on the seventh and eighth grade level are far inferior to the privately printed texts, in both content and quality. A conscientious teacher finds it necessary to supplement the text with many hours of preparation in order to present adequate instruction which the students deserve. Let's get private enterprise back in the textbook business.

—Junior high man.

Top notch texts should be provided with "built-in" study and comprehension exercises at the end of chapters, along with enrichment suggestions. These exercises should be keyed to the content material.

—Elementary man.

More texts in many fields that slow learners can *read*.

—Elementary woman.

Every year there seems to be a shortage of textbooks and a drastic reduction of books (on the authorized list) which teachers would like to use as readers or enrichment, but for which the budget seems too narrow. State action should do something to make the book situation more flexible; it should not take 2-3 months until an emergency order of additional books arrives.

Special monetary *book aid* to schools!

—High school woman.

Classroom teachers should have more to say about the adoption of textbooks—or a more liberal policy should be adopted regarding textbooks. (The state texts are *not* meeting the needs of individual students—no *one* book can; a variety of levels and interests must be considered.)

—Junior high man.

10. *Facilities*

More and better classrooms were the primary requests, but other facilities, such as libraries, gymnasiums, teachers' rooms, laboratories, and storage space, were also mentioned. Complaints about the physical conditions of existing facilities included inadequate lighting, ventilation, soundproofing, and painting. Some teachers asked for curtailment of "fancy" buildings, which they considered to be wasteful and impractical, and suggested standardized plans, with teachers' having some voice in their design.

I believe the state should have more to do with supervising building plans and construction. The building I teach in was very poorly planned. Our principal complaint is lack of air and ventilation. We can only open one of the windows. During the day the hot air is trapped and the rooms are very hot and stuffy. We have steam heat which I have never turned on since the building was erected 5½ years ago. I believe paying architects 8 percent for revised plans that were worthless to begin with is criminal.

—High school man.

In order to have a better educated child, I feel that each school should be required to have some oncampus library facility, a place where a child can go to select things of his own level and interest. The library may be in a vacant room or a portable one (bookmobile).

In our school there are over 1,200 children and we have no oncampus library. We get our books from a district library and in this way the

child has no choice in what he reads. He reads what is presented. In most cases these books are the only ones available. The public library is over two miles away and traffic is heavy. —Elementary woman.

Not a specific state function. However, helping the communities to furnish adequate school classrooms—the districts to supply the teaching staff—would be a great aid.

We've had staggered sessions—face them again next year—and the prospect of double sessions looms the next year. —High school woman.

Adequate facilities should be provided. Schools should not be dependent on the whims of their communities for financial aid.

—High school woman.

More classrooms!

—High school woman.

11. *Teacher Training and Credentials*

Education courses and colleges have already been discussed. In addition to these, other comments suggested higher standards for teachers through stricter credential requirements, elimination of provisional credentials, and better screening of prospective teachers. In-service training was also mentioned frequently, including more advanced courses for teachers who are already highly proficient in their fields, help on actual problems encountered in teaching, opportunities to observe expert teachers, and grade-level meetings and monthly bulletins on techniques. Some teachers opposed credential changes and condemned the Fisher Bill because they believed nonacademic areas were being discriminated against, or because there was less emphasis on good teaching methods.

Scholarships, grants, and loans were suggested for prospective teachers and also for experienced instructors desiring in-service training or advanced study, such as study abroad for language teachers, etc. Some teachers asked for more practice teaching.

Secondary and junior college teachers were more likely than elementary teachers to mention problems of credentialing and teacher training.

Higher standards and requirements for credentials.

—Elementary man.

College students should be given more time to participate in student teaching under a master teacher. The requirements for graduation should be extended to include more practical application in a school-room situation. This could be accomplished within a four-year program by doing away with a lot of those useless educational theory courses.

—Elementary man.

I am concerned with some of the legislation now being considered with regard to credential requirements (Fisher Bill). I cannot see how a major in an academic subject could make one a better teacher of typing and shorthand. An academic background, yes. But, let's keep the major emphasis in the field to be taught. —High school woman.

On rare occasions, due to emergency closing of schools, etc., I have had opportunities to visit other teachers and classrooms and observe ongoing programs. I would appreciate opportunities for this type of thing at least twice during a year. In-service training in *real* situations

could be most helpful if teachers were released from teaching for this observation and discussion.

—Elementary man.

12. *Teachers' Professional Status*

The major concerns here were more voice for teachers in decisions and policies, and more respect and prestige for classroom teachers. Other comments dealt with more autonomy for teachers, more academic freedom, and better working conditions (rest breaks, teachers' rooms, etc.). Another area involved support or condemnation of various teachers' organizations.

Teachers should be allowed to teach under the democratic principles they are supposed to instruct their pupils about. Also, they should be treated as first-class citizens rather than second-class citizens. In my own case, I plan to resign from my present district at the end of this school year because I cannot tolerate not being allowed to freely express my opinions.

—Elementary woman.

Recognition of teachers' opinions regarding learning situations. It appears that great reliance is placed upon the opinions and recommendations of administrators who are out of *personal* touch with the problems of education. It would seem that it is the teacher who would be able to supply the information necessary to help solve current problems in education.

—High school man.

Promote everything you can to raise teacher morale. Teaching is a *rewarding career*, but not just a job with a pension. There is no disgrace to being a teacher. Administrators are not "super" teachers.

—High school man.

Teachers must have status in the community, and not the tongue-in-cheek type of today. Many teachers lack self-respect—they can't even get it from the students!

—Elementary man.

Work carefully with the California Teachers Association and help them wherever possible with legislation. The majority of California teachers belong to the California Teachers Association and want to be represented by it, but too many Legislators would seem to ignore this. Advice from CTA helps students, parents, and teachers.

—High school man.

No union.

—Junior high man.

Discourage administrators from forcing CTA on teachers or creating atmosphere against AFT. A district as a political organ should not support or aid a teachers' association.

—Elementary man.

13. *Personnel Practices*

Personnel practices were mentioned most frequently in the upper grades and in junior colleges. Comments concerned two broad areas; assignment and evaluation procedures. The major complaint in the first was the failure to assign teachers to their areas of competence, giving them other courses which they did not feel qualified to teach. Some teachers felt they had to prepare too many different classes, and they requested limits to the number of different courses to be given by any one teacher. They also wanted equal distribution of classes and duties, without favoritism. The use of preparation periods for parent confer-

ences or pupil supervision was also protested. It was suggested that teachers' duties, assignments, and salaries should be specified in their contract. Some teachers asked for an effective channel for handling grievances.

However, the main concern in the area of personnel practices involved better procedures for evaluation, transfer, recommendation, promotion, or dismissal.

Require school districts to place teachers in their major area of preparation.

—High school man.

Teachers should be encouraged to better themselves. There is nothing more discouraging for a teacher who is sincere and interested in her field to take a sabbatical and do a year of graduate work in her field, only to return to find out that she is no longer teaching the same subject.

In my case, I did a year of graduate work at the Sorbonne and returned to find that I was no longer a full-time French teacher, but instead I was teaching remedial reading and remedial English. The principal's explanation was that I had been away for a year.

—High school woman.

A more even load for certificated personnel. Too much free time is given heads of departments, coordinators, and aspiring administrators.

—High school woman.

Supervisors need to be instructed that they are to *work with* the teachers in solving problems. In so many cases they feel and display a contempt for those teachers who genuinely seek help. This has resulted in the loss of excellent teachers to the profession while many less qualified have been retained because they have a better personality and are better able to *mix* with their superiors.

—Elementary man.

There should be a maximum as well as a minimum number of times a principal should observe his or her teachers. I can think of no possible good to be derived by any principal's "dropping in" four or five times a week for "20 minutes or so." If there is so little else to do he ought to be teaching a class himself. It becomes a "checking up" to the point where teachers wonder if after four or more years of college they are competent.

—Elementary woman.

Unfair ratings, totally unsubstantiated by any facts—only hearsay—would suggest if they are going to rate teachers, they should at least sit in the classroom to see what they are rating.

Because of difficulties with the administration, it was recommended that I not be continued at my school. I was so nauseated with the whole thing I didn't wait to see if I would be sent elsewhere in the district. Charges were made with nothing to back them up and I got the impression no one really cared anyway. I am now teaching for (a well-known computer company).

I enjoyed teaching tremendously and, if I had been a man and this was to be my life work, I might have inquired about a hearing. However—any type of profession that allows this type of treatment by colleagues and administrators to young, qualified, idealistic, and I'll go so far as to say *good* teachers, is one I'll have nothing to do with ever again. Somebody who cares less can save the youth of today.

—Former high school teacher.

One thing that might help greatly is to make the teacher's *whole* personnel file available upon request. Who needs secrets?

—Elementary man.

Teachers should have the right to sue if false information or assumptions are used in their evaluations.

—Junior high woman.

14 Administration

Administration was a recurring theme of teachers. It did not appear among the "top ten" for two reasons. First, it was a complex area, lacking single, relatively simple solutions like smaller classes or clerical help. Second, administration was mentioned in connection with a variety of other areas, such as pupil standards, discipline, class size, preparation time, nonteaching duties, and personnel practices. However, these were coded under the other headings, not under administration.

While this category deals mainly with administrators, some comments also involved other nonteaching personnel, such as supervisors, coordinators, counselors, etc. Fewer and better qualified administrators were the most specific suggestions; "better qualified" frequently being defined as having more actual teaching experience.

A number of teachers expressed concern over their relations with administrators, feeling that administrators should have more respect for teachers, and should give them more help with problems arising in the classroom. Some teachers believed this situation could be improved by limiting or reducing administrators' authority, and some suggested that teacher evaluations of administrators would be helpful.

A careful examination of the administration of each school district. A district whose administrators do not seek the cooperation and best effort of its teachers is wasting valuable tax money.—High school man.

Limit the number of administrators—so many "chiefs" you can't find the "Indians" in some districts. This could reduce the class size a great deal in our district.

—High school woman.

We have three administrators in our school: principal, vice principal, and dean of boys—totaling about \$35,000 per year. Each has a secretary and office space. We also have many salaried personnel at the main city office—total cost to district: fantastic. Yet I don't think they affect the degree of education the student actually gets to any degree. Why so many administrators?

—High school man.

Full-time administrators, full-time counselors, full-time supervisors, and plenty of them.

—Elementary man.

I think principals should spend at least a semester back in the classroom at least once every five years so as not to lose contact with teacher problems. I also think principals should have taught primary and middle grades, whether they be men or women.

—Elementary woman.

Yes! Train administrators to help teachers instead of making them nervous. If they (the administrators) want some aspect of teaching changed let them be honest about actually doing and showing what they want changed. The practice of putting down black marks on a sheet and asking demoralizing questions such as "Didn't you have

any methods courses in that college you went to?" are no help at all to a teacher trying to teach and at the same time read the administrator's mind.

—Elementary man.

Select administrators who are *competent, intelligent*, and whose main function is to try to eliminate conditions that prevent teachers from doing a good, sincere job of teaching. Many good teachers become thoroughly disgusted and frustrated by the myriad of endless "clerical" reports that are required by the administrators. In many instances, we have turned in the same information three or four times with no explanation about the use or dispensation of the material requested.

—High school woman.

There is one procedure which, if backed by state policy, could quickly remove or improve many of the problems now existing in our schools. It would also make unnecessary certain measures which have been suggested, such as the complicated question of administrators' teaching a portion of the school year.

This is the procedure I have in mind: the regular rating of administrators *by the teaching staff*. Certainly no one is in a better position to judge the effectiveness of administrators than the professional staff which they are supposed to serve. And the system could certainly not lend itself to any more abuses than that which now exists. The Principal and Co. of a school are not entrepreneurs, and the professional teaching staff are not their employees. I do not believe that education is best served by allowing administrators the arbitrary power to ignore the majority opinion of professional teaching staffs; nor does it foster the growth of democratic principles.

—High school man.

I feel one very serious threat to keeping and maintaining good attitudes among teachers is fair and professional treatment by administrators. Too often we are talked down to, read bulletins to, as if we were not able to read. Our judgment is ignored and things done with children that the administration thinks is fine when they don't know the child. Supervisors call meetings only to have the teachers OK something they have already adopted. They then say it was done by the teachers. This wastes our time and makes us feel as if we were not capable of independent thought.

—Elementary woman.

15. *Community Relations*

The main interest in this area was for more public awareness and support of education, and more recognition of the good job being done by the schools. Other comments asked for less public or parental interference, standards for school board members, less emphasis by the school upon public relations, and less emphasis on general community welfare projects which diverted attention from education itself.

Education of parents leading to better understanding and support of the public school's functions and responsibilities.

—Junior high man.

School takes on more and more, and the home does less and less. Example: See if they (children) have clothing, food, health checkup, social hygiene. These are important but the home should take some responsibility.

—Elementary man.

Greater state control to free teachers from the fears of local pressures.

—High school man.

At the present time the competent teacher is torn between a desire to teach according to his standards and the desire of administrations to keep the community happy by giving passing grades to the inept and high grades to the mediocre. The result is a lowering of standards on the part of teachers and a general lowering of the academic standards in American schools.

—High school man.

16. *Salary*

This category includes all aspects of salaries except raises, which appeared previously. Among the more common themes were uniform statewide pay scales, experience credit transferable from one district to another, less disparity between salaries of administrators and teachers, extra pay for extra duty, fringe benefits such as health insurance, merit pay, and a longer work year.

Make it possible for a teacher to transfer to another district without taking a big cut in salary.

—High school man.

Pay teachers the same as administrators.

—High school man.

A district will pay an administrator, who does nothing but supervise social activities, more than the best teacher in math, English, etc.

—Junior high man.

Yes. Be more realistic in relation to the academic teacher and the physical education department. When P.E. people work after school they are paid. Academic people will "work" the same football game or track meet, often doing the same job and putting in the same number of hours, and will not be paid. When the English teacher works after school on debates, contests, speeches, etc., he (at any rate, many of us) is not paid.

—High school woman.

More liberal tax deductions for advanced education.

—Elementary woman.

16a. *Tenure*

The most common suggestion was that tenure should be statewide and transferable, so that a teacher could move from one district to another without losing tenure. Other comments asked for stronger tenure protection, while still other said it should be weakened because it is now too difficult to get rid of poor teachers.

Extend provisions of the tenure law to all public school teachers in California.

—Elementary man.

Eliminate tenure.

—High school man.

Interdistrict tenure should be very seriously considered, as well as salary schedule placement. Quite often, a teacher remains in a district only because he can't afford to move, perhaps doing less than his best. A change might be to the advantage of the district as well as the teacher.

—High school man.

17. *Retirement*

Credit for out-of-state teaching experience in the California Retirement System was the main concern of teachers in this category. Other comments said that teachers should be protected by social security.

Recognize ARCROSS—out-of-state teachers to be put on a California retirement plan.

I made the mistake of coming to California, lost my retirement in Illinois, and probably won't teach long enough in California to get an ample retirement pension.

—Junior high woman.

Would it be possible to tie the Teachers' Retirement System to social security to help the young, struggling teacher with a family stretch his monthly paycheck, and also to provide his family with the protection (both survival and retirement) that social security gives?

—Elementary woman.

18. *Finance*

More state aid, the major topic of this category, has already been discussed. Many of the remaining comments involved new sources of revenue, such as state aid, federal aid, countywide taxes, increased local tax limits, and revisions of state apportionment procedures. Other comments covered equalization of aid for poorer districts, more accurate computation of pupil-teacher ratios so as not to include nonteaching personnel, aid to districts for special purposes, opposition to countywide taxes, withholding state money from districts which do not conform to state codes, and revision of rules about bond elections so that a mere majority would be sufficient to pass them.

Place the financial basis of the school system on a statewide level instead of on local control. This would make salaries as well as courses of study more similar throughout the state.

—High school woman.

I do not believe the county equalization proposal for school financing to be a constructive solution when there is such a disproportion between the wealth of the richest and poorest counties in California and in their respective enrollments.

—Junior high man.

Recognize the need for federal aid.

—Elementary man.

State apportionments should not be made on the basis of average daily attendance, as is now the practice. To get more state money administrators simply load more students in the classes and hire fewer teachers, which is a detriment to good teaching. State apportionments should be made on the basis of "classroom units." A classroom unit is one teacher and 25 students. The district should get approximately \$6,000 for each classroom unit. If a district has more than 25 pupils per teacher average, they get no extra state apportionment for the overloaded classroom. The present apportionment laws based on ADA actually reward districts financially for having overloaded classrooms.

—Elementary man.

Eliminate that stupid, damned register. (If insurance companies can operate on probabilities, why can't the state?) —Elementary man.

A complete change in our tax structure would give money for needed classroom construction. Today the school tax is about the only tax that a voter can directly vote upon. I can certainly understand why an already overburdened taxpayer will vote No when he has this one little chance to express himself.

However, our children, our most precious possessions, are suffering. This is false economy and may prove disastrous to our very future. Therefore, a sound tax base needs to be provided *now*. Ten years from now may be too late for the exploding population of California.

—Elementary woman.

19. *Junior Colleges*

The three main concerns peculiar to junior colleges were (1) separate districts, (2) treatment of junior colleges as part of higher education, with academic senates, a master plan for higher education, etc., and (3) changing financial support from ADA to some other basis, such as enrollment.

An approach to attendance more like that of the university and less like that of high schools is necessary for junior colleges.

—Junior college man.

Convert junior colleges from "average daily attendance" to "full time equivalent" accountability.

—Junior college man.

Outside of the fact that the state should aid more in this area (JC), we are constantly being hampered in our teaching because the state code lumps the JC into the secondary area. We need a separate code for the college—and now!

—Junior college man.

At the junior college level, teachers should be permitted to play a larger role in setting academic standards—similar to the "academic senate" of the California state college system.

—Junior college man.

Separate all junior colleges from high schools. Combined districts give most attention to the high schools; the colleges are shorted.

—Junior college man.

Require independent junior college districts for all junior colleges so that administrators and boards will spend the time and effort required to devise a program which will make junior colleges genuine institutions of higher learning rather than "high schools with ashtrays."

—Junior college man.

20. *Miscellaneous*

The state should have more to say about unification as to which districts unify. Too much local politicking is being done by administrators in order to keep their jobs, therefore the needs and best interests of the communities involved are not being served.

—Elementary man.

Standardization of school lunch program to give the students a better lunch, so they feel better and can work better due to alertness. Too many schools have a "hot starch" lunch program with no supervision of the items the students purchase. Too many students end up with potatoes, gravy, macaroni products, bread, and popcorn—and wash it down with "Cool Ade" or punch.

—Junior high man.

There should never be any federal controls—too much federal government in everything now. —Junior high woman.

Limit the term of *any* state superintendent to eight years. This would allow for "new blood" and solutions to problems. —Junior high man.

Our young people are constantly being offered a distorted view of life, through certain prevalent types of false advertising and questionable entertainment, which makes it extremely difficult to install true values in their lives in the classroom.

I believe the irresponsibility of persons engaged in misdirecting our boys and girls in such ways should be dealt with, at the state (and national) level, in a more vigorous manner. —Junior high man.

Better communications on the teacher level. While aware of the fact that the State Department of Education publishes valuable materials, these same materials apparently circulate through restricted channels, inasmuch as I have but rarely come across them. I think a bibliography of state publications in a given field could be made available to all teachers. —High school man.

21. Responses to State Action

The majority of teachers responding to this question made suggestions for state action, but there were also some notes of caution and opposition.

I believe that many educators feel, and I would concur, that many statutes were legislated rather hastily without a full analysis of all possible "side effects." —Elementary woman.

Professional educators in all fields should be consulted when legislation regarding education is to be enacted. —High school woman.

The state should not legislate programs without providing specific funds to cover the cost of the program. Examples of which I speak are the polio immunization requirement and the new testing program. —High school woman.

The local level of control is best. Each school, even, must meet its own district requirements, which often are quite different from other districts' needs in the same city. Standardization is really impossible to attain and really unnecessary. —High school woman.

The state should set the "tone" for education; standards, attitudes, and accomplishments. I know that this means more state control, but local controls are too uneven, petty, varied, etc.—High school woman.

Initiate legislation which gives teachers some real responsibility and authority, instead of allowing them to be so subject to the whims of administrators and school boards.

Don't leave loopholes for boards. Recent laws have done little good. Boards don't follow "make every attempt to" laws. —Elementary woman.

22. Suggestions for Further Studies

I think the state needs to investigate more realistically the problems in schools located in blighted areas of our cities. More research should

be done to solve some of the problems faced by educators in their task of raising educational standards in the poorer sections.

—Elementary man.

Perhaps the state might do a thorough study on the feelings of teachers on the question of departmentalization at the elementary level, and a practical rather than a theoretical study of whether children beyond third grade are really better off being with one teacher for the entire day.

—Elementary man.

Objective studies of all the new teaching devices by noninterested groups, before they are adopted in our schools. We are not afraid of them, but money should not be spent on fads and gimmicks when it is needed for other things of proven value.

—Elementary woman.

Study the problem of unwilling students—help us to meet their needs, but also protect us from wasting our time and effort on them.

—High school man.

I believe that there is a great need for a study of the relationship between classroom teaching and administration. The longer I teach, the more I am distressed by the demands and restrictions placed upon teachers—demands that eat away at teacher time so that instruction is relegated to the end of a long list of duties; restrictions that drive away creativity and enthusiasm.

I cannot believe that the administrators I have observed are doing more important work than I; they are doing *different* work, but it is not more important. If I *did* think that my work was less important, I would not be able to continue as a classroom teacher.

In my opinion, educational standards will not improve to any great degree unless there is a widespread and sincere conviction that the most important things happen in the classroom. —Junior high woman.

Publish a bulletin wherein teachers could determine how each school district in the state ranks in regard to salary, class size, staff morale, attitude, and philosophy of supervisors and school boards, etc.

Send a copy of this study to every person who indicates an interest in teaching in California, and where possible, to teachers who contemplate location changes.

Pressure would be on those districts not up to par according to the state study.

—Junior high man.

Whenever surveys are made to determine the kinds of curriculum to adopt, effectiveness of courses, etc., administrators and/or university professors make these surveys. Why not have this done by the people who meet the problems on the firing line every day?—High school man.

23. *Reactions to Questionnaire*

In evaluating this study it is important to consider teachers' attitudes toward it. Responses ranged from enthusiasm through skepticism to outright criticism. However, the rate of response and the actual comments suggest that many teachers welcomed this chance to voice their concerns. Sixty-six percent of the teachers returning questionnaires did take the trouble to offer suggestions, and almost 500 attached up to a dozen additional pages of comments. Many teachers gave their

names and expressed their willingness to provide additional information, and some even offered to testify before the committee.

Thank you for your interest and help. You will be swamped by suggestions, I know. I have known so many teachers who work such long and hard hours, some every evening. Even if nothing is accomplished, it gives us a boost to know someone is interested in helping our unvoiced cause. —Elementary woman.

I cannot believe this questionnaire will do too much good. I have filled out five or more in the past two years along this same vein. —Elementary man.

Continue to give the classroom teacher a voice in matters of classroom teaching. This questionnaire represents the first opportunity I've had to officially express my opinion on education. —High school man.

I appreciate the opportunity of filling in this questionnaire, but some of the questions are so ambiguous as to be useless. —Elementary man.

The enclosed letter was indicative of one of the serious problems for the teacher: the prevention of his uttering protest. Why *should* you even have to repeatedly assure the teacher that his answers will be kept secret? The implication is that he might be subject to reprisals were his district to know he had been critical.

If we are interested in improving our schools, who is in a better position to know the situation and make helpful criticism than the teacher?

I would like the state to insure the teacher's right of frank and open criticism and stop administration's hypocritical pretense of interest in this kind of criticism. Since most administrators are too petty to allow criticism, it is the state's responsibility if we're to get better education. —High school woman.

Please keep your word—and keep this *confidential*!

—Elementary man.

I might say that one of the main reasons for my delay (and a possible reason for poor overall response on a percentage basis) is that we were told by our principal that we did not have to fill out the questionnaire and that it would be a good idea just to throw it out.

As one who sees a great need for many changes and improvements in the school system in our state, I could not see the logic of this suggestion. —Junior high man.

The State Senate and other governmental agencies should listen to the voice of the classroom teachers through their organizations such as the CTA, NEA, CASA, and others, rather than direct questioning such as this questionnaire. —High school man.

This questionnaire is an excellent idea! Congratulations! It increases my faith in the legislative process. —High school man.

To a great extent, I feel that many of the questions asked above are "loaded"—that is, they are not answered and solved by checking the appropriate square. They are not that simple. —High school man.

What a shock! Somebody thought to ask a *teacher* what was going on in the classroom. —High school woman.

If you want more, let me know.

—Elementary man.

IV. RECOMMENDATIONS

1. Reduction of class size should be the No. 1 state legislative priority in education. Priority in achieving reduction shall be in the following areas, but not limited to them:

- a. Districts with low reading score averages in the first three grades;
- b. Elementary grades.

2. A statewide effort should be launched to eliminate, insofar as possible, requirements and local district practices which are in conflict with the priority of class size reduction, and efficient use of classroom time.

3. High on the list of priorities for elimination or reduction should be:

- a. Classroom interruptions for nonteaching reasons.

4. Teaching should be as financially rewarding as administration.

- a. Certificated personnel assigned to classroom teaching from another certificated position within the same school district may be kept at the same salary schedule until such time as the district salary schedule brings classroom teachers with the same experience and training up to the same salary level.

- b. The concept of "*parallel salary schedules*" should be encouraged in all school districts.

This means that certificated employees engaged in the field of administration, supervision, or classroom teaching, would be eligible to transfers from one field to the other with no change in pay. This should allow for greater stabilization of personnel, greater specialization, and greater satisfaction. All should be reflected in a better job of educating children.

5. Classroom sessions should not be interrupted except for emergencies.

6. Supervision of teachers:

- a. Teacher-supervisors should be selected from the ranks of practicing classroom teachers whose excellence is recognized by their fellow teachers within the same field of instruction.

- b. Requests for supervision and assistance should carry no implication of weakness for rating purposes.

APPENDIX A

SUGGESTIONS FOR STATE ACTION

By School District, Grade Level, and Sex

(Percent of Teachers Offering Suggestions Who Mentioned a Specific Item)

	ELEMENTARY						JUNIOR HIGH						HIGH						JUNIOR COLLEGE				ALL TEACHERS
	Elem. dists.		Unif. dists.		Los Angeles		Hi. school dists.		Unif. dists.		Los Angeles		Unif. dists.		Los Angeles		JC dists.		Unif. & LA All dists.				
	M.	W.	M.	W.	M.	W.	M.	W.	M.	W.	M.	W.	M.	W.	M.	W.	M.	W.	M.	W.	Total JC		
Smaller classes.....	21%	36%	24%	28%	26%	25%	27%	24%	27%	26%	19%	21%	22%	25%	26%	18%	21%	25%	11%	9%	18%	12%	25%
Nonteaching duties																							
Pupil supervision.....	7%	17%	8%	13%	11%	7%	15%	3%	3%	4%	8%	12%	5%	4%	7%	6%	5%	0	1%	0	1%	1%	11%
Lunch duty.....	6	16	8	12	11	25	18	1	5	2	8	12	5	1	3	4	2	1	1	1	0	1%	10%
Meetings.....	2	4	1	2	1	4	3	1	2	1	2	0	1	0	1	2	1	1	0	2	1	1%	2%
Other.....	2	1	4	4	2	1	2	2	0	3	3	4	3	4	4	4	4	3	3	5	4	4%	3%
More preparation time.....	5%	5%	6%	6%	4%	4%	5%	3%	11%	4%	2%	4%	4%	4%	6%	8%	4%	9%	6%	5%	12%	8%	5%
Teacher assistants																							
Curriculum help.....	8%	10%	6%	10%	8%	8%	9%	4%	7%	8%	12%	6%	12%	4%	13%	11%	10%	5%	10%	5%	13%	9%	9%
Readers.....	1	1	0	0	1	0	1	1	7	2	6	1	2	3	2	4	3	4	6	6	6	7%	2%
Specialist teachers.....	5	3	7	6	4	6	5	0	0	1	1	1	1	0	1	1	0	1	0	1	0	0	3%
Use of pupils' time.....	3%	1%	3%	2%	4%	4%	2%	3%	5%	2%	4%	10%	4%	7%	8%	7%	12%	16%	4%	5%	8%	4%	4%
Pupil standards																							
Standards.....	2%	2%	4%	1%	3%	4%	2%	6%	0	2%	3%	0	3%	1%	4%	3%	3%	2%	8%	8%	6%	6%	3%
Age.....	0	1	0	2	0	1	1%	1	0	1	1	0	0	2	1	1	2	0	0	0	0	0	1%
Curriculum																							
Stress fundamentals.....	4%	2%	4%	4%	4%	4%	3%	2%	3%	3%	2%	1%	1%	2%	2%	2%	2%	0	2%	1%	1%	1%	1%
Don't add more to curriculum.....	4	1	8	2	3	2	2%	1	0	1	1	0	0	2	1	0	1	1	1	1	0	1	1%
Flexible scheduling.....	2	3	10	2	4	2	3%	1	2	2	2	2	3	2	2	2	4	4	2	4	2	2	3%
Other.....	4	2	5	2	4	4	3%	2	4	3	5	6	7	5%	6	6	6	6	4	2	4	2	4%

Discipline	6%	2%	5%	2%	3%	2%	4%	7%	2%	4%	0	0	1%	0	0	0	2%
More authority for teachers	0	2	5	2	2	2	4	6	2	3	7	1	4	2	3	4	3%
Remove troublemakers from class																	
Improve legal framework for discipline	3	0	1	1	1	0	3	1	2	3	2	3	2	3	1	2	1%
Other	4	2	2	2	2	0	2	4	4	3	2	2	3	1	0	1	2%
Special education																	
Improve counseling, testing	4%	2%	3%	7%	6%	2%	5%	12%	6%	6%	7%	4%	6%	10%	7%	6%	2%
Other	2	3	4	2	4	0	2	3	6	2	6	1	1	2	4	3	1%
Supplies and equipment																	
More and better	5%	8%	6%	6%	20%	10%	2%	2%	2%	2%	4%	6%	7%	0	0	0	8%
Other	1	1	0	0	1	0	1	0	0	0	0	1	0	0	0	0	1%
Textbooks																	
More	4%	3%	6%	2%	4%	2%	2%	2%	1%	1%	1%	0	1%	2%	0	0	2%
Better	6	6	8	4	2	4	6	2	1	2	4	0	4	0	1	0	4%
Critical of state selection	5	2	2	2	1	2	4	2	2	4	1	2	2	2	1	0	0
Other	2	2	4	2	4	3	2	2	2	3	2	1	2	2	0	0	2%
Facilities																	
More and better classrooms	6%	4%	2%	2%	2%	2%	1%	4%	6%	6%	3%	6%	5%	4%	5%	2	3%
Other	4	4	1	1	2	1	1	1	1	1	1	2	2	3	2	5	2%
Teacher training and credentials																	
Improve ed. colleges and courses	4%	6%	6%	2%	4%	2%	3%	10%	5%	6%	5	7%	7%	6%	7%	6%	5%
Higher teacher standards	6	5	2	4	1	4	5	2	2	2	3	4	5	3	6	9	8%
Better in-service training	2	2	4	2	2	2	1	2	2	2	4	4	3	4	4	7	4%
Other	4	4	4	0	4	1	4	10	9	6	4	6	6	6	11	7	3%
Teachers' professional status																	
More voice in decisions	4%	2%	2%	2%	2%	2%	5%	2%	2%	3%	3%	2%	4%	1%	0	4%	2%
More respect, prestige	1	1	2	1	2	1	2	4	1	1	3	1	2	1	2	3	2%
Other	2	4	2	2	2	3	6	2	1	6	6	0	2	2	0	5	3%
Personnel practices																	
Assign to area of competence	0	0	0	1%	0	0	2	2	2	4	2	2	2	3	10	7	1%
Other	4	4	2	2	2	3	6	2	10	4	4	2	4	3	5	1	4%
Administration																	
Fewer	4%	1%	4%	2%	2%	4%	2%	2%	2%	2%	0%	4%	5%	3%	3%	11%	8%
Better	2	2	1	2	1	1	4	2	2	3	2	3	1	3	5	3	6%
Teacher-administrator relations																	
Other	1	1	1	4	7	4	4	4	2	2	7	2	1	1	5	7	4%

APPENDIX A—Continued
SUGGESTIONS FOR STATE ACTION
 By School District, Grade Level, and Sex
 (Percent of Teachers Offering Suggestions Who Mentioned a Specific Item)

	ELEMENTARY						JUNIOR HIGH						HIGH						JUNIOR COLLEGE				ALL TEACH- ERS	
	Unified dists.			Los Angeles			Hl. school dists.			Unified dists.			Los Angeles			Hl. school dists.		Unified dists.		JC dist.	Unif. & LA dists.	All dists.		Total JC
	Elem. dists.		M.	M.	W.	M.	W.	M.	W.	M.	W.	M.	W.	M.	W.	M.	W.	M.	W.	M.	W.			
	M.	W.																				Total elem.		
Community relations																								
More public support for teachers and education	2%	2%	4%	2%	2%	0	1%	2%	1%	1%	4%	2%	2%	2%	1%	3%	1%	2%	1%	5%	2%	1%	2%	
Other	4	2	2	1	2	2	4	2	2	3	2	3	2	2	2	2	3	2	0	4	1	4	2%	
Salary																								
Raise	17%	5%	14%	4%	18%	3%	6%	8%	18%	4%	15%	4%	11%	15%	12%	6%	11%	4%						8%
Equal pay for teachers and administrators	0	1	1	0	2	1	0	3	0	3	1	3	1	3%	4	1	2	2						1%
Other	2	1	2	2	3	1	2%	3	9	6	4	6	4%	6	5	6	3	4	1	5%	4	6	5%	3%
Tenure																								
	2%	1%	1%	1%	1%	0	1%	2%	2%	3%	2%	1%	2%	2%	2%	1%	1%	2%						1%
Retirement																								
Out-of-state credit	1%	1%	1%	4%	1%	1%	1%	2%	2%	2%	0	1%	1%	1%	2%	1%	1%	0						1%
Other	1	1	1	1	1	1	1%	0	1	1	0	1	0	0	0	0	2	0	0	0	0	0	0	0
Finance																								
More state aid	9%	4%	12%	4%	8%	2%	5%	6%	0	7%	4%	10%	2%	6%	8%	10%	3%	4%						6%
Other sources	6	4	4	1	4	0	2%	2	2	1	4	1	2%	2	6	1	4	1						1%
Other	4	1	3	1	2	1	1%	1	4	2	3	1	3%	8	6	3	3	2						2%

[illegible]

APPENDIX B

Relationship of Class Size to Quality Education

The following section is taken verbatim from a portion of a paper on class size prepared for this committee by Mr. Ben Rust, classroom teacher in the Richmond School District. Mr. Rust has previously served as consultant to this committee, preparing the original report on the current subject, *Cost of Classroom Instruction*, and serving as special consultant to the committee for the purposes of this report and its predecessor, *The Preliminary Report, An Analysis of the Helpfulness of Certain Aspects of the School Program to Classroom Teaching*.

In an evaluation of the relationship between small classes, large classes, and educational quality it is folly to depend upon a single criterion, a single success of a gifted teacher, or even an examination objectively administered to large blocks of students under controlled environments. We must ask ourselves first what we want out of education before we can conclude that the statistical information does not relate small class sizes to quality education. Students are not statistics, much as we would like them to be for our records, and the numbers on their charts do not always tell us what we want to do with them.

It is most interesting to review the literature on this subject. Generally, superintendents, administrators, and educationists seem to deprecate the importance of class sizes. They often rely upon statistical information and personal impression. We are not particularly concerned with these conclusions, certainly not as much as the method they use to arrive at them, or the philosophy they espouse. For, if we assume that students are statistics, and if we probe no farther than that into what we want for them educationally speaking, we are guilty of ineptitude, and we are able then to reach the most absurd conclusions. On the other hand, if we carefully clarify what we want for our students we have a yardstick with which to measure our successes.

The importance of this point cannot be emphasized too strongly. In a remarkable book on the subject, Professor Raymond E. Callahan has carefully documented the "cult of efficiency" and the use of statistics in the schools.¹

"... school administrators perceived themselves as business managers or, as they would say, 'school executives,' rather than scholars and educational philosophers," wrote Professor Callahan. "The question which now became significant was why had school administrators adopted business values and practices and assumed the posture of the business executive. Education is not a business. The school is not a factory."² Professor Callahan reached the conclusion that class sizes were increased in order to emulate labor-saving devices which business idolized in order to save money. "Such savings could be achieved by lowering or freezing pay scales, or, more palatable professionally, by increasing the teacher's load."³

¹ Callahan, Raymond E., *Education and the Cult of Efficiency*, University of Chicago Press, 1962.

² *Ibid.*, preface.

³ *Ibid.*, pp. 222-3.

The movement to increase size of classes, Professor Callahan said, was in some instances led by the school men themselves: "The American people not only allowed this to happen but their insistence on economy forced it upon the schools. And just as some of the leading school administrators did not rebel but actually invited lay interference, they not only did not resist this increase in class size but actually initiated the steps, advocated and defended them, and put them into effect."⁴

This movement of "reducing expenditures through increasing the size of classes and the teaching load and through eliminating small classes" began around 1911.⁵ It was pushed, so Professor Callahan concluded, in order to keep costs down, and quality education was not a considering factor in this development. "The largest item in the budget was, of course, teachers' salaries, and it was in this direction that they sought relief. Clearly the way to economize was to get more work out of teachers, either by increasing the size of their classes or by increasing the number of classes they taught, or both."⁶

Although "professors of education in normal schools" recommended 20 students per class, and although the National Council of Teacher of English and Modern Language Association recommended 80 students per day, this movement towards larger classes was not arrested. Studies which showed little statistical difference between achievement in classes of 25 and 40 were "hailed by administrators."⁷ In fact, quite a few administrators and professors of educational administration offered testimony to prove that large classes were as good as small classes. Of course, other educators opposed the increase in class size. But eventually a formula was reached which became standard. Teachers on the secondary level averaged from 150 to 180 pupils for five periods a day, an average of about 30 students per class. And although this figure was a bit higher in the elementary schools, it was not always perceptibly so.

One therefore suspects "scientific" studies which indicate little difference in quality because of the size of the classes. No one can claim that every study is motivated by financial economy. But it certainly is clear that many are, and whether they are or not, unless the researcher clearly discloses his philosophy we are unable to form an intelligent judgment about his study. The evidence, therefore, must be weighed internally. The most impressive argument against class size increase is the rational one by the person in the field. What the classroom teacher says after he has explained what he wanted to do with his students is far more impressive than the statistics which purport to minimize differences in quality because of imperceptibility in objective test scores. For example, Bruce R. Morris asked a significant question in his initial attack on this problem.⁸ What exactly do we do when our classes get larger, he asked. First, we give up the term paper. Next, we dis-

⁴ *Ibid.*, p. 232.

⁵ *Ibid.*, p. 232.

⁶ *Ibid.*, p. 233.

⁷ *Ibid.*, p. 234.

⁸ Morris, Bruce R., University of Massachusetts, "Faculty Salaries, Class Size, and Sound Education," *American Association of University Professors Bulletin*, June, 1959, pp. 195-202.

pense with individual conferences. "Most people do not realize that often more education goes on in the faculty offices than in the classroom . . . nor does the instructor have an opportunity to probe the student's mind by a series of questions in order to force him to think more deeply than is his custom. Moreover, the student loses his right to dissent or express disapproval of the teacher's statements . . . The right of self-expression is the most vital part of a sound education and is lost in a large class." Next, the essay examination must go.⁹

Mr. Morris makes certain assumptions. He assumes that a term paper has real value as an educational device. He assumes that it is important to have conferences with students. He assumes that illiteracy can be reduced by effective individualized instruction, that teaching is an art, that student probing and discussion under the tutelage of a master teacher is most important, that essay-type examination should not be abandoned, etc. There is a host of assumption. One may contrast these assumptions with those accepted by the United States Government when it dispensed moneys under the National Defense Education Act to improve "educational excellence."¹⁰

In a letter of transmittal by Francis Keppel, United States Commissioner of Education, to the Congress of the United States, Keppel wrote that the National Defense Education Act "has now been in operation for more than four years. During that time the funds expended under its various titles have been an investment not only in national security and welfare, but also in individual human beings. Directly or indirectly, the programs supported by these funds have strengthened the substance and improved the quality of education in almost every American community."¹¹

Altogether, more than 160 millions of dollars were spent in student loans, more than 73 millions in equipment for the teaching of science, mathematics, and foreign languages, more than 29 millions for counseling services, more than 18 millions for technical services.¹² Not a penny was spent on reducing class size. It was assumed that this was not a national priority. The United States Government has been dispensing more than one billion dollars per year for education since the passage of the National Defense Education Act. But none of this money has been available for teachers' salaries or reduced class sizes. Nor do the progress reports on education issued regularly by the United States Department of Health, Education and Welfare, Office of Education, give attention to class size.¹³

The failure of our data to relate statistical incidence to aims in our study of the size of classes is critical. Very few scholars, statisticians, or administrators have made a serious attempt to do so. One such analysis that did, in a general way, was the series of

⁹ *Ibid.*, p. 198.

¹⁰ U.S. Department of Health, Education and Welfare, Office of Education, *Report on the National Defense Education Act, Fiscal Years 1961 and 1962*, p. 111.

¹¹ *Ibid.*

¹² See summary of expenditures, pp. 125-6 of *Ibid.*

¹³ See various reports issued titled *Progress of Public Education in the United States of America*.

lectures given by Professor David Riesman at the University of Nebraska.¹⁴ Professor Riesman correlated constraint and variety with academic excellence. With a critical eye on the American college, Professor Reisman said: “. . . Knapp and Greenbaum rank colleges in terms of their proportionate production of recognized scholars. Most of those at the top are small, liberal arts colleges such as Reed, Swarthmore, Oberlin, Carleton, Chicago, and Antioch. Yet I wonder how many administrators have pondered this list with an eye to improving their home institutions, or how many faculties could accurately guess the leaders in this league. And, of course, students are even less likely to know these batting averages, though eventually the news does get around.”¹⁵

Now, if we assume that colleges should produce “recognized scholars,” and if that were the goal pursued, it is quite obvious that a few schools are moving in the wrong direction. And once committed to the goal of running students through the factory treadmill rather than educating them, we are trapped into an insouciant attitude toward all students. For we make no impact on them. Why, as Philip Jacoby has shown, do the small, liberal colleges such as Harvard make an impact on the student, whereas most colleges hardly alter students “in any fundamental way”?¹⁶

“Impacts,” the impressions schools make on the thinking of students, how scholarship actually does alter thinking—these are viable criteria of excellence. We cannot in a brief paper explore the possibilities of impact, but certainly, if we believe that education does serve a purpose, and if we believe that that purpose is not a transitory dip into knowledge, then we cannot intelligently discuss quality of education without carefully evaluating impact. We can assume that observable vital impact must in some way be related to scholarship; and if we can accept the findings of Knapp and Greenbaum, we must pay attention to the methods which seem to produce “recognized scholars” in the small, quality institutions of higher learning in America. The lessons derived from such a study must in some strong way relate to quality in the great grammar school tradition of England (e.g. Eton), the tutorial system, the quality private schools of America, and the small colleges (among others) mentioned by Riesman. And we cannot escape the conclusion that the answer to these questions is strongly connected with the individual teacher-pupil relationship. Admittedly, social implications strongly influence the spread of this type of learning, and it usually is associated with class, for expense has always made such quality very dear, and few families, perhaps few societies, can afford so high-priced a product. But let us not dissimulate because of expense. A person may use stone tools to carve the best of figures, but he should not then boldly proclaim their superiority to steel.

¹⁴ The three lectures were published under the title *Constraint and Variety in American Education*, Anchor, 1956.

¹⁵ *Ibid.*, pp. 34-5.

¹⁶ *Ibid.*, pp. 12-13. Jacoby's study, *Changing Values in College*.

APPENDIX C

Procedures

The sample was selected to reflect the proportions of the school population contained within the following types of districts:

Elementary	Junior college
High school	Unified

A color code was employed to allow separation of returns into their appropriate category. A separate color code was employed for the Los Angeles district to allow separate computations of certain select features of the questionnaire.

<i>District</i>	<i>Number sent</i>	<i>Number received</i>	<i>Percent</i>
Elementary -----	6,000	4,560	
Elementary (Los Angeles) -----	3,000	1,848	
Elementary (total) -----	9,000	6,408	71.3
High school -----	2,200	1,768	
High school (Los Angeles) -----	2,000	1,501	
High school (total) -----	4,200	3,269	77.8
Junior college -----	400	344	
Junior college (Los Angeles) -----	200	198	
Junior college (total) -----	600	542	90.3
Unified -----	6,200	4,595	74.0
Indeterminate grade level -----		206	
Overall total -----	20,000	15,020	75.0

After determining the number of questionnaires to send (20,000), the districts and teachers selected to receive questionnaires were chosen so as to afford a representative sample within each category.

Districts were chosen from the Department of Education's "Average Daily Attendance and Selected Financial Statistics of California School Districts, 1960-61." This lists every school district in the state in descending order by average daily attendance. The statistical compilations are separated by types of districts in the same breakdown as that used in this study: elementary, high school, junior college, and unified. The selection of districts was made by choosing districts from this list at computed, equal increments, starting with the largest in the category and working in progression by the mathematically determined increments until sufficient districts had been chosen to provide coverage of the category by a complete range of a.d.a.'s. The number of districts thus chosen was divided into the number of teachers to receive the questionnaires. In selecting the teachers within the districts, a true cross section was the aim. To accomplish this two methods of selection were used because of the variation of information available through school district directories.

1. The number equalized between the individual schools within the district and then equalized within the individual school as to grade level (elementary) or subject taught (secondary).

2. Names were selected only if their assignment clearly indicated that their full-time function was classroom teaching.

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FINAL REPORT ON

**COMPULSORY MEMBERSHIP IN PROFESSIONAL
ORGANIZATIONS AMONG CREDENTIALLED
CALIFORNIA SCHOOL EMPLOYEES**

A Report of the Senate Factfinding Committee on
Governmental Administration

MEMBERS OF THE COMMITTEE

SENATOR STANLEY ARNOLD, *Chairman*

SENATOR JOHN C. BEGOVICH, *Vice Chairman*

SENATOR GEORGE MILLER, JR.

SENATOR VIRGIL O'SULLIVAN

SENATOR THOMAS M. REES

SENATOR STEPHEN P. TEALE

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HUGH MacCOLL, *Consultant*



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GLENN M. ANDERSON
President of the Senate

HON. HUGH M. BURNS
President pro Tempore

JOSEPH A. BEEK
Secretary of the Senate

LETTER OF TRANSMITTAL

February 18, 1965

HON. GLENN M. ANDERSON
President of the Senate

Dear Mr. President:

State law makes it clear that the intent of the Legislature is that membership in employee organizations composed of public (as well as private industry) employees shall be voluntary and not subject to coercion, intimidation, nor be a condition of employment, promotion, or transfer.

Complaints that the intent of the Legislature was being ignored and circumvented led to this study. To the extent that the brief study exposes undesirable practices and makes practical recommendations for their alleviation, this report will be of assistance to Members of the Legislature who must assume, unless shown otherwise, that spokesmen for educational organizations have the full and voluntary support of their membership.

Respectfully submitted,

STANLEY ARNOLD, *Chairman*
JOHN C. BEGOVICH, *Vice Chairman*
GEORGE MILLER, JR.
VIRGIL O'SULLIVAN
THOMAS M. REES
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COMPULSORY MEMBERSHIP IN PROFESSIONAL ORGANIZATIONS AMONG CREDENTIALLED CALIFORNIA SCHOOL EMPLOYEES

I. STATEMENT OF THE PROBLEM

A. *Rights Protected by Government Code:*

Government Code Sections 3500-3509, enacted in 1961, outline the state policy regarding membership in "employee organizations" for public employees (including certificated school employees).

Section 3502 states that employees of all public agencies "shall have the right to form, join, and participate in the activities of employee organizations of their own choosing," and "the right to refuse to join or participate in the activities of employee organizations."

Section 3506 prohibits public agencies and employee organizations from interfering with, restraining, coercing, or discriminating against public employees because of the exercise of these rights.

B. *Alleged Violation of Rights:*

Members of the committee have received, since passage of the 1961 legislation cited above, sufficient complaints from certificated personnel in the public schools (almost entirely classroom teachers) of tactics allegedly denying them their "rights" to join or not to join organizations of their own choosing," that the committee staff was authorized to conduct an investigation to determine the answers of the following.

C. *Questions:*

1. Are the rights of certificated school employees to join or not to join organizations of their own choosing being abridged, denied, or violated in isolated instances, on a statewide pattern, or not at all?

2. If it is determined that there is widespread abuse of such rights, are existing legal avenues satisfactory to achieve equitable redress?

3. If there is widespread denial of such rights, and existing legal avenues do not provide equitable means for achieving redress of alleged violations of rights to join or not to join, what recommended changes in code sections and/or administrative procedures would be likely to provide more adequate protection?

II. METHODOLOGY

A. *Questionnaire to Secretaries of Boards of Education:*

The following letter was sent to the secretary of the board of education of 121 school districts:

Dear Sir:

The Senate Factfinding Committee on Governmental Administration has been assigned as a topic for study the subject matter

of membership of certificated personnel in professional organizations.

To assist in some of our preliminary investigations on this subject I would very much appreciate receiving in the enclosed envelope, on behalf of the committee, any written memoranda, policy statements, bulletins, or similar material which set forth school district policy regarding membership in professional organizations.

In addition to any of the above material, the committee would like to have for reference a copy of school district forms used for:

Applications for teaching positions, and/or examinations;

Applications for promotional positions and/or examinations;

Rating, performance evaluation, or its equivalent.

Thank you for your cooperation in this matter.

Care was taken to select districts in almost every one of the 58 counties in such a manner as to combine both adequate geographic representation along with careful selection to assure representative numbers of districts representing rural vs. urban districts, large vs. small districts, north vs. south districts, mountain, valley, and coastal districts, in a close approximation of their composition in the state as a whole. No precise breakdown by population was attempted, nor was this considered necessary. School boards representing approximately 80 percent of the school population and all of the kinds of school districts were contacted.

B. Letters to Teachers:

Contacting a representative sample of teachers would have been beyond the scope and budget for this project. Certain teachers known to the staff, however, were consulted for corroboration, criticism, or comment on material received from board secretaries. As valuable as this information was to the staff in helping to provide background, none of it forms an official part of this report except where official board policies and/or documents were provided by the teacher. The anonymity of the individuals cooperating will, of course, be protected zealously by the committee.

C. Teacher Training Institutions:

The following letter was sent to the list of teacher training institutions provided the committee by the State Department of Education:

Gentlemen:

The Senate Factfinding Committee on Governmental Administration is conducting a research project dealing with professional qualifications and membership in professional organizations of credentialed employees of California school districts.

We would appreciate receiving from you any material or information furnished by your office to prospective teachers, and/or applicants for teaching positions, which would indicate the value, and/or desirability, of membership in professional organizations in obtaining placement and in furthering the career of prospective teachers and applicants for teaching positions.

We would also appreciate an indication of the extent to which this information is stressed by a check mark in the appropriate space below.

In interviews conducted by the placement office is the advantage of membership in professional organizations stressed (1) _____ greatly; (2) _____ moderately; (3) _____ not at all.

Thank you for your cooperation in this matter.

D. Accreditation:

Accreditation procedures and manuals of the Western Association of Schools and Colleges, 1499 Bayshore Highway, Burlingame, were scanned for any reference to membership in professional organizations as part of the accreditation process.

III. FINDINGS

While material furnished by other sources provided valuable corroboration, and occasional refutation, the main body of information presented here comes from authorized representatives of the school districts in response to the committee's request for personnel policies.

1. The letter quoted in Section II—Methodology—was sent to 121 school districts.

Ninety-six districts responded with pertinent information.

From the 96 districts, the following information germane to the study was compiled:

A. School Board Response:

Material made available to teachers unequivocally recommending membership in the CTA and affiliates as a condition of employment.....	10 districts
Material forcefully recommending membership in "professional organizations" as a condition of employment by board policy.....	5 districts
Material recommending membership in "professional organizations" as a condition of employment by board policy.....	9 districts
Membership in "professional organizations" cited as basis for performance rating	26 districts
Membership in "professional organizations" a part of application form	32 districts
Support of CTA's "Code of Ethics" cited as basis for performance rating	5 districts
Names and numbers of members required as basis for employee organization's eligibility to represent its members	15 districts
No policy or explicit impartial policy regarding membership in "professional organizations"	12 districts
	114 *
Ask for photo, or leave space to include photo with application.....	Several . . . undetermined No.

* Note: Several districts were included in more than one of the above categories.

2. While there can be little doubt as to what "professional organization" is meant, most districts responding did not specify—in writing.

3. Ten districts went beyond the implicit recommendation for membership in "professional organizations" as a condition for employment, reemployment, or rating, to spell out precisely what "professional organizations" they mean. A few examples follow:

Example 1

(Information officially distributed to all teachers from the office of the superintendent of the district.)

Teacher Affiliations

Teaching is a profession, and being such, teachers are expected to assume the responsibilities that go with being associated with such an honorable occupation. It is recommended that the teachers of this district join the basic professional groups and such other organizations that advance educational ideas and progress in keeping with the accepted doctrines of building and maintaining our republic.

Basic organizations open to all teachers in ----- County are:

1. The ----- County Teachers Association.
2. The California Teachers Association.
3. The National Educational Association.

The above groups will welcome your membership.

Subsidiary organizations include many special groups, too numerous to mention here, but it is worthy to note that they merit your attention and consideration.

Deduction of Professional Dues

The method of deduction for professional teacher association (CTA, NEA, and —CTA) dues from payrolls shall be worked out to the mutual satisfaction of the teacher and the district business office.

Example 2

(Information officially distributed to all teachers through the office of the superintendent.)

Professional Organizations

Professional unity manifested through numbers of teachers identified with educational associations, to a high degree, determines the vigor and status of the teaching profession. Membership in reputable organizations has long been encouraged and sanctioned by the board and administration. Membership dues may now be paid by requesting the district office to withhold a small amount each month. Teachers may also pay their dues in a "lump sum" if they wish.

----- Teachers' Association professional membership costs as follows:

National Education Association -----	\$10.00
California Teachers' Association -----	22.00
----- County Teachers' Association -----	1.00
----- Teachers' Association -----	2.00

Teachers are encouraged to invest in their profession by becoming a member of the four groups shown above.

4. While many districts claimed not to have any policy on the subject of membership in employee organizations, their actual practices leave little room for doubt that there is something greater than "volun-

tary participation" at work in many districts. Few human institutions, outside the Iron Curtain, claim 100 percent "voluntary" membership in anything.

The committee received the following from a southern California superintendent:

Example 3

"I have received your letter of June 8 requesting information about board policies regarding employee membership in professional organizations. Our district does not have any policy on membership in organizations, and the board has not taken any position to encourage or discourage membership in any professional organization or teachers' union. (Our note: Note the distinction made by the superintendent himself.)

"As a matter of information, all of our teachers belong to the CTA and the local District Teachers' Association. (Emphasis ours) . . ."

5. A statement by a school district spokesman that "we have no policies for certificated personnel in professional organizations" does not always mean just that. That statement was received in a letter from the superintendent of "X" District, among many others. Yet, the teachers' handbook for 1964-65, adopted by formal action of the board of education of "X" District, contains the following statement:

Example 4

"Professional Organizations: This school district has had for eleven year (sic), 100% membership in the NEA, CTA, "X" County Teachers' Association, "X" Teachers' Club, and CTA Welfare. We believe that it is our PROFESSIONAL DUTY to belong to the above named organizations. Let's keep our record 100%."

The above policy bulletin was sent out to all certificated personnel by the same person who responded to the committee's questionnaire.

Example 5

Gentlemen:

In accordance with your request of June 8, 1964, we have no policies for certificated personnel in professional organizations. Certificated personnel belong to the following organizations:

CTA	California Teachers Association
NEA	National Education Association
--CTA	----- County Teachers Association
--TA	----- Teachers Association

The Superintendent belongs to:

NEA	National Education Association
CTA	California Teachers Association
--CTA	----- County Teachers Association
--TA	----- Teachers Association
--CAA	----- County Administrators Association
CESAA	California Elementary School Administrators Association
CASA	California Association of School Administrators
CAPSBO	California Association of Public School Business Officials
ASBO	Association School Business Officials
AASA	American Association School Administrators

DESPA
DCDAA
etc.

We are enclosing an application form, salary schedule, and certificated employee evaluation form.

Yours very truly,

District Superintendent

6. While most districts did not specify in writing which "professional organizations" were considered desirable for membership, the actual membership in one of the "professional organizations" of the person doing the rating leaves little doubt in the mind of all but the dullest of applicants as to which "professional" organization will receive the blessing of the "professional" person doing the rating.

7. By virtue of long usage and continuous association, there can be little doubt that reference to "professional organizations" on the various applications and rating is intended to be understood as being the California Teachers Association and its affiliated associations.

The following represent but a few of the many statements of policy, application forms, rating forms, and related material in the possession of the committee which substantiate the preceding statement:

Example 6

School Policy—District F

802 PROFESSIONAL ORGANIZATIONS

(Refer to Section II, 214, of this handbook for professional organizations and educational activities.)

1. ----- Teachers Association

The local association is in close contact with the individual teachers, and its functions and programs are keyed to their needs and interests. Our local association has helped in developing teachers' salaries, professional policies, in community relations, and in other ways.

The Association has adopted the policy of unified dues which includes membership in

The ----- Teachers Association

The ----- County Teachers Association

The California Teachers Association

Southern Section Welfare of CTA

The National Education Association

From District G, we received the following statement in a letter from the director of instructional services:

"We do not issue any statements, nor do we have any policy statement concerning the necessity to belong to a professional teachers' organization."

Yet, in an attachment to that same letter, entitled "Administrative Policies, G School District," we note, among a host of directives to teachers regarding such things as mandatory attendance at PTA meetings, all meetings called by "the administrator," etc., the following directive:

Example 7

"6. Membership in professional organization, *such as CTA*, (our emphasis) is expected."

In District H, in the Principal's and Teachers' Handbook provided to the committee by the district superintendent, we find under the heading "Professional Organizations," the following:

"One evidence of the professional growth and the professional interest of the teachers in a school system is the extent to which they support the organizations for the advancement of education. The gains that have been made in California and throughout the country have been due in a large measure to organized effort. It is considered almost a must, then, that principals and teachers support the "H" Teachers Association, the CTA, and the NEA. . . ."

The director of personnel of District "I" sent the following statement:

Example 8

"The following statement appears in our New Teachers' Handbook, and is not written policy; and not in the Certificated Policy Book:

"Teachers are urged to join the local, state, and national professional organizations:

- "1. "I" Teachers Association
2. California Teachers Association
3. National Education Association."

And finally, as further indication that, in the minds of people who do the rating, and certainly, therefore, in the minds of those being rated, CTA is synonymous with "professional organization," we offer the following response from the deputy superintendent of District "J":

Example 9

"With reference to membership in professional organizations, we quote from our Handbook for Certificated Personnel:

"J'TA is the local chapter of the California Teachers Association and an affiliate of the National Education Association. Dues may be paid by payroll deduction."

8. While the precise concern of this study is membership in "professional organizations," meaning organizations composed of credentialed school employees, it is not entirely impertinent to note that expectation of joining, participating in, paying dues to the PTA, is considered a desirable, and often necessary, condition of employment for credentialed employees as often as is membership in the CTA.

B. Accreditation:

Accreditation is a quasi-legal process of evaluation of a school district's program. In California it is done by the Western Association of Schools and Colleges, a private organization whose address is 1499 Bayshore Highway, Burlingame.

Education Code Section 5557 allows governing boards of districts maintaining a secondary school to "pay the costs of accreditation of the secondary school by any accrediting association." Outlines, procedures, handbooks, etc., for the Accrediting Commission of the Western Association of Schools and Colleges are copyrighted by the California Association of Secondary School Administrators, with offices located in the CTA Building at 1705 Murchison Drive, Burlingame. They formerly were responsible for accreditation in California.

The value of accreditation is not of concern in this report. Neither the legality nor the propriety of private organizations presuming to judge the standards of public schools is being questioned at this time.

What is of concern is the clear fact that a quasi-legal body, with evident sanction from the school district administration, can certainly be expected to exercise appreciable influence on loyal, dedicated employees who wish to assist their district in obtaining a "good rating" in their accreditation evaluation. Whatever "stigma" attaches to a poor rating will certainly be considered if an individual contributes to that poor rating.

Therefore, it is germane to note that the Western Association of Schools and Colleges, in its bulletins outlining "Procedures for Appraising the Modern High School," devotes a section to various activities which will "substantiate the level of professional competence maintained by the instructional staff. . . ."

Of the five items under this heading, the one of interest to this study is No. 2, which leaves blank space for describing "Active Participation in Professional Organizations."

Since this is to describe a school staff, perhaps the only index would be level or percent membership in the "appropriate" professional organizations, plus listing of any who had achieved special eminence such as holding office.

When we get to the self-rating blanks to be filled in by individual staff members, little doubt is left, once again, as to which "professional organizations" are the appropriate ones.

In a questionnaire distributed to all members of a southern California school district to be used "in a report being prepared for the accreditation committee which will visit our school in February, 1965," instructions were given on Question 12 to all teachers with an Adult credential only to "check any of the following professional organizations to which you belong:

- a. Post High School Education Association
- b. California Council for Adult Education
- c. National Association of Public School Educators
- d. _____ Teachers Association
- e. California Teachers Association
- f. National Education Association
- g. Other (name)"

Question 13 repeated the same request for membership for all teachers holding credentials other than Adult Education credentials.

C. Teacher Training Institutions:

The letter quoted in the Methodology Section to teacher credentialing and placement services of the California teacher education institutions was sent to the 49 institutions on the list furnished this committee by the State Department of Education. Returns were received from 34.

Of the 34, in answering the key question, "In interviews conducted by the placement office is the advantage of membership in professional organizations stressed (1) greatly, (2) moderately, (3) not at all," 5 institutions checked "greatly," 11 institutions checked "moderately," and 18 institutions checked "not at all."

There can be little doubt that this is misleading, and that there is a great tendency for teacher training institutions to tend to exert a great, or a moderate, rather than no influence at all towards impressing on a teacher candidate the importance of belonging to "appropriate" professional organizations.

For example, there is a record of at least one of the public institutions which checked the "not at all" column exerting considerable pressure to get teacher applicants to express favorable attitudes towards the CTA in order to get a favorable recommendation for employment being sought. The same person also has an apparent record of making derogatory remarks regarding membership in competing organizations (in this particular case, the American Federation of Teachers). From material in possession of the committee, selected remarks are quoted (names have been deleted, but are in the committee's possession) from an interview between a teacher utilizing the placement services of this public agency and the supervisor of secondary and junior college placement. It is important to recall, in reading the conversation, that it is not claimed that this is typical of the process in this institution; nevertheless, it must also be recalled that this institution checked "not at all," when asked what stress was placed on membership in "professional organizations."

(Interviewer—"I"; Applicant—"A")

I. You don't belong to one of those teacher things, do you?

A. Do you mean a teachers' union? Yes.

I. Well, I don't see why you would want to work at any California school, or why any administrator would want to hire you.

A. Do you mean that I can't get a job because of my union membership?

I. I don't see how. I can't ask an administrator to hire an agitator.

I. I've never taught, and I have nothing against labor unions, but it seems to me that teachers have their own *professional organization*, (emphasis ours) the CTA . . .

Additional evidence that teacher training institutions tend to exert some, rather than no, influence on membership in professional organizations among teacher applicants is furnished by another public institution which checked the "not at all" column, and also provided the committee with a bulletin put out by the college entitled "Teacher

Placement." In the section "Job Opportunities" the question of commercial placement agencies is raised, and the college states:

"Here in California we sometimes urge a candidate with specific geographic restrictions (sic) to use the placement services of the California Teachers Association Placement Office, since they have a larger coverage than we. CTA charges a fee for their services; but when a person finds himself in a crowded field and/or with geographic restrictions, it is advantageous to register with them. A personal interview with CTA in Burlingame is the first step."

Note: To obtain CTA placement services, an applicant must first join the CTA.

Several other institutions included material which belied their claim that they made no effort to impress on teacher candidates the importance of membership in "professional organizations." However, the most outspoken position on this subject came from a private college, licensed by the State of California to grant teaching credentials. The significant portions of their response is reproduced below:

"Gentlemen:

"In reply to your communication of June 16, 1964, relative to your project dealing with membership in professional organizations of credentialed employees of California school districts, at ----- University of ----- *each student teacher*, before entering his directed teaching assignment in a laboratory school, is given a thorough orientation covering the professional organizations in the areas of his teaching major and minor fields. Besides brochures describing the advantages of such membership, he is given applications for processing.

"Each student teacher is required to be a member of the Student California Teachers Association Chapter on the ----- University campus. This SCTA membership includes affiliation with the National Education Association.

"Our followup studies indicate that these prospective teachers continue membership in their professional organizations after they obtain contracts for teaching positions."

IV. CONCLUSIONS

1. The right of certificated public school employees to "join" . . . or "refuse to join" . . . "employee organizations of their own choosing" is being interfered with, abridged, and violated on a widespread basis throughout the State of California.

2. Legal remedies available to provide redress from the practices mentioned do not provide practical relief. To initiate judicial processes the teacher must be unconcerned about future employment as a teacher in California.

3. While most written material collected referred to "professional organizations," there is little doubt that ratings, employment, promotions, and recommendations for tenure are, on a widespread basis, dependent on membership, not just in "any" "professional" organiza-

tion, but explicitly on membership in the California Teachers Association and its affiliates.

4. While the findings of this study are based on a limited number of written responses, there can be no doubt that the subtle oral pressures to "join," "to have a 100 percent membership this year," etc., are every bit as influential and prevalent as the written policies and directives. For these "pressures" to emanate from persons having the power to recommend for rating, hiring, firing, promotion, transfer, and other conditions of employment is improper at best, and illegal at worst.

5. Stronger, more explicit penalties must be assessed for specific acts in violation of the code sections in question.

6. Continued pressure is inevitable, regardless of safeguards, as long as the raters and those being rated are members of the same organization.

7. Requesting names and numbers of members of employee organizations in order that they may qualify to represent their members places undue restraint on any organization other than that "professional" organization which numbers among its members authorized administrative representatives of the Board of Education.

8. Even if no written material available to a certificated employee refers to membership or nonmembership in "professional" organizations as a condition of employment, he will still be powerless to determine whether this membership or nonmembership is a relevant condition of employment unless all material in his personnel folder upon which a rating may be based are made available for his inspection.

V. RECOMMENDATIONS

1. Membership in employee organizations should under no circumstances be considered relevant to a certificated person's standing regarding:

- Employment,
- Reemployment,
- Dismissal,
- Performance rating,
- Transfer or promotion,
- Placement service by public or private placement agencies,
- Evaluation for accreditation.

2. The definition of "employee organizations" in Government Code Sections 3500 et al. should be redefined to stipulate that, insofar as employee organizations consisting of certificated personnel in the public school system are concerned, those organizations eligible to represent their members as stated in code Sections 3500 et al. should be composed only of members who have no power by virtue of their position to affect the employment standings of other certificated employees in the same organization.

3. Materials in personnel files of certificated employees which may serve as a basis for affecting the conditions of employment of the certificated person should be made available for the inspection of the person involved.

4. The propriety, legality, and desirability of the accreditation process should be given intense study.

5. The names and/or numbers of members should not be required by governing boards of employee organizations composed of certificated school personnel as a condition for eligibility to represent their members unless the employees have had the opportunity to designate the organization of their choice by secret ballot election.

o

Final Report on

DEPARTMENT OF VETERANS AFFAIRS FARM AND HOME PURCHASE PROGRAM

A Report of the Senate Factfinding Committee on
Governmental Administration

MEMBERS OF THE COMMITTEE

SENATOR STANLEY ARNOLD, *Chairman*

SENATOR JOHN C. BEGOVICH, *Vice Chairman*

SENATOR THOMAS M. REES

SENATOR GEORGE MILLER, JR.

SENATOR STEPHEN P. TEALE

SENATOR VIRGIL O'SULLIVAN

SENATOR ROBERT D. WILLIAMS

HUGH MacCOLL, *Consultant*



Published by the
SENATE
OF THE STATE OF CALIFORNIA
1965

GLENN M. ANDERSON
President of the Senate

HON. HUGH M. BURNS
President pro Tempore

JOSEPH A. BEEK
Secretary of the Senate



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LETTER OF TRANSMITTAL

February 18, 1965

HON. GLENN M. ANDERSON
President of the Senate

Dear Mr. President:

The Senate Factfinding Committee on Governmental Administration was authorized by letter from Senate Rules Committee of January 4, 1964, to study the subject matter of veterans' loan funds.

We submit hereby the report and recommendations based on that study.

Respectfully submitted,

STANLEY ARNOLD, *Chairman*
JOHN C. BEGOVICH, *Vice Chairman*
GEORGE MILLER, JR.
VIRGIL O'SULLIVAN
THOMAS M. REES
STEPHEN P. TEALE
ROBERT D. WILLIAMS

Final Report on
**DEPARTMENT OF VETERANS AFFAIRS FARM
AND HOME PURCHASE PROGRAM**

I. STATEMENT OF PROBLEM

As stated by Senator Arnold, chairman of the committee, at the October 9, 1964, hearing on the Cal-Vet program, one of the reasons for the study is, "... that the program has been so successful, that it has been so well managed by the Department of Veterans Affairs, that the California veteran has made such a remarkably faithful repayment of loans, that we find ourselves with that most unusual of all governmental problems—a surplus of money.

"For California veterans of World War I, World War II, and the Korean War, the California veterans program has made 216,602 loans since 1921. Of these, 85,497 have been paid in full. The amount in dollars which has been loaned out to veterans under this unique program is in excess of two billion dollars.

"As of this date, from a summary of the status and use of farm and home reserve fund of the Cal-Vet program, we see that \$1,333,074,000 is invested in loans; \$1,332,020,000 is in outstanding bonds; and there is a surplus of \$45,037,780.

"With no change in the program, it is likely that the surplus will continue to grow; and that is the reason for the hearing today, which forms a part of the study by our committee of the California veterans farm and home loan program.

"It is not that we have anything against reserves or surpluses. We have nothing but admiration and respect for public programs which do create reserves and surpluses. We feel that all California citizens, whether veterans or not, have reason to be grateful for the manner in which the public trust has been handled in the case of the California veterans farm and home purchase program.

"However, state agencies are established to perform certain services. The question arises and must be faced—if surpluses are accumulating and are likely to continue to accumulate, can the surpluses be put to use in a manner which will help the agency better serve the purpose for which it was designed? In the case at hand, the purpose was originally, and still is, to serve the veterans of the State of California. How these surpluses should be employed to better serve the California veteran will receive as many different answers as there are agencies, or persons interested in the program."

The problem, then, is how to make best use of accumulating surpluses to serve the purposes for which the program was established.

II. POSSIBLE PROGRAMS AND THEIR EFFECT UPON THE CAL-VET SURPLUS

This portion is reproduced from material prepared for the October 9 hearing by the Department of Veterans Affairs.

PROGRAM: "Lower Interest Rate to 3.57 Percent"

Immediate Effect. Would decrease surplus buildup by approximately \$2,030,000 per year. The 3.57 percent interest rate is the present cost of operation. The lower interest rate would mean an average savings of approximately \$15 per year per contract holder. This would not lessen the monthly payment but would shorten the repayment period.

Long-range Effect. The decrease would have an effect on the improvement loan program for it would diminish the amount available. It would also shorten the period which could be funded by the present bonds.

Another factor to be considered here is that the present bond authorizations will have been paid off by 1989, yet there will be loans outstanding and some of these, especially in the low-income group, could be bad risks. It is necessary, therefore, to have some reserve to cover such possible risks.

Remarks. This would not benefit the 85,000 veterans who helped participate in the program but are no longer in the program.

PROGRAM: "Lower Interest Rate $\frac{1}{4}$ to $3\frac{1}{2}$ Percent"

Immediate Effect. Would decrease surplus buildup by approximately \$3,375,000 per year. Same effects as lowering interest rate to 3.57 percent in that it would hasten the depletion of the available bond money.

Long-range Effect. The decrease would have an effect on the improvement loan program for it would diminish the amount available. It would also shorten the period which could be funded by the present bonds.

Another factor to be considered here is that the present bond authorizations will have been paid off by 1989, yet there will be loans outstanding and some of these, especially in the low income group, could be bad risks. It is necessary, therefore, to have some reserve to cover such possible risks.

Remarks. This would not benefit the 85,000 veterans who helped participate in the program but are no longer in the program. This would give the Cal-Vet applicants a loan with interest *below costs*. This would be hard to justify.

As all bond sales and uses of bond moneys have a direct bearing on the future bids and sales of bonds in the state, it is a serious matter to

consider making loans below the actual cost, even though the presence of the surplus makes it possible for a time.

PROGRAM: "Increase Refinancing of Homes Now Under Conventional Loans to \$10 Million Annually"

Immediate Effect. Would use all of annual buildup of reserve plus an additional amount from present reserve. Each 10 million dollars would provide for about 750 loans per year under the present maximums.

Long-range Effect. Would hasten bond depletion date.

Remarks. Over the past 43 years the 2 billion plus dollars in bonds has covered 211,695 loans. As of August 31, 1964, Cal-Vet eligibility had been established for 609,000 vets with about 1,000 per month being added.

The 750 loans under refinancing would permit an average of one loan per month per county.

PROGRAM: "Open Program to Unlimited Refinancing for as Long as Money Is Available"

Immediate Effect. Would answer request of many vets. Would deplete the available money within months.

Long-range Effect. Would hasten bond depletion date. Would bring the program to a point where it would be only a collection and servicing agency unless additional bonds were authorized by voters.

Remarks. Legislative intent should be determined—whether bonds and money are for initial assistance or to provide budgetary relief for those who are paying interest rate above that of Cal-Vet.

PROGRAM: "Create Revolving Fund by Maintaining Present Surplus—and Increasing Interest Rate"

Immediate Effect. Would increase the surplus by about \$3,375,000 per each $\frac{1}{4}$ percent. A 5 percent rate would add about 18 million per year. By 1970, when it is expected the present bonds will be gone, there would be about \$150 million in surplus which could be loaned on the premise that there would be no more bond authorizations.

Long-range Effect. Would limit Cal-Vet program to the moneys available and would eliminate future bond requests.

Remarks. Any increase of the interest rate will draw criticism from some of the Cal-Vet contract holders. Some will feel that they should not bear the cost of establishing such a revolving fund. The present contract holder would probably ignore the past 43 years of operation, varying interest rates, and other factors that makes the present low interest program and fringe benefits possible.

PROGRAM: "Increase Maximum Loan From \$15,000 to \$17,500"

Immediate Effect. Would cost approximately \$65,000,000 per year, thus reducing not only the full surplus but a portion of the present bond authorizations too. Would add about 2,500 loans per year, at an

average loan of \$15,750. Present average loan under the \$15,000 maximum is \$13,500.

Long-range Effect. Would move up the bond depletion date by approximately 15 months for each year of operation.

PROGRAM: "Increase Maximum Loan From \$15,000 to \$20,000"

Immediate Effect. With a maximum loan of \$20,000, the average loan is expected to be approximately \$18,000, which will require an investment of approximately \$225 million a year, or an increase of \$90 million in bond funds over the present level of operation. At a maximum of \$17,500, with an average loan of \$15,750, approximately \$200 million will be invested annually, or an increase of \$65 million in bond funds over the current amount.

Long-range Effect. Would move up the bond depletion date.

PROGRAM: "Pay Fire Insurance Premiums"

Immediate Effect. Would cost approximately \$3½ million per year.

Long-range Effect. The decrease would have an effect on the improvement loan program for it would diminish the amount available. It would also shorten the period which could be funded by the present bonds.

Another factor to be considered here is that the present bond authorizations will have been paid off by 1989, yet there will be loans outstanding and some of these, especially in the low income group, could be bad risks. It is necessary, therefore, to have some reserve to cover such possible risks.

Remarks. Department is now paying part of the life and disability insurance premiums (\$1,740,000 per year).

PROGRAM: "Enact Legislation to Retain Sufficient Reserve to Provide for Contingencies. Reserve to Be in Cash. Such Legislation Could Stipulate That the Surplus May Be Used at the Direction of the Director to Relieve Contract Holders Affected by Acts of Nature or to Offset Any Risks Involved After the Retirement of All Bonds, but Prior to the Ending of All Outstanding Loans."

Immediate Effect. Would curtail the program slightly unless additional bonds were sold . . . for it would withdraw the reserve money now in loans and deposit the amount in a cash reserve.

Long-range Effect. Would bring the bond sale date and bond depletion date closer.

Remarks. Sound economic principles call for the retention of such a reserve. Based on the present status, a reserve of \$55 million is appropriate.

PROGRAM: "Absorb Into the Operating Costs the Title Insurance Premium and Escrow Fees to the Amount Now Paid by the Buyer"

Immediate Effect. Would diminish the annual accrual within the operating portion of the surplus by approximately \$300,000 per year.

Long-range Effect. Would hasten bond depletion date.

Remarks. This would benefit *new* contract holders coming into the program.

PROGRAM: "Make Legislative Changes to Permit the Department to Loan Only the Difference Between Amount Available Through Conventional Loans and the Maximum Under Cal-Vet. The Vet Would Pay the Commercial Rate on One Portion and the Cal-Vet Interest on the Remainder."

Immediate Effect. If the maximum was not changed, it would allow the available bond money to last longer.

Long-range Effect. If the maximum was raised, it would hasten the depletion of bond money as the greatest demand now is for loan in the above-\$15,000 category.

III. COMMITTEE RECOMMENDATIONS

A. Modifications to Permit More Lenient Loan Provisions on Homes in Isolated or Remote Areas

Under present administrative rules, loans on homes in isolated areas have been monitored closely to insure that the veterans and the department did not suffer in a subsequent resale. Several factors, however, indicate that a lessening of the controls in such cases would not add too much risk to the program, and would undoubtedly benefit the Cal-Vet applicant. With the repossession rate low in such loans; the developments in the more remote areas; the influx of more residents and the accompanying fire and security units; some administrative changes can be made.

Recommended Department Action. Review administrative rules and ease those that will benefit Cal-Vets purchasing a home in remote areas.

Forward copy of revised rules to Senate Factfinding Committee on Governmental Administration.

Recommended Veterans Board Action. Review policies to insure they meet the needs and the fiscal limitations of the moment.

Announce publicly the intended change.

B. Modification to Permit Potential Retirees to Obtain Cal-Vet Home Prior to Occupancy

The suggestion has been made that the law should be changed to permit those persons about to retire to obtain a Cal-Vet home, even though it would not be occupied by "him or a member of his immediate family within 60 days of purchase," as is now required under Section 986.3(b) of the Military and Veterans Code.

Although the size of this potential group of applicants is unknown, it seems feasible to extend the nonoccupancy period to one year, and specify that the period beyond 60 days is available only to those who satisfy the department that they will or must retire within the year under law or company policy.

Recommended Legislative Action. Amend Section 986.3(b) of the Military and Veterans Code to extend nonoccupancy period for potential retirees to one year.

Recommended Department Action. Revise the administrative rules after the passage of legislation.

C. Extension of Low-income Loan Program

The low-income loan program was initiated in the Department of Veterans Affairs in November 1963. To date, 449 approvals have been given from a total of 637 applications received. Disapprovals have been based on: Unacceptable credit history or employment (27 percent); veteran applicant did not have sufficient cash available to make

the required down payment (43 percent); property submitted deficient either structurally or functionally (30 percent).

As noted in the statement of extended amortization loans, such higher risk loan income loans will extend past the period of final bond redemption.

Recommended Department Action. Reduce down payment requirement for low-income long-term loans. (Current requirement is 5 percent of appraised value.)

Recommended Legislature Action. Request periodical reports of progress, problems, and possible changes within the low-income program.

IV. RELEVANT INFORMATION

This portion is reproduced from material prepared for the October 9 hearing by the Department of Veterans Affairs.

History of the Cal-Vet Program

The California Legislature enacted the Farm and Home Purchase Act in 1921. A principal objective was to enable veterans to purchase homes for their own use through regular equal payments over an extended period. At the time, no lender made loans for a 20-year period and, in the 1921 economy, a relatively small number of families owned their homes. The program served to make it possible for more families to do so. Experience with the Farm and Home Act proved the feasibility of long-term lending and presaged today's FHA, G.I., and conventional lending patterns.

Initially, the maximum loan was fixed at \$5,000. This amount was maintained until the end of World War II. With the close of the war, increased prices, coupled with a pent-up demand for housing, warranted an increase in the loan amount.

At the close of World War II, as veterans were returning to civilian life in September 1945, a maximum loan of \$6,500 was provided. This amount was increased to \$7,500 in May 1946.

In the 1951 legislative session following eruption of hostilities in Korea, the loan program was extended to those veterans and the maximum loan increased to \$8,500. Increasing housing costs and property values brought about a further increase in loan to \$15,000 in July 1956. Since the change to a \$15,000 loan, 145,000 loans have been made.

By September 1, 1964, the program had been operating for 43 years. During this period, loans have been made as follows:

	LOAN PORTFOLIO	
	<i>This month</i>	<i>Number approved Total since 1921</i>
Veteran status		
World War I	13	21,976
World War II	464	152,199
Korean Emergency	271	42,427
Loans paid in full	820	85,497
	<i>Loans currently in force and in escrow</i>	
	<i>Number</i>	<i>Amount in thousands</i>
Total loans this month	748	\$10,491
Total currently in force and in escrow	131,105	1,333,074
Total since 1921	216,602	2,198,593

Legislative and Administrative Changes in the Program (1959-64)

Early in 1959, there was some question that the Division of Farm and Home Purchases was being operated at maximum efficiency. Therefore, the Director of Veterans Affairs ordered a survey and study of the division's operations. For a clear understanding of the purposes of the survey, it is necessary to provide some background.

The California Legislature, during its 1956 session, increased the maximum loan on homes from \$8,500 to \$15,000 and on farms from \$15,000 to \$40,000 and provided a Veterans Bond Act in the amount of 500 million dollars. Plans were made to open new offices and increase personnel to handle an estimated 2,500 loans per month, totaling approximately 30 million dollars. Applications for loans were received in even greater numbers than anticipated and soon began to accumulate because neither the personnel nor the facilities were adequate to give them immediate attention. To alleviate some of the pressure, improvement loans and second loans were suspended.

Early in 1957, it became a policy of the State Treasurer that no more than 50 million dollars in veterans' bonds could be sold each 90 days. This meant that only 1,400 loans, totaling about 17½ million dollars could be handled each month so the applications accumulated at an even greater rate. In 1957, the Legislature placed a moratorium on using Cal-Vet loans to refinance existing loans on homes that veterans had already purchased. As applications to refinance existing loans represented about half of those filed, this relieved the pressure considerably and improvement loans and second loans were reinstated on a limited basis.

In December 1957, the interest rate on all Cal-Vet loans was increased to 3½ percent from the 3 percent rate that had been in effect since 1946. The California Veterans Board took this action because of increasing interest costs on veterans bonds.

During the 1958 legislative sessions, the moratorium on refinancing was made permanent with the provision that some 15,000 unprocessed applications filed with the division prior to July 3, 1957, could be processed when funds were available in amounts greater than was necessary to meet the current demand for loans. Also in 1957, the \$25,000 value ceiling was placed on homes that could be purchased with Cal-Vet loans and a 300-million-dollar bond act was passed.

In 1956, the division had organized a staff for much greater volume than could be handled in 1959 with the amount of bond funds available. During the intervening years, some adjustments were made and the staff had been reduced slightly through attrition. The survey and study resulted in drastic changes in organization and functions within the division and the immediate elimination of some 57 positions. The first year's savings were half a million dollars and an increase in the level of service to those seeking Cal-Vet loans, but there was still a large accumulation of unprocessed applications for Cal-Vet loans—approximately 18,000.

The Cal-Vet interest rate was raised to 4 percent in early 1960 to offset increasing interest costs on veterans' bonds.

In May 1960, a commitment program was initiated whereby each application as it was received could be processed and, although funds were not immediately available for a loan to be made, the division could commit to make a loan when funds were available. By the end of 1960, all accumulated applications had been processed as well as those that had been received since the initiation of the commitment program, and the division was handling applications on a current basis.

During 1960, a 400-million-dollar bond act was passed.

In mid-1960, the California Veterans Board acted to discontinue the practice of the division absorbing a portion of the cost of fire and hazard insurance premiums on Cal-Vet properties.

There was also a study of other means of financing the Cal-Vet program underway with revenue bonds being preferred alternative to general obligation bonds. In a series of meetings with the Governor, State Treasurer, State Controller, and Director of Veterans Affairs, representatives of the several veterans' organizations declined to endorse the use of revenue bonds to finance the Cal-Vet loan program because it probably would result in higher interest rate to Cal-Vet purchasers.

Early in 1960, negotiations were commenced with representatives of the California Association of Insurance Agents to renew the five-year agreement to provide fire and hazard insurance coverage on all Cal-Vet properties which would expire on December 1, 1960. When it became known that the California Association of Insurance Agents was unable to obtain a proposal from the insurance companies signatory to the 1955-60 agreement for all physical loss coverage, including insurance against damage from landslides, subsidence and earth movement, proposals were solicited from any company, group of companies, or brokerage firm that would provide all physical loss coverage. When only two written proposals were received by November 30, 1960, the Director of Veterans Affairs accepted the proposal from the National American Insurance Company because it provided the required coverage at the lowest premium rates. The other written proposal submitted through the California Association of Insurance Agents provided for broad form coverage, not including landslides, subsidence and earth movement coverage, and had premium rates higher than the proposal of National American Insurance Company.

The agreement with the National American Insurance Company provides, among other things, that the division will adjust insured losses. The division's ability to provide this adjustment service was questioned by critics of the agreement.

After almost four years of operations, the division's personnel performing this function have proved the critics wrong. Claims have been processed rapidly and equitably. The division has met several severe tests during the administration of this insurance program. In 1962, during one week, over 600 claims for wind-storm damage were filed with our northern California offices. These claims were all handled expeditiously to the benefit of all concerned.

Negotiations to increase benefits under the home protection plan of life insurance were completed early in 1960 with the two companies that underwrite this insurance—the California Western States Life Insurance Company and Occidental Life Insurance Company. It was found that too often when a widow received a deed to the property after the loan was paid by the home protection plan of life insurance, there were not enough assets available to meet immediate expenses. The coverage was therefore broadened to provide a cash payment to the widow in the amount of 20 percent of the loan balance. This, of course, is in addition to the loan balance which is paid to the department. As a further aid, double indemnity for accidental death was also included.

In 1961 the demand for Cal-Vet loans declined, allowing the division to liquidate all outstanding commitments and grant loans on a cur-

rent basis. In addition, the Legislature, at the 1961 session, authorized 20 percent of available bond funds to be used to refinance loans for those who had filed applications before July 3, 1957. Processing of these loans was completed by the end of 1961.

The Legislature made some other important changes in the Cal-Vet loan program during the 1961 session.

The \$25,000 maximum value limitation on homes was changed to apply to improvements only and not the land.

A provision was made for the home protection plan of life insurance to cover all who obtain loans, including those with disabilities. The Director of Veterans Affairs extended this coverage to those who already had loans but who had been denied life insurance in the past for health reasons.

Those Japanese who were relocated during World War II, entered service from another state, and accepted a bonus were made eligible for Cal-Vet loans.

In 1962 a constitutional amendment and enabling legislation were passed by the Legislature providing for all widows of California veterans who had not remarried to be eligible for Cal-Vet loan benefits. In order to become effective, this had to be voted upon in the November 1962 general election. It failed in this election and therefore did not become law.

During the years 1959 to 1962, we experienced an increase in the number of repossessed properties. This was normal because we had previously experienced a tremendous increase in the total number of loans. On an experimental basis in 1962, the division assigned four employees to act as a sales and property management team for the disposal of these properties. The majority of repossessed properties were in the San Joaquin Valley and San Bernardino areas. The team was successful in reducing the inventory and has now been disbanded. The management of repossessed properties has been returned to the district offices.

With veterans' bonds selling at favorable rates, interest charged on Cal-Vet loans was reduced to $3\frac{3}{4}$ percent in November 1962.

In 1963 a survey was conducted to determine if efficiency could be increased and economies effected by combining several of our district offices. As a result of this survey, our former Long Beach district office and former Santa Barbara district office were closed and their territories and personnel taken over by the other adjacent districts. This resulted in the transfer of some personnel, but did not result in layoff of technically trained people.

The continuing decline in demand for Cal-Vet loans through 1962 and 1963 made possible the elimination of the restrictions on improvement loans and second loans in early 1963.

During the 1963 legislative session, the requirement that the veteran purchaser reside in the property on which he obtained a Cal-Vet loan was changed to allow his family to occupy where it was impossible for him to do so.

So those California veterans in the lower income groups could have better opportunity to participate in the Cal-Vet loan program, the plan was initiated in July 1963 to set the term of loan according to a veteran's income up to a maximum of 40 years. By extending the

loan term, a veteran with a modest income can repay a higher loan amount at a monthly payment within his means. Two hundred eighty-four low-income loans were made during the first seven months this program was in effect.

A further broadening of the home protection plan of insurance was made in early 1964 by covering all Cal-Vet purchasers with disability insurance without a physical examination as long as they were working full time for full pay.

A review of the experience under the time protection plan of life and disability insurance showed a need for an increase in premium rates resulting from the elimination of underwriting on both life and disability coverages. Rather than charge the increased premium rates to the Cal-Vet loanholders, it was decided that the premium increase would be paid from the surplus funds in the program. The premium cost to be paid from surplus funds amounts to about \$1,740,000 a year.

Legislation enacted at the 1964 session authorized the use of \$5,000,000 each year to finance homes for veterans which had been purchased with loans having an interest rate in excess of 5 $\frac{3}{4}$ percent. In addition, loans guaranteed or insured by the federal government were excluded from consideration. \$5,000,000 each year will allow approximately 350 of these loans to be made. To date only those veterans having been wounded or disabled as a result of war service have received loans, as they are given first preference for all benefits under the Veterans' Farm and Home Purchase Act.

The maximum farm loan was increased from \$40,000 to \$80,000 during the 1964 legislative session.

Present Cal-Vet Programs

The Division of Farm and Home Purchases administers its programs through 15 district offices at the following locations:

Bakersfield, 345 Chester Avenue
Fresno, 2550 Mariposa Street
Modesto, 1700 McHenry Street
Oakland, 1111 Jackson Street
Redding, 2135 Akard Avenue
Sacramento, 1227 O Street
San Bernardino, 588 Sixth Street
San Diego, 1350 Front Street
San Francisco, 350 McAllister Street
Santa Clara, 68 North Winchester Boulevard
Santa Rosa, 1739 Fourth Street
Inglewood, 830 North LaBrea Avenue
Santa Ana, 1634 West 19th Street
Van Nuys, 16917 Enadia Way
West Covina, 1707 West Garvey Boulevard

Cal-Vet Eligibility is restricted to those who served 90 days or more in the U.S. armed forces during wartime, and was a resident of the state on entry into active duty. A portion of service must have occurred between April 6, 1917, and November 11, 1918, between December 7, 1941, and December 31, 1946, or between June 27, 1950, and January 31, 1955. Discharge under honorable conditions is required.

Primary Benefits

Home Loans may be made in an amount not to exceed \$15,000. Properties are appraised at no expense to the veteran. An interest rate of $3\frac{3}{4}$ percent is currently charged. The interest rate is subject to minor adjustment, according to the financial status of the program. Basic monthly installment payments remain constant—a change in interest rate is reflected by a change in the loan amortization term, which is presently 23 years.

Loans are limited to single-family dwellings, suitable as residences for veterans and their families. Loans may be made for purchase of either new or existing homes. Two alternative methods are also provided to those who wish to have homes constructed on land they own:

A. *Progress Payment Plan.* The veteran's proposed building site is inspected, his house plans and specifications are analyzed, and his contractor's agreement is reviewed. The amount to be loaned is determined, and released to the contractor at certain stages of construction.

B. *Conditional Commitment.* The building site is inspected, plans and specifications are analyzed, and a loan amount is committed to the veteran. The commitment is conditioned on final inspection proving the construction to be in accordance with plans and specifications. Loan funds are then provided to retire interim financing.

Second or Subsequent Loans. The veteran may transfer his loan balance to other properties that meet established criteria. He must re-invest his equity in each home purchased.

Refinancing Existing Mortgages. Limited funds were made available for this purpose during the 1964 legislative session, under SB 81. The department may provide loans to retire existing mortgages that bear interest of over $5\frac{3}{4}$ percent, and are not guaranteed or insured by the federal government.

"Low-income" Loans may be made to veterans who have demonstrated fiscal responsibility, yet do not enjoy an income sufficient to meet existing financial criteria. The amortization period may be extended from the usual 23 years up to as much as 40 years. The length of extension depends on income and loan amount.

Farm Loans may be made in amounts not to exceed \$80,000. Careful appraisal is made of the property. The applicant's past experience, resources, and proposed plan of operation are analyzed, and his possibilities for success evaluated.

Secondary Benefits

Improvement Loans may be made for needed repairs, maintenance, assessments, structural improvements, etc. The amount loaned for improvements to dwellings is generally limited to the difference between loan balance and the permissible maximum of \$15,000. Loans may be made for capital improvements to farm properties, to the loan maximum of \$80,000.

Payment of Property Taxes is made on behalf of the veteran, at his request. The amount so advanced is repaid by increase of 12 monthly installment payments.

Protection Against Fire and Other Hazards is provided under a low-cost, "all physical loss" policy negotiated on a group basis with a single insurer. Personnel of the department adjust all losses, subject to review of the carrier.

Home Protection Plan assures continuing home ownership under conditions of personal family adversity.

Disability Insurance is provided to all applicants, regardless of physical condition, if they are employed at time of application. If they later become unable to work for over 90 days because of illness or accident, the insurer deposits \$80 per month to their account with the department. This benefit, while possibly less than the regular payment, serves to keep the loan account current and prevent repossession. Disability insurance coverage terminates at age 65.

Life Insurance is provided to all loan applicants under age 65. The veteran's wife or beneficiary, in the event of his death, receives an amount in cash equal to 20 percent of the loan balance. The loan is paid in full. There is a double-indemnity feature for death from accidental causes.

Coverage under the home protection plan is primarily paid for by veteran purchasers. A recent premium increase is being paid from surplus funds in the amount of approximately \$1,740,000 per year.

Summary of Status and Use of Farm and Home Reserve

As of June 30, 1964:

\$1,335,458,000 invested in loans
1,370,240,000 outstanding bonds
41,080,000 in surplus

Interest rate lowered in November 1962 to -- \$0.0375

Present cost of program, including all costs -- 0.0375

Margin ----- 0.0018 (less than 1¼%)

Decrease of ¼ percent interest would equal \$3,375,000 per year.

Contracts now in force equals 129,122. Totaling: \$1,495,114,000.

If interest lowered ¼ percent, it would mean approximately \$26 per year per contract holder.

Lowering interest would not change payments, as changes in the rate of interest are reflected in the term of repayment—either a shortening or lengthening of loan period.

If interest rate cut, or reserve depleted, it would seriously affect the amount of money available for the liberalized improvement loans and the low income loan program.

The reserve will undoubtedly slow in its buildup as the average cost of bonds authorized over the past 43 years have called for higher interest repayments. This means the average cost of bond payments will show a steady increase.

A second factor that will decrease the reserve buildup is that there is less bond money to invest prior to making loans with it. Thus, there will be less interest revenue from the bond sale deposits.

An additional cost to the program is the new benefit where part of the life and disability insurance premium payments are made by the department. This adds \$1,740,000 to the cost of the program each year.

Disregarding the advice of Price Waterhouse and lowering the interest rate would probably curtail the improvement loan program and the low-income plan, perhaps call for discontinuance of the department, paid home protection plan insurance premiums, and would lower the reserve to a dangerous level.

Bonding Patterns

The Cal-Vet program is financed by the sale of general obligation bonds. These bond issues are passed by the Legislature and approved by the electorate from time to time as new bond funds become necessary to continue the program.

During the 43-year history of the program, 13 such bond issues have been passed in amounts varying from the 1921 issue of \$10,000,000 to the 1956 issue of \$500,000,000. During the history of the program, a total of \$2,085,000,000 has been authorized by the voters. All of these bond issues have been sold except the 1962 authorization of \$250,000,000.

It is anticipated that at the present rate of expenditure, and assuming no drastic changes in the program or economic conditions, that funds on hand, together with the proceeds of the \$250,000,000 1962 authorization, will carry the program until approximately 1970. Any changes in the program that require additional funds will, of course, accelerate the time when new bond funds will be necessary to continue the program. Relatively few bond sales have been necessary in the past several years because of the reduced demand for loans and the high rate of prepayments of existing contracts. These prepayments are reinvested in properties for California veterans. This reinvestment of prepaid funds substantially reduces the amount of new bond funds required.

The interest rate on Cal-Vet bonds has fluctuated from a high of approximately 4½ percent in 1924 to a low of less than 1 percent in 1945. The last sale of Cal-Vet bonds in January 1964 had an interest rate of 3.20 percent. At the present time, the average net interest cost on all of the outstanding bonds is 3.41 percent.

HISTORY OF VOTES FOR AND AGAINST CALIFORNIA VETERANS BOND ACTS

Election date	Amount of bond issue	"Yes" votes	"No" votes	Percentage of "Yes" to total votes	Ratio in favor
11/7/22.....	\$10,000,000	479,556	220,694	68	2.17 to 1
11/2/26.....	20,000,000	705,398	219,230	76	3.22 to 1
11/4/30.....	20,000,000	835,579	265,682	76	3.15 to 1
11/6/34.....	30,000,000	1,023,496	659,818	61	1.55 to 1
11/7/44.....	30,000,000	2,385,571	333,892	88	7.14 to 1
11/5/46.....	100,000,000	1,818,323	467,364	80	3.89 to 1
6/6/50.....	100,000,000	1,664,445	646,952	72	2.57 to 1
11/4/52.....	150,000,000	3,825,825	637,765	86	6.00 to 1
11/2/54.....	175,000,000	2,560,629	664,000	79	3.86 to 1
11/6/56.....	500,000,000	3,657,829	890,322	80	4.11 to 1
11/4/58.....	300,000,000	3,133,313	1,103,800	74	2.84 to 1
6/7/60.....	400,000,000	2,254,410	1,217,808	65	1.85 to 1
6/5/62.....	250,000,000	1,880,875	1,854,916	50.3	1.01 to 1
	\$2,085,000,000				

DEPARTMENT OF VETERANS AFFAIRS
DIVISION OF FARM AND HOME PURCHASES

STATEMENT INTEREST RATE ON ISSUES AND EFFECTIVE RATE AFTER SALE

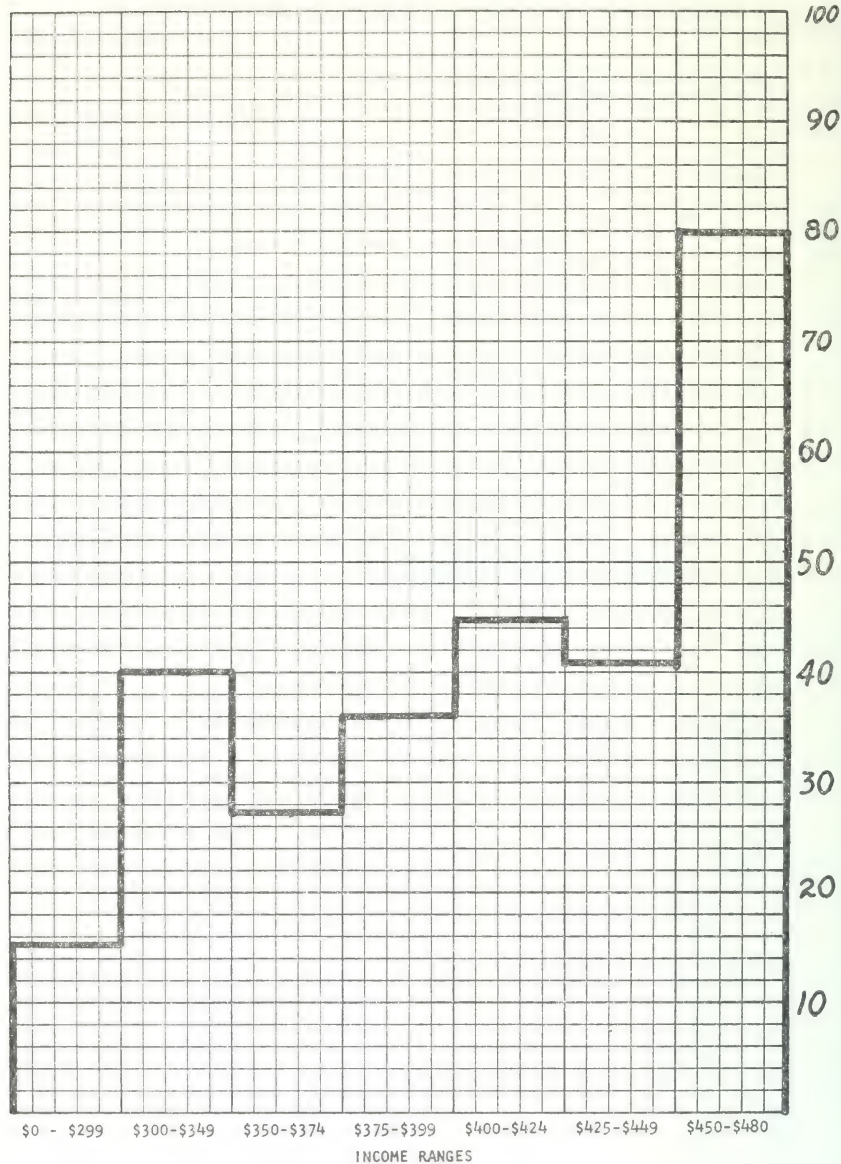
Date	Issue	Interest rate on sale	Issue MM	To date	Effective interest rate after sale	Bonds outstand- ing M	Dow-Jones average
2/24	1st—1921	4.4995	4				
10/24	2nd—1921	4.2399	2				
5/25	3rd—1921	4.2341	2				
10/25	4th—1921	4.4318	2				
2/27	1st—1925	4.1839	2½				
6/27	2nd—1925	4.1099	3				
11/27	3rd—1925	3.9670	2½				
2/28	4th—1925	3.9253	4				
5/28	5th—1925	4.000	4				
10/28	6th—1925	4.2252	4				
2/31	1st—1929	3.9422	4				
6/31	2nd—1929	3.6766	4				
10/31	3rd—1929	4.000	3				
12/31	4th—1929	4.4904	6				
4/32	5th—1929	4.3553	3				
6/35	1st—1933	2.8706	5				
2/36	2nd—1933	2.6098	5				
6/36	3rd—1933	2.5462	5				
1/37	4th—1933	2.0170	3				
4/37	5th—1933	2.75	3				
6/37	6th—1933	2.5813	3				
1/38	7th—1933	2.2891	3				
1/39	8th—1933	2.1638	3	80			
8/45	1st—1943	.9810	15	95			1.65 57
4/46	2nd—1943	1.2324	15	110			1.56 33
4/47	1st—1946	1.5346	10	120			1.86 33
5/48	2nd—1946	1.8183	10	130			2.20 39
9/48	3rd—1946	1.9272	25	155			2.41 49
6/49	4th—1946	1.9237	30	185	1.7394	114,974	2.27 35
2/50	5th—1946	1.6991	25	210	1.7253	132,855	2.05 36
8/50	1st—1949 A	1.6632	50	260	1.7023	182,855	1.93 27
8/51	2nd—1949 B	1.8902	25	285	1.7120	199,667	2.36 47
2/52	3rd—1949 C	1.7260	25	310	1.7130	215,949	2.26 54
2/53	1st—1951 D	2.4159	100	410	1.9657	305,624	2.55 14
1/54	2nd—1951 E	1.9329	50	460	1.9549	344,295	2.52 59
2/55	1st—1954 F	2.0298	60	520	1.9664	389,265	2.38 36
12/55	2nd—1954 G	2.1372	30	550	1.9747	410,665	2.51 38
6/56	3rd—1954 H	2.2956	50	600	2.0155	452,130	2.58 29
10/56	4th—1954 J	2.7957	35	635	2.0861	478,330	2.93 14
2/57	1st—1956 K	3.3004	50	685	2.2309	528,370	3.26 —04
6/57	2nd—1956 L	3.4258	50	735	2.3554	567,220	3.27 —15
8/57	3rd—1956 M	3.5790	50	785	2.4760	607,120	3.38 —19
11/57	4th—1956 N	3.6504	50	835	2.5889	657,120	3.43 —22
2/58	5th—1956 P	3.07227	100	935	2.6859	744,010	2.87 —20
5/58	6th—1956 Q	2.96169	50	985	2.7114	794,010	2.93 —03
7/58	7th—1956 R	3.2276	100	1,085	2.7884	878,310	3.11 —12
3/59	8th—1956 S	3.5544	50	1,135	2.8544	915,000	3.27 —28
7/59	1st—1958 U	3.9446	100	1,235	3.0064	1,011,000	3.64 —30
1/60	2nd—1958 W	4.0191	50	1,285	3.0783	1,040,900	3.84 —18
3/60	3rd—1958 X	3.952	50	1,335	3.1373	1,077,490	3.66 —29
6/60	4th—1958 Y	3.9534	50	1,385	3.1899	1,120,890	3.54 —41
9/60	5th—1958 Z	3.8156	50	1,435	3.2290	1,154,540	3.45 —36
4/61	1st—1960 AA	3.87231	140	1,575	3.32651	1,265,860	3.57 —30
9/61	2nd—1960 BB	3.75986	100	1,675	3.37393	1,349,010	3.64 —11
6/62	3rd—1960 CC	3.20751	100	1,775	3.36452	1,414,630	3.37 —17
1/64	4th—1960 DD	3.20393	60	1,835	3.40947	1,366,320	3.32 —12

New & Paid in Full Contracts

1 2 3 4 5 6 7 8 9 10 11 12 1 2 3 4 5 6 7 8 9 10 11 12 1 2 3 4 5 6 7 8 9 10 11 12
 1961-62 1962-63 1963-64



LOW INCOME LOANS - NOVEMBER 1, 1963 - JULY 31, 1964

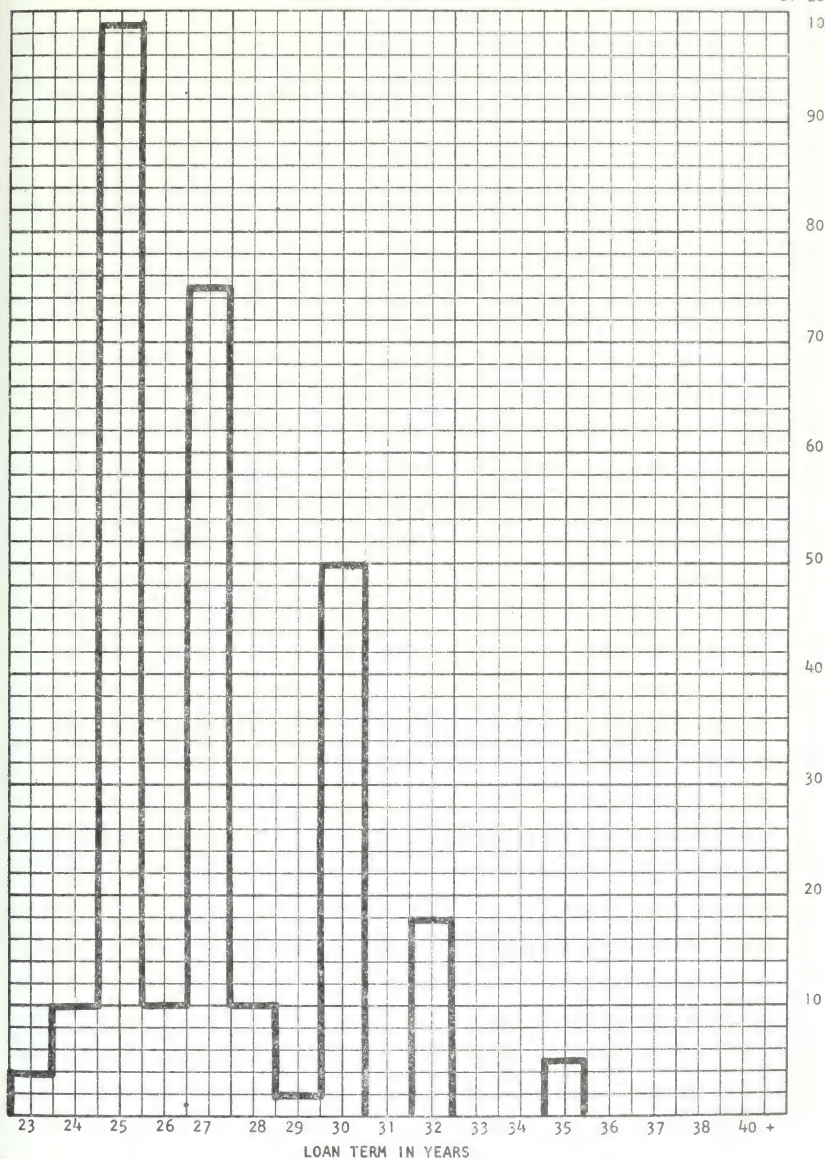
Number
of Loans

VETERANS FARM AND HOME PURCHASE PROGRAM

25

LOW INCOME LOANS - NOVEMBER 1, 1963 - JULY, 1964
TOTAL LOANS GRANTED 284

Number
of Loans



O

printed in CALIFORNIA OFFICE OF STATE PRINTING

THE SENATE FACT FINDING COMMITTEE ON JUDICIARY

Report and Recommendations

on

COMMITMENT PROCEDURES

FOR THE

MENTALLY ILL

JANUARY 1965

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OF THE STATE OF CALIFORNIA

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JOSEPH A. BEEK

Secretary

Prepared by

A. LaMONT SMITH, D.P.A.

Committee Consultant

ROSTER OF WITNESSES

Name

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BELLAMY, DR. WILLIAM A.	President, Northern California Psychiatric Society; Assistant Clinical Professor of Psychiatry, University of California Medical School
CANNAN, JESS D.	District Attorney and County Counsel of Trinity County
CHRISTIAN, JUDGE WINSLOW	Administrator of Health and Welfare Agency, State of California
DEMING, LEIGH	Administrative Adviser, Department of Mental Hygiene
KARESH, JUDGE JOSEPH	Superior Court of San Francisco, Department 95
KNOX, DR. STUART C.	Chairman, Mental Health Committee of the California Medical Association
MAPLE, CHARLES A.	Deputy Public Defender, Los Angeles County
MILLER, JUDGE ALLEN	Superior Court of Los Angeles, Department 95
MUNNELL, JUDGE WILLIAM A.	Presiding Judge of Department 95, Los Angeles; Chairman of Committee on Mental Health
PACHT, RUDOLPH	California Association for Mental Health
PALMER, DR. JAMES O.	California State Psychological Association and Ad Hoc Committee on Hospital Commitment
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RUSSELL, DR. LEE EDWARD	Orange County Health Department
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DRUCKER, JUDGE LEWIS	Judge, Superior Court, Los Angeles County

LETTER OF TRANSMITTAL

SENATE CHAMBER
Sacramento, January 1965

HONORABLE HUGH M. BURNS
*President pro Tempore of the Senate
and Members of the Senate*

GENTLEMEN :

The procedures for the civil commitment of the mentally ill are contained in numerous sections and with their various cross-references are difficult to understand.

On the basis of hearings in 1962 and in 1964 it was determined that while no substantial substantive changes were necessary, the relocation and grouping of provisions related to admission or commitment to institutions would be desirable. A bill has been drafted which will accomplish this purpose and also eliminate obsolete provisions or terminology.

The committee in the interest of improving existing procedures related to the care and treatment of public and private patients is recommending the several measures included in this report with supporting statements by witnesses.

The Senate Fact Finding Committee on Judiciary was formed pursuant to Rule 12.5 of the Standing Rules of the Senate and is herewith submitting its report.

Respectfully submitted,

EDWIN J. REGAN, *Chairman*
JOHN W. HOLMDAHL, *Vice Chairman*

CLARK L. BRADLEY
CARL L. CHRISTENSEN, JR.
FRED S. FARR
DONALD L. GRUNSKY

ROBERT J. LAGOMARSINO
VIRGIL O'SULLIVAN
FRANK S. PETERSEN
JOSEPH A. RATTIGAN

READER'S GUIDE

The format of this report was designed to provide a concise explanation of recommended legislation related to commitment procedures for the mentally ill. In addition, problems and their possible solutions as presented by witnesses during public hearings have been grouped under selected topics. Comments by a number of persons concerning the same topic can easily be referred to by all interested persons.

The report is arranged in three sections to permit discretionary consideration of its contents. Chapter I, Recommended Legislation, contains four bills, each with a brief explanation of the basis for their proposal by the committee. The justifications are followed by related excerpts of testimony by hearing witnesses. The Legislative Counsel's digest of each of the proposed bills has been printed in boldface type preceding the recommended measure. Chapter II, Hearing Highlights on Selected Topics, endeavors to bring together comments by various witnesses concerning the same or related subjects. The page numbers refer to the transcript for the hearings filed in the office of the chairman. They are available for public reference, therefore, no testimony has been paraphrased and verbatim quotations have been held to a minimum.

Following the hearings inquiries were made to clarify statements of witnesses and where better understanding of the problem could be achieved by quoting the text of a statute referred to by a witness this was done in footnotes or by other editorial comment as indicated.

In the appendices is the text of the bill which proposes a reorganization, without substantive change, of existing statutory provisions related to commitments to mental hospitals. Several communications felt to be of reference value are also included in this section.

The time and effort expended by witnesses and by the staff of all agencies in preparation for the hearings or in responding to subsequent inquiries is gratefully acknowledged.

A. LAMONT SMITH, D.P.A.
Consultant

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CHAPTER I

Committee Recommended Legislation S.B. 36 †

Purpose

Place in a single location in the Welfare and Institutions Code all provisions related to commitments and admissions to mental institutions. In addition, the removal of obsolete provisions and terminology.

Justification

In the course of several years of hearings conducted on this subject the consensus of witnesses was that ambiguous terminology should be clarified; unrelated provisions removed and that commitment procedures be made uniform.

Selected Statements by Hearing Witnesses

MISS AITKEN: . . . we should change the words "dipso-maniac" and "inebriate," which are unfortunate. I think the word "alcoholic," or whatever word one of the advanced schools of the study of this problem would substitute as the most modern terminology for the person who drinks beyond control, would be. (P. 62.*)

JUDGE CHRISTIAN: I understand from examining these materials, and from discussing this hearing with the staff of the committee, that the committee's primary concern is with a codification, a rearrangement and a consolidation, if possible, of several of the separate provisions that now exist affecting civil commitment of persons alleged to be mentally ill.

From my own personal experience, having sat in proceedings in mental illness in perhaps ten or twelve counties, I can certainly offer all encouragement to the committee in this work. This is a work that is much needed.

The statutes, as you have seen indicated in the materials before you, are unnecessarily repetitive and obscure in many instances. (P. 66.*)

MR. MELVIN THALE: I feel that the commitment procedures as stated are adequate to take care of the civil rights of the people. In fact, I think they ought to be liberalized rather than made more strict. (P. 83.*)

MR. RUDOLPH PACTH: We feel that the code provisions at the present time are deficient in at least two respects. First, they are scattered and they are hard to find. Unfortunately, a lot of people besides lawyers have to find them at times—social workers, and even psychiatrists, and so on.

† See Appendix A for complete text of this measure.

* Hearing transcript, office of chairman.

Secondly, some of them are ambiguous and even inconsistent. We feel that the statutory provisions, at the very least, should be reorganized or recodified, and that probably piecemeal amendments wouldn't solve the problem or alleviate the present situation to any substantial degree.

For this reason, we feel that probably a commission should be appointed to make a study and to formulate substantive revisions as well as recodification and that appropriate funds should be available for the needs of such a commission.

Finally, we feel that probably the funds should be adequate so that there can be participation in such a commission of all of the various disciplines involved: people from the Department of Mental Hygiene, from the Department of Corrections, from the judiciary and the lawyers who practice in the field, from social workers, from the medical people, including the psychiatrists but not limited to the psychiatrists, and so on.

We feel that if there is such participation, it will probably come up with something that is acceptable to all. (P. 114.*)

MR. WELLBORN: Now, I have no suggestions or recommendations to make in regard to any changes in our statutes. I have discussed this with our judges and county hospital officials and others in our county and no one seems to have any strong feelings one way or the other. (P. 159.*)

DR. BELLAMY: All right. As you will see from the abstract, I am not too dissatisfied with the existing code. I feel that it's quite excellent, and I am not offering this as a platitude; it's a firm opinion of mine. I think that one could scarcely come to any other conclusion.

The code, I feel, is deficient in that the sections are scattered and that there is some inconsistency from one section to another. (P. 188.*)

JUDGE MUNNELL: I want to say that, frankly, after having served in this court for approximately two years, I am of the opinion that very little needs to be done with the law to either insure sound medical practices for the patient or to protect the constitutional or legal rights of the patient. (P. 216.*)

I think all in all we have a very fine system of treating the mentally ill in California. The hospitals are most anxious to treat and release as soon as possible in cooperation with the court. The judicial system, at least as far as my experience is concerned, is excellent.

In conclusion, gentlemen, I see no great need of changing in a substantive way the law. Perhaps there is a need for reclarification in bringing the statutes together and rewriting ambiguous language, but by and large I think our system is satisfactory for the age and period in which we are now living. (P. 229.*)

MR. LEIGH DEMING: If this committee is to accomplish a great deal I think it will be necessary to carry on what was proposed two years ago and not too much done about it for various reasons, and that is try a recodification and a standardization of these procedures. (P. 229.*)

* Hearing transcript, office of chairman.

JUDGE REPPY: The general observation I have is that I feel that it would be helpful to let you know that at least Ventura County believes that we can very satisfactorily handle our cases under the present framework, both from the standpoint of the court and of the patients. It would seem to me that how much redrafting you might do would depend on how particular you wish to be in developing complete clarity and uniformity and cohesiveness and things of that nature. It would be a commendable work if you do that, but it isn't absolutely necessary, as I see it, for the courts to function. (P. 232.*)

* Hearing transcript, office of chairman.

CHAPTER I

Recommended Legislation S.B. 38

Purpose

Authorize the Director of Mental Hygiene to appoint a staff team to annually examine into the care and treatment of mentally ill or incompetent persons by any public or private establishment and to report to the judge of the committing court whenever any person is not receiving proper or suitable care.

The director must also submit a report concerning any person he deems *not* to be in need of further care or confinement. The judge of the superior court of the county from which such person was voluntarily admitted, or committed, is empowered to take any necessary action.

Justification

The present authority of a State Hospital Superintendent permits great autonomy with respect to the power to determine the readiness of a patient for return to the community. The committee heard testimony which advocated establishment of a review board, a review by the committing court, or an internal review by staff of the Department of Mental Hygiene. The proposed measure will mandate the Department, through an internal staff team, to annually review the care and treatment of persons within both public and private hospitals, homes or other establishments, and to bring to the attention of the court any improper care, condition or unnecessary confinement.

Selected Statements by Hearing Witnesses

MR. TSO: During 1963 635 persons were committed to the custody of our department for supervision and care. Of these 635, 456 were committed pursuant to Section 5076 and placed in various sanitariums licensed by the State Department of Mental Hygiene.

However, during the year my deputies and I had the opportunity to inspect these various sanitariums used by the court and, in several instances, found that the services and the facilities offered were wholly inadequate. They were inadequate in terms of the physical surroundings, the medical and dental care provided for, the food, and the lack of activities whatsoever for our patients. Based upon these findings, our wards were removed from these inadequate facilities.

At the present time we have approximately 1,100 patients under this Section 5076 supervision and the average age is approximately 75.

CHAIRMAN PETERSEN: The average age?

MR. TSO: Yes, sir. These patients are placed in approximately 30 sanitariums throughout the Los Angeles area and within the county, or they are allowed to remain at home subject to periodic supervision calls by the mental health counselor.

I am quite happy to report now that the 30-odd sanitariums we use are providing adequate care and facilities. And the county here in Los Angeles, by court order, pays each sanitarium \$200 per patient. And the court or the mental health counselor seeks to reimburse the county of Los Angeles for an annual expenditure of \$2 million by having the estate of the person, or his responsible relatives, reimburse the county for that \$200.

Now, the responsible party is the spouse, or the father and mother, or the adult child of the committed person. And the estate of the committed person over 65 usually consists of \$172 monthly, and this \$172 comes from the state OAS program, proportionately, probably, and the social security benefits.

It seems that our net payment for upkeep of our geriatric patients runs to about \$250,000 of the \$2 million expenditure. (P. 150.*)

DR. STUART C. KNOX: The establishment of impartial review boards at several centers throughout the state could provide for frequent reevaluation in cases where a doubt was held by the patient, his family, or their representatives, legal or medical.

Such boards should include psychiatric physicians, nonpsychiatric physicians, and a legal counselor, provided with proper staff. Access to appeal to such a board should be available at any time throughout the patient's period of treatment.

In addition, the patient or his family, of course, have the usual legal remedies for releases or redress. (P. 11.)*

I would feel that after they had had one appeal, that certainly no further appeal should be entered until a specified time. I would imagine that the appeal board itself could set down a time in which it would again review the case. (P. 13.)*

JUDGE CHRISTIAN: I would like to point to a third undesirable consequence of the use of the commitment procedure as the basic means of access to the public facilities. That is that where so many patients come into the system upon findings that courts, I fear, are not always careful to distinguish between the finding of need for care and treatment and the existence of a condition that is dangerous to the patient or to the public, where so many hundreds and thousands of patients come in under findings that they are dangerous to themselves or others. It is easy to lose sight of the few patients who come into the system who are really in that condition; who really are dangerous to themselves or to others.

I have a feeling that this lack of accurate classification in the intake contributes to some of the cases that, perhaps, members of the committee are aware of that have occurred in recent years where discharges have occurred, where absences without leave have been followed by a discharge rather than an attempt to locate the patient, and then these incidents have been followed by harm to the patient or to others.

I have a feeling that these events are made more likely by our failure to distinguish at intake between a person who really is dangerous to himself or to others and, therefore, perhaps, should have an authoritative placement under a court procedure with all the trappings of due process, than a person who is merely sick and in need of treatment.

* Hearing transcript, office of chairman.

Now, there are a number of possibilities that are available to us in attempting to deal with this situation. I should like to reinforce at this point the disclaimer that I made upon opening, and that is that these are not program recommendations coming to the committee from the Department of Mental Hygiene or from the administration. They are certain ideas that are of some interest to us that may be of some interest to the members of the committee, that would require further study and elaboration before they could be offered as a legislative program. Some of them are reciprocally inconsistent, so that this should not be taken as an indication of becoming a series of legislative requests.

But, here are some of the possibilities that exist. All of these are in effect in one manner or another in this or in other systems.

First, there could be required in a court commitment some terminal period following which there would be a report and a review similar to the annual review that is now required of juvenile court, after a finding of hardship under the juvenile court law.

Now, I hasten to say that a procedure of this kind would cause much inconvenience, cause the use of much staff time in the hospitals. It would, perhaps, be resisted by the department on that ground. I do not know. It would have to be evaluated.

But, the point is that there may be some utility in actually requiring us to make up our minds again, from time to time, rather than to keep some of the less active patients month after month after month for lack of a particular occasion that forces an evaluation.

CHAIRMAN PETERSEN: Judge, this morning Dr. Stainbrook, I believe, or maybe it was Dr. Knox, suggested that we have a review board from the State of California to review from time to time patients in a mental hospital.

Is that the kind of thought you have in mind? A separate board, a review board which would, from time to time, review these matters?

JUDGE CHRISTIAN: I don't know what Dr. Stainbrook had in mind in detail. I suggest that a board would have difficulty in handling the immense numbers that are involved in a procedure like this. There are many thousands of patients in the state system.

I suggest that a particular board would have some difficulty in handling this. The possibility that I had in mind was that the court's original order of commitment would be limited to a set time following which there would have to be a new report to the court and a full further order of commitment, such as now exists in the juvenile court law where a finding of wardship is good for one year and then a review and further hearing.

Now, I have separated the possibilities here. The first would be a terminal period of commitment. The second would be a periodic review requiring a written report of the court. A third possibility would be to reform in some way, and I believe a suggestion was made to the committee today, to reform in some way the medical examiner system. (P. 74.*)

* Hearing transcript, office of chairman.

JUDGE REPPY: Dr. Knox, when he was testifying, suggested this board of review and, as I understood him, indicated that perhaps there should be some time limit in the judge's commitments because at the present time there is none.

When we make a commitment it is entirely up to the hospital staff to determine when the release should be. I feel that that is the proper way to have it handled, since we are guided almost 100 percent by what the medical examiners testify to. I find in my role with respect to that it is mostly relegated to a discussion with the medical examiners as to various possibilities that might be available for the patient that they consider to be mentally ill.

I hardly conceive of myself, as putting myself up as a better medical expert than the examiners and saying "You think this man is mentally ill but I don't."

However, I do feel perfectly at liberty to ask them if they don't feel that this particular patient, maybe, could be handled at home, or through private psychiatry, and things of that nature, even though the attorney designated for the party, let us say, doesn't bring that particular matter up.

So, when it comes to the problem of release, it seems to me that that is essentially an internal problem of the hospital, and as to whether they would want a board of review to which a patient in a hospital might have the right to appeal from time to time, and that such a review would be conducted within the hospital and would either be an advisory type thing or even, perhaps, the right to override the staff's opinion, would be a problem to be worked out.

As I understand it, at Camarillo State Hospital they have regular staff meetings for each patient, and they review his or her condition at the so-called staff meetings. And the patients, those with whom I have spoken, rather live for that time when they say, "Well, we are coming up before staff and maybe we are going to be released." Or words to that effect.

Dr. Knox was in hopes that the medical examiners could be board psychiatrists or eligibles. Obviously, that is not possible in the smaller counties, or even in the moderately sized counties, which I feel Ventura County now falls into. (P. 125.*)

CHAIRMAN PETERSEN: Do you think after commitment there should be, from time to time, a judicial review of the patient? Do you think that should be set forth in the law?

JUDGE REPPY: I don't see any need for judicial review. You have it through the writ of habeas corpus where the patient thinks he is well and the hospital staff says he isn't. Most of them all get to know that they have the right to file a petition for writ of habeas corpus, and we get communications directly from the patients and we interpret many of them to be requests for a hearing for a writ of habeas corpus and are very liberal in our interpretations, because we feel that that is a right that they have and one that's our duty

* Hearing transcript, office of chairman.

to protect. I see no objection to the review board as an internal policy of the hospital. As I mentioned yesterday my understanding is that Camarillo State Hospital, they do have these staff hearings from time to time, but these are at the desire of the hospital. It's possible that a review at the request of the patient would be in order if it isn't something that can be abused.

CHAIRMAN PETERSEN: Do you think the law is sufficient, then, as it is now in that regard?

JUDGE REPPY: As far as judicial review, yes. As far as internal hospital review at the request of the patient, that might be explored. (P. 236.)*

SENATOR GRUNSKY: Might I ask as to the practical matter, when you find and make a commitment do you in effect close your file; I mean, is that the end of that proceeding?

JUDGE REPPY: Yes, unless there is a request for a jury trial, because when the judge makes the commitment the patient then goes to Camarillo State Hospital and the release procedure is in the hands of the hospital.

SENATOR GRUNSKY: Of course, what I am now going to follow through on would be, then, a rather marked change. Where the court appoints the guardian of the estate, you require usually annual accountings, though it's discretionary with the court at what intervals. If you have a guardian of a person, of an incompetent or such, the court retains jurisdiction, and yet on this much more serious situation where the liberty, in effect, of the patient is involved by institutional care, you just in effect close your file and turn them over to an institution, and I am not suggesting anything, but my mind is in question as to whether or not the file should not be kept open and perhaps a periodic accounting in the form of a review or an annual medical report should be kept in the court records and have a continuing file just as you do in a guardianship, because, frankly, my estate is far less important than my liberty.

JUDGE REPPY: Well, I think the question is what philosophy you want to go with. Do you want the court to be the determining body as to when the person is well and should be released, or do you—

SENATOR GRUNSKY: Well, except where you say do I want it, I don't say I do or I don't, I am just inquiring.

JUDGE REPPY: Well, I mean, the statement—

SENATOR GRUNSKY: It is just a matter of policy and there is no indication in the testimony here that there has been any abuse, that when a person is institutionalized they are suddenly in Siberia where nobody ever follows up on them. Of course, the patient

* Hearing transcript, office of chairman.

is in no position, really, to institute . . . my feeling is that if they are in a mental institution they are not really in a position to protect their own rights.

JUDGE REPPY: Well, they have the right to communicate with attorneys, and a surprising number of letters go out.

SENATOR GRUNSKY: Well, they have not the capacity, let me put it that way, and who is their guardian, who is looking out for them, and, as I say, the courts look out for citizens in every other respect so it just seems that in this instance the court doesn't; I mean, it washes its hands of it.

JUDGE REPPY: Well, I think you are worried about the occasional person that might sort of get lost in the regimen of the hospital. I think we have to take full faith in the administration of the hospital that those things won't occur, or if they do that somehow or another they will come to light and be followed by the court.

SENATOR GRUNSKY: By the same theory, then, why do you not have full faith in a guardian or a bank or anyone else whom you appoint a guardian of an estate?

JUDGE REPPY: Well, because a guardian is dealing with the property of the person.

SENATOR GRUNSKY: I say that's a lot less important than my freedom.

JUDGE REPPY: I know, but the court is a specialist in the property line and the court is not a specialist in the mental illness field.

SENATOR GRUNSKY: But you are a specialist in protecting my rights and due process. I am just throwing this out, I am not advocating it.

JUDGE REPPY: Well, I think the answer to that is how well does the arrangement for petition of writ of habeas corpus work and how responsive is the staff of the hospital to meeting that.

SENATOR GRUNSKY: That is true, and you spoke of writing out. I mean that I can write letters and they may never find their way into the post office, because I am sure I don't have the privilege to walk out and see that it is posted, and all of these other things, your civil rights and . . .

JUDGE REPPY: Well, I don't know how these letters come out, but a surprising number do come out.

SENATOR GRUNSKY: Obviously all the ones that come out you receive, but those that don't you never receive, so you don't know.

JUDGE REPPY: I don't know if they provide a letter that—that might very well be an area to explore, to be sure that nobody is getting deprived of his rights.*

SENATOR GRUNSKY: I don't want to enlarge on it, but it is just something that I have expressed myself on because I think there is not enough attention paid to it.

CHAIRMAN PETERSEN: For instance, I know one administrator of the hospital located in my county, and this was some years ago, had a rule for some time when the patients could not contact an attorney and could not write out to an attorney, which was actually denying that person due process of law. If you had in the law where the court would have to review, from time to time, that person's mental health, then that would take care of a situation such as that.

JUDGE REPPY: Well, being legally trained I would be very much in favor of some internal procedure in a hospital which would make it possible for the patient to communicate with an attorney, or with the court if they wish. I don't see that it would be practical, however, for the court to follow this up. The only way it could be done would be to set a particular time, perhaps, as you suggested a guardian does, when a person's liberty situation is reviewed by the court, and you might be missing the proper time because it would probably come within a fairly prompt span of time when the patient feels he should get out.

SENATOR GRUNSKY: Well, I was just thinking of the problem of a person getting lost in the institution, friendless, and, . . . well, we see it in prison cases. I think we just read recently about a person who was lost, didn't have a friend in the world, until finally 50 years later some long lost relative came in and with the utmost simplicity the guy is out, which probably could have been accomplished 30 years ago, but he had no friend and the court is a friend of my money, but he forgets my liberty.

JUDGE REPPY: The isolated case can appear that. Our experience as far as the hospital is concerned is that they are releasing the patient quite early.

SENATOR GRUNSKY: I know, that's by necessity, we don't have room to take care of them.

JUDGE REPPY: Well, it's not only necessity, it's medical philosophy now that the patients get out as soon as possible.

SENATOR GRUNSKY: As far as I am concerned my deep interest in these hearings is motivated by the question of due process

* See Welfare and Institutions Code Sec. 7502 which provides there will be no restriction on the correspondence of inmates with the superior court judge or district attorney of the county from which he was committed or admitted. In addition, Department of Mental Hygiene ruling No. 52 gives mail privileges beyond those provided in Section 7502 of the Welfare and Institutions Code. In addition to correspondence with superior court judges and district attorneys, the rule provides that patients have a right to send uncensored mail "to their own attorneys, the superintendent, and the director." The rule gives further correspondence rights with other persons. Department Rule No. 53 provides that mail directed to patients from the superior court judge or district attorney shall be delivered to the patient unopened.

of law and protection of the civil rights of the patient, because frankly I think the psychiatrists, as far as the medical treatment is concerned, are the experts and they are certainly not going to get any help from me in that field. Being a layman, I am vitally interested in the matter of civil rights.

JUDGE REPPY: Well, you see, the point you are concerned with as to when the person should leave is a medical one. I think perhaps what you are concerned with is should there be a review of how the patient got in, and again be sure that everything went all right.

SENATOR GRUNSKY: That's right, or that you don't have some incompetent doctor who himself may be a mental case or alcoholic and doesn't keep records and doesn't even know who is there. I mean, there are some institutions that are just that sloppy. I don't think we have any in California, but—

JUDGE REPPY: But the answer might be for the state to have a legal expert who would check out the cases in the mental institutions.

SENATOR GRUNSKY: Well, all I am saying is that you are real worried about my money and my estate, but nobody worries about what happens to you when they close the door on you.

JUDGE REPPY: Well, you can rest assured we are certainly worried about it at the time the hearings take place, and the rather awesome task of making the commitment. (P. 237.)*

JUDGE MUNNELL: The problem of a judicial review, however, I feel as Judge Reppy does, would be difficult, and for this reason: Perhaps it is best illustrated in what frequently happens in this court, the patient demonstrates graphically the situation that the doctors describe by diagnosis, the doctors say this is a case of schizophrenia, paranoiac reaction and recommend hospitalization, and the patient will talk about the gamma rays controlling their thoughts or minds, this is something you can see, as a layman you can see this person is ill and needs help.

Now, that patient asks for a jury trial, doesn't recognize the need for psychiatric help at all, very resistive, requests the jury trial and three weeks later that same patient is before a jury with these symptoms or mental illness clearly masked. The condition is still there, the mental illness continues, but the symptoms are absent. What has happened? Three or four weeks in the hospital awaiting his jury trial with the very excellent drugs available and this patient does not demonstrate the illness.

Now, picture the judge reviewing a patient who has been in the hospital 60 days or 90 days, reviewing the case. He is not in a position as a layman to say that this patient continues to be mentally ill and in need of hospitalization. The doctors at the jury trial in the first illustration will frequently come in before the jury, after this court has made

* Hearing transcript, office of chairman.

a commitment, and say the patient is in a state of remission and recommend a dismissal, I frequently think not because the doctor doesn't believe that the patient is mentally ill, but they are not going to be able to demonstrate it to the jury, which is about what you have to do to get the jury to go along in a finding.

I would prefer to see, in order to protect against this type of thing, an internal review, a periodic review by a staff of doctors.

SENATOR GRUNSKY: You mean internal within the hospital?

JUDGE MUNNELL: Internal within the hospital, to require the doctors, which I am sure they must be doing this already as a matter of practice, I am confident they are doing it, and I am confident of it because of the number of the patients which are released, I think the average period of hospitalization now is somewhere around 90 days.

SENATOR GRUNSKY: You feel habeas corpus is adequate protection now?

JUDGE MUNNELL: Yes.

SENATOR GRUNSKY: But the one I'm interested in is the lone individual with no family and no friends, and frankly myself, if I were in an institution, maybe Caryl Chessman and some of those can write their briefs and do all the rest of it, but if I were mentally ill I would be pretty alone in this world without someone looking out for me.

JUDGE MUNNELL: This is a very interesting thing, but I believe the doctors will all tell you that if you become mentally ill you are not going to lose your knowledge of law. (P. 244.)*

JUDGE JOSEPH KARESH: Thank you for permitting me to come back. I am of the opinion that the judge who commits a man should within 90 days have a review of what has happened to the man in the hospital, and if it appears to the court that perhaps there should be a re-hearing, then the court should have the right to give it to him. It may be a burden, but it's worth it.

Now, we know that habeas corpus is very limited, and for a man to get out on habeas corpus is almost impossible, but I would like to know what happens to the man that I send up. I don't know. Sometimes you walk down the street and you see a man you have committed. We ought to be advised and that ought to go into his file. Here you have a file, the man has been let out of the hospital and there is nothing in the file to show that this man is out. To be sure, he may have a certificate in his pocket, but that doesn't do any good. There should be something on this order and I am glad you called it to my attention.

SENATOR GRUNSKY: They do it on parole, particularly when the individual is going to be back in your community, and the next time he is in trouble he is going to be back before you.

* Hearing transcript, office of chairman.

JUDGE KARESH: There is no question that there should be a review in, I think 90 days, because I think that's the 90-day period when they know something good is going to happen or some good is not going to happen. It ought to be automatic to review it in 90 days and the result of that conclusion should come to the court.

SENATOR GRUNSKY: The reassurance I am seeking is . . . I mean, it's obvious that the psychiatrists in the hospital are going to give you reports and you may read them and accept the recommendation, but the point is that at least you will know they have been required and they know that someone else is going to read that report, some responsible judge . . . and, it has to my mind, a very salutary effect upon the doctors. It's just like sending a patient out for a medical examination and the doctor knows he is going to have to submit to the attorney a lengthy written report; it's surprising how much more careful they are in their examinations and the thoroughness with which they do it.

JUDGE KARESH: As Janet Aitken mentioned, we might use the analogy of the sex psychopath. I think they have to report back to the court in 90 days, and if it should be done in that case it should be done in this case.

CHAIRMAN PETERSEN: All you have to have is a report from the doctor, you wouldn't have to have another report.

SENATOR GRUNSKY: If the doctors are making the reports anyway. . . .

JUDGE KARESH: They might as well make it to the court. If the court feels that's something he should explore, he should have that right.

SENATOR GRUNSKY: And if you felt there was something not quite according to the book, then you as a friend of . . . in a paternalistic way, you as a friend of this lonely soul could initiate an appropriate proceeding, call in the public defender or notify somebody to see that he will be protected. (P. 247.*)

JUDGE MUNNELL: The hospital frequently will issue a certificate of competency. I wonder if in issuing that a copy could be filed with the court for filing in the patient's record. Frequently we run into problems with title companies, the patients will need a judicial decree and perhaps this would help in one respect, and then if you are thinking of a judicial review, rather than thinking of the 30-day clause, of the 90-day clause, because probably the majority of the patients committed are going to have been released by that time, perhaps the annual judicial review would be highly desirable.

* Hearing transcript, office of chairman.

SENATOR GRUNSKY: And it would be done by an attaché; it wouldn't be expected that you would do it yourself, but a referee or court attaché like a counsellor who would review it, and if something looked out of order he could see you in chambers and say, "Judge, let's take a look at this."

JUDGE MUNNELL: Perhaps even the judicial review right in the hospital by the judge. If you are going to have a review, it should be a review.

SENATOR GRUNSKY: Or like they do when the time comes up for parole.

JUDGE MUNNELL: If it is to be a judicial review, then it should be judicial, then the court should be there with doctors and taking testimony and making a finding of one kind or another.

CHAIRMAN PETERSEN: You know we have a medical review now, at least we assume we do.†

JUDGE MUNNELL: Yes, I am worried about the sexual psychopathy proceedings, because you are going to find yourself back in the same position you were in the first instance; that is, you make a preliminary finding that the person is sexually abnormal, a sex offender, and commit him for 90 days, and just prior to the expiration of the 90 days you receive back a letter that this man is in fact—which you already suspected him to be—a mentally abnormal sex offender. The superintendent recommends indeterminate commitment and the court, as a matter of form, then commits for an indeterminate period of time and a certified copy of the order is served upon the patient in the hospital and he has within 10 days to request a jury trial or waive it. I think we might find ourselves in that same position if we ask for this report back from the hospital. If it is going to be a review, I am not sure that it is needed. I don't think that it is, but if the committee thinks that it is—

SENATOR GRUNSKY: I am not advocating it, please don't misunderstand me, my mind is just inquiring into it.

JUDGE MUNNELL: Well, in your deliberations, when you get to that point, I think it should be a judicial review with perhaps a year's lapse from the date of the original commitment. (P. 250.†)

* Hearing transcript, office of chairman.

† See Welfare and Institutions Code Sec. 6621, which requires the superintendent of the hospital, within three days of the reception of any patient, to make a thorough physical and mental examination of the patient. Further, that during the time the patient remains an inmate it is required that the superintendent make or cause to be made such examinations as are approved by the department. Department Rule No. 46 is to implement Sec. 6621, W. & I. Code. The rule provides that there shall be a continuous review of the status of each patient and at least quarterly a general evaluation by his doctor with a clear notation to be made in the patient's medical record.

LEGISLATIVE COUNSEL'S DIGEST

Mentally ill persons.

Amends Sec. 7501, W. & I.C.

Requires that examination by Department of Mental Hygiene of public and private facilities for mentally ill be made annually, and provides that Director of Mental Hygiene shall appoint three-man team to conduct such examination.

Provides that if it is found that any person confined in such a facility is not properly or suitably cared for, director shall report such fact to judge of superior court from which such person was committed or otherwise entered facility, for such action as judge finds necessary to take.

SENATE BILL

No. 38

Introduced by Senators Petersen, Grunsky, Rattigan, and Farr

January 6, 1965

REFERRED TO COMMITTEE ON JUDICIARY

An act to amend Section 7501 of the Welfare and Institutions Code, relating to the mentally ill.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 7501 of the Welfare and Institutions
- 2 Code is amended to read:
- 3 7501. *The At least once annually the department shall ex-*
- 4 *amine all each public and private hospitals hospital, boarding*
- 5 *homes home or other establishments establishment whether or*
- 6 *not licensed by the department, receiving or caring for the*
- 7 *insane, alleged insane, mentally ill or other incompetent per-*
- 8 *sons, and shall inquire into their its methods method of gov-*
- 9 *ernment, and the treatment of all inmates thereof. The exam-*
- 10 *ination shall be conducted by a three-man team appointed*
- 11 *by the director, and such team shall report its findings to*
- 12 *the director.*
- 13 *If, as a result of any such examination, it is found that*
- 14 *any person is not properly and suitable cared for, or is not in*
- 15 *need of further confinement, the director shall report that fact*
- 16 *to the judge of the superior court of the county from which the*
- 17 *person was committed or otherwise entered the hospital, board-*

1 *ing home, or other establishment, for such action as the judge*
2 *finds necessary to take.*

3 ¶ *The department shall also examine the condition of all*
4 *buildings, grounds, or other property connected with such*
5 *institutions, and shall inquire into all matters relating to*
6 *their management. For the purposes specified in this para-*
7 *graph the department shall have free access to the grounds,*
8 *buildings, and books and papers of any such institution, and*
9 *every person connected therewith shall give such information*
10 *and afford such facilities for examination or inquiry, as the*
11 *department requires.*

CHAPTER I

Recommended Legislation S.B. 37

Purpose

Authorize discretion to be exercised by the district attorney concerning acceptance of a petition from any person other than officials and physicians now authorized to file a petition for commitment of an allegedly mentally ill person.

In counties having established the position of mental health counselor such officials will be designated as an official also authorized to file such petitions.

Justification

In criminal cases the law now permits the district attorney's office to exercise discretion concerning the filing of a criminal complaint. A suggestion was made to the committee that it be a misdemeanor to wilfully and falsely file a petition alleging mental illness as is now the law in regard to initiating proceedings for determination of drug addiction. The committee felt that there was not sufficient data presented to warrant recommending the imposition of a criminal penalty at this time but that a discretionary evaluation by the district attorney prior to the filing of a petition to determine that probable cause for such action was justified appeared desirable.

In addition to those officials and physicians now authorized to initiate petitions for court proceedings it was the consensus of the committee that, based on the testimony concerning the equitable functioning of county mental health counselors that they should be similarly authorized to perform this function.

Selected Statements by Hearing Witnesses

MISS AITKEN: Moving on to the commitment petition section, there is one thing in there that troubles me as an assistant district attorney, and that is the requirement that the district attorney shall prepare the papers. I think that is a poorly worded section. I think that the district attorney should be required to prepare the papers if an investigation reveals reasonable and probable cause.

Now, I think every district attorney's office would exercise that as they do in criminal cases. But I think that it is dangerous to have something in the law—someone could come in and demand, somebody who was unjustified, and the district attorney would be hard put to say "I am not going to do it" when the law says "shall." (P. 44.)*

I would also like, along the lines of possibly bad petitions, to require it to be a misdemeanor for anyone to willfully falsely file a petition. Now, oddly enough, that appears in the drug addiction commitment, which I know you are not going to discuss, but there are not too many of those. If it is in there, in that Section 5361,* † I certainly think it should be in all of the other forms of commitment.

* Hearing transcript, office of chairman.

† Sec. 5361, Welfare and Institutions Code. "Any person who knowingly and maliciously attempts to have any person adjudged a drug addict under this article, unlawfully, is guilty of a misdemeanor."

Now, these cases would be hard to prove, but the very fact that it is there, I think, would keep the occasional designing or malicious person in a domestic dispute, or a family-with-money situation, from seizing on this procedure to get someone out of the way and maybe become a guardian, or something like that.

Also, I think another section should be made uniform, and that is 5262,[†] which provides in the case of mentally retarded that a malicious petition, and this would, of course, require proof, will justify the court ordering the petitioner to pay all costs. Again, it would be hard to prove, but if those things are in the law, and if they are made clear to people petitioning by the people who take the petitions, clerks, district attorneys, hospital staff, I think you will have a little less of what scares us all the most, which is the malicious, false petition. (P. 52.*)

JUDGE ALLEN MILLER: If it is possible for any county, no matter how small a start they make, to have a mental counselor and take advantage of that, that gives you a staff within which the court can operate and this is absolutely essential, I think, to obtain some kind of aid to the court in not only protecting the civil rights, but also in organizing the medical testimony to bring to bear on the situation.

And so I urge every representative of every county who is here which doesn't have a mental health counselor, or even a part-time one, to assist in this thing, because I think this is the starting point to give you the tools to understand how to operate this.

Then, with a mental health counselor, or maybe even the use of a probation officer in lieu thereof, using the technique of the 5076,[‡] which permits the court, without the stigma of finding a person mentally ill, to find him disoriented, or bordering on mental illness, and he has the power then to make a commitment and postpone for 30 or 60 days this final thing of needing hospitalization.

Then that mental health counselor, or maybe the probation department serving in this capacity, can take this person by the hand and get him into outpatient therapy, which frequently is needed. This is a device that I think can be used greater without the stigma of commitment and overcrowding our hospitals, maybe, with the borderline case.

Where you feel that there might be a good calculated risk that outpatient therapy would immediately apply, it might be efficacious rather than a commitment.

A further use of this technique, I think, would be very advantageous, particularly when we are through Short-Doyle, in the next few years, going to have, in my opinion, a great deal more facilities for out-

* Hearing transcript, office of chairman.

† Sec. 5262, Welfare and Institutions Code. "In case of the dismissal of the petition, the court may, if it considers the petition to have been filed with malicious intent, order the petitioner to pay the expenses in connection therewith, and may enforce such payment by such further orders as it deems necessary."

See also Sec. 5152, Welfare and Institutions Code. "If the alleged mentally ill person is adjudged not to be mentally ill, the judge may, in his discretion, charge the costs of the proceedings to the person who signed the petition in respect to him, and judgment may be entered against him for the amount thereof and enforced by execution."

‡ Sec. 5076, Welfare and Institutions Code.

patient clinics where we can take care of the situation in this way without the necessity of the finding that goes along with mental illness and commitment. And this kind of answers a little bit, I think, this thing on a temporary basis, this idea that was proposed by Mr. Thale of an observation period of maybe 30 to 60 days before the final decision is made. I think we can use 5076 (Welfare and Institutions Code), disoriented and bordering on mental illness, and then some device to hold his hand and obtain outpatient treatment might be a good device. (P. 136.*)

DR. RUSSELL: I like also Judge Miller's suggestion of the mental health counselor.

Sometimes in government you have to improvise, and I have a feeling that we have probably done that simply because mental health counselors sounds like it is another job, and which frightens our appropriating bodies, and so we have done it in other ways.

One way or another, I think there must be and should be mental health counselors. This is serious business, so I think that a lot of excellent talent has to be thrown into it. (P. 149.)*

MR. TSO: What I want to do, and what I shall attempt to do, is to briefly set forth the functions that the mental health counselors perform in Los Angeles County.

Here in Los Angeles County the psychiatric department of this court is assigned by court rules all matters relating to the commitment of the mentally ill person, along with the alcoholic, the narcotic-drug addict, and the various other persons that require hospitalization.

Within the psychiatric department of this court is the office of the counselor in mental health. Here in Los Angeles we have a staff of 30, 14 of which are mental health counselors. The functions of the mental health counselors' office pertain to the involuntary commitment of the alleged mentally ill for this county of seven million people. These functions are centered in three main areas:

The first area is the screening and preparation of the petition alleging a mental problem.

The second area is the investigation and report to the court as to the cases brought before it.

The third area is the supervision and care of the persons committed to its custody pursuant to Section 5076 of the Welfare and Institutions Code. These persons are essentially the senile persons that, because of advanced age, have been deemed bordering on mental illness.

With respect to the area of screening and preparing the petition alleging this mental illness, I would point out the fact that during the calendar year of 1963 there were 10,646 intake cases that appeared before our department.

Of the 10,646 intake cases, 6,046 actual filings took place.

The 4,600 cases that were not filed on we attribute to our policies respecting the preparation of the petition alleging mental illness, and

* Hearing transcript, office of chairman.

to the efforts of each deputy mental health counselor who seeks in every way, whenever feasible, to channel the person seeking help into a voluntary program.

Of the 6,046 filings in 1963, 4,146 were petitions alleging mental illness in which 3,650 were actually committed by the court under Sections 5100 or 5076.

Now, this figure represents a commitment percentage of approximately 88 percent, and I again feel that this figure may be attributed to the screening process and utilization of non-court-connected psychiatric programs.

Our screening process here essentially provides that before a petition alleging mental illness is prepared, probable cause must be submitted to the mental health counselor assigned to the particular case, and probable cause here may be in the form of a certificate or a letter from a doctor stating that the doctor has examined the patient and, based upon this examination, feels the patient or the person to require hospitalization or detention pending the court hearing and subsequent commitment, if any.

Of course, there is another factor in here, in that the probable cause may be affirmative allegations by the petitioning party that the person is likely to injure himself or others because of the mental condition, unless detained and hospitalized.

Now, based upon this requirement and the referral system, we hope that only cases that absolutely require commitment by the court are processed and that the frivolous and capricious types of commitment requests are eliminated.

We treat our psychiatric court as an agency of last resort, and whenever possible we seek to channel the person into a voluntary program. I feel that our procedure under the present code has worked quite effectively, and because of it the 4,600 cases were not filed on.

However, there is the position taken that a person who is not satisfied with our requirements can still file a petition alleging mental illness inasmuch as the Section 5047 of the Welfare and Institutions Code provides that "Any person may file a petition."

I believe here that this is a necessary feature in our present code and should be retained inasmuch as it leaves the petitioning parties a right to a court adjudication respecting their allegation and doesn't make the findings of the mental health counselor, who is part of an administrative agency, a final one.

It seems that the majority of our petitions here in Los Angeles are a result of certification from the hospital here. Usually the patient has been brought into the hospital for detention and observation by peace officers or interested parties pursuant to Section 5050.3 of the Welfare and Institutions Code, and this observation period is usually for a period of 72 hours. Subsequent to the 72 hours, the hospital then submits their certification to us for the preparation and filing of the petition alleging mental illness. Upon the filing of the petition the judge of the psychiatric court here may issue an order of detention, thereby detaining the person further here in the hospital pending the examination and hearing.

Now, once the detention is issued in Los Angeles, the mental health counselor, who is not a uniformed deputy, serves the person with a certified copy of the petition and order of detention and commences his investigation and report of the case then and there. This report, the mental health report, is provided for under Section 5029 of the Welfare and Institutions Code, and contains just about complete information pertaining to the inducing cause of the mental illness.

From the date of service upon the alleged mentally ill, a court hearing here in Los Angeles is usually provided for within two court days. During these two court days the person is examined by our court medical examiners and the investigation and report of the mental health counselor is concluded and submitted to the court.

Of course, at the hearing the judge will determine the issue of the person's mental condition. . . .

Briefly, to conclude, I have two recommendations that would aid us in our program. The first recommendation would be that Section 5047 of the Welfare and Institutions Code be amended so that in counties having a mental health counselor that office shall be the agency that prepares the petition alleging mental illness rather than the office of the district attorney.

The second recommendation is that persons committed under the provisions of Section 5076, these are the elderly, senile persons, be permitted to jury trial rights, such as those that are committed pursuant to 5100 as mentally ill. (P. 150 *)

CHAIRMAN PETERSEN: What requirements do you have to have to be a mental health counselor for Los Angeles?

MR. TSO: The 14 mental health counselors assigned to the department here have at least a master's degree in the behavior sciences and one year in the field of treatment and dealing with mentally ill persons.

I, myself, am a member of the California State Bar and my position is that chiefly of an administrator.

CHAIRMAN PETERSEN: What is the salary range of the mental health counselor in Los Angeles County?

MR. TSO: I believe that our senior item pays approximately \$11,000, sir.

CHAIRMAN PETERSEN: And the junior, the lowest grade?

MR. TSO: The junior is up to about \$9,000, sir. (P. 157.*)

JUDGE MUNNELL: I would like to say one other word about the mental health counselors' unit, Los Angeles County. This is a staff which saves the Los Angeles County taxpayer an untold sum of money, it's difficult for me to compute the value in dollars, if not its value in saving grief and suffering to the relatives and the parents of the patients. (P. 220.*)

* Hearing transcript, office of chairman.

CHAIRMAN PETERSEN: With regard to your petitions, do you feel you have the discretion of whether you file a petition or not?

MR. TSO: Yes, sir. That is quite true. However, in the event that the person is unsatisfied with our requirement, he still has the statutory right and privilege of filing a petition on his own.

CHAIRMAN PETERSEN: Did you hear the suggestions that if a person did file upon his own and did so wrongly, that that would be a misdemeanor? Do you think that would be a worthwhile change in the law?

MR. TSO: Yes, Mr. Chairman. We had that provision in the 6500 (6500 et seq. Penal Code) series of our Narcotic Act. . . .

And because of that, we have very few, let's say, wrongful reportings. And I think if we have that in the provisions of 5047 (Welfare and Institutions Code), we might prevent it.

However, I have been here one year now, or a year and a half, with the department, and of the 700 or 800 filings that I have taken part in, I think, to my knowledge, only four were filed by another agency. (P. 157.*)

LEGISLATIVE COUNSEL'S DIGEST

Mental commitments.

Amends Sec. 5551, W. & I.C.

Conditions right of person to file petition for commitment of alleged mentally ill person on finding by district attorney that there is probable cause for allegations made by such person.

Authorizes counsellor in mental health to file such petition.

SENATE BILL

No. 37

Introduced by Senators Petersen, Grunsky, Rattigan, and Farr

January 6, 1965

REFERRED TO COMMITTEE ON JUDICIARY

An act to amend Section 5551 of the Welfare and Institutions Code, relating to mental commitments.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 5551 of the Welfare and Institutions
- 2 Code is amended to read:

* Hearing transcript, office of chairman.

1 5551. Any person may *submit to the district attorney of*
2 *the county a request for permission to file in the superior*
3 *court a verified petition, alleging that there is in the county*
4 *a person who is mentally ill and in need of supervision, care,*
5 *or treatment, and asking that examination be made for the*
6 *welfare of the person as provided in this article. If the dis-*
7 *trict attorney finds that there is probable cause for the alle-*
8 *gations made by the requester, he shall grant permission to*
9 *the requester to file the petition, and the requester may then*
10 *file the petition. If the district attorney refuses to grant per-*
11 *mission, he shall make a written record of that fact, giving the*
12 *reasons for his refusal, and shall file the record with the clerk*
13 *of the superior court.*

14 When no relative, friend, or other person can be found
15 in the county who is able and willing to make and file the
16 petition herein provided, any peace officer, probation officer,
17 physician attending the patient, *counsellor in mental health,*
18 physician attached to a public hospital or institution, if the
19 person is a patient therein, or public guardian may make and
20 file the petition herein provided. The district attorney or his
21 deputy shall prepare the petition and all other forms re-
22 quired in the proceeding when requested by the party who is
23 to file the petition or other form. When a petition is filed by
24 any such person, neither the person making or filing the peti-
25 tion, nor his superiors, nor the department, hospital, or insti-
26 tution to which he is attached nor any of its employees, shall
27 be rendered liable thereby either civilly or criminally if there
28 was probable cause for the making and filing of said petition.
29 *The district attorney shall not be rendered either civilly or*
30 *criminally liable for granting or refusing to grant permission*
31 *to file a petition if there was probable cause for his action.*

Recommended Legislation S.B. 88

Purpose

Eliminate the present provision for granting of a jury trial to any person aggrieved by refusal of the court to grant an application for order of supervision, commitment, detention or hospitalization of person alleged to be mentally ill.

Justification

In the course of the 1962 hearing of the committee testimony was received which indicated that under present law an individual could be retried, despite a medical discharge from hospitalization, on the basis of any aggrieved dissatisfied person. There does not appear to have been any extensive use of this old section and there appears no pervasive reason for its continuance.

Selected Statements by Hearing Witnesses

SENATOR FARR: There is another matter that you brought up, Judge Munnell It is the matter of a friend of the family demanding a jury trial after the court has found a person to be not mentally ill.

JUDGE MUNNELL: Yes. In this court in Department 95, if the judge sitting here finds the person not to be mentally ill based upon the testimony of the doctors, and the person is released and ordered discharged, then a relative, under the existing law, may demand a jury trial on the question of his mental illness.

CHAIRMAN CAMERON: Does anyone know what the reason for that is? Did the people understand it? I am accused of being mentally ill. I am brought up here; the doctors say they disagree; one thinks I am ill but I am all right, and the other one says let him go.

JUDGE MUNNELL: Or take both. They both say he is all right. (P. 214.)*

CHAIRMAN CAMERON: Or they both say he is all right. And a relative, for instance, thinks I belong in an institution, so the judge says no; the doctors say he is all right. Let Senator Cameron go. The relative says no; "I demand a jury trial." So I have to sit in front of a jury all over again. This doesn't seem right to me.

MR. MELVIN B. THALE: I might say, I have had four of those jury trials and I haven't lost one yet, where the doctor has testified that the person is not mentally ill and the person himself got up and testified and after the jury heard the person who the doctors recommended be discharged, they committed him every time.

* 1962 hearing transcript, office of chairman.

CHAIRMAN CAMERON: They did? Will you stand up, sir, and identify yourself?

MR. THALE: My name is Melvin B. Thale, deputy district attorney.

SENATOR GRUNSKY: Can we get that point straight? You mean the jury actually finds the person should be committed even though the judge had found they should not be committed?

MR. THALE: That is correct. The judge here in the hearing in Department 95, on the advice of his two doctors, found the person to be not mentally ill. And then the people, under the section, it used to be 5129, demanded a jury trial. It says where the people are dissatisfied with the ruling of the court they may in turn demand . . . (P. 216.*)

SENATOR FARR: When you say "the people," are you talking about the family?

JUDGE MUNNELL: Family. The interested parties.

MR. THALE: Family. It says the aggrieved party may demand a jury trial. The case was set down for a jury trial, had a regular full-fledged trial, the doctors testified, other witnesses testified on behalf of the person who was to be discharged, and the person himself testified in his own behalf and the jury came back with verdicts of mentally ill. And the person went to the state hospital. (P. 216.*)

SENATOR GRUNSKY: Might I ask, what testimony was it to support it? You mean the relatives get up and say he is a nuisance at home?

MR. THALE: Yes, the relatives got up and said he was a nuisance at home.

SENATOR GRUNSKY: And the jury probably has a nuisance or two at home of their own, so they go along with it?

MR. THALE: I found out usually in these cases the trial turns on the appearance of the patient before the jury regardless of medical testimony either way.

SENATOR GRUNSKY: And discussing it with the jurors, which I know is not infrequently done, to find out how in the world they arrive at their decision, that seems to be what they thought?

MR. THALE: They were guided by the appearance of the witness. (P. 216.*)

SENATOR GRUNSKY: I have this question: It is rather new to me that having waived a jury and proceeded to trial and being dissatisfied, whether you are the plaintiff, defendant, district attorney,

* 1962 hearing transcript, office of chairman.

as the case may be, how you can get a retrial and a reshuffle. Well, I know it is in the law, but it puzzles me. I know if I go in and waive a jury trial and don't like the decision, I placed my bet and I take my chances. But in this you actually get two shots?

MR. STOUT: You have two interests. (P. 217*)

MR. DISTLER: Excuse me, Senator Cameron. I might have an answer to the last question, and that is that on the previous commitment hearing there has not yet been an opportunity for a trial by jury. (P. 218.*)

On the original commitment hearing, of course, there is no trial by jury, just a determination. . . . These trial-by-jury commitment proceedings occur after the original commitment, never prior. And that would perhaps answer your question.

CHAIRMAN CAMERON: Yes. Now again, Mr. Purcell, do you know any reason, or can you think of any legislative history why a friend or relative should have the right to demand a jury trial once the doctors and judge have declared the man really is competent?

MR. PURCELL: No, I don't know why the section was put in, although it has been in the law for some 23 years. It was enacted way back in 1939.

SENATOR RATTIGAN: Do you suppose it was in the law because it was then conceived that the person filing the petition is before the court and tenders an actionable issue of fact and that he is constitutionally entitled to a jury trial of that issue of fact?

MR. PURCELL: That may well be. (P. 219.*)

JUDGE DRUCKER: There may be occasions when, at the time of the examination by the doctors, a person may appear to be rational at the time, and at the time of the appearance before the court herein the psychiatric department he appears to have insight into his problem and there appears to be no need for commitment to a mental hospital or sanitarium. Yet, the family who may have lived with the problem, and this man who may have been under the care of a psychiatrist over some period of time, are satisfied that this man does require help even though he appeared at a time when he seemed to be rational. And so the family pursues this further and wants a further hearing. (P. 220.*)

When the matter is brought up before the jury, some time elapses before the case finally gets to trial and at that time the patient may have a remission and demonstrate the fact that he is mentally ill by the manner in which he answers the questions which appear to be irrational at the time.

Consequently, the jury may come to a different conclusion than that first reached by the doctor.

So it appears that at the time of the examination it wasn't apparent to the doctors, and I think if the doctors would reexamine after they

* 1962 hearing transcript, office of chairman.

listen to the patient's testimony, they may themselves change their testimony. It has happened on a few occasions.

CHAIRMAN CAMERON: Mr. Stout, did you wish to add anything?

MR. STOUT: No. Senator Rattigan has, I think, by his question to the Legislative Counsel representative, posed the issue. I think this is the origin of the rule, because the person who signs the petition is essentially under the law an aggrieved party, and has an interest or stake in the outcome. It is not only the person himself, but the petitioner who has an interest in the proceeding. (Pp. 220, 221.)*

SENATOR GRUNSKY: My feeling is this: Anything that deprives a person of their life, liberty or pursuit of happiness, whether it is a criminal proceeding, which mental proceedings are not, or whether it is a proceeding in alleged mental illness, so far as that patient is concerned they are incarcerated and deprived of their liberty just as real as if they are being charged with a criminal offense. And though there may be a constitutional question involved, such as that phrase by Senator Rattigan, I think that I would be willing to enact the law and have it tested for the reason that I think I may already have made clear, but by further analogy, a prosecuting witness in a criminal matter certainly does not have the decision as to whether or not it should be a jury trial and certainly has no right to demand an appeal.

So far as I am concerned, whether it would be my wife—heaven forbid—a neighbor, or so-called friend—and with such friends, who needs enemies?—who file the complaint, so far as I am concerned, even though it is a mental proceeding, they are my prosecuting witness and so far as I am concerned my liberty and my constitutional rights are my decision and my discretion to exercise.

CHAIRMAN CAMERON: Mr. Distler, you have practiced on this. How do you feel about this?

MR. DISTLER: I don't feel these other parties should have this right to file this trial by jury. (Pp. 221, 222.)*

MISS AITKEN: I would like to comment now on the jury trials. I believe that this privilege should remain, although people who try them find them difficult cases. Sometimes, if a patient—this is from the standpoint of the person who has tried the cases—is under control, he may convince a jury he is not mentally ill, but after much soul searching I feel this is a privilege we should retain in the law.

Reading your proceedings from your last hearings on this, I notice that there were questions raised about the jury, raised by the petitioner or the complainant. I have never had that situation myself so I can't comment on it, except philosophically.

I think, though I have mixed feelings, that that privilege should remain. I don't think it is utilized nearly as much as the request for a jury by the patient. (P. 59.)*

* Hearing transcript, office of chairman.

LEGISLATIVE COUNSEL'S DIGEST

Mental commitments.

Repeals Sec. 5576, W. & I.C.

Eliminates provision granting right to jury trial to any person aggrieved by refusal of judge to grant application for order of supervision, commitment, detention, or hospitalization of person alleged to be mentally ill.

SENATE BILL

No. 88

Introduced by Senators Petersen, Grunsky, Rattigan, and Farr

January 12, 1965

REFERRED TO COMMITTEE ON JUDICIARY

An act to repeal Section 5576 of the Welfare and Institutions Code, relating to mental commitments.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 5576 of the Welfare and Institutions
2 Code is repealed.
3 5576. If a judge refuses to grant an application for an
4 order of supervision, commitment, detention or hospitalization
5 of a mentally ill person alleged to be dangerous to himself
6 and others if without supervision and treatment by physicians;
7 detention and hospital or sanitarium care he shall state his
8 reasons for such refusal, and any person aggrieved thereby
9 may demand a trial of the question of the mental illness of
10 the person alleged to be mentally ill, in the manner provided
11 for a jury trial when demanded by or on behalf of the alleged
12 mentally ill person.

CHAPTER II

Hearing Highlights on Selected Topics

Topic: *Voluntary Commitments*

DR. STAINBROOK: . . . there is the trend which I think is very basic and which has been really quite dramatic in the last six or seven years—I can give you the statistics from this particular hospital—toward the voluntary admissions of patients.

For example, seven years ago, at the time when I came to this hospital, we were admitting into this unit, that is, into the psychiatric unit, about 97 percent of all the patients who came to the psychiatric unit who were here either by an original petition issued by the court outside for examination within the hospital, or under the 72-hour emergency commitment, so that only 3 percent at that time, over seven years ago, who came under the scope of the hospital were here voluntarily.

At the present time we admit about 50 percent of the patients to the hospital on a voluntary basis. And the same kind of change has occurred with reference to the people who go on to the state hospital; from about 97 percent committed patients leaving this institution to the state hospital seven years ago to somewhere just over 50 percent who now go to the state hospital under commitment at the present time.

So you see, this is really a very striking change with respect to getting into the sickroom in psychiatry.

I would assume that this tendency has by no means spent itself, and I will attempt to discuss with you some of the directions which I think this voluntary admissions should still go, and which requires facilitation by various other agencies in the community. (P. 17.*)

. . . I think there are basically two fundamental reasons. One has to do, let's say, with the readiness of people to seek psychiatric help and, therefore, to come to a psychiatric hospital for this and come voluntarily.

I think the other change has been in psychiatrists themselves; that is, their willingness to maybe modify their perception of the patient as not being so dangerous and so threatening to them, and they have been much more willing, therefore, to spend the time with the patient working through his own anxiety about coming into a psychiatric hospital and getting him in on a voluntary basis.

SENATOR GRUNSKY: Do you think possibly under the Short-Doyle Act, where they have confidence they will be taken care of nearer home and maybe as an outpatient, rather than feeling if they come in voluntarily they are on a bus, and so forth. . . .

DR. STAINBROOK: Yes, I think all of this has gone into the patient's insight of what is going to happen.

* Hearing transcript, office of chairman.

SENATOR GRUNSKY: I presume with their first contact and in consultation the psychiatrist can logically persuade them that they may need institutional care and then they, with their logic, will go along?

DR. STAINBROOK: Yes, I think so. I have one other way that I am fond of putting this: I hear so many people, psychiatrists included, say that this patient has no insight; he doesn't recognize he is ill. He refuses to be a patient. And the ordinary assumption here is that this lack of insight is the patient's unwillingness to accept his own distress, whereas, actually, in my own experience, that is very seldom the case. Most of these psychiatric patients I know are quite willing to accept themselves as being disturbed, but they have great reservations about being a patient our way, and this acceptance of what being a patient is going to mean for them, being put away in a hospital and not coming back.

I think the patient's acceptance of what the patient's experience means has allowed a great deal for the patient to come a great deal closer in coming to the hospital voluntarily, because you see here again, and I might anticipate and say that one of the problems about commitment procedures, of course, is that their very existence perpetuates them, in the sense that if commitment procedures are possible, psychiatrists are likely, because of the tremendous pressure of time, and so on, to commit the patient rather than provide the reassuring helping relationship with the patient in which the patient's anxiety can be handled, and in getting the patient to agree to enter voluntarily.

So I think there have been those two changes, changes with the patient and changes encountered by the patient, which has allowed him to work through a reassuring relationship, and the fact that maybe it is all right to be a patient.

So, there has been, however, this very dramatic tendency, and I think this is one thing to keep in mind. To anticipate my argument, my own feeling is that if we push all we can from the psychiatric point of view toward getting voluntary admissions, we will ultimately reduce the number of patients who have to go into a state hospital, or any other kind of psychiatric hospital, under commitment to, I would estimate, about 20 percent.

You see, in Britain at the present time they have somewhat this same kind of ratio. I think we can do the same thing here.

As a matter of fact, in some of my more assertive moments I have stated that if I had enough staff to run this hospital, I would be willing to run it for one month without any recourse to commitment procedures whatsoever.

CHAIRMAN PETERSEN: Doctor, excuse me. But, how is this brought about in Great Britain?

DR. STAINBROOK: Well, simply by a willingness of the hospital, first of all, to be open; to work through with the patient what it means to enter the hospital; the provision of the same kind of outpatient resources close to the community; reducing the threat and danger in the circumstances; and the hospitals' general willing-

ness to accept voluntary admissions because, on the other side, you see, our own state hospitals are now around 50 percent of the voluntary admissions. But I think that anybody who speaks honestly has to state because of the limited resources of personnel in the state hospitals, and because of the fact that they have to accept committed patients, they frequently, in spite of themselves, make it a little more difficult for the voluntary applicant to come into the hospital than for the committed one, and again this shifts the balance in terms of commitment.

Then there is the other tendency toward the open hospital, which I think has been in line with reduction of the threat and the fear of the psychiatric hospital experience, and then, as you are suggesting, the shift from state to local treatment, so that increasingly local hospitals are able to accept right from the beginning patients whom they then perceive as not patients they are going to examine, quote and unquote, and send off to some other place, but right from the beginning they are going to attempt to treat themselves.

Now, if I can just rely upon your indulgence for just a few minutes, I want to put in a little bit of psychiatric, shall we say, education here, because I think this has a great deal to do with admitting procedures, and how, for example, in this particular hospital, where we fragment the hospital induction process, that is, stage many people here for seven days, then ultimately send them to the definitive treatment in some state hospital, how in many circumstances I feel this is highly antitherapeutic.

For example, consider the problem of the acutely disturbed psychopathic patient. I think there are two things going on when you become acutely mad. The first thing is because schizophrenia, or the schizophrenic reaction we are most familiar with, I think is a reaction formed to many different kinds of insults both to the person and his body, to his brain.

The first reaction, of course, that one experiences in becoming psychotic is the sense of the disorganization of one's self functioning.

Now, the second response is tremendously acute anxiety about becoming crazy. And the basic process of disorganization plus the acute anxiety about it constitutes, for me, the panic state of the acute psychosis.

Now, the implication of this, I think, is just basically in this area: If at the beginning when the patient is acutely psychotic and in great panic about himself I can provide for him another consistent, predictable human being whom he can predict and therefore come to some kind of stability about predicting himself, because I sense that one of the most difficult things of being a psychotic patient is our own inability to predict how other people from moment to moment are going to behave towards you, and how you from moment to moment are going to behave, it must be really a terrifying experience to have this little sense of control of one's self.

If, however, one can establish quickly in the first hours of this happening a human relationship that is consistently there, and intelligent in resisting anxiety, I have a feeling that patients so treated may quickly restitute from the acute panic and disorganization induced by the panic. They may still be psychotic, quote and unquote, but from

that time on they experience what it means to be helped so they may quickly get better.

On the other hand, patients for whom this type of experience can attain, for whom, for example, we lock in a room, or for whom because of our inadequate resources here we can't really give this kind of consistent response, these patients have nothing to do to handle their own anxiety except doing more of what they are already doing badly; withdrawing, avoiding other people, making delusional interpretations in order to make sense of what is happening to them, and getting worse.

The point is, I think, the sooner we can reach the extent to which a patient can enter a psychiatric hospital where he is going to stay, the better it is in terms of his prognosis.

Therefore, since many of the state hospitals are in urban centers, direct admissions, even of an acute nature, under the so-called 72 hour commitment, with the subsequent adjudication about commitment being done in that hospital, would seem to me at least to be a procedural communication which would not only perhaps make for more efficient committing procedures on the part of the courts involved, but also make it more likely that less of acute schizophrenics would go on into the long term chronic schizophrenia.

I think that is an important consideration here. (P. 19.)*

MISS AITKEN: . . . I believe in the philosophy of voluntary hospitalization, but I don't believe that it is possible in every case. I was very interested in Dr. Stainbrook's remarks about a psychiatrist convincing his patient that he needs voluntary treatment. I think that the commitment patients generally won't go to see a psychiatrist, in my experience, and when the subject is mentioned to them, they have a tendency to flee in panic.

It is for cases like that that I believe we need a court procedure. But there are other voluntary methods of admission, either public or private, state or county, which are possible and I think it is better to do that, because I think it is better for the patient. (P. 42.)*

JUDGE CHRISTIAN: . . . Now, a third front on which this effort ought, I believe, to be approached is that access to public facilities by persons who require public care in the psychiatric field ought to be made more readily available to the patients who appear voluntarily. That is, that the principal and usual method of access to public psychiatric facilities ought no longer to be judicial proceedings leading to a court commitment, but ought to be a referral by a family physician or a self referral, such as you would normally have in the case of any sick person who is reporting himself for treatment and happens to have to use public facilities for treatment.

The committee knows, of course, that the statutes do not allow for voluntary placement of patients in the state hospitals. Statistics indicate, though, that there is a very wide variation in different parts of the state in the use of the voluntary commitment procedure; voluntary

* Hearing transcript, office of chairman.

placement. Los Angeles County is quite high in this regard. There is much use made of the voluntary placement here, and the good record of Los Angeles County in this regard tends to make the statewide average look better than it would be were it not for the heavy weighting that the large population of this county gives to the statistical picture.

Among the individual hospitals of the state system there are now differences in theory in the reception of alcoholics, for example. Some of the hospitals, from my own experience, prefer not to take a patient for treatment of alcoholism except by court commitment, on the basis that the patient will not stay long enough to receive useful treatment.

Other hospitals, including notably Mendocino State Hospital, that the chairman is familiar with, has an active policy of encouraging voluntary placements on the basis that this creates in the patient a state of mind that is more conducive to effective therapy than if the commitment is involuntary.

Now, aside from these wide differences that exist in our system, there are comparisons with other public psychiatric systems in other states and abroad that are very striking.

In the United Kingdom, for example, after the adoption of the Mental Health Act of 1959, the proportion of voluntary placements in psychiatric facilities has gone to more than 95 percent; less than 5 percent of the total intake into public psychiatric facilities is on any kind of involuntary placement.

Here are some of the consequences of our continuing heavy reliance on court commitment as the usual or basic method of access to public psychiatric facilities.

Number one: The stigma that is felt in the public mind, upon psychiatric illness, upon acceptance of treatment in public facilities, is greatly reinforced where there is a judicial finding of mental illness followed by an order of commitment that implies incompetency that bears so obvious an analogy to criminal proceedings, and the like. (P. 70.*)

. . . I should like to refer the committee especially to the British Mental Health Act of 1959, I believe it is, under which, as I have indicated earlier, the basic method of access to the public facilities is referral by the general practitioner or self-referral. Less than 5 percent of the intake comes from court commitment. Similar but less drastic results have been achieved in several American jurisdictions.

There is now pending in the District of Columbia a study which will lead, I am told, to a measure—there is a measure now pending in Congress, but a new measure is being prepared for the next session. There is a draft of a mental health act that was prepared by some personnel of the Department of Health, Education and Welfare, that has been adopted in varying forms in Alaska, Missouri, North Carolina, and certain other American jurisdictions, with the result that more and more of the intake comes by means of voluntary self-referral and a participation of the family physician, and less and less by the intervention of the court.

I suggest that in all of this, that any changes or reforms that can be brought about in the manner that I have suggested, there is no civil liberty question whatsoever. What I am referring to here is the possibility of making available at the option of persons, at the option of

their medical examiners, their medical advisers, a procedure that is as much like as possible the usual way in which people take medical services with no compulsion, and with compulsion reserved wherever possible to cases that cannot properly be handled in this way.

I suggest to the committee that it ought to be possible in this state to engineer a result that will limit the use of court proceedings to those cases that are really dangerous to themselves or to others, and in practice we might find that our proportion is comparable to that of British experience: 5 percent or less. (P. 79.)*

JUDGE REPPY: . . . The desire to have the main stress on voluntary entrance is very interesting. I really don't know what the statistics are for our county, but I doubt that we have as many voluntaries as was suggested, even though our county has Camarillo State Hospital right in it. It might be that very reason, perhaps, that we don't.

But the problem with the voluntaries, which has developed with us, is that they do have the right to be released and they have to be released within seven days, and we get quite a few petitions before us filed by a doctor at Camarillo State Hospital who feels that the patient should not be released as he is now asking for and we conduct a hearing on it. I don't know whether there is anything in particular that can be done about that.

The problem of the stigma of commitment, I think, deserves a few comments. I find that to be a very real fear among the patients and members of their families. Despite the rather enlightened outlook that we say we have, I think at least the people who face commitment feel that it is going to be a stigma. So, if it is possible to handle a case in a way that does not result in commitment, we like to do that. And frequently we make continuances over a considerable period of time, as much as even three months, and release the party during the period of the continuation with usually a recommendation that the party continue conferences with his family physician, or with a psychiatrist, if they have the money. That is a terrific problem, affording the cost of psychiatrists. (P. 126.)*

JUDGE ALLEN MILLER: I have heard so many suggestions today, and Judge Christian's broad sketches with respect to where we are going generally in the state mental health appeal to me very much, and I see these trends going toward voluntary commitments, and getting away from the legal, involuntary commitments, I think, is the trend, and I think it is a good trend, and I don't think there is a judge sitting on the bench in California who isn't sympathetic to handling these things on a voluntary basis rather than an involuntary basis and going to take every step that he possibly can to see this philosophy effectuated. (P. 133.)*

* Hearing transcript, office of chairman.

DR. EDWARD LEE RUSSELL: I believe, and I think that probably the purpose of the committee, the interim committee, is to eliminate all acts or all measures that are not serving any useful purpose. For us, in our area, the voluntary admission is being used, but is being used mainly for the admission of patients to private hospitals. I am not proposing that it be eliminated, then. That is a decision that belongs to someone else. (P. 145.*)

MR. JESS D. CANNAN: We don't use the voluntary procedure at all in our county. Now, when I say we don't use it, what I mean is that we always use the involuntary procedure; however, many of our patients are voluntary in nature but we still go through the involuntary procedures. (P. 161.)*

SENATOR GRUNSKY: What is the reason for that?

MR. CANNAN: What is the reason? Well, one of the reasons is that it was my understanding, it was the understanding of our superior court judge that the hospitals preferred that. I have on occasion discussed it over the phone with them and they have said, "Well, go ahead with the involuntary procedure." They seem to prefer it.

SENATOR GRUNSKY: Well, then, why? I still would pursue the why, as to why they would prefer it, unless they have some sort of idea that the patient could walk out any time he wants to?

MR. CANNAN: That's precisely the answer.

CHAIRMAN PETERSEN: If I may interject myself into this, of course, Mendocino is my home, Ukiah, and I think their theory and philosophy has changed and they do want voluntary commitments now, I don't know if that has reached Trinity County, but in Mendocino County I know we have more and more voluntary commitments, and the hospital seems to want, or at least has stated they want voluntary commitments.

SENATOR GRUNSKY: But the implication of his testimony is that they feel a problem under voluntary commitments where somebody is in and they don't like the food or something and they can walk out.

MR. CANNAN: Right. Well, I feel there is a problem there myself.

MR. KENNEDY: There is an additional thing, Senator, that we have in our area—I am from Trinity also—and that is that the sheriff is reluctant to transport voluntary patients, he would much rather transport them while they are under court order, he feels more secure this way, and there is often no other way for them to get to the hospital than to be taken by the sheriff.

SENATOR GRUNSKY: Then again, I ask why.

* Hearing transcript, office of chairman.

MR. KENNEDY: I don't know. I am just expressing his feeling in the matter. He prefers to not be assisting these people in a private capacity, but rather to be acting under direction of the court.

SENATOR GRUNSKY: Well, is he worried about civil suits and claims?

MR. KENNEDY: Yes, definitely.

CHAIRMAN PETERSEN: And also it would be an expenditure of public funds.

MR. KENNEDY: It could be construed to be an expenditure of public funds for private purposes.

SENATOR GRUNSKY: Well, incidentally, for the record, then, that raises questions that if we are trying to encourage voluntary commitments, which the previous testimony has carried that consensus, maybe under governmental tort liability and other things, we had better understand whether they are exposed and existing law is working against the wider use of voluntary commitments. That's an incidental consideration we better have in mind, if I am correctly interpreting past testimony that we would like to have more and more voluntary commitments.

MR. CANNAN: Yes. There is one other thing in our county: Of course, we don't have the organization and we don't have the trained personnel to actually arrange or to promote voluntary commitments—I will get into this later on—and this is another reason we use the involuntary procedure. (P. 161.*)

JUDGE JOSEPH KARESH: . . . I believe in voluntary commitments wherever possible, but I would urge that there be placed in the law, some legislation that would provide that out of the county funds the people voluntarily committing themselves **should be transported** to the state hospital. There should be the same protection from a lawsuit, in the event there is an accident, that the sheriff gets when he transports the person. The way it is now, a **person transporting** someone, if you are an official and there is an accident, I don't think that he would be protected, and I don't think you could use government funds. (P. 202.*)

* Hearing transcript, office of chairman.

Topic: *Commitment Procedures for Private vs. Public Institutions*

DR. STUART C. KNOX: Commitment procedures should be uniform for both public and private facilities and should grant these facilities the following prerogatives:

A. They should be permitted to admit for treatment all persons who make application for such treatment, and they should be empowered to detain such persons for a period not to exceed seven days after application for release.

B. They should be permitted to admit, for supervision and care, any person who has been certified by a single physician as being mentally ill and in need of supervision, care and treatment; and they should be empowered to detain such persons not to exceed 72 hours, excluding weekends and holidays, after such emergency admission by certification of a single physician.

C. They should be permitted to admit for treatment any person who has been certified by each of two physicians as being mentally ill and in need of supervision, care or treatment; and they should be empowered to detain such persons not to exceed 60 days from the date of such admission.

D. They should be empowered to admit any person who has been committed in a judicial proceeding and to render care or treatment in accordance with the terms of the order of commitment for the period of time provided for in the commitment order.

The criterion for involuntary detention of a patient in protective quarantine should be the factor of danger to self or others. This factor is difficult to establish on the rules of evidence in some cases and must often be based on opinions derived from medical knowledge and experience. (P. 8.*)

One change that I think should be in the existing statutes today is to have a uniform code that applies to public and private hospitalization. (P. 15.*)

MISS AITKEN: On the private hospitals, I am not an expert. I would approve of either conforming them to the commitment or, in lieu of that, just one final thought, on the certification, I have actually great faith in the private hospitals, which are licensed, and in the great majority of the private psychiatrists practicing in the field; 99 percent, probably.

But there is always the possibility of either mistake or malice, or something like that.

You will notice that in the voluntary entry to a private hospital the private hospital must send a record of this to the Department of Mental Hygiene. I would say that if the certification remains in, the same thing should follow, and I checked the code and didn't find it. I could be wrong.

* Hearing transcript, office of chairman.

In other words, when a physician certified a person to a private hospital, I think that the private hospital should be required to make a log of that and send it to the Department of Mental Hygiene. I think the Department of Mental Hygiene could well even by letter contact the patient, or contact the hospital, and ask them to inquire if they are satisfied with the situation. One can always say, "Will the letter be delivered?"

I think we could add a misdemeanor section for failure to deliver communications and receive and mail communications.

I also would like to see the certifying doctors be required to be psychiatrists or board eligible, as much as that is possible. (P. 62.*)

* Hearing transcript, office of chairman.

Topic: *Detention Observation for 72 hours vs. 12 days.*

DR. STAINBROOK: Now, this leads me, then, to a suggestion about the 72-hour emergency commitment. I think that this is much too short a time for any kind of significant response to be made to the patient in terms of handling, particularly this acute situation I am talking about. It also forces the psychiatric facilities to quickly go to commitment simply out of their desperation about being able to do anything else that is alternatively desirable, and it seems to me, therefore, that Section 5050 in the Welfare Code, which talks about this emergency commitment, should be amended to 12 days so that the emergency hospital, such as we have here, has an opportunity to deal with this acute situation for at least 12 days, if necessary, out of which would come much more significant therapeutic handling of the acute psychotic experience, reducing the possibilities of chronic illness, and maybe—perhaps—also reducing significantly the amount of committed aspects. If one had a 12-day emergency commitment, orders of detention by the court after the petition would no longer be necessary in most cases because the medical examiners, by the court, could use the 12 days working in conjunction with the hospital staff to arrive at the decision for commitment.

And I think that this expansion here would achieve a great deal of real value both for the patient and the patient's prognosis and for us.

SENATOR GRUNSKY: You are contemplating treatment within that 12-day period?

DR. STAINBROOK: Oh, certainly. Right from the beginning.

SENATOR GRUNSKY: You will run into a very strong and perhaps not medically justified due process of law and civil rights question; that is the one thing a great number of citizens are fearful of . . . a period of even 72 hours they are fearful, and 12 days would alarm them to a great degree. I am talking now not about mental cases, but about people who are fearful that one day they may, through family, unfriendly family, or some other people, be put in for rather dramatic and traumatic treatment which could have an ulterior motivation.

That may sound like fictional or overdramatized situations, but people are fearful of that occurring.

DR. STAINBROOK: Yes, I know.

SENATOR GRUNSKY: Of course, we say it can't happen here in America, but it could happen. Not only unwanted family people, but it might even occur by getting rid of a few Senators or Assemblymen some day.

DR. STAINBROOK: Or even a few psychiatrists.

SENATOR GRUNSKY: Yes.

DR. STAINBROOK: Yes, I am quite aware of this kind of propaganda. However, you know the treatment I am talking about is nothing more traumatic than human kindness, human sensitivity, and the understanding of the psychotic distressed patient. That is all I am talking about.

If that kind of response from the hospital is dangerous, then, obviously, we have come to a very poor state.

You know, in this hospital we use no electroshock treatment, et cetera, on any of our patients.

SENATOR GRUNSKY: I am not talking about your hospital. The point is, whatever we do, we give the power. . . .

DR. STAINBROOK: Yes. But, on the other hand, you have many precedents for this, that many states have 10 to 15 days on the emergency evaluation commitment. So that is not asking for any kind of revolutionary change, as a matter of fact.

So, I am sure that this will be a counterfeeling. But I am only suggesting that if this amendment could be made, that there would be tremendous advantages in terms of the treatment of illness and I think also it would reduce the number of people who go on to the state hospital under commitment because, again and again, I come back to this: In spite of our best intent, the existence of commitment procedures perpetuates them.

CHAIRMAN PETERSEN: Doctor, in that regard, perhaps the detention hearings, as they have in juvenile court, might provide this person with due process of law. Do you think that that would upset the patient, to as soon as possible have a detention hearing before the court?

DR. STAINBROOK: No. I think that anything that is done in a nonthreatening way with the patient by people whom he knows is not a threatening kind of thing. This means, however, that in such a circumstance whoever is responsible for the detention hearing and the people in treatment relationship to the patient have to be very intimately associated. Otherwise, I can see that you could, first of all, split the patient's conception of who has responsibility for him, and maybe also really further confuse him about whether he is a patient or whether he is a prisoner, which is the next small aspect of this that I would like to discuss.

SENATOR GRUNSKY: Before you come to that, I still didn't get the practical solution to the problem that you state.

As I understood, disapproving of the way patients are handled now where they sort of go in for a processing in an atmosphere which is not really appropriate psychiatric hospitalization, but, as I have watched the proceedings here, you don't know what type of institution the patient should be referred to, so which of the many and varied institutions do you select?

And if you simply select the one by reason of its proximity to the court of commitment, it may not be the one best suited for the type of treatment.

So, I am just wondering if it is a practical solution. . . .

DR. STAINBROOK: Well, I can understand the difficulty about at some point making a differential diagnosis or disposition about the patient, for example, going directly to Norwalk as against coming here.

I think the important thing is that we could, for example, I am quite sure, make many such decisions in our admitting area about who would probably go directly to Norwalk, in which case, rather than spending seven days here to be transported directly there and to be under definitive treatment immediately.

SENATOR GRUNSKY: Then you would be making the decision rather than, in this instance, Judge Munnell, for example.

DR. STAINBROOK: Only a decision about what hospital to use, which is what psychiatrists and physicians make all the time.

Shall they be admitted to the surgical ward or the medical ward, or to the psychiatric hospital for commitment procedures ultimately, or to this hospital for acute treatment, and so on. It is difficult to make that in some cases. I can understand that we could not do it as black and white as one might expect, but all I am suggesting is and I used that as an illustration to indicate how I would like to see the first two weeks of the acute psychosis dealt with as a treatment response, without just putting the patient on ice, so to speak, and waiting until he gets somewhere else, you see, because this makes psychiatry behave as though we have no acute pneumonia, and obviously we do have an acute illness.

Some of our illnesses are not only acute, but they are fatal. Yet, the fragmented aspect of this 72-hour commitment which, then, makes it mandatory for the next hospital to pick up after seven days interferes with the receiving hospital's ability to really mount a consistent therapeutic attack on the first two weeks of the illness, when I think it counts.

SENATOR GRUNSKY: Am I understanding it correctly that, for example, the cases which were handled in Judge Munnell's court here this morning, that the time which they are being held, based upon his decisions, based upon the recommendations of the testifying psychiatrist, is not for treatment but simply, in effect, holding them in protective custody?

DR. STAINBROOK: It depends on what you mean by "treatment," you see. Certainly they have a certain kind of treatment, a certain kind of drug. But, basically, the basic treatment situation, whatever else you are doing, is the relationship between the physician and the patient.

This gets fragmented in a situation like this. The psychiatrist changes. Other people take over. . . .

SENATOR GRUNSKY: Maybe a holding facility isn't adequate to enable them to do that.

DR. STAINBROOK: I think the time is too short to do it also. I think that it can't be done in 72 hours because this means that this hospital has to make a decision in much less than 72 hours in order to process the petition, and so forth. (P. 25.)*

. . . I am not talking about all patients. I am talking now about acute psychotic situations where they are, by the way in which the 72-hour commitment procedures and the subsequent commitment and procedures to the state hospital are now engineered, we effectively behave as if we have no acute problem. And we are saying we are going to effectively treat this patient until he gets to the state hospital seven or eight days later, then in the state hospital, I may tell you, another two weeks may pass before they decide where he is going to go, and I think the first three or four weeks of the psychosis are tremendously important.

All I am saying is if we had more time to do an adequate handling of some of these acute cases, I think we would salvage more. (P. 33.)*

MISS AITKIN: . . . I believe, that a petition should be signed sooner than 72 hours. That only gets him before the doctors. And I think when you snatch a person—and I think we have to look at the worst when we write a law to protect the people—when you take him from where he is, I think that papers justifying it have to be signed, otherwise I think that it can be too easy, sometimes, for people to give the evidence to the police.

And bear in mind, these cases do not go to a law enforcement officer or to the hospital. They usually go right to the police.

I hope you will consider the due process factors there, and I would recommend consideration of a 24-hour requirement of filing rather than 72. The man is still before the hospital, and there can be a dismissal. (P. 46.)*

MELVIN MAPLE: Going back to the statements made by Dr. Stainbrook, and I think this is the crux of the matter, quite frankly, I would like to see a period of time, and I think Dr. Stainbrook began to talk about the problem but he missed the point, really, where you can involve the patient who is acutely ill, and these are the people that can be done harm by deferring treatment.

SENATOR GRUNSKY: That is where he was talking about the 12 days?

MR. MAPLE: That's right. Now, you enter into the problem area of civil rights, of course. If you are going to delay these people, detain them in a hospital—

SENATOR GRUNSKY: And with drastic treatment.

MR. MAPLE: —with drastic treatment, then you have got to have some sort of hearing right at the very beginning to protect their civil rights. And maybe you can do it on the order of a predetention hearing, like they have in the juvenile court system, where you have

* Hearing transcript, office of chairman.

an adjudication right away. But you don't keep them for 72 hours and then postpone the hearing for another four days, and by that time the person is already so frightened and so scared and so involved in the psychotic process that it is really too late to do very much for him in this hospital, and you have to, then, send him out to a state hospital.

But, if you could shorten that interval and get him involved in a doctor-patient relationship soon enough, before he has reached the process of disorganization where you can't bring him back, then you could keep him from becoming chronically ill. And you could really safeguard his civil rights in the proper sense, because he has a right to be treated, too, you see, if he is really psychotic.

So, to distinguish between these two kinds of people, that is the crux of the problem: between the person who is really ill and the person who is being railroaded.

In the case of the person who is really ill, he deserves to get treatment right now, just as though he had a contagious disease that could be cured if we would only treat him right now, but who will die if we deferred even 48 hours. If he has gaseous gangrene on his leg, we have no hesitation. We go in there. And if it is a boy whose parents have religious scruples, we go down and we get a court order and we do it. And we worry about these other things later, because we know that in the case of a leg that is infected, that he is going to lose it.

But, how about the child, or the adult, who is going to lose his mind, and who is going to suffer untold tortures, mental tortures, for years unless he is treated right now? He is just as emergent. It is just as important to him that he receive treatment. But we stop short because we say, "Well, we have got to really decide that he is ill."

SENATOR GRUNSKY: Well, Dr. Stainbrook made that point very clear, and you are agreeing with him, and I agree with both of you. But, how about protecting the civil rights where 12 days of drastic treatment can make a marginal or sane person appear insane if not drive him insane?

MR. MAPLE: All right. Now, I would suggest, and this is the whole point, if we have some sort of court procedure, if you must have a court procedure, you have no problem where you have a voluntary commitment, and I don't like the word "commitment" there. Let's say a voluntary admission to a hospital or treatment facility of some sort, preferably in the local level because that is where the best thing is done for the patient treatmentwise, therapywise, where the least disorganization of his life occurs, and taking him away from his family can be accomplished best at the local level.

If the entry to the hospital of a person who is unwilling to go, whose relationship with his own family doctor has not developed to the point where he is accepting his need, so that he is contesting it in some way and he says "No, you can't take me away to that hospital" or "You can't take me to that clinic, I won't go," and you have to involve some people to force him to go in some way, these people can be handled immediately.

Now we go down to the judge and get a detention order. But the detention orders are issued almost perfunctorily. Somebody goes down,

he makes some statements under oath, and little or no investigation is made and they detain him, then for 72 hours and four days after the 72 hours he is entitled to a hearing. It is already too late.

Why not, if he is contesting it, why not provide some mechanism where he can get a hearing right now, and he could have his family doctor involved, his people involved who are, after all, bringing him to the attention of the court, or the detention process? Why can't we have some sort of hearing like they have in the juvenile court for that purpose?

SENATOR GRUNSKY: Well, is that what you are suggesting?

MR. MAPLE: That is what I am suggesting.

SENATOR GRUNSKY: Follow pretty much the general procedure of juvenile court?

MR. MAPLE: Well, I don't like analogies. You should spell out specifically what the person has a right to in the Welfare and Institutions Code, if he is alleged to be mentally ill, and he is resistant of treatment if it is going to be an involuntary sort of procedure.

But you should be able to bring the hearing about relatively quickly instead of deferring it, you see. (P. 94.*)

JUDGE REPPY: This leaves me to comment on one point that was brought up by Mr. Maple, and that is the desirability of having a period of time where observation might occur before an actual commitment should be made by the court. We have worked out the system with the availability of Camarillo State Hospital in cooperation with Dr. Nash, the superintendent there, whereby if our medical examiners are in doubt concerning someone's mental illness, and they frequently are, they will suggest that we have a period of observation at Camarillo State Hospital, which will run anywhere from one week to sometimes two or even three weeks, so that a member of that staff can evaluate the person and then come to our hearings. And in recent time, say the last six or eight months, there always seems to have been one in that category and Dr. Borrell, who is currently the doctor who handles this type of thing for the state hospital, is presently at our hearings, and he testifies concerning these referred patients.

Of course, this all occurs before commitment, so there is the opportunity to have this period of time where the patient can be temporarily exposed to the atmosphere at Camarillo State Hospital, although he doesn't get active treatment of the drastic type that Senator Grunsky was concerned about, I am sure that there is some effort to provide the physician-patient relationship that the other doctor, Dr. Knox, or one of the other doctors, was suggesting.

So, I think we have a pretty fair background of any patient before any order for commitment is made, and it generally results in the patient receiving very prompt attention in order to get the patient to the hospital as soon as possible. (P. 122.)*

* Hearing transcript, office of chairman.

DR. RUSSELL: I think I know what Dr. Stainbrook is talking about, but it bothers me that he thought that we should extend the observation period under Section 5050.3 to 12 days. It seems to me rather long.

He is, of course, thinking of providing more intensive care immediately, and I think we all have the same objective in mind. I just have some doubt and some wonder about it. (P. 148.*)

MR. JESS D. CANNAN: Now, we use the 72-hour emergency detention a great deal. We like it. I wouldn't recommend it be made longer or enlarged, but I would ask you to retain it. I think it's a very useful tool.

Now, there is one matter I do have a feeling about, though, and that is that in all 72-hour emergency detentions I use our county physician—I don't use the peace officers—and I would recommend that you seriously consider permitting the 72-hour emergency detention upon the signature of any physician. I think this would be helpful in our county because our county physician isn't always available, and I would rather rely upon a physician than upon a peace officer. (P. 160.*)

JUDGE KARESH: Now, I don't agree with the doctor who said that we should have a period of commitment for 12 days. I think that is contrary to everything, as lawyers, that we have been taught to believe, it goes contrary to due process, and, while you may say it doesn't involve civil rights, it does involve civil rights, because a man's liberty is taken away.

Now, there is a school of thought, as I said, that would like to do away with the court, they would like a board of psychiatrists to make the determination, and I oppose that in every way that I can, not because I am a judge presiding over a psychiatric department, because my department will be changed, but I just believe in the court system, and any statement that the air of this court is an air that is attached to a criminal proceeding, I don't understand it, I can't fathom it. Is it being suggested that because a judge presides he gives an intimation of a criminal procedure? Well, under those circumstances you shouldn't have a judge in a conciliation court, because being a judge he is going to give an intimation of that type of authority, which is not helpful.

I say that the authoritarian figure of a judge, and I am not a psychiatrist but I believe it anyway, the authoritarian figure of a judge is helpful to the patient and helpful to the relatives. (P. 198.*)

JUDGE MUNNELL: I don't feel that we need to tamper much with the 72-hour commitment procedure, at least as it operates in Los Angeles County, and I was very interested in Judge Karesh's remarks that probably in San Francisco a different problem would exist, but here if the doctors are of the opinion at any time during the 72-hour period that the patient is not mentally ill, or not sufficiently mentally ill as to require commitment, that patient is released from the

* Hearing transcript, office of chairman.

hospital. Now, this is a very fine technique and a very fine system, but if the patient is thought to be in need of continued hospitalization or commitment, the patient has a choice of going voluntarily or to have a petition filed. Frequently the patients are confused, they are mixed up and they don't know exactly what they do want. One minute they are willing to go voluntarily and the next minute they want to go home. (P. 218.*)

We are not at the point yet where I think—as some of the speakers indicated, Dr. Stainbrook, for whom I have the highest regard—I don't think that we have come to the point yet where we can either extend the period of observation or diminish the importance or the role of the court in the commitment process. I would suspect that we are approaching that time, maybe that's 5 or 10 years hence. (P. 220.)*

* Hearing transcript, office of chairman.

Topic: Board Psychiatrists for Medical Examiners

CHAIRMAN PETERSEN: Dr. Knox, with regard to committing a person after he has been certified by two physicians, do you think the law should be changed to require that at least one of these committing physicians be a board psychiatrist?

DR. KNOX: I think that in certain areas in the state where board psychiatrists to date are not immediately available, this might bring about an undesirable situation. I think that we would have to presume that in certain areas where psychiatrists are not available, at least we have some general physicians who are especially qualified in this field, and they probably would have to be used until such time as we can get complete coverage of the state.

So, I felt that it would be better not to put a specific limitation on it. This would be an ideal situation, naturally.

CHAIRMAN PETERSEN: If they were available, that would be the ideal situation? (P. 15.)*

MISS AITKEN: On Section 5000, which appoints the medical examiners, I believe that they should be psychiatrists. I believe they should be members of the American Board of Neurologists and Psychiatrists, and at least eligible for members of the board as diplomates, either board members or board eligible, which I believe requires three years of training.

CHAIRMAN PETERSEN: What would you do, if I may ask a question, in a county such as Trinity County where you are fortunate if you even have a doctor living there?

MISS AITKEN: This is a problem. I checked with a psychiatrist I know and he thought that there should be a board eligible psychiatrist in every county. Now, if there isn't, possibly you could have something about that this is the desirable goal wherever possible.

I admit I don't know if there is such a person in every county.

I have another thought on Section 5000, and I am sure this is right, but I think there should be discretion in there for the medical examiners to have a social worker, one or more, assigned to them. And I know that some counties have taken advantage of the counselor in mental health and of the public guardian, but some haven't and I think, short of that, every county could use, within its discretion, at least one social worker who could check on statements of patients; who could, in a sense, be a probation officer afterwards where the court makes the arrangements which are not direct commitment, but other orders for the mental health of the person, such as a rest home, or something like that.

* Hearing transcript, office of chairman.

I would like that to be discretionary, however, because, thinking of Trinity, you might not need it. (P. 43.*)

JUDGE CHRISTIAN: . . . I believe a suggestion was made to the committee today, to reform in some way the medical examiner system.

That, from my own observation, is not an effective procedure in some counties. To my own observation, in some counties there has been the practice followed of appointing as the two medical examiners the two oldest members of the medical profession in that county. I am not sure how widespread this practice is, but I suggest that it may be a matter that is subject to legislative control.

One of the possibilities would be to require as an alternate to some basic psychiatric qualification the appointment actually of a member of the state hospital staff as one of the two examiners. In my own practice, when I was responsible for these cases in the county, I routinely did that. Of the two examiners, one I always appointed from the staff of the hospital where the commitments from my county were going, and the other would be a local practitioner, duly qualified under the statute, allowing for the appointment of a panel. (P. 77.*)

JUDGE REPPY: Our medical examiners are not psychiatrists. They never have been. They are M.D.'s. We have attempted to always utilize ones who can consistently give their time. Dr. Maguire and Dr. Hunter are now the two that chiefly do it, and it is very seldom that we use another doctor who has been certified.

I think they have become quite knowledgeable in the matter of psychiatric problems. (P. 122.*)

Also, that reminds me as to the smaller counties, even where there are psychiatrists in the area who might be on the board who would be medical examiners, I don't think they would want to be because I think they would feel that it would develop a conflict with their private practice where they actually have ethical problems, and so forth, involved.

So I think for the time being, at least, we are faced with having just regular M.D.'s acting as medical examiners.

CHAIRMAN PETERSEN: Judge, may I ask a question?

JUDGE REPPY: Yes, indeed.

CHAIRMAN PETERSEN: You do have qualified board psychiatrists at the state hospital, do you not?

JUDGE REPPY: Oh, yes. A great many of the doctors, I am sure, are board psychiatrists there. They do not, as a regular practice, come and examine our patients. It is only when we make these referrals when our medical examiners are undecided about a particular case. We don't want to impose on their graciousness too much. (P. 128.*)

* Hearing transcript, office of chairman.

MR. CANNAN: Now, our main problem, I think, in this area—and, as I say, I want to make one statement on this—basically I think we have a good procedure now for our county, and I think that the existing law provides us most of the tools we need to take care of the commitment procedures. The problem we have really isn't a statutory problem, it's a practical problem of not having psychiatrists.

We have four doctors in our county, all of which are medical examiners certified by the court. Now, they are very candid about this subject, they prefer not to act as medical examiners, and they do it only as a community service because there is no available psychiatrist and there is no one else to do this, and they brought up some problems, we were talking about a liability, for example, and they have asked me on occasion, "Now, I am not a psychiatrist and yet I am called upon to testify regarding this person. I personally don't feel that I am qualified as a psychiatrist and would I be subject to malpractice or would I be subject to criticism for becoming involved in something that, if I was placed under oath, I would have to state is a fact, I am not qualified in that area."

Well, I told them that I think they have the sanction of the law behind them and that in addition we have a practical problem that there is nobody else, so we do it. They are very helpful and they do an excellent job, they are all good friends of mine and we all work very closely together on this matter, and if we do have cases which are difficult and the doctors say quite frankly to me that they are not sure, then what we do is we have the court order the person be taken to Mendocino State Hospital where he is examined by two staff psychiatrists. He is then returned to our county, we get a written report, I take the written report to the two original doctors and they review the report and possibly even call somebody on the staff who made the examination and then make an independent determination.

Now, what I would like to suggest, and what I think would be very practical in my county, would be for me to be able to have the court certify a patient to Mendocino for examination and to have the hearing there. I can't see why we should transport him back to Trinity County for a hearing and then retransport him back to Mendocino for treatment, and then if he demands a jury trial bring him back to Trinity County and have the trial and then take him back to Mendocino again.

I think if we have the safeguard of requiring a certification of two medical examiners that the person is probably ill and have him certified to the hospital only for examination, not for treatment, and after examination then to hold the hearing there, because the two staff psychiatrists are there, I don't think that there would be too much inconvenience to the court in Mendocino County, and certainly it would be more convenient to the patient and in his best interests, it seems to me. (P. 167.*)

Now, another thing that I think this would assist in is this: We have cases that, because we don't have psychiatrists, we have commitments which are returned occasionally to our county, released by the hospital. Well, I think we would avoid that by this procedure, because they would be examined by the staff psychiatrists and they would be released then, there would be no hearing.

* Hearing transcript, office of chairman.

I would like to talk about the matter of board psychiatrists, the suggested requirement that there be at least one board psychiatrist at a hearing. If the Legislature should enact such a provision they would have to make provision also for counties of our character and size, and you would either have to permit us to use the state's facilities or else you would have to provide for a board psychiatrist to attend our hearings, because it's impossible for me to obtain one. I have tried to obtain psychiatrists from other counties and been unsuccessful, they simply don't want to come up, and also the cost involved would be prohibitive. (P. 170.*)

MR. STOUT: Mr. Cannan was talking about, a problem that the small counties have, and you will recall in my testimony a year ago I made a suggestion: We recognize that counties like Trinity, Humboldt and other counties of this type in the north, many counties like this in the south, are poor counties from a tax structure point of view, their governmental resources are not significantly large to be able to handle this sort of thing. Furthermore, their caseloads are not significantly high and as long as we hold to and require that we continue to utilize the county function as a sort of sacrosanct situation we are going to get into a high-cost problem. I think we can significantly lower costs, particularly in mental case treatment and diagnosis and court procedure if we set up joint county organizations. There is absolutely, it seems to me, no reason why Trinity would have to have a structure of medical examiners and all the panoply of a psychiatric court when it is possible to combine Trinity with other counties in the same geographical area and put them into a structure that would handle this as a unified proposition, each contributing its pro rata share of the costs.

Now, assumedly many of these counties, in the north and in the south, don't have access to psychiatrists or board eligible psychiatrists. There is no reason why a district, mental health district of the type I envision, cannot enter into a contract with the State Department of Mental Hygiene to have the services of recognized and board certified or board eligible psychiatrists provided for by the state on a contract basis to the district, the mental health district or what have you.

Now, if you will recall in the early history of jurisprudence we had circuit courts, because the counties were not developed in this very full-blown manner that we have here, and a judge from a population center would go out on a riding. This is true in Oregon today, where the judge goes out from Medford, as an example, and goes down to Klamath Falls and over on to the east side to hear cases as cases develop in those counties where there is a necessity to have a judge service a particular situation, and I see no real objection to this kind of a procedure undertaken in this area. (P. 182.*)

* Hearing transcript, office of chairman.

DR. BELLAMY: I too feel that in counties in which there are psychiatrists that the medical examiner should have the qualification of the psychiatrist or board eligible psychiatrist whenever possible. (P. 192.*)

I think that these appointments might very well be backed up by advisory committees or review committees who, if I understand the judiciary, will not have very much power, because the judge, of course, has the power to appoint in these instances, but I think that judges should learn how to live with citizens advisory and review committees just as superintendents of state hospitals have had to learn to live with them. They are troublesome, but in one sense they serve quite a useful function. (P. 143.)*

* Hearing transcript, office of chairman.

Topic: Record of Dispositions

MISS AITKEN: . . . when you go to the state hospital and you are well, they give a certificate. Something none of the rest of us have, a certificate saying we are mentally sound. Where the judge does release under the Sutherland vs. Palm theory, or on the advice of his medical examiners, or special knowledge he has that is reputable, I think he should issue a minute order and I think this should be in the code. After all, our police department does not make a police report of this, but it is known that the person has been taken in. I think if he had a minute order saying that good cause appearing, and following examination, or whatever, it is found this person is not mentally ill, or any wording which makes it clear that that person will have something which will justify him.

Now, I think we must also protect the petitioner there from false arrest. I haven't worked out perfect language. I would be presumptuous if I did. But I think this is an idea, some sort of a minute order which indicates that he was not—that he was released before even a hearing. (P. 52.)*

I think both in the situation where the judge decides a mistake may have been made under Sutherland against Palm, or, in this situation, after the doctors indicate that there should not be a commitment, or the judge does not order it, there should be a minute order, I think both those orders should recite circumstances which indicate good faith, if such existed. That is a protection to the petitioner and a protection to the hospital and a protection, in many cases, to law enforcement.

If good faith isn't there, obviously, the judge should not recite it.

But, I do feel that the person who is released either upon the petition getting him to the hospital, or upon the hearing, is entitled to something from the superior court which, in a sense, got him there in the first place. (P. 58.)*

I think again another situation here where I would like a minute order is the situation where the person recovers sufficiently to be released between asking for the jury and receiving the trial. We all try to honor the 10-day period in which the trial is supposed to be held, but sometimes the courts can't do it. Sometimes the person himself wants a little more time. Sometimes it is two or three weeks.

My county, generally, sends the demanding patient to the state hospital, simply because the local hospital is too crowded.

Down there, very often, there is a sufficient recovery so that our doctors can no longer say the person is mentally ill. When that happens, we take the word of the medical examiners and the superior court will generally set aside the commitment.

On occasion I have done it on motion and affidavits of the doctors. Sometimes we have done it on oral testimony of the doctors out at our psychiatric court.

*Hearing transcript, office of chairman.

But, there again you have a situation where somebody has a commitment, then he just is released.

I think there should be, again, an order signed by the superior court judge reciting all of the facts and giving reasonable cause in it, but indicating changed circumstances. (P. 61.*)

MR. MAPLE: Now, the present code, as amended, I think, in 1959, provides that the superintendent of a state hospital can so indicate on the release that the person never had been mentally ill, even though committed, you see. I have forgotten the number of the section. But I believe that is one of the kinds of discharges that is possible under 6729, Welfare and Institutions Code.

So that the Legislature has already recognized that there is that kind of problem. The trouble is, in the case of a person who has been adjudicated mentally ill by a court and then appeals to a jury, there is no similar provision to remove the possible stigma by some discharge or piece of paper.

And Miss Aitken, quite rightfully, pointed out, I think, that some sort of minute order showing the circumstances, that there was a hearing and that the court found the person not to be mentally ill, or that there was a jury trial and the jury found the person not to be mentally ill, might overcome some of the stigma of an earlier commitment. (P. 93.*)

JUDGE REPPY: As far as dismissals are concerned, or releases by the court, since we don't operate with this system of a commitment with no formal hearing, the only time when the court determines to release a person as not mentally ill would be at the hearing. And very often that appears to be the case where the medical examiners feel that the person is not mentally ill and they recommend that that be so found. We actually make a formal finding that the person is not mentally ill and is discharged, and a minute order is made, and if the family or the person wanted a copy of that, they could get it. We don't have an automatic process of giving it to them.

CHAIRMAN PETERSEN: But you actually make the order, though?

JUDGE REPPY: Oh, yes, I think the prior practice was that if the doctors reached the conclusion that the person was not mentally ill, the judge would simply say well, the petition is dismissed, and I don't feel that that was quite the accurate way to do it and the better thing for the court to say would be that the court finds the patient not mentally ill and the patient is discharged. There is a minute order to that effect. (P. 130.*)

LIEUTENANT PAUL PHELPS: There was one suggestion made here about the certificate of sanity, if you want to call it that just for brief purposes, and I won't quarrel too much with the idea provided it doesn't go to the extent that when, as in our cases, they are sent over here for observation and are released by the psychiatrist here within 24 hours, that they would be required to give them a cer-

* Hearing transcript, office of chairman.

tificate that said they were sane, because this would backfire on half of these 37 that were sent over and released and then came back within 24 hours, and it would certainly put us in a bad position when we picked this fellow up the second time and he had a certificate here saying, "I am sane." I don't think there is any intentions of carrying it to that ridiculous end, but it's worth thinking about. (P. 210.*)

Topic: Apprehension Warrants

MISS AITKEN: Now, about the emergency, I was very impressed with the papers prepared by the Legislative Counsel's office, but there is one thing I presume to disagree with a little. I don't think we should call this emergency commitment. It is only emergency apprehension, because once the person has been brought in he is released, unless the petition—a voluntary arrangement is made, or a petition is filed.

So I think it is important, at least I consider it so, to consider this as emergency apprehension. There is no separate proceeding of commitment in emergency cases and this is, I think, the place where due process deserves the highest consideration, though I do understand the medical problems. These are the cases of acute danger.

Here I would allow the officers to be in uniform if necessary. Here I would allow it to be a posse of police, if necessary. (P. 46.)*

* Hearing transcript, office of chairman.

Topic: Hearings by Court in Formal or Informal Setting

DR. STAINBROOK: Then the question about the formality of hearing. Of course, this is a matter of judicial decision. But I am firmly convinced that the more informal such transactions with the patient can be, the better it is for the patient. And in this hospital, these hearings, I think, are quite benign most of the time and non-stressing for the patient. But, in general, I wonder whether the law ought to specify no open court hearings for commitment procedures. (P. 35.)*

MISS AITKEN: Now, I think Section 5050.8 is one of the most poorly worded sections I have ever read in my life. This is the one on the hearing. It says if no formal hearing is required, the judge makes a determination. The judge still makes a hearing, and I have never met one yet who did not make a better hearing than the minimum required in the section.

But I think it should be spelled out that he will make a hearing which at least fulfills the minimum of due process; that the person will be there; that the petitioner shall be there. I know this is done, but I do think that section, one, isn't clear to me; it wasn't clear to me when I read it, so it may not be clear to others.

Two, I think it provides beautifully for a full hearing, which I understand is hardly ever requested, and it does not set out minimum standards, in my opinion, where the person himself doesn't request a hearing. Interestingly enough, the burden is put on him, and I don't think that is fair either. By "him" I mean the patient.

Personally, a fair bench is handling this, in my opinion, in every county. I don't think there should be what we in criminal law call an arraignment.

Now, I don't want to bring criminal law into this. I don't want to call a person a defendant. I want to call him a patient.

By arraignment I mean a judge telling him what his rights are the first time the judge is at the hospital after the man is brought in, and I am not talking about detentions; not the order to come in for examination.

It is easy to say you have given the patient a piece of paper, but I think that where a judge talks to him as they do in the criminal court, and sometimes the stakes are far higher here to the patient and his family than a criminal court, I think we owe it to the patient to have somebody explain in simple, clear English, "Sir, you have been brought in because someone thinks you are ill and need an examination. Now, you have a right to a lawyer, you have a right to a hearing, you can contact your relatives," and that sort of thing.

* Hearing transcript, office of chairman.

We used to do that informally in San Francisco. I think it is still done in some cases, but our judges here, and I can't speak because I am not there every day, and I think that should be very seriously considered. (P. 47.*)

SENATOR GRUNSKY: Mr. Maple, you used the phrase "terrors of the court proceeding." Are you referring there to the contested hearings?

MR. MAPLE: Not at all. Sometimes the patients who come through that door into this courtroom and sit in that chair, and their counsel sits here, are so frightened that they behave in a most unseemly manner in court, a most undignified manner. They will be so frightened that they will grovel on the floor and beg not to be given shock treatments. They will beg not to be taken through that door. They will have to be forced through that door sometimes. They will have to be sitting here in leather restraints because they are so frightened. Maybe because they have a misconception about what goes on here.

But, to them, it looks like a board of inquisition. They have never been here before, and they are scared.

If we make it less formal, they relax.

Now, I, as their counsellor, used to see them before they came to the court. And I would spend all afternoon here the previous day and explain the court procedure to them, draw little pictures of the courtroom, and explain where the judge would be sitting, and where the doctors would be sitting, and be friendly toward them, you see. And they would begin to relax and understand, and it would take some of that terror aspect out of it. And they could accept the fact that, well, the doctors apparently are saying that they are ill and they have certain rights that they understand.

That took a lot of this so-called terror, in which I am perhaps being overdramatic in saying that, but a lot of the patients genuinely do feel that, and I think this inhibits their ability to receive treatment. This is a very important thing, gentlemen.

CHAIRMAN PETERSEN: How would you change the court procedure? Or would you?

MR. MAPLE: The court procedure itself, I think, would be nice, and we used to do this in the case of the more severely disturbed patient, we used to go upstairs, and the court would see them in their bed, which is a little more familiar, at least, than down here. People do have, you know, even in criminal lawsuits, or civil lawsuits, in regular courtrooms, witnesses get up on a witness stand and they are scared to death. And we sometimes mistake their nervousness for a lack of candor on the witness stand.

Think of a person who is mentally disturbed, who has the same kinds of fears but who is unable to control them quite so well as the witness in the witness box. And it is very important to have this person here who understands it, and helps them, and makes them feel comfortable.

* Hearing transcript, office of chairman.

But, how much more important it would be for a doctor to involve himself with that person and stay with them throughout these procedures, interpret them to them, and maybe the procedures would be unnecessary if we had it that way, you see.

So, I think that is a point that I am sure Dr. Stainbrook would agree with philosophically. I don't know whether it would be administratively possible for him to implement that kind of thing, and maybe it would cost a lot of money. I don't know. But I think it would help a great deal in handling these cases that have to be committed ultimately. (P. 103.)*

JUDGE MUNNELL: Now, this brings me to a point with respect to one of the witnesses who testified about his activity as a public defender in this courtroom—quite dramatic but I think more theatrical than factual—that the patient grovels on the floor begging not to be sent to the hospital. I would like to state that in the two years I have been there, and Judge Miller happened to be sitting with me at the time of that testimony and he served here for two years, we have never seen one case of that type.

Now, the patients, of course, in most instances do want to go home, but coming into the courtroom, observing the flag, the court reporter, the judge in his robe, this has a very beneficial effect on the patient. The patient now is aware of what is proceeding, generally the patient has drawn himself together for this particular circumstance. He now knows that he is having his day in court, and this happens with a great frequency in this court: I will ask the patient, "Well, Mr. Jones, the doctors feel that you do require hospitalization, what do you think about it?"

"I am not the judge, you are the judge, this is your job, you tell me."

Now, I find this with a great deal of frequency and it is important, I think, to bring out that the patient wants to know that he is really not being railroaded, because he frequently doesn't know whether he is mentally ill and unable to express a choice. This is when the doctors say they lack insight. Now, those with sufficient insight go voluntarily. (P. 218.)*

JUDGE ALLEN MILLER: . . . at one time in this court the practice was to hold most of the hearings on wards upstairs out of the public view, and with a minimum of public observation. And the idea was that, well, a lot of the patients were too disturbed and it was traumatic for them to be in court.

I want to oppose that viewpoint very strongly. I think the change of the system to have everything in court down here except in a very, very rare case of a bed patient, has been good because I think the court and the judge can play a role, a therapeutic role, actually, in the process of the commitment just as Mr. Maple, as a public defender, can play a therapeutic role in the process. And my observation is that maybe you who observed the court operating here, a judge with empathy can, with that robe on, with the authority of his position, be

* Hearing transcript, office of chairman.

very helpful therapeutically in the process of commitment and preparing him, if he has to go to the hospital, for that eventuality.

So I feel that that should not be changed by law or otherwise to be permitted, to the extent that it has to be done in open court. (P. 135.*)

CHAIRMAN PETERSEN: Judge, am I correct in assuming that one of the reasons we used to have so many hearings upstairs, or in the hospital, was because we didn't have the tranquilizers and the patients were sometimes in straightjackets and it was impossible to bring them to court, or practically impossible?

JUDGE MILLER: Yes, I think that played a large part in it. Now, it happened that the practice started of having all hearings here in court, and not on the wards, before I started to preside in here. Judge Nix put it into effect. And there is no question about it, Senator, that this has helped considerably in this area.

But now I find with tranquilizers the acute stage is fairly well over. And, incidentally, I was perturbed at first about what these tranquilizers were doing: Was it depriving the court of the raw thing that he should see, and what effect does this tranquilizer have in eliciting truth or not eliciting truth, and the real facts? I had some degree of misgivings about this at first, and I now feel that it is perfectly in order.

I have had enough medical testimony to assure me that this doesn't impair any memory faculties of the patient, and I usually, when I am sitting here, ask, well, what has the dosage been, how much dosage, and I can learn a little bit now of what the condition of this patient is. Then I compare it with the condition when he came in; get it into the record. He was maniacal, and so forth, when he came in, the dosage has been so many of thorazine, and I know what it is and how long a period of time, and it helps to have that in the record, I think, for protection all the way around, too. (P. 139.*)

MR. CANNAN: Now, in our county, and this is by practice, the district attorney presents all commitments. We actually have a formal hearing in every case. I have discussed this matter with the superior court judge, the matter of not having a formal hearing, and he and I both feel that it's a questionable procedure and we don't, as lawyers, as people trained in law, feel they ought to have a formal procedure, so we hold one in every case, and we hold it in the security room. Now, although it is formal in structure, it is informal in nature, it is more or less just a discussion. The witnesses are placed under oath and it's an informal discussion between the court and—

CHAIRMAN PETERSEN: May I interrupt and ask what room did you say you held it in?

MR. CANNAN: The security room of the hospital.

* Hearing transcript, office of chairman.

CHAIRMAN PETERSEN: I see. You have it at the hospital, then, the hearing?

MR. CANNAN: Right. This is our mental ward, if you will. It's one room.

SENATOR GRUNSKY: When you use the security room, is that because it's the most convenient room or because you have problems requiring the safeguarding or other things?

MR. CANNAN: Well, we call it the security room because generally we have a special attendant watching the mentally ill person.

SENATOR GRUNSKY: That's what I'm getting at, it isn't just coincidental that that's the only available room, you use it to safeguard against any violence?

MR. CANNAN: That's right.

CHAIRMAN PETERSEN: Does your judge have a robe on?

MR. CANNAN: No. No, he wears a business suit and the clerk is present, the doctors are present and any other witnesses and myself. The patient is generally sitting or in bed.

CHAIRMAN PETERSEN: It doesn't, say, have the dignity of a courtroom?

MR. CANNAN: No. No, it doesn't.

SENATOR GRUNSKY: How about family?

MR. CANNAN: Family is there if they like, and, of course, they have to be notified, so they are notified. We have no spectators, other than the family, of course, or friends.

Now, our primary problem, and let me say this before I begin—

CHAIRMAN PETERSEN: May I go back to your formal hearing for a minute. At the hearing you have the two doctors?

MR. CANNAN: Yes.

CHAIRMAN PETERSEN: And your medical examiners, and I assume they are not psychiatrists?

MR. CANNAN: No, they are not.

CHAIRMAN PETERSEN: Do you call other witnesses?

MR. CANNAN: Yes, I do, because the doctors actually generally only see the patient one, two or three times, and they will see them for perhaps 15 minutes on one day, 15 minutes the next day, and, of course, they check the charts, and also to assist them I always prepare a statement or report of the information that we have on this patient.

CHAIRMAN PETERSEN: Other than the petition?

MR. CANNAN: Yes. And I bring the witnesses to assist the court, but also to assist the doctors, because many times they will make statements such as, "Well, I wish I had a little bit more information," or, "I wish I had more background," and it would necessitate a continuance if the information wasn't there.

CHAIRMAN PETERSEN: You generally call the person who signed the petition?

MR. CANNAN: Not necessarily. (P. 164.*)

JUDGE JOSEPH KARESH: Now, you will ask me what kind of system do we have in San Francisco. Well, it's the informal procedure, and now I have come to the conclusion after sitting here and listening, and the debating back and forth, I am convinced that we should have the formal procedure, and I think Mr. Kennedy said that he had been in and seen our system of hearing and it may mean, Honorable Senators, that we might have to ask you for an additional judge, or at least a judge to devote a half a day to it, but I think it will be worth it. The idea that after the hearings are over I have to rush away when the relatives want to talk to me and I don't have the time is very, very disturbing to me. (P. 201.*)

* Hearing Transcript, Office of Chairman.



APPENDIX A

LEGISLATIVE COUNSEL'S DIGEST

Mental commitments.

Adds, amends, and repeals various secs., W. & I.C.

Revises and rearranges statutory provisions relating to the commitment and admission of persons to state hospitals and other facilities for mentally incompetent persons; makes no substantive change in law.

SENATE BILL

No. 36

Introduced by Senators Petersen, Grunsky, Farr, and Rattigan

January 6, 1965

REFERRED TO COMMITTEE ON JUDICIARY

An act to amend Sections 160 and 703 of, to amend and renumber Sections 5699, 5700, 5700.5, 5701, 5701.3, 5701.4, 5702, 5703, 5704, 5705, 5706, 5707, 5708, 5709, 5751, 5752, 5753, 5754, 6000, 6001, 6002, 6002.5, 6003.1, 6003.2, 6004, and 6005 of, to repeal Sections 5750, 5750.1, 5750.2, 5750.3, 5750.5, and 6003 of, to repeal Part 1 (commencing with Section 5000) of Division 6 of, to repeal Article 3.4 (commencing with Section 6605) of Chapter 1 of Part 4 of Division 6 of, to repeal Article 3.5 (commencing with Section 6610) of Chapter 1 of Part 4 of Division 6 of, to add Part 1 (commencing with Section 5000) to Division 6 of, and to add Part 1.5 (commencing with Section 5500) to Division 6 of, the Welfare and Institutions Code, relating to mentally irresponsible persons, and declaring the urgency thereof, to take effect immediately.

The people of the State of California do enact as follows:

1 SECTION 1. Section 160 of the Welfare and Institutions
2 Code is amended to read:

3 160. The Department of Mental Hygiene shall investigate
4 and examine all nonresident persons who are confined in, ad-
5 mitted, or committed to any state hospital or state home for the
6 mentally deficient, and shall cause such persons, when found to
7 be nonresidents as defined in this chapter, to be promptly and
8 humanely returned under proper supervision to the states in
9 which they have legal residence. The department may defer
10 such action by reason of a patient's medical condition.

11 For the purpose of facilitating the prompt and humane
12 return of such persons the Department of Mental Hygiene may

1 enter into reciprocal agreements with the proper boards, com-
2 missions, or officers of other states or political subdivision
3 thereof for the mutual exchange or return of such persons con-
4 fined in, admitted, or committed to any state hospital in one
5 state whose legal residence is in the other, and it may in such
6 reciprocal agreements vary the period of residence as defined
7 in this chapter to meet the requirements or laws of the other
8 states.

9 The department may give written permission for the return
10 of any resident of this state confined in a public institution in
11 another state, corresponding to any state hospital for the
12 mentally ill or to any state home for the mentally deficient of
13 this state *in the manner and under the conditions set forth in*
14 *Section 6075 of this code.* ~~When a resident is returned to this~~
15 ~~State pursuant to this chapter, he may be delivered to any in-~~
16 ~~stitution of the department as designated by the Director of~~
17 ~~Mental Hygiene. Such person shall be admitted by the super-~~
18 ~~intendent of the institution for care and treatment for a period~~
19 ~~not exceeding seven days during which time the person shall~~
20 ~~be released at the earliest possible time or committed in accord-~~
21 ~~ance with law.~~

22 SEC. 2. Section 703 of said code is amended to read :

23 703. If the court, after finding that the minor is a person
24 described by Sections 600, 601, or 602, is in doubt concerning
25 the state of mental health or the mental condition of the
26 person, the court may continue the hearing and commit the
27 person to the Department of Mental Hygiene *in the manner*
28 *and under the conditions set forth in Section 5725 of this*
29 *code.* for placement in a state hospital or state home for the
30 mentally deficient for an indeterminate period of not more
31 than 90 days; for observation of the mental health or the men-
32 tal condition of the person and recommendations concerning
33 his future care, supervision, and treatment. If the Department
34 of Mental Hygiene has designated a particular state institu-
35 tion to receive minors so committed for observation, all com-
36 mitments shall be made to the department for placement in
37 the institution so designated. The superintendent of the institu-
38 tion to which the minor is so committed shall receive him,
39 unless the institution is already full or the funds available
40 for its support are exhausted, or if, in the opinion of the
41 superintendent, the person is not a suitable subject for admis-
42 sion. Before such person is conveyed to the institution, it shall
43 be ascertained from the superintendent thereof if the person
44 may be accepted as herein set forth.

45 For each minor person so committed for observation, the
46 county from which he is committed shall pay the state at the
47 rate of forty dollars (\$40) per month for the time the person
48 so committed remains in the state institution for observation.
49 Such expense shall be considered expense of support and main-
50 tenance within the meaning of Article 16; (commencing with
51 Section 900) and the county shall be entitled to reimburse-
52 ment therefor from the earnings, property, or estate of the

minor, or from his parents, guardian, or other person liable for his support and maintenance, in accordance with the provisions of that article. Each county auditor shall include in his state settlement report rendered to the Controller in the months of January and June and the amount due under the provisions of this section, and the county treasurer, at the time of settlement with the state in such months, shall pay to the State Treasurer, upon the order of the Controller, the amounts found to be due by reason of such commitments.

The medical superintendent or other person in charge of the state hospital or state home for the mentally deficient in which a minor person is placed for observation pursuant to this section shall, as soon as possible and within 90 days, examine the person to determine the state of his mental health or his mental condition, and submit to the juvenile court a report on the state of his mental health or mental condition which shall include a diagnosis of the nature of his mental illness or disability, if any; and recommendations concerning his future care, supervision, and treatment.

If the medical superintendent or other person in charge of the state institution in which the minor has been placed for observation reports to the court that the minor is not affected with any mental illness, disorder, or other mental disability for which he might be committed to the Department of Mental Hygiene for placement in any state institution under Division 6 (commencing with Section 5000) of this code, such superintendent or other person in charge of the state institution shall return the minor to the juvenile court within seven days after the date of the report and the court shall proceed with the case in accordance with the provisions of this chapter.

When the juvenile court directs the filing in any other court of a petition for the commitment of a minor to the Department of Mental Hygiene for placement in any state institution, the juvenile court shall transmit to the court in which the petition is filed a copy of the report of the medical superintendent or other person in charge of the state institution in which the minor was placed for observation. The court in which the petition for commitment is filed may accept the report of the medical superintendent or other person in charge of the state institution in lieu of the appointment, certificate, and testimony of medical examiners or other expert witnesses appointed by the court, if the laws applicable to such commitment proceedings provide for the appointment by court of medical examiners or other expert witnesses or may consider the report as evidence in addition to the certificates and testimony of medical examiners or other expert witnesses.

The jurisdiction of the juvenile court over the minor shall be suspended during such time as the minor is subject to the jurisdiction of the court in which the petition for commitment is filed or under commitment ordered by that court.

SEC. 3. Part 1 (commencing with Section 5000) of Division 6 of said code is repealed.

1 SEC. 4. Part 1 (commencing with Section 5000) is added to
2 Division 6 of said code, to read:

3
4 PART 1. GENERAL PROVISIONS

5
6 CHAPTER 1. MEDICAL EXAMINERS

7
8 5000. The superior judge of each county may grant cer-
9 tificates in accordance with the form prescribed by the State
10 Department of Mental Hygiene, showing that the persons
11 named therein are reputable physicians and graduates of in-
12 corporated medical colleges, and have been in active practice
13 of their profession at least five years. When certified copies
14 of such certificates have been filed with the department, it shall
15 issue to such persons certificates or commissions, and the per-
16 sons therein named shall be known as "medical examiners."
17 There shall at all times be at least two such medical examiners
18 in each county. The certificate may be revoked by the depart-
19 ment for incompetency or neglect, and shall not be again
20 granted without the consent of the department.

21 5001. The department shall keep in its office a record show-
22 ing the name, residence, and certificate of each duly qualified
23 medical examiner. Immediately upon the receipt of each duly
24 certified copy of a medical examiner's certificate, it shall file
25 the same, and advise him of its receipt and filing.

26
27 CHAPTER 2. COUNSELORS IN MENTAL HEALTH

28
29 5025. The office of counselor in mental health may be cre-
30 ated in any county in this state by the board of supervisors
31 thereof. The counselors in mental health to serve under the
32 provisions of this chapter shall be nominated and appointed
33 by the judge of the superior court by written order entered
34 in the minutes of the court.

35 5026. In each county where the office of counselor in mental
36 health has been created under the provisions of this chapter,
37 the judge of the superior court may appoint two such coun-
38 selors. In counties of the first class having a charter the num-
39 bers, compensation and benefits of officers and employees shall
40 be as provided in Section 69894.1 of the Government Code.

41 5027. The term of office of the counselors in mental health
42 shall be during the pleasure of the court, and they may at any
43 time be removed by the court in its discretion. Such counselors
44 shall devote their entire time and attention to the duties of
45 their office.

46 5028. In any county in which counselors in mental health
47 have been appointed, the clerk of the court shall, before any
48 mentally disordered or mentally ill person is brought before
49 the court under the provisions of Article 2 (commencing with
50 Section 5550) of Chapter 1 of Part 1.5 of Division 6, notify one
51 of the counselors in mental health of the court.

5029. The counselor in mental health shall inquire into the antecedents, character, family history, environment, and superinducing cause of the mental disorder or mental illness of every alleged mentally disordered or mentally ill person brought before the court and shall make his report to the judge thereof, in writing or verbally, in open court or in chambers, as directed by the judge of the court. Every counselor, assistant counselor, and deputy counselor in mental health shall have the powers of a peace officer. At any time, at his discretion, such counselor may bring any mentally disordered or mentally ill person committed to his care before the court for such further or other action as the court deems proper.

5030. Wherever in this code or in any other statute reference is made to psychopathic probation officers, such reference shall be deemed to mean and refer to the counselors in mental health provided for in this chapter; and wherever in this code or in any other statute reference is made to probation of the mentally ill or the mentally disordered or other incompetent persons, such reference shall mean and refer to supervision of such persons.

CHAPTER 3. CONSTRUCTION OF THIS CODE AND OTHER LAWS

5050. Nothing in this part or Chapter 1 (commencing with Section 5500) of Part 1.5 of Division 6 shall be held to change or interfere with the provisions of the Penal Code and other laws relating to mentally ill persons charged with crime or to the criminally insane.

This part and Chapter 1 (commencing with Section 5500) of Part 1.5 of Division 6 shall be liberally construed so that, as far as possible and consistent with the rights of mentally ill persons and others, such mentally ill persons shall be treated, not as criminals, but as sick persons.

Any person complained against in any petition or proceeding started by virtue of the provisions of Chapter 1 (commencing with Section 5500) of Part 1.5 of Division 6 shall not forfeit or suffer any legal disability by reason of the provisions of this part or that chapter or of any proceedings pursuant to this part or that chapter during the time of the pendency of the petition or while said person is under the jurisdiction of the court.

5051. No person who is being treated by prayer in the practice of the religion of any well recognized church, sect, denomination or organization, shall be ordered detained or committed under the provisions of Chapter 1 (commencing with Section 5500) of Part 1.5 of Division 6 unless the court shall determine that he is or would likely become dangerous to himself or to the person or property of others, or unless, being an adult, he shall consent to such detention or commitment, or, being a minor, his parent or guardian having custody of his person shall consent thereto.

CHAPTER 4. PUBLIC GUARDIAN

5075. In any county the board of supervisors may by ordinance create the office of public guardian and such subordinate positions as may be necessary and fix compensation therefor. Such board of supervisors may appoint a public guardian to fill such office and provide for the appointment to the subordinate positions.

5076. Such board of supervisors may provide by ordinance that the public administrator shall be ex officio public guardian.

5077. The board of supervisors may by ordinance terminate the office of public guardian.

5078. Whenever the public administrator has been designated ex officio public guardian the board of supervisors may by ordinance terminate such designation and appoint another public guardian and all authority shall vest in the successor.

5079. Whenever the board of supervisors has not designated the public administrator as ex officio public guardian but has appointed another to the office of public guardian it may terminate such appointment and by ordinance may designate that the public administrator shall be ex officio public guardian and all authority shall vest in the successor.

5080. The authority of the public guardian or ex officio public guardian shall cease upon the termination of his office as such public guardian or ex officio public guardian and his authority shall vest in his successor.

5081. In proper cases any such public guardian may apply to a court of competent jurisdiction for appointment as guardian of the person and estate or person or estate of any person in the county who is a patient under the provisions hereof or who is a recipient of aid under any of the provisions of this code where it appears that such person requires a guardian.

5082. When the public guardian makes application under Section 5081 of this code for guardianship of the person and estate or person or estate of any person who is under the jurisdiction of the State Department of Mental Hygiene such application may be granted, if sufficient under said Section 5081, with the written consent of said department.

5083. The public guardian shall file an official bond in such amount as may be fixed, from time to time, by the board of supervisors, which bond shall inure to the joint benefit of the several guardianship estates and the county, and such public guardian shall not be required to file bonds in individual guardianship estates.

5084. All funds coming into the custody of the public guardian shall be deposited in the county treasury and disbursed by proper warrant, or shall be deposited in one or more banks or invested in one or more insured savings and loan associations authorized to do business within the county and withdrawn only upon an order of the public guardian, countersigned by a judge of the superior court. In counties having a

1 population of over 270,000, such withdrawals need not be
2 countersigned by a judge of the superior court.

3 5085. If necessary the public guardian in his discretion may
4 employ private attorneys where the cost thereof can be de-
5 frayed out of guardianship estate funds.

6 5086. Where the market value of the real and personal
7 property of the guardianship estate appears to be less than
8 fifty dollars (\$50) it shall not be necessary to have such prop-
9 erty appraised and no appraisal shall be required in any
10 guardianship estate handled by the public guardian where the
11 estate consists of money only or money and other property of
12 a market value of fifty dollars (\$50) or less.

13 5087. The public guardian upon the death of his ward may
14 pay in full or in part from any assets of such ward which are
15 under his control the unpaid expenses of his ward's burial and
16 last illness. After the payment of such expenses the public
17 guardian may transfer any remaining assets in accordance with
18 and subject to the provisions of Section 630 of the Probate
19 Code. The value of the deceased ward's property for the pur-
20 pose of ascertaining the right to transfer under said section
21 shall be determined after deduction of said expenses paid.

22 5088. Upon the death of the ward or other termination of
23 the guardianship, the public guardian shall have a claim against
24 the ward's estate for his reasonable expenses incurred in the
25 execution of the guardianship, and such compensation for his
26 services and those of his attorney as the court in which his
27 accounts are settled deems just and reasonable.

28 5089. No fees shall be charged or received by the county
29 clerk for the filing of any such guardianship petition nor for
30 any official service performed by him in the course of the
31 guardianship proceedings.

32 5090. Necessary expenses of the public guardian in the
33 conduct of any guardianship estate may be advanced by the
34 county and if so ordered by the board of supervisors such ex-
35 penses shall be a county charge, but the county shall be re-
36 imbursed therefor out of any funds or property of the estate
37 by the public guardian.

38 5091. Insofar as the provisions of this chapter may be in
39 conflict with the provisions of Section 5225 of this code, the
40 latter section is hereby repealed.

41 42 CHAPTER 5. RESEARCH CONCERNING SEXUAL DEVIATION 43 AND SEX CRIMES 44

45 5125. The Department of Mental Hygiene, acting through
46 the Superintendent of the Langley Porter Clinic, shall plan,
47 conduct, and cause to be conducted scientific research into the
48 causes and cures of sexual deviation, including deviations con-
49 ductive to sex crimes against children, and the causes and cures
50 of homosexuality, and into methods of identifying potential
51 sex offenders.

1 5126. Upon the recommendation of the Superintendent of
2 the Langley Porter Clinic, the Department of Mental Hygiene
3 may enter into contracts with the Regents of the University
4 of California for the conduct, by either for the other, of all or
5 any portion of the research provided for in this chapter.

6 5127. Each state agency shall cooperate with the Superin-
7 tendent of the Langley Porter Clinic, or with the University
8 of California, as the case may be, to the fullest extent that its
9 facilities will permit without interfering with the carrying out
10 of its primary purposes and functions.

11 5128. The Department of Mental Hygiene with the ap-
12 proval of the Director of Finance may accept gifts or grants
13 from any source for the accomplishment of the objects and
14 purposes of this chapter. The provisions of Section 16302 of
15 the Government Code do not apply to such gifts or grants and
16 the money so received shall be expanded to carry out the pur-
17 poses of this chapter, subject to any limitation contained in
18 such gift or grant.

19

20

CHAPTER 6. FIREARMS

21

22 5150. No person who is a mental patient in any hospital
23 or institution or on leave of absence from any hospital or in-
24 stitution shall own or have in his possession or under his cus-
25 tody or control any firearms whatsoever.

26 5151. Any person who shall knowingly supply, sell, give,
27 or allow possession or control of a firearm to any person who
28 is a mental patient in any hospital or institution or on leave
29 of absence from any hospital or institution, shall be punishable
30 by imprisonment in a county jail not exceeding one year or by
31 fine not exceeding five hundred dollars (\$500), or by both fine
32 and imprisonment.

33

34 5152. Whenever a person who has been detained or appre-
35 hended for examination of his mental condition, or who is a
36 mental patient in any hospital or institution or who is on
37 leave of absence from such hospital or institution, is found to
38 own, have in his possession or under his control, any firearm
39 whatsoever, said firearm shall be confiscated by any law en-
40 forcement agency or peace officer, who shall retain custody of
41 said firearm until the release without commitment of the per-
42 son or the restoration to capacity of the person, or until the
43 appointment of a guardian for the person, or shall make such
44 other disposition of the firearm as ordered by the court.

45

46

CHAPTER 7. COMMITMENTS OF MENTALLY ILL PERSONS CHARGED WITH CRIME

47

48 5175. Commitments of mentally ill persons charged with
49 the commission of public offenses are provided for in Section
50 1026 of the Penal Code and in Chapter 6 (commencing with
51 Section 1367), Title 10, Part 2 of the Penal Code.

CHAPTER 8. EXPENSE OF DENTENTION OR PROCEEDINGS
CONCERNING COMMITMENTS

Article 1. Mentally Ill Persons

5200. The cost necessarily incurred in determining the mental illness calling for care or commitment under this code of an indigent person and securing his admission into a state hospital, and the expense of providing proper clothing for him in accordance with the rules and regulations adopted by the Department of Mental Hygiene, is a charge upon the county from which he is committed. Such costs include the fees of the medical examiners allowed by the judge before whom the testimony of the medical examiners is given.

5201. If the person alleged to be mentally ill or sought to be committed is not an indigent person, the costs of the proceedings are a charge upon his estate, or shall be paid by persons legally liable for his maintenance, unless the judge orders otherwise. The fees allowed the medical examiners, court appointed or otherwise, shall be included as charges against the estate of the person alleged to be mentally ill or against persons responsible for his maintenance only if such person is adjudged to be mentally ill.

5202. If the alleged mentally ill person is adjudged not to be mentally ill, the judge may, in his discretion, charge the costs of the proceedings to the person who signed the petition in respect to him, and judgment may be entered against him for the amount thereof and enforced by execution.

Article 2. Mentally Disordered Persons

5225. The reasonable cost of maintenance of a person committed under the provisions of Section 5568, in a sum to be fixed by the court at the time of the commitment, shall be defrayed out of the estate of the patient so committed or shall be a charge upon his relatives liable for his maintenance.

If, however, the patient is found to be an indigent resident of the county, in accordance with the definition of such residence prescribed in Article 2 (commencing with Section 2550) of Chapter 2 of Division 4 of the Welfare and Institutions Code, and without funds or relatives responsible for his maintenance able to pay such charge, then the expense of his maintenance shall be a charge upon the county in which the court has jurisdiction and shall be paid out of the county treasury upon a written order of the judge of the superior court of the county, directing the county auditor to draw his warrant upon the county treasurer specifying the amount of such expense.

All funds expended by the county for the maintenance of such patient, or such maintenance in a sum or rate per day or per month fixed by the board of supervisors where such patient is cared for in a county institution, shall be a charge against such patient or against his husband, wife, father,

1 mother, or children, in the order named and the county shall
2 be entitled to reimbursement therefor. If such patient has
3 property or acquires any the county shall have a claim against
4 him or his estate, if deceased, to the amount of expense in-
5 curred and said claim shall be enforced, if necessary, by action
6 against him or his estate, if deceased, upon order of the board
7 of supervisors of the county incurring such expense. If the
8 patient has such husband, wife, father, mother, or children
9 liable to him for his maintenance, the county shall have a
10 claim against such relatives, or any of them, in the order
11 named, to the amount of expense incurred, and said claim
12 shall be enforced, if necessary, by action against such rela-
13 tives, or any of them, upon order of the board of supervisors
14 of the county incurring such expense.

15 If the indigent patient is a nonresident of the county or
16 if a relative or a friend of the patient is found outside the
17 county, of whose ability and willingness to assume the respon-
18 sibility and the expense of the proper care of the patient the
19 court is satisfied, the court may release the patient to the
20 custody of such relative or friend and the cost and expense of
21 transporting the patient to the home of the relative or friend
22 or to the county or state where the patient has a legal residence
23 shall be a charge upon the county in which the court has
24 jurisdiction and shall be paid in the manner prescribed in
25 this section for the payment of other expenses for the care of
26 such patients.

27 If an indigent patient is confined in a medical institution
28 as the result of a diagnosis of tuberculosis, and it is suspected
29 that the patient is or has become mentally ill, he shall be re-
30 turned for commitment proceedings to that county from which
31 he entered the medical institution.

32 Where the county has incurred expense upon order of court
33 or is likely to incur such expense for the maintenance of such
34 patient and he has estate for which no guardian has been ap-
35 pointed out of which the county is or may be entitled to re-
36 imbursement, the district attorney or county counsel, as the
37 case may be, shall apply to the proper court for the appoint-
38 ment of a guardian of the estate of such patient. It shall be
39 competent for a county employee to act as such guardian.
40 Where such county employee is appointed and acts as such
41 guardian he shall act without guardianship fees being charged
42 or received from said estate, and the board of supervisors may
43 order that expenses necessary in the conduct of the guardian-
44 ship and the necessary premiums on the bonds of the guardian
45 be advanced by the county, and if so ordered by said board
46 of supervisors such expenses shall be a charge against the
47 county, but the county shall be reimbursed therefor out of any
48 funds or property of the estate of such patient by said
49 guardian.

50 Any such guardian may sell or encumber the property of
51 the estate of such patient under the provisions of Section 1530
52 of the Probate Code and from the proceeds of any such sale

1 or encumbrance or from any other funds of the estate which
2 may come into his possession, he shall pay to the county the
3 expense incurred by it for the maintenance of such patient
4 and shall pay, when available, the expense subsequently in-
5 curred by the county for any such maintenance.

6 No fee shall be charged or received by the county clerk for
7 the filing of any such guardianship petition nor for any offi-
8 cial service performed by him in the course of the guardian-
9 ship proceedings.

10 Article 3. Mentally Deficient Persons

11 5250. The court shall inquire into the financial condition
12 of the parent, guardian, or other person charged with the sup-
13 port of any person committed as a mentally deficient person,
14 and if it finds him able to do so, in whole or in part, it shall
15 make a further order, requiring him to pay, to the extent the
16 court considers him able to pay, the expenses of the proceed-
17 ings in connection with the investigation, detention, and com-
18 mitment of the person committed, and the expenses of his de-
19 livery to the institution, and to pay to the county, at stated
20 periods, such sums as the court deems proper, during such
21 time as the person remains in the institution or on leave of
22 absence to a licensed hospital, facility or home for the care of
23 such persons. This order may be enforced by such further
24 orders as the court deems necessary, and may be varied, al-
25 tered, or revoked in its discretion.

26 The court shall designate some county officer to keep a rec-
27 ord of such payments ordered to be made, to receive, receipt
28 for, and record such payments made, to pay over such pay-
29 ments to the county treasurer, to see that the persons ordered
30 to make such payments comply with such orders, and to report
31 to the court any failure on the part of such persons to make
32 such payments.

33 5251. In any case in which the probation officer is charged
34 with the duty of collecting amounts payable to the county
35 under this article, upon the verified application of the proba-
36 tion officer the board of supervisors may make an order dis-
37 charging the probation officer from further accountability for
38 the collection of any such amount in any case as to which the
39 board determines that the amount is too small to justify the
40 cost of collection; that the statute of limitations has run; or
41 that the collection of such amount is improbable for any rea-
42 son. Such order is authorization for the probation officer to
43 close his books in regard to such item, but such discharge of
44 accountability of the probation officer does not constitute a
45 release of any person from liability for payment of any such
46 amount which is due and owing to the county. The board may
47 request a written opinion from the district attorney or county
48 counsel as to whether any particular amount is too small to
49 justify the cost of collection, whether the statute of limita-
50
51

1 tions has run, or whether collection of any particular item is
2 improbable.

3 5252. The cost necessarily incurred in determining whether
4 a person is a fit subject for admission to a home for the men-
5 tally deficient and securing his admission thereto, is a charge
6 upon the county whence he is committed. Such costs include
7 the fees of witnesses, medical examiners, psychiatrists and
8 psychologists allowed by the judge ordering the examination.
9 If the person sought to be committed is not an indigent per-
10 son, the costs of the proceedings are a charge upon his estate,
11 or shall be paid by persons legally liable for his maintenance,
12 unless otherwise ordered by the judge.

13 5253. Each county auditor shall include in his state settle-
14 ment report rendered to the Controller in the months of
15 January and June the amount due the state by reason of
16 commitments to the home for the mentally deficient; and the
17 county treasurer, at the time of the settlement with the state
18 in such months, shall pay to the State Treasurer, upon the
19 order of the Controller, the amounts found to be due to the
20 state by reason of such commitments. In the event of the
21 failure of the county auditor or county treasurer to do or
22 perform any of the things required in this section, the State
23 Department of Mental Hygiene may require the county treas-
24 urer by writ of mandate to pay to the State Treasurer upon
25 an order of the Controller all amounts found to be due to
26 the state at the time of the next settlement of the county
27 treasurer with the state, and it shall be no defense to such
28 a proceeding that the county auditor has failed to include
29 such sums in his report rendered to the Controller, and it
30 shall not be necessary for the department to allege or prove
31 any fact with relation to the condition of the funds of the
32 county. The department may recover sums due from counties
33 as in this article provided, by the presentation of claims
34 against the board of supervisors, and recovery may be had
35 on all sums due the state for a period of three years next
36 prior to the presentation of any such claims.

37 38 Article 4. Narcotic Drug Addicts 39

40 5275. At the hearing involving a person alleged to be a
41 narcotic drug addict the court shall inquire into the financial
42 condition of the person committed or, if the person is a minor,
43 of the parent, guardian, or other person charged with his
44 support. If the court finds such person or persons able to do
45 so in whole or in part, a further order shall be made requir-
46 ing him or them to pay, to the extent the judge considers
47 just, the expenses of the proceedings in connection with his
48 commitment, and to pay to the county of which he is a bona
49 fide resident, such sums as the court deems proper, during
50 such time as the person committed remains in the hospital or
51 on parole to a licensed home for the care of such person. The
52 court shall make a further order requiring such person or

persons to pay to the Department of Mental Hygiene the expense of delivery of the patient to the state hospital for placement in which he was committed, which shall be paid to and collected by the department and credited to the appropriation for transportation of patients.

The county auditor shall keep a record of such payments ordered to be made to the county, and shall receive, receipt for, and record such payments made, pay over such payments to the county treasurer, see that the persons ordered to make such payments comply with such orders, and report to the court any failure on the part of such persons to make such payments.

5276. The county from which each person is committed under Section 5630 shall pay the state the cost of care of such person, for the time the person committed remains an inmate of the institution or on leave of absence to a licensed home for the care of such person, at the monthly rate therefor as fixed and determined by the Director of Mental Hygiene from time to time, but in no case shall it exceed the rate of forty dollars (\$40) per month.

5277. Each county auditor shall include in his state settlement report rendered to the Controller in the months of January and June, the amount due under the provisions of Section 5276, and the county treasurer, at the time of the settlement with the state in such months, shall pay to the State Treasurer, upon the order of the Controller, the amounts so due.

Article 5. Inebriates, and Habit-forming Drug Addicts

5300. The reasonable cost of maintenance of a person committed or confined under the provisions of Section 5656 or 5677 to a branch of the county jail, in a sum to be fixed by the court at the time of the commitment or confinement, shall be a charge against the person committed or confined, or if such person be indigent against his relatives liable for his maintenance.

Prior to the making of the order of confinement provided for in Section 5656 or 5677, the court shall inquire into the financial condition of the person confined and of the relatives liable for his maintenance. If the court finds such person or persons able to do so in whole or in part, a further order shall be made requiring him or them to pay to the county making the confinement to the extent the judge considers just, the expense of the proceedings in connection with his confinement, and to pay to the county maintaining the branch of the county jail, such sums as the court deems proper during such time as the person confined remains in said branch of the county jail.

The county auditor shall keep a record of such payments ordered to be made to the county, and shall receive, receipt for, and record such payments made, pay over such payments to the county treasurer, see that the persons ordered to make

1 such payments comply with such orders, and report to the court
2 any failure on the part of such persons to make such payments.
3 5301. At the hearing involving a person alleged to be an
4 inebriate, or addicted to the use of habit-forming drugs the
5 court shall inquire into the financial condition of the person
6 committed and of the relatives liable for his maintenance. If
7 the court finds such person or persons able to do so in whole
8 or in part, a further order shall be made requiring him or them
9 to pay to the county making the commitment, to the extent the
10 judge considers just, the expense of the proceedings in connec-
11 tion with his commitment, and to pay to the county maintain-
12 ing the institution if the commitment be to an industrial farm
13 or road camp or branch of the county jail, such sums as the
14 court deems proper during such time as the person committed
15 remains in the industrial farm or road camp or branch of the
16 county jail.

17 The county auditor shall keep a record of such payments
18 ordered to be made to the county, and shall receive, receipt
19 for and record such payments made, pay over such payments
20 to the county treasurer, see that the persons ordered to make
21 such payments comply with such orders, and report to the
22 court any failure on the part of such persons to make such
23 payments.

24 Responsibility for cost of maintenance of persons confined
25 in Department of Corrections regional jail camps shall be
26 governed by the laws relating to such institutions and regula-
27 tions of the Department of Corrections issued thereunder.

28 29 Article 6. Mentally Abnormal Sex Offenders

30
31 5325. The charges for the care, treatment or services ren-
32 dered to persons committed as mentally abnormal sex offenders
33 shall be in accordance with the provisions of Article 1 (com-
34 mencing with Section 5200) of this chapter.

35 36 CHAPTER 9. EXECUTION OF COMMITMENT ORDERS

37 38 Article 1. Mentally Ill Persons

39
40 5400. The mentally ill person, together with certified copies
41 of the petition, order for detention, report of the apprehending
42 officer concerning the safeguarding and disposition of the men-
43 tally ill person's property, the order for hearing and examina-
44 tion, order of commitment of the judge, and the certificate of
45 the physicians, shall be delivered to the sheriff of the county
46 and by him shall be delivered to the officer in charge of the
47 designated state hospital or licensed hospital or sanitarium,
48 to which the mentally ill person is committed. No female men-
49 tally ill person shall be taken to any state or other hospital
50 without the attendance of some other female or of some relative
51 of the mentally ill person.

1 The sheriff in transporting mentally ill persons delivered to
2 him may use a vehicle that is not visibly marked as an official
3 county vehicle and may wear apparel other than his uniform.

4 5401. All moneys found on the person of a mentally ill
5 person at the time of apprehension shall be certified to by the
6 judge, and sent with the mentally ill person to the hospital,
7 there to be delivered to the medical superintendent and by him
8 deposited in a fund to be known as the patients' personal
9 deposit fund, and to be disposed of in the same manner as
10 other funds deposited in the patients' personal deposit fund.

11 5402. The superintendent or person in charge of any state
12 hospital may refuse to receive any person upon any order, if
13 the papers presented do not comply with the provisions of
14 Section 5400.

15 Article 2. Mentally Deficient Persons

16
17
18 5425. The court shall attach to the order of commitment
19 of a mentally deficient person its findings and conclusions,
20 together with all the social and other data it has bearing upon
21 the case, and the same shall be delivered to the home with
22 the order.

23 5426. The sheriff or probation officer, whichever may be
24 designated by the court, may execute the order of commitment
25 with respect to any mentally deficient person.

26 In any case in which the probation officer executes the order
27 of commitment, he shall be compensated for transporting such
28 person to a state hospital in the amount and manner in which
29 a sheriff is compensated for similar services under Section 7059.

30 Article 3. Narcotic Drug Addicts

31
32
33 5450. The sheriff of any county wherein an order is made
34 by any court committing any person as a narcotic drug addict
35 or returning such person to the court, or any other person
36 designated by the court, shall execute the writ of commitment
37 or order of return, and receive as compensation therefor such
38 fees as are now or may hereafter be provided by law for the
39 transportation of prisoners to the state prison, which shall be
40 payable in the same manner. Subject to the approval of the
41 judge in all cases the parent, guardian, or other person charged
42 with the support of a minor person committed may, and if he
43 is able or the estate of such person is sufficient, shall execute
44 the writ of commitment without expense to the county or
45 state, after being duly sworn therefor. Where the writ is so
46 executed, the person executing it shall for that purpose have
47 the powers of a sheriff, and the execution by him shall have
48 the same effect as if performed by the sheriff. No female person
49 committed shall be taken to the hospital by any male person
50 not her husband, father, brother, or son, without the attend-
51 ance of some woman of good character and mature age, chosen
52 for the purpose by the court, which woman shall, if the court

1 sees fit, be paid therefor such reasonable remuneration as the
2 court allows.

3
4 Article 4. Inebriates, and Habit-forming Drug Addicts

5
6 5475. Any person committed as an inebriate, or habit-
7 forming drug addict shall be delivered to the state hospital
8 for the mentally ill to which he has been committed in com-
9 pliance with the provisions of Article 1 (commencing with
10 Section 5400) of this chapter, providing for the commitment
11 and delivery of a mentally ill person.

12
13 Article 5. Mentally Abnormal Sex Offenders

14
15 5480. The sheriff of any county wherein an order is made
16 by the court committing a person as a mentally abnormal sex
17 offender for an indeterminate period to a state hospital or
18 returning such person to the court, or any other peace officer
19 designated by the court, shall execute the writ of commitment
20 or order of return, and receive as compensation therefor such
21 fees as are now or may hereafter be provided by law for the
22 transportation of prisoners to the state prison, which shall be
23 payable in the same manner. No female person committed shall
24 be taken to or from any state or other hospital without the
25 attendance of some woman of good character and mature age
26 or of a relative of the person.

27 5481. Certified copies of the affidavit, certification from the
28 trial court, warrant of apprehension, order for hearing and
29 examination, report of the probation officer and of the court-
30 appointed psychiatrists, and the order of placement for obser-
31 vation or order of commitment for an indeterminate period, as
32 the case may be, shall be delivered to the person transporting
33 the person to the state hospital, and shall be delivered by that
34 person to the officer in charge of the hospital.

35
36 CHAPTER 10. DUTIES OF PEACE OFFICERS

37
38 5490. All peace officers and other persons having similar
39 duties relating to the mentally ill poor shall see that all poor
40 and indigent mentally ill persons within their respective mu-
41 nicipalities are speedily granted the relief conferred by this
42 part and Chapter 1 (commencing with Section 5500) of Part
43 1.5 of this division. When so ordered by a superior judge, they
44 shall see that such mentally ill persons are, without unneces-
45 sary delay, transferred to the proper state hospitals provided
46 for their care and treatment. Before sending a person to any
47 such hospital, they shall see that he is in a state of bodily
48 cleanliness and comfortably clothed with new clothes. The de-
49 partment may by order direct that any person whom it deems
50 unsuitable therefor shall not be employed as an attendant for
51 any mentally ill person. After the patient has been delivered

to the proper officers of the hospital, the care and custody of the county or municipality from which he is sent cease.

SEC. 5. Part 1.5 (commencing with Section 5500) is added to Division 6 of said code, to read:

PART 1.5. COMMITMENTS AND ADMISSIONS

CHAPTER 1. JUDICIAL COMMITMENTS

Article 1. Mentally Disordered Sex Offenders

5500. As used in this article, "mentally disordered sex offender" means any person who by reason of mental defect, disease, or disorder, is predisposed to the commission of sexual offenses to such a degree that he is dangerous to the health and safety of others. Wherever the term "sexual psychopath" is used in any code, such term shall be construed to refer to and mean a "mentally disordered sex offender."

5500.5. This article shall not apply to any person sentenced to death nor to any person ineligible for probation under the Penal Code. This article shall not apply to any person convicted of an offense the punishment for which may be death until after a sentence other than death has been imposed, at which time this article shall apply to such person and he may be certified to the superior court as provided in Section 5501.

5501. (a) When a person is convicted of any criminal offense, whether or not a sex offense, the trial judge, on his own motion, or on motion of the prosecuting attorney, or on application by affidavit by or on behalf of the defendant, if it appears to the satisfaction of the court that there is probable cause for believing such person is a mentally disordered sex offender within the meaning of this article, may adjourn the proceeding or suspend the sentence, as the case may be, and may certify the person for hearing and examination by the superior court of the county to determine whether the person is a mentally disordered sex offender within the meaning of this article. Conviction upon a charge of violation of Section 290 of the Penal Code by failure to register as required thereby is conviction of a criminal offense within the meaning of this subdivision.

(b) When a person is convicted of a sex offense involving a child under 14 years of age and it is a misdemeanor, and the person has been previously convicted of a sex offense in this or any other state, the court shall adjourn the proceeding or suspend the sentence, as the case may be, and shall certify the person for hearing and examination by the superior court of the county to determine whether the person is a mentally disordered sex offender within the meaning of this article.

(c) When a person is convicted of a sex offense involving a child under 14 years of age and it is a felony, the court shall adjourn the proceeding or suspend the sentence, as the case

1 may be, and shall certify the person for hearing and examina-
2 tion by the superior court of the county to determine whether
3 the person is a mentally disordered sex offender within the
4 meaning of this article.

5 When an affidavit is filed under (a) it shall be substantially
6 in the form specified for the affidavit of mental illness in
7 Section 5553 of this code except that the title and body of the
8 affidavit shall refer to such person as "an alleged mentally
9 disordered sex offender" and shall state fully the facts upon
10 which the allegation that the person is a mentally disordered
11 sex offender is based. If the person is then before the court
12 or is in custody, the court may order that the person be de-
13 tained in a place of safety until the issue and service of a
14 warrant of apprehension as provided by this article.

15 When the court certifies the person for hearing and exami-
16 nation by the superior court of the county to determine
17 whether the person is a mentally disordered sex offender, the
18 court shall transmit to the superior court its certification to
19 that effect, accompanied by a statement of the court's reasons
20 for finding that there is probable cause for believing such
21 person is a mentally disordered sex offender within the mean-
22 ing of this article in cases certified under (a), or a statement
23 of the facts making such certification mandatory under (b)
24 or (c).

25 The judge or justice presiding in such court, whenever it is
26 deemed necessary or advisable, may issue and deliver to some
27 peace officer for service, a warrant directing that the person
28 be apprehended and taken before a judge of the superior court
29 for a hearing and examination to determine whether the per-
30 son is a mentally disordered sex offender. The officer shall
31 thereupon apprehend and detain the person until a hearing
32 and examination can be had. At the time of the apprehension
33 a copy of the affidavit if one was filed, the certification, ac-
34 companied by the court's statement, and the warrant shall be
35 personally delivered to the person and copies thereof shall
36 also be delivered to the superior court to which the person was
37 certified and to the district attorney of the county.

38 The warrant of apprehension shall be substantially in the
39 form provided by Section 5555 of this code for the apprehen-
40 sion of a person alleged to be mentally ill.

41 5501.5. Whenever a person is certified to the superior court
42 for hearing and examination under Section 5501 the certifica-
43 tion may be made in substantially the following form:

44
45 (Title of court and cause)

46
47 Order Adjourning Proceedings and Certifying Alleged Men-
48 tally Disordered Sex Offender to the Superior Court

49
50 Upon the court's own motion, the motion of the prosecuting
51 attorney, application by or on behalf of the defendant (strike
52 the conditions not applicable), it appearing to the satisfaction

of the court that the above-named defendant has been convicted of a criminal offense, to wit, violation of _____ of the State of California, and that there is probable cause for believing that said defendant is a mentally disordered sex offender within the meaning of Article 1 of Chapter 1 of Part 1.5 of Division 6 of the Welfare and Institutions Code of the State of California, as amended, in that—he is a person who by reason of mental defect, disease, or disorder, is predisposed to the commission of sexual offenses to such a degree that he is dangerous to the health and safety of others.

Now, therefore, the above proceeding is adjourned and it is hereby ordered that the above-named defendant is certified to the Superior Court of the State of California, in and for the County of _____ for hearing and examination by said court to determine whether said defendant is a mentally disordered sex offender within the meaning of said Article 1 of Chapter 1 of Part 1.5 of Division 6 of the Welfare and Institutions Code of the State of California, as amended. The above-named defendant shall be taken before said court, as provided in Section 5503 of said code, on the _____ day of _____, 19____, at the hour of _____.* A copy of this certification of said defendant to said superior court shall be delivered to said defendant.

Dated this _____ day of _____, 19____.

Judge

* This sentence may be included if such date and hour have been set by the superior court upon the request of the certifying judge.

5503. The person certified or alleged to be a mentally disordered sex offender shall be taken before a judge of the superior court of the county. The judge shall then inform him that he is certified or alleged to be a mentally disordered sex offender, and inform him of his rights to make a reply and to produce witnesses in relation thereto. The judge shall by order fix such time and place for the hearing and examination in open court as will give reasonable opportunity for the filing of the probation officer's report as provided in Section 5503.5, and for the production and examination of witnesses. If, however, the person is too ill to appear in court, or if appearance in court would be detrimental to the mental or physical health of the person, the judge may hold the hearing at the bedside of the person. The order shall be entered at length in the minute book of the court or shall be signed by the judge and filed, and a certified copy thereof served on the person. The judge shall order that notice of the apprehension of the person and of the hearing of mentally disordered sex offender be served on the district attorney of the county and on such relatives of the person known to be residing in the county as the judge deems necessary or proper.

1 If the alleged mentally disordered sex offender has no attorney the judge may appoint an attorney to represent him, or if
2 a request is made for an attorney by the alleged mentally disordered sex offender, the judge shall appoint an attorney to
3 represent him, and, in a county where there is no public defender, fix the compensation to be paid by the county for such
4 services if the court determines that the person is not financially able to employ counsel.

5 5503.5. The court shall refer the matter to the probation officer, along with a copy of the certification accompanied by
6 the certifying court's statement, and the name and address of each psychiatrist appointed pursuant to Section 5504, to investigate and report to the court within a specified time, upon
7 the circumstances surrounding the crime and the prior record and history of the person. The report shall include the criminal
8 record, if any, of the person, obtained from the State Bureau of Criminal Identification and Investigation. The probation officer shall furnish to the psychiatrists pertinent information concerning the circumstances surrounding the crime
9 and the prior record and history of the person.

10 5504. The judge shall appoint not less than two nor more than three psychiatrists, each of whom shall be a holder of a
11 valid and unrevoked physician's and surgeon's certificate who has directed his professional practice primarily to the diagnosis and treatment of mental and nervous disorders for a
12 period of not less than five years, and at least one of whom shall be from the medical staff of a state hospital or county
13 psychopathic hospital, to make a personal examination of the alleged mentally disordered sex offender, directed toward ascertaining whether the person is a mentally disordered sex
14 offender.

15 5505. Each psychiatrist so appointed shall file with the court a separate written report of the result of his examination, together with his conclusions and recommendations and
16 his opinion as to whether or not the person would benefit by care and treatment in a state hospital. At the hearing each psychiatrist shall hear the testimony of all witnesses, and shall
17 testify as to the result of his examination, and to any other pertinent facts within his knowledge.

18 5506. Any psychiatrist so appointed by the court may be called by either party to the proceeding or by the court itself and when so called shall be subject to all legal objections as to competency and bias and as to qualification as an expert.
19 When called by the court, or by either party to the proceeding, the court may examine the psychiatrist, as deemed necessary, but either party shall have the same right to object to the questions asked by the court and the evidence adduced as though the psychiatrist were a witness for the adverse party.
20 When the psychiatrist is called and examined by the court the parties may cross-examine him in the order directed by the court. When called by either party to the proceeding the

adverse party may examine him the same as in the case of any other witness called by such party.

5507. The psychiatrists so appointed by the court shall be allowed such fees as in the discretion of the court seem just and reasonable, with regard to the services rendered by the psychiatrists, but in no event shall such fees exceed the sum of forty dollars (\$40) per day in addition to actual traveling expenses. The fees allowed shall be paid by the county in which the hearing is held.

5508. The provisions of this article relating to psychiatrists appointed by the court shall not be deemed or construed to prevent any party to a proceeding under this article from producing any other expert evidence as to the mental condition of the alleged mentally disordered sex offender.

5509. The judge shall also cause to be examined as a witness any other person whom he believes to have knowledge of the mental condition of the alleged mentally disordered sex offender, or of the financial condition of the alleged mentally disordered sex offender and of any person liable for his support.

5510. The judge may, for any hearing, order the clerk of the court to issue subpoenas and compel the attendance of witnesses from any place within the boundaries of this state; but no person is obliged to attend as a witness in such a hearing out of the county where he resides or is served unless the judge, upon affidavit to the effect that affiant believes that the evidence of the witness is material and his attendance at the hearing necessary, indorses on the subpoena an order for the attendance of the witness.

All witnesses, other than psychiatrists appointed by the court, attending a hearing upon a subpoena issued under this section shall be entitled to the same fees and expenses as in criminal cases, to be paid upon the same conditions and in like manner.

5511. The alleged mentally disordered sex offender shall be present at the hearing, and if he has no attorney, the judge may appoint an attorney to represent him, or the judge may order the county public defender to represent him at the hearing, if he determines that the person is not financially able to employ counsel.

5511.7. If, upon the hearing, the person is found by the superior court not to be a mentally disordered sex offender, the superior court shall return the person to the court in which the case originated for such disposition as that court may deem necessary and proper.

If the court finds the person is a mentally disordered sex offender, but would not benefit by care and treatment in a state hospital, the court may return the person to the court in which the case originated for such disposition as that court may deem necessary and proper.

1 5512. If, after examination and hearing, it appears there is
2 sufficient cause to believe that the person is a mentally dis-
3 ordered sex offender within the meaning of this article,
4 the judge may make and sign an order that the person
5 be placed temporarily in a suitable psychiatric facility
6 maintained by a county or in a state hospital of the Depart-
7 ment of Mental Hygiene designated by the court for observa-
8 tion and diagnosis for a period not to exceed 90 days, with the
9 further provision in said order that the superintendent of the
10 hospital or person in charge of the county facility shall report
11 to the court the diagnosis and recommendations concerning
12 such person within the 90-day period. The court shall attach
13 to the order for observation its findings and copies of the cer-
14 tification and statement from the other court, any affidavits
15 filed, the written reports of the court-appointed psychiatrists,
16 and the report of the probation officer, together with such so-
17 cial and other data that it has available bearing upon the case,
18 and the same shall be delivered to the institution with such
19 order.

20 The superintendent of the hospital or person in charge of
21 the county facility shall within 90 days cause the person to be
22 examined and forward to the committing court his opinion as
23 to whether or not the person is a mentally disordered sex of-
24 fender, whether or not he is a danger to the health and safety
25 of others, and whether or not he will benefit by care and treat-
26 ment in a state hospital, including therein a report, diagnosis
27 and recommendation concerning the person's future care, su-
28 pervision and treatment.

29 If the superintendent of the hospital or person in charge of
30 the county facility reports to the court that the person is not
31 a mentally disordered sex offender, the person shall be re-
32 turned to the court for further disposition of his case. The
33 court shall then cause the person to be returned to the court
34 in which the criminal charge was tried to await further action
35 with reference to such criminal charge.

36 If the superintendent of the hospital or person in charge of
37 the county facility reports to the committing court that the
38 person is a mentally disordered sex offender but will not
39 benefit by care or treatment in a state hospital and is a
40 danger to the health and safety of others, the court shall
41 then cause the person to be returned to the court in which
42 the criminal charge was tried to await further action with
43 reference to such criminal charge. Such court shall resume the
44 proceedings and shall impose sentence or make such other suit-
45 able disposition of the case as the court deems necessary. If,
46 however, such court is satisfied that the person is a mentally
47 disordered sex offender but would not benefit by care or treat-
48 ment in a state hospital and is a danger to the health and
49 safety of others, it may recertify the person to the superior
50 court of the county. If the superior court, after hearing, finds
51 that the person is a mentally disordered sex offender but would
52 not benefit by care or treatment in a state hospital and is a

1 danger to the health and safety of others, it may make an order
2 committing the person for an indefinite period to the Depart-
3 ment of Mental Hygiene for placement in a state institution or
4 institutional unit for the care and treatment of mentally dis-
5 ordered sex offenders designated by the court and provided
6 pursuant to Section 5518. At such hearing or hearings, the
7 person shall be entitled to present witnesses in his own behalf,
8 to be represented by counsel and to cross-examine any witnesses
9 who testify against him. The person shall remain in such insti-
10 tution or institutional unit until he is no longer a danger to the
11 health and safety of others. Thereupon, the proceedings set
12 forth in Section 5517 shall be followed with respect to the
13 certifying of an opinion to the committing court and the re-
14 lease of the person thereby.

15 If the superintendent of the hospital or person in charge of
16 the county facility reports to the court that the person is a
17 mentally disordered sex offender and that the person could
18 benefit by treatment in a state hospital, the court in its discre-
19 tion has the alternative to return the person to the criminal
20 court for further disposition or may make an order committing
21 the person to the department for placement in a state hospital
22 for an indeterminate period and a copy of such commitment
23 shall be personally served upon said person within five days
24 after the making of such order and such person may within 10
25 days demand a hearing in court and upon such demand said
26 court shall order the return of said person to said court and
27 fix a time and place for a hearing. Upon such hearing the
28 court may accept the report of the superintendent of the hos-
29 pital or person in charge of the county facility, if verified, in
30 lieu of the examination by and testimony of court-appointed
31 psychiatrists, or may consider the report as additional evi-
32 dence. Upon such further hearing the court may make an
33 order committing the person to the department for placement
34 in a state hospital designated by the court for an indetermi-
35 nate period, or may make other suitable disposition of the
36 case.

37 No person shall be committed for an indeterminate period
38 as a mentally disordered sex offender unless an observation
39 placement has been made and reported, diagnosed and recom-
40 mended upon as provided by this section.

41 5512.3. If the court orders the commitment of the person
42 to the department for placement in a state hospital for an
43 indeterminate period, the court may, in the order of commit-
44 ment, require the superintendent of the state hospital to make
45 periodic reports to the court concerning the person's progress
46 towards recovery.

47 5512.5. Persons committed as mentally disordered sex of-
48 fenders to the department for placement in a state hospital
49 following an observation placement under this article shall
50 have the same rights to jury trial as provided in this code for
51 mentally ill persons.

1 5513. The sheriff of any county wherein an order is made
2 by the court committing a person for an indeterminate period
3 to a state hospital or returning such person to the court, or
4 any other peace officer designated by the court, shall execute
5 the writ of commitment or order of return, and receive as com-
6 pensation therefor such fees as are now or may hereafter be
7 provided by law for the transportation of prisoners to
8 the state prison, which shall be payable in the same manner. No
9 female person committed pursuant to this article shall be taken
10 to or from any state or other hospital without the attendance of
11 some woman of good character and mature age or of a relative
12 of the person.

13 The expense of transporting a person to a county facility or
14 state hospital temporarily for an observation placement under
15 this article and returning such person to the court is a charge
16 upon the county in which the court is situated.

17 5514. Certified copies of the affidavit, certification from the
18 trial court, warrant of apprehension, order for hearing and
19 examination, report of the probation officer and of the court-
20 appointed psychiatrists, and the order of placement for ob-
21 servation or order of commitment for an indeterminate period,
22 as the case may be, shall be delivered to the person transporting
23 the mentally disordered sex offender to the county facility or
24 state hospital, and shall be delivered by that person to the
25 officer in charge of the facility or hospital.

26 5516. The provisions of Article 5 of Chapter 1 of Part 4
27 of Division 6 relative to the property and support of mentally
28 ill persons and inebriates in state hospitals, the liability for
29 such support, and the powers and duties of the Department
30 of Mental Hygiene and all officers and employees thereof in
31 connection therewith shall apply to persons committed to
32 state hospitals pursuant to this article the same as if such
33 persons were expressly referred to in said Article 5.

34 5517. Whenever a person who is committed for an indeter-
35 minate period to the department for placement in a state
36 hospital as a mentally disordered sex offender (a) has been
37 treated to such an extent that in the opinion of the superin-
38 tendent the person will not benefit by further care and treat-
39 ment in the hospital and is not a danger to the health and
40 safety of others, or (b) has not recovered, and in the opinion
41 of the superintendent the person is still a danger to the health
42 and safety of others, the superintendent of the hospital shall
43 file with the committing court a certification of his opinion
44 under (a) or (b), as the case may be, including therein a
45 report, diagnosis and recommendation concerning the person's
46 future care, supervision or treatment. If the opinion so certi-
47 fied is under (a) the committing court shall forthwith order
48 the return of the person to said committing court and shall
49 thereafter cause the person to be returned to the court in
50 which the criminal charge was tried to await further action
51 with reference to such criminal charge.

1 Such court shall resume the proceedings, upon the return
2 of the person to the court, and after considering all the evi-
3 dence before it may place the person on probation for a period
4 of not less than five years if the criminal charge permits such
5 probation and the person is otherwise eligible for probation.
6 As a condition of such probation the person shall totally
7 abstain from the use of alcoholic liquor or beverages. In any
8 case, where the person is sentenced on a criminal charge, the
9 time the person spent under indeterminate commitment as a
10 mentally disordered sex offender shall be credited in fixing his
11 term of sentence.

12 5518. If the opinion so certified is under subdivision (b)
13 of Section 5517, the committing court shall forthwith order
14 the return of the person to said committing court and shall
15 thereafter cause the person to be returned to the court in which
16 the criminal charge was tried to await further action with
17 reference to such criminal charge.

18 Such court shall resume the proceedings and after consider-
19 ing all the evidence before it shall impose sentence or make
20 such other disposition of the case as the court may deem neces-
21 sary and proper; provided, that said court, if satisfied that the
22 person has not recovered from his mental disorder and is still
23 a danger to the health and safety of others, may recertify the
24 person to the superior court of the county. If said court after
25 hearing makes a finding that the person is still a mentally dis-
26 ordered sex offender and is still a danger to the health and
27 safety of others, it may make an order recommitting the person
28 for an indeterminate period to the Department of Mental Hy-
29 giene for placement in a state institution or institutional unit
30 for the care and treatment of such mentally disordered sex
31 offenders designated by the court. At such hearing or hearings,
32 the person shall be entitled to present witnesses in his own
33 behalf, to be represented by counsel and to cross-examine any
34 witnesses who testify against him.

35 The Director of Mental Hygiene, with the approval of the
36 Director of Corrections and the Director of Finance, may pro-
37 vide on the grounds of a state institution or institutions under
38 the jurisdiction of the Department of Corrections or the De-
39 partment of Mental Hygiene one or more institutional units to
40 be used for the custodial care and treatment of mentally dis-
41 ordered sex offenders. Each such unit shall be administered in
42 the manner provided by law for the government of the institu-
43 tion in which such unit is established.

44 The court shall cause the person so recommitted to be de-
45 livered to the state institution or the institutional unit so
46 designated. The person shall remain therein or in any other
47 such institution or institutional unit to which he may be trans-
48 ferred by the Director of Mental Hygiene until the person
49 is no longer a danger to the health and safety of others. There-
50 upon the proceedings set forth in Section 5517 shall be fol-
51 lowed with respect to the certifying of an opinion to the com-
52 mitting court and the release of the person thereby.

1 5519. After a person has been committed for an indetermi-
2 nate period to the department for placement in a state hospital
3 as a mentally disordered sex offender and has been confined
4 for a period of not less than six months from the date of the
5 order of commitment, the committing court may upon its own
6 motion or on motion by or on behalf of the person committed,
7 require the superintendent of the state hospital to which the
8 person was committed to forward to the committing court,
9 within 30 days, his opinion under (a) or (b) of Section 5517,
10 including therein a report, diagnosis and recommendation
11 concerning the person's future care, supervision, or treatment.
12 After receipt of the report, the committing court may order
13 the return of the person to the court for a hearing as to
14 whether the person is still a mentally disordered sex offender
15 within the meaning of this article.

16 The hearing shall be conducted substantially in accordance
17 with Sections 5504 to 5511, inclusive. If, after the hearing,
18 the judge finds that the person has not recovered from his
19 mental disorder and is still a danger to the health and safety
20 of others, he shall order the person returned to the Depart-
21 ment of Mental Hygiene under the prior order of commitment
22 for an indeterminate period, or, if the opinion of the superin-
23 tendent of the state hospital was under (b) of Section 5517,
24 he may make and sign an order recommitting the person for
25 an indeterminate period to the Department of Mental Hygiene
26 for placement in a state institution or institutional unit for
27 the care and treatment of such mentally disordered sex of-
28 fenders designated by the court and provided pursuant to
29 Section 5518. A subsequent hearing may not be held under
30 this section until the person has been confined for an addi-
31 tional period of six months from the date of his return to
32 the department. If the court finds that the person has recov-
33 ered from his mental disorder to such an extent that he is no
34 longer a danger to the health and safety of others, or that he
35 will not benefit by further care and treatment in the hospital
36 and is not a danger to the health and safety of others, the
37 committing court shall thereafter cause the person to be re-
38 turned to the court in which the criminal charge was tried to
39 await further action with reference to such criminal charge.

40 5520. The superintendent of a state hospital or person in
41 charge of a county psychiatric facility may extend to any
42 person confined therein pursuant to this article such of the
43 privileges granted to other patients of the hospital or facility
44 as are not incompatible with his detention or unreasonably
45 conducive to his escape from custody.

46 5521. The district attorney of the county may appear on
47 behalf of the people at any of the hearings held pursuant
48 to this article.

49 5522. Every person ordered placed in a county facility or
50 state hospital temporarily for observation pursuant to this
51 article or committed for an indeterminate period to a state

hospital or state institution as a mentally disordered sex offender, who escapes or attempts to escape therefrom, or who escapes or attempts to escape while being conveyed to or from such county facility, state hospital or state institution, is punishable by imprisonment in the state prison not to exceed five years or in the county jail not to exceed one year.

Article 2. Mentally Ill Persons

5550. "Mentally ill persons," as used in this code, means persons who come within either or both of the following descriptions:

(a) Who are of such mental condition that they are in need of supervision, treatment, care, or restraint.

(b) Who are of such mental condition that they are dangerous to themselves or to the person or property of others, and are in need of supervision, treatment, care, or restraint.

Wherever in this code the term "insane" or its variants are used, such terms shall be construed to refer to and mean "mentally ill" or its variants, as defined in this section.

5551. Any person may file in the superior court a verified petition, alleging that there is in the county a person who is mentally ill and in need of supervision, care, or treatment, and asking that examination be made of the mental health of the person, and that provision be made for the welfare of the person as provided in this article.

When no relative, friend, or other person can be found in the county who is able and willing to make and file the petition herein provided, any peace officer, probation officer, physician attending the patient, physician attached to a public hospital or institution, if the person is a patient therein, or public guardian may make and file the petition herein provided. The district attorney or his deputy shall prepare the petition and all other forms required in the proceeding when requested by the party who is to file the petition or other form. When a petition is filed by any such person, neither the person making or filing the petition, nor his superiors, nor the department, hospital, or institution to which he is attached nor any of its employees, shall be rendered liable thereby either civilly or criminally if there was probable cause for the making and filing of said petition.

5552. The petition shall contain the following:

(a) The name and address of the petitioner and his interest therein.

(b) The name of the person alleged to be mentally ill, and, if known to the petitioner, the address, age, sex, marital status, and occupation of the person alleged to be mentally ill.

(c) The facts upon which the allegation that the person is mentally ill and in need of supervision, care or treatment is based.

(d) A statement whether, in the opinion of the petitioner, the alleged mental illness of the person is such as to render

1 him in need or supervision, care or treatment, or to render him
2 dangerous to health, person or property.

3 (e) The name of as a respondent thereto, every person
4 known or believed by the petitioner to be legally responsible
5 for the care, support, and maintenance of the person alleged
6 to be mentally ill and the address of every such person, if
7 known to the petitioner.

8 (f) Such other information as the court may require.

9 5553. The petition shall be in substantially the following
10 form:

11
12 In the Superior Court of the State of California
13 in and for the County of _____

14	_____	} Petition
15	_____	
16	The People	
17	For the Best Interest and Protection of	
18	_____ ,	
19	as a Mentally Ill Person,	
20	_____	} Respondents
21	and Concerning	
22	_____ and	
23	_____	
24	_____	
25	Respondents	

26
27 _____, residing at _____ (tel. _____), being duly
28 sworn deposes and says: That there is now in the county, in
29 the City or Town of _____ a person named _____, who
30 resides at _____, and who is believed to be mentally ill and
31 in need of supervision, care, or treatment.

32 That the person is _____ years of age; that ---he is
33 _____ (sex); and that ---he is _____ (single, married,
34 widowed, or divorced); and that _____ occupation is
35 _____.

36 That the facts because of which petitioner believes that the
37 person is mentally ill and in need of supervision, care or treat-
38 ment are as follows: That ---he, at _____ in the county,
39 on the _____ day of _____, 19____, _____
40 _____

41
42 That petitioner's interest in and case is _____
43 _____

44 That petitioner believes that said person is so mentally ill
45 (a) as to be in need of supervision, care or treatment under
46 the provisions of this act,

47 or

48 (b) as to render him dangerous to himself or to the person
49 or property of others.

50 (Strike out (a) or (b), whichever is not applicable.)

1 That the persons responsible for the care, support, and
 2 maintenance of the mentally ill person, and their relationship
 3 to the person are, so far as known to the petitioner, as follows:
 4 (Give names, addresses, and relationship of persons named as
 5 respondents)

6 Wherefore, petitioner prays that examination be made to
 7 determine the state of the mental health of _____, alleged
 8 to be mentally ill, and that such measures be taken for the
 9 best interest and protection of said _____, in respect to
 10 his supervision, care and treatment, as may be necessary and
 11 provided by law.

12 _____
 13 _____ Petitioner
 14 Subscribed and sworn to before me this _____ day of
 15 _____ 19____.
 16 _____, County Clerk
 17 By _____, Deputy
 18 _____

19 5554. Whenever it appears, by petition pursuant to this
 20 article, to the satisfaction of a judge of the superior court in
 21 any county that any person therein is mentally ill, and in need
 22 of supervision, treatment, care or restraint the judge shall so
 23 far as consistent with Section 5051 of this code, make such
 24 orders as may be necessary to provide for examination into
 25 the state of mental health of the person, and for the safe-
 26 keeping, necessary medical treatment, care or restraint of
 27 the person, pending hearing, in the county psychopathic hos-
 28 pital, in his own home, in a state hospital, or in such other
 29 place as will afford access to medical examiners for the pur-
 30 pose of examination and suitable provisions for the safety and
 31 comfort of the person. The judge shall by order appoint two
 32 medical examiners to make a personal examination of the
 33 person and to report thereon to the court.

34 If the judge is satisfied that the person is sufficiently men-
 35 tally ill that examination should be made into the state of his
 36 mental health, the judge shall issue an order notifying the
 37 person to submit to examination at such time and place as
 38 designated by the judge. The order for examination shall be
 39 served as provided in Section 5556 by a peace officer or coun-
 40 selor in mental health of the county at least one day before
 41 the time fixed for the examination. The person shall be per-
 42 mitted to remain in his home or other place of domicile pend-
 43 ing the examination, and shall be permitted to be accompanied
 44 by one or more of his relatives or friends to the place of ex-
 45 amination.

46 If it appears to the judge from a certificate of a licensed
 47 physician and surgeon dated not more than three (3) days
 48 prior to the presentation of the petition and filed with the
 49 court, certifying that he has examined the person and is of the
 50 opinion the person is mentally ill, and because of his illness
 51 is likely to injure himself or others if not immediately hospital-
 52 ized or detained, or if it otherwise affirmatively appears that

1 said person is likely to injure himself or others, the judge may
 2 issue and deliver to a peace officer or counselor in mental health
 3 of the county an order directing that the person be forthwith
 4 detained in a place designated in the order for examination
 5 and hearing as provided in this article. The judge may issue a
 6 similar order if the person fails or refuses to appear for ex-
 7 amination when notified.

8 5555. The order for examination or detention shall be in
 9 substantially the following form:

10
 11 In the Superior Court of the State of California
 12 in and for the County of -----
 13

14
 15 The People
 16 For the Best Interest and Protection of
 17 -----
 18 as a Mentally Ill Person
 19
 20 and Concerning
 21 ----- and
 22 -----
 23 Respondents
 24

Order
 for
 Examination
 or
 Detention

25
 26 The people of the State of California to -----
 27 -----:
 28 (peace officer, counselor in mental health)
 29

30 The petition of ----- having been presented this day to
 31 me, a Judge of the Superior Court in and for the County of
 32 -----, State of California, from which it appears that there
 33 is now in this county, at -----, a person by the name of
 34 -----, who is mentally ill and in need of supervision, treat-
 35 ment, care or restraint.

36 And it satisfactorily appearing to me that said person is
 37 sufficiently mentally ill and in need of supervision, treatment,
 38 care or restraint, that examination should be made into the
 39 state of his mental health, and hearing held, if demanded, to
 40 determine the supervision, treatment, care or restraint, if any,
 41 necessary for his best interest and protection, and the protec-
 42 tion of the people.

43 I do hereby appoint ----- and ----- as medical ex-
 44 aminers to make a personal examination of -----, the per-
 45 son alleged to be mentally ill, and to report thereon to the
 46 court, pursuant to Section 5566 of the Welfare and Institutions
 47 Code.

48 *Now, therefore, you are commanded to notify said -----,
 49 to submit to an examination into the state of his mental
 50 health at ----- on or before the ----- day of -----,
 51 that thereafter he may be taken before a judge of the superior
 52 court in this county for examination and hearing to deter-

mine the measures to be taken for the best interest and protection of said _____, as a mentally ill person, as provided by law.

*And it affirmatively appearing to me that said person is sufficiently mentally ill that he is likely to injure himself or others if not immediately hospitalized or detained, you are therefore commanded to forthwith detain said _____, or cause him to be detained for examination and hearing, pending the further order of the judge, at _____, and there be cared for in a humane manner as a mentally ill person and provided with any medical treatment deemed necessary to his physical well-being.

*And it satisfactorily appearing to me that said person has failed or has refused to appear for examination when notified by order of this court, you are therefore commanded to forthwith detain said _____ or cause him to be detained for examination and hearing, pending the further order of the judge, at _____, and there be cared for in a humane manner as a mentally ill person.

I hereby direct that a copy of this order together with a copy of the said petition be delivered to said person and his representative, if any, at the time of his notification; and I further direct that this order may be served at any hour of the night.

Witness my hand, this _____ day of _____, 19____.

Judge of the Superior Court

*Strike out when not applicable.

Return of Order

I hereby certify that I received the above order for examination or detention, and on the _____ day of _____, 19____, served it by notifying and delivering to said _____ personally, and to his representative, if any, to wit, _____, a copy of the order and of the petition,* or by apprehending said person and causing him to be detained for examination and hearing and for humane care as an alleged mentally ill person at _____; until further ordered and directed by the judge.

*I hereby certify that prior to the service of the above order for detention and the apprehension of _____ I served notice on the person and his representative, if any, as required under Section 5557 of the Welfare and Institutions Code.

Dated: _____, 19____.

Signature of officer

*Strike out when not applicable.

5556. As promptly as possible, and at least one day before the time of the examination as fixed by the court order, a copy of the petition and order for examination shall be personally

1 delivered to the person and his representative, if any, and,
2 unless the petition is filed by such a relative to the wife, hus-
3 band, father, mother, or other nearest relative of the person
4 alleged to be mentally ill, if any such relative is known to be
5 within the county; if no such relative is known to be within
6 the county, a copy of the petition and order for examination
7 shall be personally delivered to the person with whom such
8 alleged mentally ill person resides or at whose home he is, or
9 in the absence of that person, to a friend of the alleged men-
10 tally ill person.

11 When an order for the forthwith detention of the person
12 as issued by the court is executed by the officer, a copy of the
13 petition and order for detention shall be personally delivered
14 to the persons designated in this section.

15 5557. At the time of service of the petition and order for
16 examination or detention, the officer making the service shall
17 also deliver to each person served a copy of a notice which
18 shall read substantially as follows:

19 The petition which accompanies this notice has been filed
20 in the Superior Court in and for the County of _____,
21 alleging that _____ is mentally ill and in need of super-
22 vision, treatment and care.

23 * _____ is notified to present himself at the time and place
24 designated in the attached order to submit to an examination
25 into the state of his mental health. He is permitted to be ac-
26 companied by one or more of his relatives or friends to the
27 place of examination. If he fails or refuses to appear for such
28 examination, the court may issue an order for his forthwith
29 detention for such examination.

30 * _____ has been affirmatively alleged to be sufficiently
31 mentally ill that he is likely to injure himself or others if not
32 immediately hospitalized or detained. The court has therefore
33 issued the attached order for detention and for examination
34 and hearing before the court.

35 _____ has the right to a hearing, to bring in witnesses
36 and to have compulsory process therefor, and to be represented
37 by an attorney.

38 If _____ or a relative, friend, counsel or representative
39 desires to be heard by the court, he must within four days
40 after service of this notice file a request for a hearing with the
41 clerk of the Superior Court in and for the County of _____.

42 * Strike out when not applicable.
43

44 5558. The officer shall, pursuant to the order for deten-
45 tion, apprehend the person, as provided in this article, and
46 cause him to be delivered at the place designated in the order
47 until examination can be had, as herein provided. At the time
48 of such apprehension, or within a reasonable time thereafter,
49 unless a responsible relative or the guardian or conservator of
50 the person is in or has taken possession of his personal prop-
51 erty, the officer shall take all necessary precautions with re-
52 spect to the personal property in the actual possession of or

1 in the premises occupied by such mentally ill person to pre-
2 serve and safeguard the same pending the determination of
3 the proceedings. The officer shall then furnish to the court a
4 full, complete, and itemized report of the patient's property
5 so preserved and safeguarded and of its disposition, in sub-
6 stantially the form set forth in this section; except that if a
7 responsible relative or the guardian or conservator of the pa-
8 tient is in or has taken possession of the patient's property,
9 the report shall include only the name of the relative or guard-
10 ian or conservator and the location of the property; thereupon
11 the responsibility imposed herein upon the officer shall termi-
12 nate. Pending the examination, such order may be made rela-
13 tive to the care, custody, confinement and the preservation and
14 safeguarding of the property of the alleged mentally ill person
15 as to the judge seems for the best interests, welfare and health
16 of the patient.

17 As used in this section, "responsible relative" includes the
18 spouse, parent, adult child or adult brother or sister of the
19 patient, except that such term does not include the person who
20 filed the petition to commence proceedings under this article.

21 Report of Officer

22
23
24 I hereby report to the above entitled court that the personal
25 property of the person apprehended herein consisting of
26 ----- was preserved and safeguarded by -----.

27 (Insert name of officer, responsible relative, guardian,
28 or conservator)

29
30 The said property is now located at -----.

31
32 Dated: -----19----.

33
34 -----
35 Signature of officer

36
37 5559. If no demand is made for a hearing by or in behalf
38 of the alleged mentally ill person after four days from the
39 service of the notice, petition and orders for examination or
40 detention as provided in this article, or if a hearing is waived
41 by the person, or by his attorney, during such four-day period,
42 the judge may proceed immediately to determine the mental
43 status of the alleged mentally ill person.

44 The judge shall consider the report of the two medical
45 examiners appointed by the court to make a personal examina-
46 tion of the person and to report to the court. The judge may
47 require other proof in addition to the petition and the report
48 of the medical examiners.

49 If the judge is satisfied that the person is so mentally ill
50 as to be in need of supervision, treatment, care or restraint,
51 the judge may adjudge the person to be mentally ill and

1 order the person committed or cared for as provided in Sec-
2 tion 5567 of this code. No order for commitment to an insti-
3 tution for the mentally ill shall issue unless two medical
4 examiners have personally made an examination of the person
5 alleged to be mentally ill and have filed with the judge a
6 report upon a form substantially as set forth in Section 5566
7 of this code containing the facts and circumstances upon which
8 the judgment of the examiners is based and stating that the
9 condition of the person examined is such as to require care
10 and treatment in an institution for the mentally ill.

11 If it appears to the judge that the person is harmless and
12 his relatives or guardian are willing or able properly to care
13 for him at some place other than such institution, the judge
14 may order the person to be placed in the care and custody
15 of his relatives or guardian.

16 5560. If a request is made for a hearing on behalf of the
17 alleged mentally ill person, the judge shall, or he may upon his
18 own motion, by order fix such time and place for the hearing
19 and examination as will give reasonable opportunity for the
20 production and examination of witnesses. Notice of the time
21 and place of the hearing shall be given each person upon whom
22 the petition was served and such other persons as the court
23 may order; such notice may be sent by registered mail with
24 return receipt requested to the last known address of each such
25 person. The order shall be entered at length in the minute
26 book of the court or shall be signed by the judge and filed.

27 5561. Upon sufficient showing that the interest of the pa-
28 tient as to his mental and physical condition would best be
29 subserved thereby, the court may continue the hearing. Upon
30 demand made at any time during the continuance by the pa-
31 tient or any of his relatives, friends, counsel or representative,
32 the court shall set the hearing at a date not more than five days
33 from the time the demand was made. Notice of the time and
34 place of the hearing shall be given as provided in Section 5560.

35 5562. If an order for continuance is made, unless a demand
36 for hearing is made during the continuance, the clerk shall
37 place the case on the court calendar for hearing on the 30th
38 day following the date of the order and notice shall be given
39 as provided in Section 5560. The court shall then hear and
40 dispose of the case, unless the case is again continued. In the
41 event of successive continuances the clerk shall set the case
42 for hearing on the 30th day following the date of each order
43 and notice shall be given.

44 5563. For the purpose of conducting hearings pursuant to
45 this article the court may be convened at any time and place
46 within the county, suitable to the mental and physical health
47 of the person, except that the time and place for hearing shall
48 not be different from the time and place for the trial of civil
49 actions if any party to the proceeding, prior to the hearing,
50 objects to any different time or place; and provided, that if
51 the hearing is held at any place other than a regular courtroom

1 of the superior court five days' notice be given thereof to the
2 patient and the petitioner, unless waived by the person or his
3 representative, and appropriate minute order made thereof
4 on the records of the court.

5 Any such hearing may be held in the psychiatric ward or
6 unit of a county hospital and it shall be deemed that such
7 hearing is held in a place for the trial of civil actions and in
8 a regular courtroom of the superior court.

9 Any other provision of this section notwithstanding, the
10 alleged mentally ill person may demand that the hearing be
11 public, and be held in a suitable place for attendance by the
12 public.

13 5564. The judge of the superior court may, for any hear-
14 ing, order the clerk of the court to issue subpoenas and compel
15 the attendance of witnesses from any place within the bound-
16 aries of this state and shall issue such subpoenas and compel
17 attendance of witnesses as requested by the alleged mentally
18 ill person; but no person is obliged to attend as a witness in
19 such a hearing out of the county where he resides or is served
20 unless the judge, upon affidavit to the effect that affiant be-
21 lieves that the evidence of the witness is material and his
22 attendance at the hearing necessary, indorses on the subpoena
23 an order for the attendance of the witness.

24 The judge shall compel the attendance of at least two medi-
25 cal examiners, who shall hear the testimony of all witnesses,
26 make a personal examination of the alleged mentally ill person,
27 and testify before the judge as to the result of the examination,
28 and to any other pertinent facts within their knowledge. The
29 judge shall also cause to be examined before him as a witness,
30 any other person who he has reason to believe has any knowl-
31 edge of the mental condition of the alleged mentally ill person,
32 or of his financial condition or that of the persons liable for
33 his maintenance.

34 All witnesses attending a hearing upon a subpoena issued
35 under this section shall be entitled to the same fees and ex-
36 penses as in criminal cases, to be paid upon the same conditions
37 and in like manner.

38 5565. The alleged mentally ill person shall be present at
39 the hearing, and if he has no attorney, the judge may appoint
40 an attorney to represent him, or if a request is made for an
41 attorney by the alleged mentally ill person, the judge shall
42 appoint an attorney to represent him and in a county where
43 there is no public defender fix the compensation to be paid by
44 the county for such services, or the judge may order the
45 county public defender to represent him at the hearing if he
46 determines the person is not financially able to employ counsel.

47 5566. The medical examiners, after making the examination
48 and hearing the testimony, shall make and sign a certificate
49 showing as nearly as possible the facts herein indicated, in
50 substantially the following form:

In the Superior Court of the State of California
in and for the County of _____

The People

For the Best Interest and Protection of _____,

as a mentally Ill Person and _____,

Concerning _____,

and _____,

Respondents

Certificate
of Medical
Examiners

We, Dr. _____ and Dr. _____, medical examiners in the County of _____, duly appointed and certified as such, do hereby certify under our hands that we have examined _____, alleged to be mentally ill, and have attended before a judge of said court at the hearing on the petition concerning said person, and have heard the testimony of all witnesses, and, as a result of the examination, have testified under oath before the court to the following facts concerning the alleged mentally ill person:

Name _____

Address _____

Age _____ Sex _____

Occupation _____ Marital Status _____

(Single, married, widowed, divorced)

Religious belief _____

Pertinent case history _____

General physical condition _____

Present mental status _____

Laboratory reports (if any) _____

Tentative diagnosis of mental health _____

Recommendation for disposition or supervision, treatment and

care _____

Reasons for the recommendation _____

1 Date_____

3 _____
4 _____
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51 _____
52 _____

Medical Examiner

Medical Examiner

5567. If, after examination and certificate have been made, the judge believes that the person is either (a) of such mental condition that he is in need of supervision, treatment, care, or restraint, or (b) of such mental condition that he is dangerous to himself or to the person or property of others, and is in need of supervision, treatment, care, or restraint, the judge may adjudge the person to be mentally ill, and may, so far as is consistent with Section 5051 of this code, make and sign an order.

(a) That the person be cared for and detained in a county psychopathic hospital, in a community mental health service established under the provisions of Division 8 of this code, or a licensed sanitarium or hospital for the care of the mentally ill entitled by law to receive and care for such persons, or that the person be otherwise cared for, until the further order of the court, or

(b) That the person be committed to the Department of Mental Hygiene for placement in a state hospital designated by the court, or

(c) That the person be committed to a facility of the Veterans Administration, or other agency of the United States Government, in accordance with the provisions of Section 1663 of the Probate Code.

The order shall be in substantially the following form, and shall be filed with the clerk.

In the Superior Court of the State of California
in and for the County of _____

The People

For the Best Interest and Protection of

as a Mentally Ill Person,

and Concerning

_____ and
_____, Respondents

Judgment of Men-
tal Illness and
Order for Care,
Hospitalization
or Commitment

The petition dated _____, alleging that _____ is mentally ill, having been presented to this court on the _____ day of _____, 19____, and an order of detention issued thereon by a judge of the superior court of this county, and a return of the said order;

1 And it further appearing that the provisions of Sections
2 5551 to 5566, inclusive, of the Welfare and Institutions Code
3 have been complied with;

4 And it further appearing that Dr. _____ and Dr. ____
5 _____, two regularly appointed and qualified medical examiners
6 of this county, have made a personal examination of the al-
7 leged mentally ill person, and have made and signed the cer-
8 tificate of the medical examiners, which certificate is attached
9 hereto and made a part hereof;

10 Now therefore, after examination and certificate made as
11 aforesaid the court is satisfied and believes that _____ is

12 *(a) Of such mental condition that ____he is in need of
13 supervision, treatment, care, or restraint, or

14 *(b) Of such mental condition that ____he is dangerous to
15 h____self or to the person or property of others, and is in need
16 of supervision, treatment, care, or restraint.

17 It is ordered, adjudged and decreed:

18 That _____ is a mentally ill person and that ____he

19 *(a) Be cared for and detained in _____, a county psy-
20 chopathic hospital, a community mental health service, or a
21 licensed sanitarium or hospital for the care of the mentally ill
22 until the further order of the court, or

23 *(b) Be cared for at _____, until the further order of
24 the court, or

25 *(c) Be committed to the Department of Mental Hygiene
26 for placement in a state hospital, to wit: _____ State Hos-
27 pital at _____, California, or

28 *(d) Be committed to a facility of the Veterans Adminis-
29 tration or other agency of the United States, to wit: _____
30 at _____ in accordance with the provisions of Section 1663
31 of the Probate Code of the State of California.

32 It is further ordered and directed that _____ of this
33 county, take, convey and deliver _____ to the proper au-
34 thorities of the hospital or establishment designated herein
35 to be cared for as provided by law.

36 Dated this _____ day of _____, 19____.

37 _____
38 Judge of the Superior Court

39 * Strike out where inapplicable.

40
41 5568. If, on the examination as provided by law, the court
42 finds a person to be mentally disordered and bordering on
43 mental illness but not dangerously mentally ill, the court may
44 commit him to the care and custody of the counselor in mental
45 health and may allow him to remain in his home subject to
46 the visitation of a counselor in mental health and subject to
47 return to the court for further proceedings whenever such
48 action appears necessary or desirable; or the court may com-
49 mit him to be placed in a suitable home, sanitarium, or rest
50 haven home, subject to the supervision of the counselor in
51 mental health and the further order of the court.

1 5569. Whenever a person has been adjudged to be men-
 2 tally ill and ordered by the court to be cared for and detained
 3 in a licensed sanitarium or hospital or otherwise cared for, the
 4 court may thereafter make such further order or orders for
 5 hearing or other disposition concerning the person as the court
 6 may deem necessary and proper. The court may accept a writ-
 7 ten report and recommendation concerning the person made
 8 by a licensed physician treating the person, if verified, in lieu
 9 of the examination by and testimony of court-appointed physi-
 10 cians and in lieu of the personal appearance in court of the
 11 person; provided, however, that upon request made to the
 12 court by or on behalf of the person he shall have the right
 13 to a personal appearance in court. The court may order the
 14 person to be discharged if he has improved to such an extent
 15 that he is no longer in need of supervision, treatment, care or
 16 restraint; the court may order the person to continue under
 17 care and treatment, in the same or another licensed sanitarium
 18 or hospital, or the court may order the person to be otherwise
 19 cared for, until the further order of the court; provided, how-
 20 ever, that before making an order when necessary for commit-
 21 ment of the person to a state hospital, the court shall require
 22 that a hearing be held and that a written report and recom-
 23 mendation be made by two medical examiners appointed by
 24 the court, and if the person is committed to a state hospital
 25 he shall have the right to a jury trial as provided in Section
 26 5572 of this code.

27 5570. The county clerk shall keep an index, alphabetically
 28 arranged, which shall show the name and age of each person
 29 examined as to mental illness, the date of the order of com-
 30 mitment or hospitalization and the name of the hospital,
 31 community mental health service, or sanitarium to which the
 32 person was ordered confined and cared for or the name of the
 33 designated state hospital to which the person was committed.

34 5571. No case of harmless chronic mental unsoundness or
 35 mental deficiency shall be committed to the Department of
 36 Mental Hygiene for placement in any state hospital for the
 37 care and treatment of the mentally ill. When any such person
 38 becomes mentally ill, however, he may be committed to the
 39 department for placement in a designated state hospital for
 40 the mentally ill or to a licensed hospital or sanitarium, as
 41 provided in this article.

42 5572. If a person ordered under Section 5567 to be cared
 43 for or detained in any licensed hospital or sanitarium as a
 44 mentally ill person or committed to a state hospital, or any
 45 friend in his behalf, is dissatisfied with the order of the judge
 46 so detaining or committing him, he may, within 10 days after
 47 the making of such order, demand that the question of his
 48 mental illness be tried by a judge or by a jury in the superior
 49 court of the county in which he was committed or the order
 50 of detention was issued. Thereupon the court shall set the
 51 case for hearing at a date, or shall cause a jury to be sum-
 52 moned and to be in attendance at a date stated, not less than

1 five nor more than 10 days from the date of the demand for
2 a court or jury trial. The court shall adjudge whether the
3 person is mentally ill, or if it is a trial by jury shall submit to
4 the jury the question: Is the person mentally ill?

5 5573. Proceedings under Section 5567 under the order of
6 detention in a hospital or sanitarium or commitment to a state
7 hospital shall not be stayed, pending the proceedings for de-
8 termining the question of mental illness by a judge or jury,
9 except upon the order of a superior judge, with provision
10 made therein for such temporary care and custody of the
11 person as the judge deems necessary. If the superior judge,
12 by the order granting the stay, commits the person to the
13 custody of any person other than a peace officer, he may, by
14 such order, require a bond for his appearance at the trial.

15 5574. At the trial the petition and its allegations that the
16 person is a mentally ill person shall be presented by the dis-
17 trict attorney of the county.

18 5575. The trial shall be had as provided by law for the trial
19 of civil causes, and if tried before a jury the person shall be
20 discharged unless a verdict that he is mentally ill is found by
21 at least three-fourths of the jury. If the judge adjudges or the
22 verdict of the jury is that he is mentally ill the judge shall
23 adjudge that fact and make an order similar to the original
24 order for detention in a licensed hospital or sanitarium or for
25 commitment to a state hospital. If such order is for the super-
26 vision, treatment, care or restraint of the mentally ill person in
27 a hospital or sanitarium, a peace officer shall deliver the person
28 and present a copy of the order to the superintendent or other
29 official of such institution; if the order is for the commitment
30 of a mentally ill person to a state hospital, such order shall be
31 presented, at the time of commitment of the mentally ill per-
32 son, to the superintendent or person in charge of the state hos-
33 pital to which the mentally ill person is committed.

34 5576. If a judge refuses to grant an application for an
35 order of supervision, commitment, detention or hospitalization
36 of a mentally ill person alleged to be dangerous to himself and
37 others if without supervision and treatment by physicians,
38 detention and hospital or sanitarium care he shall state his
39 reasons for such refusal, and any person aggrieved thereby
40 may demand a trial of the question of the mental illness
41 of the person alleged to be mentally ill, in the manner pro-
42 vided for a jury trial when demanded by or on behalf of the
43 alleged mentally ill person.

44 5577. Any person committed to the care and custody of
45 the counselor in mental health under the provisions of Section
46 5568, and for whom no guardian has been appointed under the
47 provisions of the Probate Code, or a relative or a friend in his
48 behalf, may make application, by petition duly verified, to a
49 judge of the superior court of the county where such commit-
50 ment was ordered, for an order adjudging that such person is
51 competent. Such petition shall be filed in the proceedings in
52 which such commitment was ordered, and no fees shall be

1 charged by the county clerk for the filing of the petition nor
2 for any official service rendered in said proceedings. The judge
3 shall set the application for hearing and notice of the hearing
4 of the application shall be given, in the manner directed by
5 the court, to the counselor in mental health, to the person com-
6 mitted if he is not the applicant, and to such relative or rela-
7 tives of such person residing in the county as the court directs,
8 and those to whom notice is given shall be given an opportu-
9 nity to appear and be heard on the hearing of the application.

10 The hearing shall be conducted in the same manner as civil
11 cases, and on demand by the petitioner shall be tried by a jury
12 in the same manner as civil cases. If on the hearing the decision
13 of the court or the verdict of the jury is that the person is com-
14 petent, an appeal may be taken as in civil cases. If the court
15 decides or the jury renders a verdict declaring the person is
16 competent, the court shall make an order declaring the person
17 to be competent and discharging his commitment. If three-
18 fourths of the jury fail to unite in a verdict, or the court or
19 the jury decides that the person is not then competent, the
20 proceeding shall be dismissed and no new application to have
21 the person declared competent shall be made for six months
22 thereafter.

23 24 Article 3. Mentally Deficient Persons

25
26 5590. As used in this code, "mentally deficient persons"
27 means those persons, not psychotic, who are so mentally re-
28 tardated from infancy or before reaching maturity that they are
29 incapable of managing themselves and their affairs independ-
30 ently, with ordinary prudence, or of being taught to do so, and
31 who require supervision, control, and care, for their own wel-
32 fare, or for the welfare of others, or for the welfare of the com-
33 munity.

34 Wherever in this code or in any provision of statute hereto-
35 fore or hereafter enacted the terms "feebleminded" and
36 "feeble-mindedness" are used, they shall be construed to refer
37 to and mean "mentally deficient" and "mental deficiency,"
38 respectively, as defined in this section. All persons heretofore
39 committed or admitted as feebleminded to any state home for
40 the feebleminded, or committed to the Department of Mental
41 Hygiene for placement therein, shall be deemed to have been
42 committed or admitted thereto as mentally deficient persons.

43 5591. Any mentally deficient person may be committed to
44 the Department of Mental Hygiene for placement in a desig-
45 nated state home for the mentally deficient if he has been a
46 resident of the state for the period of one year next preceding
47 the presentation of the petition, or, in the case of a person
48 under the age of one year who was born in the state, if the
49 parent in whose custody he is has been a resident of the state
50 for the period of one year next preceding the presentation of
51 the petition.

1 Residence acquired in this or in another state shall not be
2 lost by reason of military service in the armed forces of the
3 United States. The residence of minor children during the
4 period of such military service shall be determined in accord-
5 ance with the residence of the parent in such service or in
6 accordance with the residence of the child.

7 5592. A petition for the commitment of a mentally defi-
8 cient person to the Department of Mental Hygiene for place-
9 ment in a designated state home for the mentally deficient may
10 be filed in the superior court of the county in which such per-
11 son resides, by any of the following persons:

12 (a) The parent, guardian, or other person charged with
13 the support of the mentally deficient person.

14 (b) Any district attorney or probation officer.

15 (c) The Youth Authority.

16 (d) Any person designated for that purpose by the judge
17 of the court.

18 (e) The Director of Corrections.

19 The petition shall state the petitioner's reasons for suppos-
20 ing the person to be eligible for admission thereto, and shall be
21 verified by the affidavit of the petitioner.

22 5593. The court shall fix a time and place for the hearing
23 of the petition. The hearing may, in the discretion of the court,
24 be held at any time and place which the court deems proper,
25 and which will give opportunity for the production and exami-
26 nation of witnesses.

27 5594. In all cases the court shall require due notice of
28 the hearing of the petition to be given to the alleged incom-
29 petent. Whenever a petition is filed by a probation officer,
30 district attorney, the Youth Authority or the Director of Cor-
31 rections, the court shall require such notice of the hearing of
32 the petition as it deems proper to be given to any parent,
33 guardian, or other person charged with the support of the
34 person mentioned in the petition.

35 5595. Whenever the court considers it necessary or advis-
36 able, it may cause a warrant to issue for the apprehension and
37 delivery to the court of the alleged mentally deficient person,
38 and may have the warrant executed by any peace officer.

39 5596. Pending the hearing the alleged mentally deficient
40 person may be left in the charge of his parent, guardian, or
41 other suitable person, or may be placed in the county psy-
42 chopathic hospital.

43 5597. The court shall inquire into the condition or status
44 of the alleged mentally deficient person. For this purpose it
45 may by subpoena require the attendance before it of a physician
46 who has made a special study of mental deficiency and is
47 qualified as a medical examiner, and of a clinical psychologist,
48 or of two such physicians, or of two such psychologists, to
49 examine the person and testify concerning his mentality. The
50 court may also by subpoena require the attendance of such
51 other persons as it deems advisable, to give evidence.

1 5598. Each psychologist and physician shall receive for
2 each attendance mentioned in Section 5597 the sum of five
3 dollars (\$5) for each person examined, together with his nec-
4 essary actual expenses occasioned thereby, and other witnesses
5 shall receive for such attendance such fees and expenses as the
6 court in its discretion allows, if any, not exceeding the fees
7 and expenses allowed by law in other cases in the superior
8 court.

9 Any fees or traveling expenses payable to a psychologist,
10 physician, or witness as provided in this section and all ex-
11 penses connected with the execution of any process under the
12 provisions of this article, which are not paid by the parent,
13 guardian, or person charged with the support of the supposed
14 mentally deficient person, shall be paid by the county treasurer
15 of the county in which the person resides, upon the presenta-
16 tion to the treasurer of a certificate of the judge that the
17 claimant is entitled thereto.

18 5599. If the court finds that the person is mentally de-
19 ficient, and that he has been a resident of the state for one
20 year next preceding the presentation of the petition, or, if the
21 person is under the age of one year, that he was born in the
22 state and that the parent in whose custody he is has been a
23 resident of the state for the period of one year next preceding
24 the presentation of the petition, or, if the person is the child
25 of a person in military service as provided in Section 5591,
26 the court may make an order that the person be committed to
27 the Department of Mental Hygiene for placement in the So-
28 noma State Home or to the Pacific Colony and that he be
29 received, maintained, and educated therein. The court, how-
30 ever, may commit a mentally deficient person who has been
31 in the state less than one year for the purpose of transporta-
32 tion of such person to the state of his legal residence pursuant
33 to Section 160. On the presentation of the order the superin-
34 tendent of the institution to which the person is committed
35 shall receive him therein, unless the institution is already full,
36 or the fund available for its support is exhausted, or, in the
37 opinion of the Department of Mental Hygiene, the person
38 is not a suitable subject for admission thereto.

39 5600. In case of the dismissal of the petition, the court may,
40 if it considers the petition to have been filed with malicious in-
41 tent, order the petitioner to pay the expenses in connection
42 therewith, and may enforce such payment by such further
43 orders as it deems necessary.

44 5601. Any person who knowingly contrives to have any
45 person adjudged mentally deficient under the provisions of
46 this article, unlawfully or improperly, is guilty of a misde-
47 meanor.

48 5602. If, when a boy or girl is brought before a juvenile
49 court under the juvenile court law, it appears to the court,
50 either before or after adjudication, that the person is mentally
51 deficient, or if, on the conviction of any person of crime by
52 any court it appears to the court that the person is mentally

deficient, the court may adjourn the proceedings or suspend the sentence, as the case may be, and direct some suitable person to take proceedings under this article against the person before the court, and the court may order that, pending the preparation, filing, and hearing of the petition, the person before the court be detained in a place of safety, or be placed under the guardianship of some suitable person, on his entering into a recognizance for the appearance of the person upon trial or under conviction when required. If, upon the hearing of the petition, or upon a subsequent hearing, the person upon trial or under conviction is not found to be mentally deficient, the court may proceed with the trial or impose sentence, as the case may be.

Article 4. Epileptics

5610. Persons who are afflicted with epilepsy, as such condition is defined in medical practice, may be committed to state hospitals when such persons are in need of care and treatment for their epilepsy, or when such persons are also suffering from mental illness. Whenever an epileptic person is found to be mentally deficient he may be committed to a state home for the mentally deficient as provided in Article 3 of this chapter, and "mentally deficient person," as used in that article shall be construed to be an epileptic person.

5611. Epileptic persons committed to state hospitals shall be subject to the same rules and laws governing the rights, care, property and support, transfer, leave of absence and discharge of mentally ill persons committed to state hospitals the same as if such persons were expressly mentioned therein.

Article 5. Narcotic Drug Addicts

5625. A "narcotic drug addict" within the meaning of this article is any person who habitually takes or otherwise uses to the extent of having lost the power of self-control any opium, morphine, cocaine, or other narcotic drug as defined in Article 1 of Chapter 1 of Division 10 of the Health and Safety Code.

Wherever in this article the term "drug addict" is used, such term shall be construed to refer to and mean "narcotic drug addict" as defined in this section. All persons heretofore committed or admitted as drug addicts to any state hospital, or committed to the Department of Mental Hygiene for placement therein, shall be deemed to have been committed or admitted as narcotic drug addicts.

5626. Whenever it appears by affidavit to the satisfaction of a magistrate of a county that any person is a narcotic drug addict, he shall issue and deliver to some peace officer for service, a warrant directing that the person be apprehended and taken before a judge of the superior court for a hearing and examination on such charge. The officer shall thereupon apprehend and detain the person until a hearing and exami-

1 nation can be had. At the time of the apprehension a copy
2 of the affidavit and warrant of apprehension shall be person-
3 ally delivered to the person.

4 5627. Such affidavit and warrant of apprehension shall be
5 substantially in the form provided by Sections 5553 and 5555
6 of this code for the examination of a person alleged to be
7 mentally ill.

8 5628. The person charged shall be taken before a judge
9 of the superior court, to whom the affidavit and warrant of
10 apprehension shall be delivered to be filed with the clerk.
11 The judge shall then inform him of his rights to make a
12 defense to such charge and to produce witnesses in relation
13 thereto. The judge shall by order fix such time and place
14 for the hearing and examination in open court as will give
15 a reasonable opportunity for the production and examination
16 of witnesses. Such order shall be entered at length in the
17 minute book of the court or shall be signed by the judge and
18 filed and a certified copy thereof shall be served on the person.
19 The judge may order that such notice of the apprehension of
20 the person and the hearing of the charge be served on such
21 relatives of the person known to be residing in the county
22 as the court deems necessary or proper.

23 5629. The judge may cause witnesses to be summoned and
24 examined before him. The hearing and examination shall be
25 had in substantial compliance with the provisions of Sections
26 5564, 5565, and 5566 of this code.

27 5630. If, after a hearing and examination, the judge be-
28 lieves the person charged is a narcotic drug addict, he shall
29 make an order committing such person to the Department of
30 Mental Hygiene for placement in a designated hospital for an
31 indeterminate period of not less than three months nor more
32 than two years.

33 If satisfactory evidence is submitted to the trial judge
34 showing that the person to be committed is of bad repute or
35 bad character, apart from his habit for which the commitment
36 is made, and that there is reasonable ground for believing that
37 the person if committed will not be benefited by treatment,
38 the judge shall not commit the person to a state hospital.

39 5631. If a person ordered committed to a state hospital,
40 or any friend in his behalf, is dissatisfied with the order of
41 the judge committing him, he may, within 10 days after the
42 making of the order of commitment, demand that the issue be
43 tried by a judge or by a jury in the superior court of the
44 county in which he was committed. Thereupon a trial shall be
45 had in compliance with the provisions of Sections 5572 to 5576,
46 inclusive, of this code.

47 If the alleged narcotic drug addict has no attorney the judge
48 may appoint an attorney to represent him, or if a request is
49 made for an attorney by the alleged narcotic drug addict, the
50 judge shall appoint an attorney to represent him and, in a
51 county where there is no public defender, fix the compensation

1 to be paid by the county for such services if the judge deter-
2 mines that the person is not financially able to employ counsel.
3 5632. Witnesses at hearings for the commitment of narcotic
4 drug addicts shall receive the usual fees and expenses allowed
5 by law in other cases in the superior courts. Any fees or travel-
6 ing expenses payable to any witness in any proceeding for the
7 commitment of a narcotic drug addict, and all expenses con-
8 nected with the execution of any process under this article,
9 which are not paid by the narcotic drug addict or his parent,
10 guardian, or other person charged with his support, if he is a
11 minor, shall be paid by the county treasurer of the county in
12 which the person resides.

13 5633. Any person committed as a narcotic drug addict
14 except such persons as have been committed under the pro-
15 visions of Section 5634, may be placed on leave of absence
16 after the expiration of three months under the same rules and
17 conditions under which the mentally ill are placed on leave
18 of absence, and the superintendent, on filing his written cer-
19 tificate with the Director of Mental Hygiene, may discharge
20 any person committed under this article after the expiration
21 of three months and before the expiration of the maximum
22 term of confinement when such superintendent is satisfied that
23 the person will not receive substantial benefit from further
24 hospital treatment.

25 5634. If, when a girl or boy is brought before a juvenile
26 court under the Juvenile Court Law, or if, on the arrest of any
27 person charged with crime in any court, it appears to the
28 court, either before or after adjudication, that such person is
29 a narcotic drug addict within the meaning of this article, the
30 court may adjourn the proceedings or suspend the sentence,
31 as the case may be, and direct some suitable person to take
32 proceedings under this article against the person before the
33 court, and the court may order that, pending the preparation,
34 filing, and hearing of the petition, the person before the court
35 be detained in a place of safety, or if a minor, be placed under
36 the guardianship of some suitable person on his entering into
37 a recognizance for the appearance of the person upon trial or
38 under conviction when required. If, upon the hearing of the
39 petition, or upon a subsequent hearing, the person before the
40 court, upon trial, or under conviction, is found not to be a
41 narcotic drug addict, the court may proceed with the trial or
42 impose sentence, as the case may be. If the person is com-
43 mitted to the hospital as a narcotic drug addict and has been
44 detained therein for a period of not less than three months
45 whenever thereafter the superintendent of the institution
46 wherein the addict is confined certifies to the committing court
47 that the person has been sufficiently treated, or gives any other
48 reason which is deemed by the court to be adequate and suffi-
49 cient, the court may order the discharge of the person so com-
50 mitted, or may order his return to await the further action of
51 the court.

1 5635. Any person who knowingly and maliciously attempts
2 to have any person adjudged a narcotic drug addict under this
3 article, unlawfully, is guilty of a misdemeanor.

4
5 Article 6. Habit-forming Drug Addicts
6

7 5650. A "habit-forming drug addict," within the meaning
8 of this article, is any person who is so far addicted to the
9 intemperate use of habit-forming drugs, other than narcotic
10 drugs as provided in Section 5625 of this code, as to have lost
11 the power of self-control.

12 As used in this article the term "habit-forming drugs"
13 shall be construed to refer to and mean those dangerous drugs
14 designated in Article 8 (commencing with Section 4210) of
15 Chapter 9, Division 2 of the Business and Professions Code,
16 which are habit-forming drugs.

17 5651. Whenever it appears by affidavit to the satisfaction
18 of a magistrate of a county that any person is so far addicted
19 to the intemperate use of habit-forming drugs as to have lost
20 the power of self-control, he shall issue and deliver to some
21 peace officer for service a warrant directing that the person be
22 apprehended and taken before a judge of the superior court
23 for a hearing and examination. The officer shall thereupon
24 apprehend and detain the person until a hearing and examina-
25 tion can be had. At the time of the apprehension a copy of
26 the affidavit and warrant of apprehension shall be personally
27 delivered to the person.

28 Wherever in this article the term "stimulants" is used, such
29 term shall be construed to refer to and mean "habit-forming
30 drugs" as provided in Section 5650. All persons heretofore
31 committed under the provisions of this article as stimulant
32 addicts shall be deemed to have been committed as habit-
33 forming drug addicts.

34 5652. The affidavit and warrant of apprehension shall be
35 substantially in the form provided by Sections 5553 and 5555
36 of this code for the examination of a person alleged to be men-
37 tally ill.

38 5653. The person charged shall immediately be taken be-
39 fore a judge of the superior court to whom the affidavit and
40 warrant of apprehension shall be delivered to be filed with the
41 clerk. The judge shall then inform him of the charge against
42 him, and inform him of his rights to make a defense to such
43 charge and to produce witnesses in relation thereto.

44 The judge shall by order fix such time and place for the
45 hearing and examination in open court as will give a reason-
46 able opportunity for the production and examination of wit-
47 nesses. This order shall be entered at length in the minute book
48 of the court by the clerk or shall be signed by the judge and
49 filed and a certified copy thereof shall be served on the person.
50 The judge may order that notice of the apprehension of the

1 person and of the hearing of the charge be served on such rela-
2 tives of the person known to be residing in the county, as the
3 court deems necessary or proper.

4 5654. Where a rehabilitation center for the care and treat-
5 ment of inebriates is maintained in a branch of the county
6 jail within the county, the judge may, upon the written recom-
7 mendation of one medical examiner and the written consent
8 of the person charged, order the person confined to such re-
9 habilitation center immediately and without further hearing
10 or examination for a term not exceeding one year. Any person
11 confined pursuant hereto, may, upon written demand filed with
12 the clerk at any time during the period of confinement, request
13 hearing and examination as provided in Article 2 (commencing
14 with Section 5550) of this chapter. Upon the filing of any
15 such request, the judge shall by order, fix a time and place
16 for hearing and examination and proceed as in cases where no
17 order of commitment has been made pursuant to the consent of
18 a medical examiner and the person charged.

19 5655. The hearing and examination shall be had in compli-
20 ance with the provisions of Sections 5564, 5565, and 5566 of
21 this code.

22 5656. If the judge, after such hearing and examination,
23 believes the person is so far addicted to the intemperate use
24 of habit-forming drugs, as provided in this article, as to have
25 lost the power of self-control, he shall make an order that the
26 person be committed to the Department of Mental Hygiene for
27 placement in a hospital for the care and treatment of the
28 mentally ill designated in such order, or that such person be
29 confined in a regional jail camp maintained by the Department
30 of Corrections or in an industrial farm or industrial road
31 camp within the county or, in the event that the county main-
32 tains a branch of the county jail at which inmates thereof are
33 required to perform agricultural and other out-of-doors labor,
34 in such branch of the county jail. The order of commitment
35 and statement of financial condition shall be in substantially
36 the form provided by Section 5567 of this code for the com-
37 mitment of mentally ill persons.

38 Before a person is committed to a state hospital, however,
39 satisfactory evidence shall be submitted to the trial judge
40 showing that the person to be committed is not of bad re-
41 pute or bad character, apart from his habit for which the com-
42 mitment is made, and that there is reasonable ground for be-
43 lieving that the person, if committed, will be permanently
44 benefited by treatment.

45 5657. If the court orders that the person be confined in a
46 state hospital, the court shall commit the person to the De-
47 partment of Mental Hygiene for placement in a designated
48 hospital for a definite period not to exceed two years, but he
49 may be placed on leave of absence by the medical superin-
50 tendent under the same rules and conditions under which the
51 mentally ill are placed on leave of absence, and the

1 superintendent, on filing his written certificate with
2 the Director of Mental Hygiene, may discharge any
3 person committed under this article when he is satis-
4 fied that the person will not receive substantial benefit
5 from further hospital treatment, with the same power as con-
6 tained in Article 8 (commencing with Section 6725), Chapter
7 1, Part 4, Division 6 of this code. In the event that the person
8 shall have been committed to an industrial farm or industrial
9 road camp or branch of the county jail, as provided in Section
10 5654 or 5656 of this code, he may, after recommendation by the
11 medical director of the county that the person will not receive
12 substantial benefit from further confinement, be paroled by the
13 county board of parole commissioners in the same manner
14 as prisoners in county jails are paroled.

15 5658. If a person ordered committed to a state hospital,
16 or any friend in his behalf, is dissatisfied with the order of the
17 judge committing him, he may, within 10 days after the mak-
18 ing of the order of commitment, demand that the issue be
19 tried by a judge or by a jury in the superior court of the
20 county in which he was committed. Thereupon a trial shall be
21 had in compliance with the provisions of Sections 5272 to
22 5276, inclusive, of this code.

23 Article 7. Inebriates

24 5675. Proceedings for the commitment of a person alleged
25 to be an inebriate shall be instituted and conducted in the
26 manner prescribed in Article 6 (commencing with Section
27 5650) of this chapter. The procedure shall be modified only
28 to the extent necessary to reflect that the person whose com-
29 mitment is sought is alleged to be an inebriate rather than a
30 habit-forming drug addict.

31 5676. Where a rehabilitation center for the care and treat-
32 ment of inebriates is maintained in a branch of the county
33 jail within the county, the judge may, upon the written rec-
34 ommendation of one medical examiner and the written consent
35 of the person charged, order the person confined to such
36 rehabilitation center immediately and without further hearing
37 or examination for a term not exceeding one year. Any person
38 confined pursuant hereto, may, upon written demand filed
39 with the clerk at any time during the period of confinement,
40 request hearing and examination as provided in Article 2
41 (commencing with Section 5550) of this chapter. Upon the
42 filing of any such request, the judge shall by order, fix a time
43 and place for hearing and examination and proceed as in cases
44 where no order of commitment has been made pursuant to the
45 consent of a medical examiner and the person charged.

46 5677. If the judge, after such hearing and examination,
47 believes the person is subject to inebriety in such a degree
48 as to require custodial care and treatment, he shall make
49 an order that the person be committed to the Depart-
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1 ment of Mental Hygiene for placement in a hospital for
2 the care and treatment of the mentally ill designated in such
3 order, or that such person be confined in a regional jail camp
4 maintained by the Department of Corrections or in an indus-
5 trial farm or industrial road camp within the county or, in
6 the event that the county maintains a branch of the county
7 jail at which inmates thereof are required to perform agricul-
8 tural and other out-of-doors labor, in such branch of the county
9 jail.

10 Before a person is committed to a state hospital, however,
11 satisfactory evidence shall be submitted to the trial judge
12 showing that the person to be committed is not of bad reput-
13 or bad character, apart from his habit for which the commit-
14 ment is made, and that there is reasonable ground for believ-
15 ing that the person, if committed, will be permanently bene-
16 fited by treatment.

17 5678. If the court orders that the person be confined in a
18 state hospital, the court shall commit the person to the De-
19 partment of Mental Hygiene for placement in a designated
20 hospital for a definite period not to exceed two years, but he
21 may be placed on leave of absence by the medical su-
22 perintendent under the same rules and conditions under which
23 the mentally ill are placed on leave of absence, and the
24 superintendent, on filing his written certificate with the
25 Director of Mental Hygiene, may discharge any person
26 committed under this article when he is satisfied that the per-
27 son will not receive substantial benefit from further hospital
28 treatment, with the same power as contained in Article 8
29 (commencing with Section 6725), Chapter 1, Part 4, Division
30 6 of this code. In the event that the person shall have been
31 committed to an industrial farm or industrial road camp or
32 branch of the county jail, as provided in Section 5676 or 5677
33 of this code, he may, after recommendation by the medical
34 director of the county that the person will not receive substan-
35 tial benefit from further confinement, be paroled by the county
36 board of parole commissioners in the same manner as pris-
37 oners in county jails are paroled.

38 5679. If the judge, after the hearing and examination, be-
39 lieves the person is subject to inebriety, but that the condition
40 of the person is not such as to require custodial care or treat-
41 ment, the judge may place the person on probation, subject
42 to the supervision of the probation officer, in the same manner
43 in which persons who are mentally disordered but not danger-
44 ous to health, person, or property are placed on probation, and
45 the laws relating to the probation, commitment, or other dis-
46 position of such mentally disordered persons shall apply to
47 and govern the commitment, probation, or disposition of per-
48 sons subject to inebriety in a degree not requiring custodial
49 care or treatment in the same manner and to the same extent
50 as if such persons so subject to inebriety were specifically re-
51 ferred to therein.

Article 8. Mentally Abnormal Sex Offenders

5700. The term "mentally abnormal sex offender" as used in this article means any person who is not mentally ill or mentally defective, and who by an habitual course of misconduct in sexual matters has evidenced an utter lack of power to control his sexual impulses and who, as a result is likely to attack or otherwise inflict injury, loss, pain or other evil upon the objects of his uncontrolled and uncontrollable desires.

5701. A petition alleging that a person named therein is a mentally abnormal sex offender and is in need of supervision, care or treatment and asking that provisions be made for the welfare of such person as provided in this article, may be filed in the superior court of the county in which such person resides only by the following persons:

(a) The parent, spouse or child of such person; or

(b) The person himself.

The petition shall state the petitioner's reasons for believing that the person may be a mentally abnormal sex offender and in need of supervision, care or treatment. The petition shall be accompanied by the written consent of the person himself voluntarily requesting examination and hearing by the court as provided in this article. The petition shall also be accompanied by a written statement of at least one medical examiner, stating that in his opinion the person is a mentally abnormal sex offender as defined in this article and recommending that examination be made of such person in accordance with the provisions of this article.

5702. The court shall fix a time and place for the hearing of the petition. The court shall require due notice of the hearing of the petition to be given to the person.

5703. The person alleged to be a mentally abnormal sex offender shall be taken before a judge of the superior court of said county, and the hearing and examination shall thereafter be had in substantial compliance with the provisions of Sections 5503 to 5511, inclusive, of this code.

5704. If, after examination and hearing, the judge believes that the person is a mentally abnormal sex offender, as defined in this article, he may order that the person be committed to the Department of Mental Hygiene for placement in a state hospital designated by the court for a period of time not to exceed two years for supervision, care and treatment, or the judge may dismiss the petition. The petition, the reports, the court orders and other court documents filed in the court shall not be open to inspection by any other than the parties to the proceeding, the attorneys for the party or parties, and the State Department of Mental Hygiene, except upon the written authority of a judge of the superior court of the county in which the proceedings were had.

5705. Whenever a person is committed to the department and confined in a state hospital under the provisions of this article, the superintendent of the state hospital shall maintain

1 complete records of the supervision, care and treatment given
2 to each such person. Such records shall not be open to the
3 inspection of any person not in the employ of the department
4 or of the state hospital, except that a judge of the superior
5 court may by order permit examination of such records. The
6 superintendent of the state hospital may, at any time after
7 admission, discharge such person, or grant him a leave of
8 absence upon such terms and conditions as he deems proper.
9 5706. Proceedings under this article shall not be brought,
10 and a petition under this article may not be filed, by or in
11 behalf of any person against whom a criminal charge has been
12 made which has not been prosecuted to final judgment.

13 Article 9. Juvenile Court Wards

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16 5725. If the court, after finding that the minor is a person
17 described by Sections 600, 601, or 602, is in doubt concerning
18 the state of mental health or the mental condition of the per-
19 son, the court may continue the hearing and commit the person
20 to the Department of Mental Hygiene for placement in a state
21 hospital or state home for the mentally deficient for an inde-
22 terminate period of not more than 90 days, for observation of
23 the mental health or the mental condition of the person and
24 recommendations concerning his future care, supervision, and
25 treatment. If the Department of Mental Hygiene has desig-
26 nated a particular state institution to receive minors so com-
27 mitted for observation, all commitments shall be made to the
28 department for placement in the institution so designated. The
29 superintendent of the institution to which the minor is so
30 committed shall receive him, unless the institution is already
31 full or the funds available for its support are exhausted, or if,
32 in the opinion of the superintendent, the person is not a suit-
33 able subject for admission. Before such person is conveyed to
34 the institution, it shall be ascertained from the superintendent
35 thereof if the person may be accepted as herein set forth.

36 The medical superintendent or other person in charge of the
37 state hospital or state home for the mentally deficient in which
38 a minor person is placed for observation pursuant to this
39 section shall, as soon as possible and within 90 days, examine
40 the person to determine the state of his mental health or his
41 mental condition, and submit to the juvenile court a report on
42 the state of his mental health or mental condition which shall
43 include a diagnosis of the nature of his mental illness or
44 disability, if any, and recommendations concerning his future
45 care, supervision, and treatment.

46 If the medical superintendent or other person in charge of
47 the state institution in which the minor has been placed for
48 observation reports to the court that the minor is not affected
49 with any mental illness, disorder, or other mental disability
50 for which he might be committed to the Department of Mental
51 Hygiene for placement in any state institution under this
52 chapter, such superintendent or other person in charge of the

1 state institution shall return the minor to the juvenile court
2 within seven days after the date of the report and the court
3 shall proceed with the case in accordance with the provisions
4 of the Juvenile Court Law.

5 When the juvenile court directs the filing in any other court
6 of a petition for the commitment of a minor to the Department
7 of Mental Hygiene for placement in any state institution, the
8 juvenile court shall transmit to the court in which the petition
9 is filed a copy of the report of the medical superintendent or
10 other person in charge of the state institution in which the
11 minor was placed for observation. The court in which the
12 petition for commitment is filed may accept the report of the
13 medical superintendent or other person in charge of the state
14 institution in lieu of the appointment, certificate, and testimony
15 of medical examiners or other expert witnesses appointed by
16 the court, if the laws applicable to such commitment proceed-
17 ings provide for the appointment by court of medical exam-
18 iners or other expert witnesses or may consider the report as
19 evidence in addition to the certificates and testimony of medical
20 examiners or other expert witnesses.

21 The jurisdiction of the juvenile court over the minor shall
22 be suspended during such time as the minor is subject to the
23 jurisdiction of the court in which the petition for commitment
24 is filed or under commitment ordered by that court.

25 CHAPTER 2. EMERGENCY APPREHENSION

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28 5880. When any person becomes so mentally ill as to be
29 likely to cause injury to himself or others and to require im-
30 mediate care, treatment, or restraint, a peace officer, health
31 officer, county physician or assistant county physician, who
32 has reasonable cause to believe that such is the case, may take
33 the person into custody for his best interest and protection
34 and place him as provided in this section. The person believed
35 to be mentally ill may be admitted and detained in the quarters
36 provided in any county hospital or state hospital upon appli-
37 cation of the peace officer, health officer, county physician, or
38 assistant county physician. The application shall be in writing
39 and shall state the circumstances under which the person's
40 condition was called to the officer's or physician's attention
41 and shall also state that the officer or physician believes, as a
42 result of his personal observation, that the person is mentally
43 ill and because of his illness is likely to injure himself or others
44 if not immediately hospitalized.

45 The superintendent or physician in charge of the quarters
46 provided in such county hospital or state hospital may care
47 for and treat the person for a period not to exceed seventy-two
48 (72) hours, excluding Saturdays, Sundays, and holidays.
49 Within said seventy-two (72) hours the person shall be dis-
50 charged from the institution unless a petition of mental illness
51 is presented to a judge of the superior court and the court
52 issues an order for detention of such person, or unless the

1 person is admitted as a patient under any other provision
2 of law.

3
4 CHAPTER 3. ADMISSION ON CERTIFICATION

5
6 Article 1. State Hospitals on Application
7 of Local Health Officer

8
9 6000. This article shall be construed as providing an addi-
10 tional, but not an exclusive, procedure for the admission of
11 mentally ill persons to state hospitals. Except as in this article
12 otherwise expressly provided, nothing in this article shall be
13 construed as repealing any other provision of law providing
14 for the admission of mentally ill persons to state hospitals, or
15 providing for the commitment of mentally ill persons to state
16 hospitals.

17 6001. The superintendent of a state hospital may admit
18 to the hospital any person believed to be mentally ill and in
19 need of supervision, care, or treatment, on application for his
20 admission and certification of his mental illness made pursuant
21 to this article, subject to general rules and regulations pre-
22 scribed by the Department of Mental Hygiene, but the super-
23 intendent shall not admit any person under this article if the
24 person to be admitted, or any relative or friend acting in his
25 behalf, protests against his admission to the superintendent
26 either before or at the time of admission.

27 6002. Application for the admission of a person to a state
28 hospital pursuant to this article shall be made only by the local
29 health officer. As used in this article, "local health officer"
30 means the county, city, or district health officer charged with
31 the preservation of the public health in the county, city, or
32 district.

33 6003. Any relative or friend of a person believed to be
34 mentally ill and in need of supervision, care, or treatment may
35 report that fact to the local health officer, together with the
36 name and place of residence of the person. The local health
37 officer may make or cause to be made such investigations as he
38 deems to be necessary to ascertain the facts. If it appears to
39 the health officer that there is reasonable cause for believing
40 that admission to a state hospital under this article will be
41 for the best interest of the person he may make the application
42 to a state hospital. Proceedings under this article shall be
43 stopped whenever the person believed to be mentally ill or
44 any relative or friend acting in his behalf protests against
45 such proceedings to the investigating health officer or to the
46 examining physicians.

47 Any local health officer or his employee who makes or assists
48 in making an application under this article shall not be ren-
49 dered criminally liable thereby when there is reasonable cause
50 for believing that such application will be for the best interest
51 of the person.

1 6004. Each such application shall be accompanied by cer-
2 tificates, dated not more than seven (7) days prior to the
3 presentation of the application to the superintendent, by each
4 of two physicians certifying that he has examined the person
5 within three (3) days of the date of the certificate and be-
6 lieves the person to be mentally ill and in need of supervision,
7 care, or treatment. Each such physician shall further certify
8 that he holds a valid and unrevoked physician's and surgeon's
9 certificate issued under the provisions of Division 2, Chapter
10 5, of the Business and Professions Code, and that he is not
11 related to the person by blood or marriage and is not con-
12 nected in any way with a state hospital.

13 6005. The department shall prescribe and publish instruc-
14 tions and forms of application, physicians' certificates of
15 mental illness, and all other documents provided for in this
16 article, and may include in them such questions as it deems
17 necessary or useful. Such instructions and forms may be
18 furnished to the health officers of the several counties, cities,
19 and health districts in the state and to any other person
20 applying therefor.

21 6006. If the alleged mentally ill person or the person
22 responsible for his maintenance and support is financially
23 unable to pay the cost of obtaining the physicians' certificates
24 such cost shall be paid by the county in which the health officer
25 is employed; provided, that such health officer shall have, prior
26 to the employment of such examining physicians, approved
27 such employment and that the cost of such physicians' service
28 for such alleged mentally ill person shall not exceed the sum
29 of ten dollars (\$10).

30 6007. No person shall be delivered to a state hospital for
31 admission thereto under this article until the application for
32 his admission has been accepted by the superintendent of the
33 hospital. The superintendent may refuse to accept any appli-
34 cation or to admit any person to the hospital if he believes the
35 person is not mentally ill nor in need of supervision, care or
36 treatment, if there is no room for him in the hospital, or if his
37 admission would violate any rule of the Department of Mental
38 Hygiene.

39 6008. Upon acceptance of the application by the super-
40 intendent of the hospital, the person shall be delivered to the
41 hospital within five (5) days under the direction of the local
42 health officer. No female person shall be taken to a state hos-
43 pital, except by a relative, without the attendance of some
44 woman of good character and mature age. The application for
45 admission and the accompanying certificates shall be delivered
46 to the hospital before or at the time of the delivery of the
47 person to the hospital.

48 1. Every public officer or public employee who delivers or
49 assists in the delivery of a person to a state hospital pursuant
50 to this section shall receive therefor such fees and expenses as
51 are payable to the sheriff for conveyance of patients to state
52 institutions, which shall be paid in the same manner.

1 6009. Any public officer or employee who transports or
2 delivers or assists in transporting or delivering or detains or
3 assists in detaining any person pursuant to this article shall
4 not be rendered criminally liable thereby unless it be shown
5 that such officer or employee acted maliciously or in bad faith
6 or that his negligence resulted in bodily injury to such person.

7 6010. Except as expressly otherwise provided in this article,
8 persons admitted to state hospitals pursuant to this article
9 shall be entitled to the same rights and care, shall be subject
10 to the same rules, and the liability for their support shall be
11 the same, as if such persons had been duly committed thereto
12 by a court of competent jurisdiction, and the laws governing
13 the rights, care, property and support, transfer, leave of ab-
14 sence, and discharge of mentally ill persons committed to state
15 hospitals shall apply to persons admitted to state hospitals
16 pursuant to this article the same as if such persons were ex-
17 pressly mentioned therein.

18 6011. Prior to transporting any person to a state hospital
19 or his admission thereto, pursuant to this article, the local
20 health officer shall cause to be delivered to such person a notice
21 in writing informing the person that application has been
22 made for his admission to a state hospital and of his right to
23 object thereto. At any time after the admission of a person to
24 a state hospital pursuant to this article, the person, or any
25 relative or friend in his behalf, may file with the superin-
26 tendent of the hospital in which the person is confined, a
27 written request for a court hearing to determine whether or
28 not the person is mentally ill and in need of supervision, care,
29 or treatment in the hospital.

30 6012. The department shall make such rules and issue such
31 instructions to hospital personnel as will insure the provision
32 of facilities for making written demand for court hearing to
33 every person admitted to the hospital pursuant to this article
34 upon indication of his desire to make such request, and for the
35 immediate transmission of every such request to the superin-
36 tendent of the hospital. The department shall provide blank
37 forms of such requests for the use of such patients or relatives
38 or friends acting in their behalf.

39 6013. Upon receipt of each written request for a court
40 hearing, the superintendent of the hospital shall notify the
41 Director of Mental Hygiene and the local health officer who
42 made the application for the admission of the person of the
43 request. The superintendent shall immediately send the re-
44 quest for hearing to the superior court of the county from
45 which the application for the admission of the person was
46 made, together with all the following:

47 (a) A true copy of the application for admission of the
48 person to the hospital.

49 (b) A true copy of the certificates which accompanied the
50 application.

51 (c) A report on and diagnosis of the mental condition of the
52 person by the superintendent of the state hospital.

6014. The written request for court hearing, together with the documents specified in Section 6013, shall have the force and effect of a verified petition and of a demand for court hearing under the provisions of Article 2 of Chapter 1 of Part 1.5 of Division 6 of this code, and proceedings thereon shall be had as provided in that article. In such proceedings, however, the court may dispense with the observation period provided for therein, and may accept the report and diagnosis of the superintendent and medical staff of the state hospital in lieu of the appointment, certificates, and testimony of medical examiners. In addition to the notices of time and place of the hearing given to the person or his representative and a relative or friend pursuant to Section 5560, the clerk of the court shall give notice of the time and place of the hearing to the superintendent of the hospital in which the person is confined, by registered mail or otherwise.

6015. Pending the hearing, the person shall be detained in the state hospital to which he was admitted. The superintendent shall cause the person to be delivered by employees of the hospital to the court for the hearing.

If, after hearing, the court commits the person to the Department of Mental Hygiene for placement in a state hospital, the person shall be delivered by state hospital employees to the hospital designated by the court.

6016. Whenever the superintendent of a state hospital to which a person has been admitted pursuant to this article is of the opinion that the person is no longer in need of supervision, care, or treatment in the hospital, he may release the person on leave of absence or discharge him upon any of the grounds provided in this code for the release or discharge of mentally ill persons committed to state hospitals.

6017. Nothing in this article limits the right of any person admitted to a state hospital pursuant to this article to a writ of habeas corpus upon a proper application made at any time by such person or a relative or friend on his behalf.

6018. This article does not authorize any examination as provided in Section 6004 or the admission to a state hospital of any person who is being treated by prayer in the practice of the religion of any well recognized church, sect, denomination or organization, if he, or any relative or friend acting in his behalf, protests against such examination or admission to the local health officer investigating the case.

6019. A local health officer may make application under this article on behalf of a person believed to be mentally ill to a facility of the Veterans Administration within this state upon receipt of a certificate from the Veterans Administration showing that such person is eligible for care or treatment therein. The chief officer of any facility of the Veterans Administration within this state may admit such person under this article and thereupon shall be vested with the same powers and obligations as superintendents of state hospitals have under this article with respect to retention of custody, leave

1 of absence, discharge or notification of court when demanded
2 by the person.

3
4 Article 2. State Hospitals on Certification
5 of Physicians
6

7 6022. The superintendent of a state hospital may admit to
8 the hospital for a period not to exceed ninety (90) days for
9 observation, care or treatment, any person who is believed to
10 be mentally ill and who does not object to such admission or
11 for whom no such objection is made by a member of his family,
12 relative, or friend, upon

13 (a) The written application made on behalf of the person
14 by a member of his family, relative, friend with whom he
15 resides or guardian of the person, a health or welfare officer
16 of the community, or the head of a hospital, sanitarium or
17 other institution in which the person may be, and accom-
18 pained by

19 (b) The certificates of two physicians that they have exam-
20 ined such person and believe him to be mentally ill and in need
21 of observation, care or treatment, and because of his illness
22 lacks sufficient insight or capacity to make responsible applica-
23 tion himself. Each such physician shall be duly licensed in this
24 state and not related to the person by blood or marriage. Each
25 such certificate shall show that such person was examined by
26 the physician not more than ten (10) days prior to the pres-
27 entation of the application and certificates to the superin-
28 tendent.

29 6023. At any time after such person has been admitted to
30 the state hospital, he, or anyone on his behalf, may give notice
31 in writing to the superintendent of his desire to leave the hospi-
32 tal. Such person shall be discharged within fifteen (15) days
33 after receipt of the notice unless the superintendent is of the
34 opinion that the person is mentally ill and in need of further
35 care, treatment or supervision. In such event the superintend-
36 ent shall forthwith in writing inform the patient, and the per-
37 son who gave the notice or who made the written application
38 on behalf of the patient, of such opinion and of the proceedings
39 to follow, and shall retain the patient in the hospital during
40 such fifteen (15) day period.

41 The superintendent may within such fifteen (15) days re-
42 lease the patient on leave of absence if the patient makes
43 written request for the same and if such leave will benefit the
44 patient in the opinion of the superintendent, otherwise he
45 shall within such fifteen (15) days file, in the superior court
46 of the county from which the application was made, the
47 following:

48 (a) A true copy of the notice of desire to leave the hospital.

49 (b) A true copy of the application for admission to the hos-
50 pital.

51 (c) A true copy of the physician's certificate which accom-
52 panied the application.

(d) A report and diagnosis setting forth the opinion of the superintendent concerning the mental condition of the patient.

6024. The documents specified in Section 6023 shall, upon being filed in court, have the force and effect of a verified petition and of a demand for court hearing under the provisions of Article 2 (commencing with Section 5550) of Chapter 1 of this division, and proceedings thereon shall be had as provided in that article. In such proceedings, however, the court may dispense with the observation period provided for therein, and may accept the report and diagnosis of the superintendent and medical staff of the state hospital in lieu of the appointment, certificates, and testimony of medical examiners. In addition to the notices of time and place of the hearing given to the person or his representative and a relative or friend pursuant to Section 5560, the clerk of the court shall give notice of the time and place of the hearing to the superintendent of the hospital in which the person is confined, by registered mail or otherwise.

Pending the hearing, the person shall be detained in the state hospital to which he was admitted. The superintendent shall cause the person to be delivered by employees of the hospital to the court for the hearing.

If, after hearing, the court commits the person to the Department of Mental Hygiene for placement in a state hospital, the person shall be delivered by state hospital employees to the hospital designated by the court.

6025. At any time after such person has been admitted to a state hospital the superintendent may discharge him, or may release him on leave of absence with the patient's written consent, whenever the patient is no longer in need of observation, care or treatment in the hospital. Except as expressly otherwise provided in this article, a person admitted under this article shall be entitled to the same rights and care, shall be subject to the same rules and regulations of the hospital, and the liability for his support shall be the same, as if such person had been duly committed by a court of competent jurisdiction.

6026. At the expiration of ninety (90) days following a person's admission under this article, the superintendent shall discharge him from the hospital if the person has not previously been discharged or released, unless the patient is mentally ill and in need of further hospital care and treatment in the opinion of the superintendent. In such event he shall forthwith give written notice of such opinion and of the proceedings to follow to the patient, to the person who made the application for admission, and to the known spouse, parents or children of the patient residing in this state, and shall retain the patient in the hospital for not more than fifteen (15) additional days. If no relative, friend or other person takes steps in behalf of the patient within the fifteen (15) days, either to care for the person on leave of absence with the person's written consent, or to have him otherwise admitted to a suitable hospital in accordance with law, the superintendent shall file in the su-

1 perior court of the county from which the application was
2 made the documents specified in Section 6023. Thereafter the
3 proceedings in court and pending the court hearing shall be in
4 accordance with the provision of Section 6024.

5 A person who is released under this article on leave of
6 absence from a state hospital shall not be returned to the
7 hospital without his consent. If such person becomes in need
8 of further hospital care or treatment steps may be taken in
9 his behalf to have him otherwise admitted to a suitable hos-
10 pital in accordance with law.

11 6027. The Department of Mental Hygiene shall prescribe
12 and publish instructions, forms of application, physician's cer-
13 tificates, notices and other documents necessary for the proper
14 execution of this article, and may furnish them to the health
15 and welfare officers of the several cities and counties of the
16 state, and to any organization, institution, physician or person
17 requiring them. The Director of Mental Hygiene shall require
18 reports from the state hospital superintendents concerning
19 persons admitted under this article at such times and in such
20 form as he deems advisable.

21 6028. Nothing in this article limits the right of any person
22 admitted to a state hospital pursuant to this article to a writ
23 of habeas corpus upon a proper application made at any time
24 by such person or a relative or friend on his behalf.

25 Article 3. Private Institutions

26
27
28 6030. No person, except one who voluntarily desires and
29 seeks admission as a patient, shall be admitted or taken by
30 any person to a private psychopathic institution, hospital,
31 sanitarium, department, or ward for the care or treatment
32 of persons who are mentally ill or deranged, without a written
33 statement from at least one licensed physician, who has no
34 financial interest in nor membership on the paid regular or
35 consultant staff of such private psychopathic institution, hos-
36 pital, sanitarium, department, or ward, that he has made a
37 mental examination of the patient and that the patient should
38 be admitted to such place for care or treatment.

39 6031. At any time after the admission of a patient to a
40 private institution, hospital, or sanitarium pursuant to the
41 provisions of Section 6030 of this code, the patient, or any
42 relative or friend in his behalf, may file with the person in
43 charge of the institution, hospital, or sanitarium in which the
44 patient is confined, a written request for a court hearing to
45 determine whether or not the person is mentally ill and in
46 need of supervision, care or treatment in such institution,
47 hospital, or sanitarium, and proceedings thereon shall be had
48 as provided in Article 1 of Chapter 3 of this part.

49 6032. No person shall be admitted to such private insti-
50 tution, hospital, or sanitarium pursuant to Section 6030 of this
51 code unless the physician's statement is in certificate form and
52 is presented within three days of the physician's mental ex-

amination, and no person so admitted shall be detained or permitted to remain in such institution, hospital, or sanitarium for a period longer than 90 days, unless during such period he has filed a request to remain in such institution, hospital, or sanitarium as a voluntary patient, or unless during such period a petition has been presented to the superior court under the provisions of Article 2, Chapter 1 of Part 1.5 of Division 6 of this code and an order issued requiring such person to be detained in such institution, hospital, or sanitarium, or unless proceedings are pending under Section 6031 of this code to determine whether or not the patient is mentally ill and the patient has been ordered detained in such institution, hospital, or sanitarium pending the outcome of such hearing, or unless prior to the end of such period such private institution, hospital, or sanitarium has received a written application from a friend or relative of such person to retain such person therein for further care or treatment accompanied by two certificates executed by two physicians as required under Section 6030 and this section.

6033. No physician who shall execute, in good faith, a certificate under this article, and no private institution, hospital, or sanitarium, or its agents, servants, or employees, which shall admit and detain such person, in good faith, upon the authority of such application, or applications, and certificate, or certificates, shall be liable in damages to such person, or to his heirs, executors or administrators, for false imprisonment or otherwise; provided, however, that such physicians, institutions, hospitals, or sanitariums shall not be exempt from liability for negligence in the care or treatment of such persons.

CHAPTER 4. OTHER TYPES OF CONFINEMENT WITHOUT COURT ORDER

Article 1. Voluntary Admissions to State Hospitals

6050. Pursuant to rules and regulations established by the State Department of Mental Hygiene, the superintendent of a state hospital for the mentally ill or mentally deficient may receive and detain in such hospital, as a boarder and patient, any person who is a suitable person for care and treatment in such hospital, upon receipt of a written application for the admission of the person into the hospital for care and treatment made in accordance with the following requirements:

(a) In the case of an adult person, the application shall be made voluntarily by the person, at a time when he is in such condition of mind as to render him competent to make it.

(b) In the case of a minor person, the application shall be made by his parents, or by the parent, guardian, or other person entitled to his custody to any of such mental hospitals as may be designated by the Director of Mental Hygiene to admit minors on voluntary applications.

1 Any such person received and detained in a state hospital
2 shall be deemed a voluntary patient.

3 Upon the admission of a voluntary patient to a state hospital,
4 the superintendent shall immediately forward to the office of
5 the State Department of Mental Hygiene the record of such
6 voluntary patient, showing the name, residence, age, sex, place
7 of birth, occupation, civil condition, date of admission of such
8 patient to such hospital, and such other information as is re-
9 quired by the rules and regulations of the department.

10 The charges for the care and keeping of a mentally ill per-
11 son in a state hospital shall be governed by the provisions of
12 Article 5 (commencing with Section 6650) of Chapter 1 of
13 Part 4 relating to the charges for the care and keeping of men-
14 tally ill persons in state hospitals. The county where a men-
15 tally deficient person resided at the time of admission, as
16 determined by the Department of Mental Hygiene, shall pay
17 the cost to the state of the care of such person as provided by
18 Sections 7009 and 7010 of this code. The responsibility of the
19 mentally deficient patient and his kindred for reimbursement
20 to the county shall be governed by Articles 3 and 4 (com-
21 mencing with Section 2576) of Chapter 2 of Division 4 of this
22 code.

23 No adult person received into a state hospital under such
24 voluntary application shall be detained therein for more than
25 seven days, after having given notice, in writing, to the super-
26 intendent of his desire to leave such hospital unless, within
27 such period, a petition has been filed with the superior court
28 for commitment of such person as a mentally ill person.

29 No minor person received into a state hospital as a voluntary
30 patient shall be detained therein for more than seven days
31 after notice is given, in writing, to the superintendent by the
32 parents, or the parent, guardian, or other person entitled to
33 the custody of the minor, of their desire to remove him from
34 the hospital.

35 No person received into a state hospital as a voluntary
36 patient during his minority shall be detained therein after he
37 reaches the age of majority, but any such person, after attain-
38 ing the age of majority, may apply for admission into the hos-
39 pital for care and treatment in the manner prescribed in this
40 section for applications by adult persons.

41 The department shall establish such rules and regulations
42 as are necessary properly to carry out the provisions of this
43 section.

44 6051. Admissions to the Langley Porter Clinic or to the
45 Neuropsychiatric Institute, U.C.L.A. Medical Center, may be
46 on a voluntary basis after approval by the medical superin-
47 tendent of the clinic or institute, as the case may be.

Article 2. Voluntary Admissions to
Private Institutions

6060. The person in charge of any private institution, hospital, or sanitarium which is conducted for, or includes a department or ward conducted for, the care and treatment of persons who are mentally ill or deranged may receive and detain therein as a voluntary patient any person suffering from mental illness or derangement who is a suitable person for care and treatment in the institution, hospital, or sanitarium, who voluntarily makes a written application to the person in charge for admission into the institution, hospital or sanitarium, and who is at the time of making the application mentally competent to make the application.

After the admission of a voluntary patient to a private institution, hospital, or sanitarium the person in charge shall forward to the office of the State Department of Mental Hygiene a record of the voluntary patient showing such information as may be required by rule by the department.

No voluntary patient in a private institution, hospital, or sanitarium shall be detained therein for more than seven days, after having given notice, in writing, to the person in charge of the institution, hospital, or sanitarium of his desire to leave the institution, hospital, or sanitarium, unless within such period a petition has been filed with the superior court for commitment of such person as a mentally ill person.

Article 3. Voluntary Admissions to County
Psychopathic Hospitals

6070. As used in this article, "county psychopathic hospital" means the hospital, ward, or facility provided by the county pursuant to the provisions of Section 6300.

6071. The superintendent or person in charge of the county psychopathic hospital may receive, care for, or treat in the hospital any person who voluntarily makes a written application to the superintendent or person in charge thereof for admission into the hospital for care, treatment, or observation, and who is a suitable person for care, treatment, or observation, and who in the case of an adult person is in such condition of mind, at the time of making application for admission, as to render him competent to make such application. In the case of a minor person, the application shall be made by his parents, or by the parent, guardian, or other person entitled to his custody.

6072. No adult person received into the county psychopathic hospital under the provisions of Section 6071 of this code shall be detained therein for more than seven days, after having given notice, in writing, to the superintendent or person in charge, of his desire to leave such hospital.

No minor person received into the county psychopathic hospital under the provisions of Section 6071 of this code shall be

1 detained therein for more than seven days, after notice is
2 given, in writing, to the superintendent or person in charge of
3 the hospital by the parents, or the parent, guardian or other
4 person entitled to the custody of the minor, of their desire to
5 remove the minor from the hospital unless, within such period,
6 a petition has been filed with the superior court for commit-
7 ment of such person as a mentally ill person.

8
9 Article 4. Transfers From Other Jurisdictions

10
11 6075. The Department of Mental Hygiene may give writ-
12 ten permission for the return of any resident of this state con-
13 fined in a public institution in another state, corresponding
14 to any state hospital for the mentally ill or to any state home
15 for the mentally deficient of this state. When a resident is re-
16 turned to this state pursuant to this section, he may be de-
17 livered to any institution of the department as designated by
18 the Director of Mental Hygiene. Such person shall be ad-
19 mitted by the superintendent of the institution for care and
20 treatment for a period not exceeding seven days during which
21 time the person shall be released at the earliest possible time
22 or committed in accordance with law.

23 6076. The Department of Mental Hygiene may admit to
24 any state hospital for the mentally ill, if there is room therein,
25 any mentally ill soldier or sailor in the service of the United
26 States on such terms as are agreed upon between the depart-
27 ment and the properly authorized agents, officers, or repre-
28 sentatives of the United States government.

29 SEC. 6. Section 5699 of said code is amended and renum-
30 bered to read:

31 ~~5699.~~

32 6200. As used in this part, "establishment" and "in-
33 stitution" include every hospital, sanitarium, home, or other
34 place receiving or caring for any ~~insane, alleged insane,~~ men-
35 tally ill; or other incompetent person referred to in this di-
36 vision.

37 SEC. 7. Section 5700 of said code is amended and renum-
38 bered to read:

39 ~~5700.~~

40 6201. No person, association, or corporation, shall estab-
41 lish or keep, for compensation or hire, an establishment
42 for the care, custody, or treatment of the ~~insane, alleged in-~~
43 ~~sane,~~ mentally ill; or other incompetent persons referred to in
44 this division without first having obtained a license therefor
45 from the Department of Mental Hygiene, and having paid the
46 license fee provided in this chapter.

47 Any person who carries on, conducts, or attempts to carry
48 on or conduct an establishment for the care or treatment of
49 the ~~insane or alleged insane,~~ mentally ill; or incompetents
50 without first having obtained a license from the Department of
51 Mental Hygiene, as in this chapter provided, is guilty of a
52 misdemeanor and on conviction thereof shall be punished by

1 imprisonment in a county jail not exceeding six months or by
2 a fine not exceeding one thousand dollars (\$1,000), or by both
3 such fine and imprisonment. The managing and executive
4 officers of any corporation violating the provisions of this sec-
5 tion shall be liable under the provisions of this section in the
6 same manner and to the same effect as a private individual
7 violating the same.

8 The provisions of this chapter do not apply to any hospital
9 which maintains and operates organized medical or surgical
10 facilities primarily for the diagnosis, care, and treatment of
11 physical human illness, including convalescence, and including
12 care during and after pregnancy, and to which persons may
13 be admitted for overnight stay or longer, and holds a license
14 in good standing issued under the provisions of Chapter 2 of
15 Division 2 of the Health and Safety Code.

16 Sec. 8. Section 5700.5 of said code is amended and re-
17 numbered to read:

18 ~~5700.5.~~

19 6202. The district attorney of every county shall, upon
20 application by the State Department of Mental Hygiene or its
21 authorized representatives, institute and conduct the prosecu-
22 tion of any action brought for the violation within his county
23 of any of the provisions of this chapter.

24 Sec. 9. Section 5701 of said code is amended and renum-
25 bered to read:

26 ~~5701.~~

27 6203. Every application for a license shall be accompanied
28 by a plan of the premises proposed to be occupied, describing
29 the capacities of the buildings for the uses intended, the extent
30 and location of grounds appurtenant thereto, and the number
31 of patients proposed to be received therein, with such other in-
32 formation, and in such form, as the department requires. The
33 department shall adopt such rules and regulations as are neces-
34 sary to properly enforce and apply the provisions of this code
35 relating to licensed private mental institutions, and may clas-
36 sify the establishments and prescribe minimum standards of
37 safety, sanitation, diagnostic, medical, nursing, therapeutic
38 and other facilities and equipment for each class of establish-
39 ment.

40 The application shall be accompanied by the proper license
41 fee. The amount of the license fee for each fiscal year is that
42 fixed by the following schedule:

43 (a) For establishments licensed to receive not more than
44 ten (10) patients, the fee is twenty dollars (\$20).

45 (b) For establishments licensed to receive more than ten
46 (10) but not more than thirty (30) patients, the fee is forty
47 dollars (\$40).

48 (c) For establishments licensed to receive more than thirty
49 (30) but not more than fifty (50) patients, the fee is seventy-
50 five dollars (\$75).

51 (d) For establishments licensed to receive more than fifty
52 (50) patients, the fee is one hundred dollars (\$100).

1 In case of the issuance of a license on or after the first day
2 of January next succeeding the beginning of the fiscal year,
3 the license fee for the remainder of the fiscal year is one-half
4 the sum fixed for the entire fiscal year. The department shall
5 require a license fee, in situations where licensed establish-
6 ments increase their number of patients during any fiscal
7 year, based upon a pro rata charge under the schedule set
8 forth herein.

9 An additional fee shall be required in accordance with the
10 schedule set forth herein in the event of an application for
11 transfer of a license to another person to operate the same
12 establishment or for the transfer of a license issued in the
13 name of one person to operate an establishment at a certain
14 location where an application is received to transfer that
15 license to the same person to operate an establishment at a
16 different location.

17 SEC. 10. Section 5701.3 of said code is amended and re-
18 numbered to read:

19 ~~5701.3.~~

20 6204. The provisions of this chapter do not apply to pri-
21 vate homes certified for family care of patients ~~paroled or~~ on
22 leave of absence from state hospitals or state homes. The de-
23 partment may dispense with any requirements of this chapter
24 in an establishment licensed to receive not more than three (3)
25 patients. Licenses may be issued without payment of a fee to
26 establishments which do not have the capacity to receive or
27 care for more than six mentally ill or other incompetent per-
28 sons, which establishments are classified as family homes in
29 the regulations of the department.

30 SEC. 11. Section 5701.4 of said code is amended and re-
31 numbered to read:

32 ~~5701.4.~~

33 6205. The provisions of this chapter do not apply to any
34 private institution conducted by and for persons who adhere
35 to the faith of any well recognized church or religious denomi-
36 nation for the purpose of providing facilities for the care or
37 treatment of the sick who rely upon prayer or spiritual means
38 for healing in the practice of the religion of such church or
39 denomination.

40 SEC. 12. Section 5702 of said code is amended and renum-
41 bered to read:

42 ~~5702.~~

43 6206. The department shall not grant any such license un-
44 til it has made an examination of the premises proposed to
45 be licensed, and is satisfied that they are substantially as de-
46 scribed, and are otherwise fit and suitable for the purposes
47 for which they are designed to be used, and that such license
48 should be granted.

49 SEC. 13. Section 5703 of said code is amended and renum-
50 bered to read:

1 ~~6703.~~

2 6207. The department may at any time examine and ascer-
3 tain how far a licensed establishment is conducted in com-
4 pliance with the license therefor. If the interests of the inmates
5 of the establishment so demand, the department may, for just
6 and reasonable cause, suspend or revoke any such license. The
7 proceedings shall be conducted in accordance with Chapter 5
8 of Part 1 of Division 3 of Title 2 of the Government Code, and
9 the department shall have all the powers granted therein.

10 SEC. 14. Section 5704 of said code is amended and renum-
11 bered to read:

12 ~~5704.~~

13 6208. All licenses issued under the provisions of this chap-
14 ter shall expire on the first day of July next succeeding the
15 date of issue. Application for renewal of the license, accom-
16 panied by the necessary fee, shall be filed with the department
17 annually, not less than 10 days prior to its expiration and if
18 application is not so filed, the license shall be automatically
19 canceled.

20 SEC. 15. Section 5705 of said code is amended and renum-
21 bered to read:

22 ~~5705.~~

23 6209. The department may at any time cause any hospital,
24 establishment or home caring for or treating ~~insane, alleged~~
25 ~~insane~~, mentally ill or incompetent persons to be visited and
26 examined.

27 SEC. 16. Section 5706 of said code is amended and renum-
28 bered to read:

29 ~~5706.~~

30 6210. Each such visit may include an inspection of every
31 part of each establishment, and all the outhouses, places, build-
32 ings and grounds used in connection therewith. The repre-
33 sentatives of the department may make an examination of all
34 records, methods of administration, the general and special
35 dietary, the stores and methods of supply, and may cause an
36 examination and diagnosis to be made of any person confined
37 therein.

38 The patients who require it shall be given suitable oppor-
39 tunity to converse with the representatives of the department,
40 apart from the officers and attendants.

41 The representatives of the department may examine the
42 officers, attendants, and other employees, and make such inquir-
43 ies as will determine their fitness for their respective duties.

44 SEC. 17. Section 5707 of said code is amended and renum-
45 bered to read:

46 ~~5707.~~

47 6211. The representatives of the department may, from
48 time to time, at times and places designated by the Depart-
49 ment, meet the managers or responsible authorities of such
50 establishments in conference, and consider in detail all ques-
51 tions of management and improvement of the establishments,

1 and may send to them from time to time, written recommenda-
2 tions in regard thereto.

3 SEC. 18. Section 5708 of said code is amended and renum-
4 bered to read:

5 ~~5708.~~

6 6212. The authorities of each establishment for mentally
7 ill persons or other incompetents shall place on file in the office
8 of the establishment the recommendations made by the depart-
9 ment as a result of such visits, for the purpose of consultation
10 by such authorities, and for reference by the departmental
11 representatives upon their visits.

12 Every private institution, hospital, sanitarium, or establish-
13 ment licensed by the department for the care and treatment
14 of mentally ill or other incompetent persons referred to in this
15 division shall keep records of every person admitted thereto,
16 in the manner and form prescribed by rule and regulation of
17 the department, and shall furnish all or any portion of such
18 records to the department when required.

19 SEC. 19. Section 5709 of said code is amended and renum-
20 bered to read:

21 ~~5709.~~

22 6213. The provisions of this part shall not prevent local
23 authorities of any county, city or city and county, within the
24 reasonable exercise of the police power, from adopting rules
25 and regulations, by ordinance or resolution, prescribing stand-
26 ards of sanitation, health and hygiene for private institutions
27 for the care, custody or treatment of ~~the insane; alleged insane;~~
28 *mentally ill* or other incompetent persons, not in conflict with
29 the provisions of this part, and requiring a certificate by the
30 local health officer, that the local health, sanitation and hygiene
31 laws have been complied with before maintaining or conducting
32 any such institution within such county, city or city and
33 county.

34 SEC. 20. Section 5750 of said code is repealed.

35 ~~5750. No person, except one who voluntarily desires and~~
36 ~~seeks admission as a patient, shall be committed or taken by~~
37 ~~any person to a private psychopathic institution, hospital, sani-~~
38 ~~tarium, department, or ward for the care or treatment of per-~~
39 ~~sons who are mentally ill or deranged, without a written state-~~
40 ~~ment from at least one licensed physician, who has no financial~~
41 ~~interest in nor membership on the paid regular or consultant~~
42 ~~staff of such private psychopathic institution, hospital, sani-~~
43 ~~tarium, department, or ward, that he has made a mental exami-~~
44 ~~nation of the patient and that the patient should be admitted~~
45 ~~to such place for care or treatment.~~

46 SEC. 21. Section 5750.1 of said code is repealed.

47 ~~5750.1. At any time after the admission of a patient to~~
48 ~~a private institution, hospital, or sanitarium pursuant to the~~
49 ~~provisions of Section 5750 of this code, the patient, or any~~
50 ~~relative or friend in his behalf, may file with the person in~~
51 ~~charge of the institution, hospital, or sanitarium in which the~~
52 ~~patient is confined, a written request for a court hearing to~~

1 determine whether or not the person is mentally ill and in need
2 of supervision, care or treatment in such institution, hospital,
3 or sanitarium, and proceedings thereon shall be had as pro-
4 vided in Article 3.5 of Chapter 1 of Part 4 of Division 6 of
5 this code.

6 SEC. 22. Section 5750.2 of said code is repealed.

7 5750.2. No person shall be admitted to such private institu-
8 tion, hospital, or sanitarium pursuant to Section 5750 of this
9 code unless the physician's statement is in certificate form and
10 is presented within three days of the physician's mental exami-
11 nation, and no person so admitted shall be detained or per-
12 mitted to remain in such institution, hospital, or sanitarium
13 for a period longer than 90 days, unless during such period he
14 has filed a request to remain in such institution, hospital, or
15 sanitarium as a voluntary patient, or unless during such period
16 a petition has been presented to the superior court under the
17 provisions of Article 3, Chapter 1 of Part 1 of Division 6 of
18 this code and an order issued requiring such person to be de-
19 tained in such institution, hospital, or sanitarium, or unless
20 proceedings are pending under Section 5750.1 of this code to
21 determine whether or not the patient is mentally ill and the
22 patient has been ordered detained in such institution, hospital,
23 or sanitarium pending the outcome of such hearing, or unless
24 prior to the end of such period such private institution, hos-
25 pital, or sanitarium has received a written application from a
26 friend or relative of such person to retain such person therein
27 for further care or treatment accompanied by two certificates
28 executed by two physicians as required under Section 5750 and
29 this section.

30 SEC. 23. Section 5750.3 of said code is repealed.

31 5750.3. No physician who shall execute, in good faith, a cer-
32 tificate under this chapter, and no private institution, hospital,
33 or sanitarium, or its agents, servants, or employees, which shall
34 admit and detain such person, in good faith, upon the author-
35 ity of such application, or applications, and certificate, or cer-
36 tificates, shall be liable in damages to such person, or to his
37 heirs, executors or administrators, for false imprisonment or
38 otherwise; provided, however, that such physicians, institu-
39 tions, hospitals, or sanitariums shall not be exempt from lia-
40 bility for negligence in the care or treatment of such persons.

41 SEC. 24. Section 5750.5 of said code is repealed.

42 5750.5. The person in charge of any private institution,
43 hospital, or sanitarium which is conducted for, or includes a
44 department or ward conducted for, the care and treatment of
45 persons who are mentally ill or deranged may receive and
46 detain therein as a voluntary patient any person suffering from
47 mental illness or derangement who is a suitable person for
48 care and treatment in the institution, hospital, or sanitarium,
49 who voluntarily makes a written application to the person in
50 charge for admission into the institution, hospital or sani-
51 tarium, and who is at the time of making the application
52 mentally competent to make the application.

1 After the admission of a voluntary patient to a private insti-
2 tution, hospital, or sanitarium the person in charge shall
3 forward to the office of the State Department of Mental Hy-
4 giene a record of the voluntary patient showing such infor-
5 mation as may be required by rule by the department.

6 No voluntary patient in a private institution, hospital, or
7 sanitarium shall be detained therein for more than seven days,
8 after having given notice, in writing, to the person in charge
9 of the institution, hospital, or sanitarium of his desire to leave
10 the institution, hospital, or sanitarium, unless within such
11 period a petition has been filed with the superior court for
12 commitment of such person as a mentally ill person.

13 SEC. 25. Section 5751 of said code is amended and renum-
14 bered to read:

15 ~~5751~~

16 6250. No person in a private institution, hospital, sani-
17 tarium, department, or ward for the care or treatment of the
18 mentally ill shall be restrained from sending written communi-
19 cations of the fact of his detention in such institution to a
20 friend, relative, or other person. The physician in charge of
21 such person and the person in charge of such hospital shall
22 send each such communication to the person to whom it is
23 addressed. If, however, the physician in charge finds it inad-
24 visable to send any such communication because it contains
25 other matter which would do harm to the reputation of, and
26 would later cause mental anguish to, the person detained, or
27 if the physician finds it impossible to send any such communi-
28 cation within 24 hours, then both the physician in charge of
29 the patient and the person in charge of the institution shall
30 give notice of the detention of such patient to the district
31 attorney of the county from which the patient came at time of
32 admission and the district attorney of the county in which
33 the institution is located, and to the Department of Mental
34 Hygiene, giving the name and address of the patient and the
35 names and addresses of the person or persons who arranged
36 for his admission. Such district attorney or district attorneys
37 shall investigate the detention of such patient and advise the
38 patient concerning his legal rights and shall report in full
39 concerning such patient to the Department of Mental Hygiene.
40 The person in charge of the institution may detain a patient
41 only when there has been compliance with the provisions of
42 this section.

43 SEC. 26. Section 5752 of said code is amended and renum-
44 bered to read:

45 ~~5752~~

46 6251. No court proceedings shall be had in relation to the
47 mental condition of a patient in a private institution, hospital,
48 sanitarium, department or ward for the care or treatment of
49 the mentally ill unless the patient is either present or repre-
50 sented by an attorney. The judge of the superior court before
51 whom the proceedings are to be heard shall appoint two li-
52 censed medical examiners who are not connected with any

private psychopathic institution to make a personal examination of the patient and to testify before the judge as to the results of such examination. The provisions of this section shall not be applicable to proceedings for the appointment of a guardian under the Probate Code of this state.

SEC. 27. Section 5753 of said code is amended and renumbered to read:

~~5753~~

6252. Upon proof of the violation of any provision of Part 2 of Division 6 of this code, the license to any person to operate such private institution, hospital, establishment, home, or sanitarium may be suspended or revoked by the Department of Institutions. The proceedings shall be conducted in accordance with Chapter 5 of Part 1 of Division 3 of Title 2 of the Government Code, and the department shall have all the powers granted therein.

SEC. 28. Section 5754 of said code is amended and renumbered to read:

~~5754~~

6253. The Director of Mental Hygiene may bring an action to enjoin the threatened violation, or continued violation of the provisions of this part, including the operation of an establishment or institution without a license, or of any of the regulations promulgated under this part, in the superior court located in the county in which the violation occurred or is about to occur. Any proceeding under the provisions of this section shall conform to the requirements of Chapter 3 (commencing with Section 525) of Title 7 of Part 2 of the Code of Civil Procedure, except that the director shall not be required to allege facts necessary to show or tending to show the lack of an adequate remedy at law or to show or tending to show irreparable damage or loss.

At least 30 days prior to the filing of a complaint against a licensee, the director shall serve the licensee with a written notice specifying each deficiency in the licensed establishment or institution, and of the violation or continued violation by such establishment or institution of this part or any of the regulations promulgated under this part. No restraining order or injunction, either temporary or permanent, shall be granted by the court which would cause a licensed establishment or institution to cease operations or which would seriously impede the continued operation of the establishment or institution, unless the operator thereof has been accorded a prior judicial hearing with respect to whether or not such restraining order or injunction shall issue.

SEC. 29. Section 6000 of said code is amended and renumbered to read:

~~6000.~~

6300. The board of supervisors of each county may maintain in the county hospital or in any other hospital situated within or without the county, suitable facilities and hospital service for the detention, supervision, care, and treatment of

1 persons who are mentally ill, mentally disordered, mentally
2 deficient or retarded, or who are alleged to be such.

3 The county may contract with public or private hospitals
4 for such facilities and hospital service when they are not suit-
5 ably available in any institution or establishment maintained
6 or operated by the county.

7 The facilities and services shall be subject to the approval
8 of the State Department of Mental Hygiene, and each person
9 having charge and control of any such hospital shall allow
10 the department to make such investigations thereof as it
11 deems necessary at any time.

12 Nothing in this chapter means that mentally ill, mentally
13 disordered, mentally deficient or retarded persons may not be
14 detained, supervised, cared for, or treated, subject to the right
15 of inquiry or investigation by the department, in their own
16 homes, or the homes of their relatives or friends, or in a li-
17 censed establishment.

18 SEC. 30. Section 6001 of said code is amended and renum-
19 bered to read:

20 ~~6001~~

21 6301. As used in this chapter "county psychopathic hos-
22 pital" means the hospital, ward, or facility provided by the
23 county pursuant to the provisions of Section ~~6000~~ 6300.

24 SEC. 31. Section 6002 of said code is amended and renum-
25 bered to read:

26 ~~6002~~

27 6302. The superintendent or person in charge of the
28 county psychopathic hospital may receive, detain, supervise,
29 care for or treat in the hospital any person who comes within
30 any of the following descriptions:

31 (a) Who has been placed therein pursuant to a court order
32 or court commitment under the provisions of this code or the
33 Penal Code.

34 (b) Who has been placed therein pursuant to the provisions
35 of Section ~~5050.3~~ 5880 of this code.

36 (c) Who voluntarily makes a written application ~~to the~~
37 ~~superintendent or person in charge thereof for admission into~~
38 ~~the hospital for care, treatment, or observation, and who is a~~
39 ~~suitable person for care, treatment, or observation; and who in~~
40 ~~the case of an adult person is in such condition of mind, at the~~
41 ~~time of making application for admission, as to render him~~
42 ~~competent to make such application. In the case of a minor~~
43 ~~person, the application shall be made by his parents, or by the~~
44 ~~parent, guardian, or other person entitled to his custody as pro-~~
45 ~~vided in Article 2 (commencing with Section 6060) of Chapter~~
46 ~~4 of Part 1.5 of this division.~~

47 SEC. 32. Section 6002.5 of said code is amended and re-
48 numbered to read:

49 ~~6002.5~~

50 6303. Any adult person detained in such hospital, who is
51 in such condition of mind as to render him competent to make
52 such application shall at his request be exempt from medical

1 or psychopathic treatment, upon filing with the superintendent
2 a statement that he depends upon prayer or spiritual means
3 for healing in the practice of the religion of a well-recognized
4 religious church, sect, denomination, or organization. In case
5 of an adult not found to be in such condition of mind, a
6 similar statement may be filed on his behalf by another and
7 thereupon similar exemption shall be granted. Any minor
8 detained in such hospital shall be exempt from medical or
9 psychopathic treatment, if his parent or guardian shall file
10 with said superintendent an affidavit stating that he relies
11 upon prayer or spiritual means for healing in the practice of
12 the religion of a well-recognized religious church, sect, de-
13 nomination, or organization.

14 SEC. 33. Section 6003 of said code is repealed.

15 ~~6003. No adult person received into the county psycho-~~
16 ~~pathic hospital under the provisions of subdivision (c) of Sec-~~
17 ~~tion 6002 of this code shall be detained therein for more than~~
18 ~~seven days, after having given notice, in writing, to the super-~~
19 ~~intendent or person in charge, of his desire to leave such hos-~~
20 ~~pital.~~

21 No minor person received into the county psychopathic hos-
22 pital under the provisions of subdivision (c) of Section 6002
23 of this code shall be detained therein for more than seven days,
24 after notice is given, in writing, to the superintendent or per-
25 son in charge of the hospital by the parents, or the parent,
26 guardian or other person entitled to the custody of the minor,
27 of their desire to remove the minor from the hospital unless,
28 within such period, a petition has been filed with the superior
29 court for commitment of such person as a mentally ill person.

30 SEC. 34. Section 6003.1 of said code is amended and re-
31 numbered to read:

32 ~~6003.1~~

33 6304. A superintendent or person in charge of the county
34 psychopathic hospital may discharge any patient who is not
35 a proper case for treatment therein, or whose discharge, in
36 the judgment of the superintendent or person in charge, will
37 not be detrimental to the public welfare or injurious to the
38 patient.

39 SEC. 35. Section 6003.2 of said code is amended and re-
40 numbered to read:

41 ~~6003.2~~

42 6305. The superior court of the county shall review the
43 cases of all persons held under court commitment in a county
44 psychopathic hospital for a period of six months and shall re-
45 view such cases at six months intervals thereafter. Section
46 5100.5 of this code shall be applicable to such review.

47 SEC. 36. Section 6004 of said code is amended and re-
48 numbered to read:

49 ~~6004~~

50 6306. In case such mental patient or the person legally
51 liable for his maintenance is or becomes the owner of property,
52 real, personal, or mixed, the county furnishing such care,

1 treatment, or observation, shall be reimbursed therefrom for
2 its charges. The board of supervisors of the county shall fix
3 and determine a schedule of charges for the care, treatment,
4 or observation of such mental patients, and reimbursement to
5 the county shall be made upon the basis of the charges so fixed.

6 SEC. 37. Section 6005 of said code is amended and re-
7 numbered to read:

8 ~~6005~~

9 6307. Any superintendent or person in charge of the
10 county psychopathic hospital, and any public officer, public
11 employee, or public physician who either admits, causes to be
12 admitted, delivers, or assists in delivering, detains, cares for, or
13 treats, or assists in detaining, caring for or treating, any per-
14 son pursuant to this chapter shall not be rendered criminally
15 liable thereby.

16 SEC. 38. Article 3.4 (commencing with Section 6605) of
17 Chapter 1 of Part 4 of Division 6 of said code is repealed.

18 SEC. 39. Article 3.5 (commencing with Section 6610) of
19 Chapter 1 of Part 4 of Division 6 of said code is repealed.

20 SEC. 40. This act is an urgency measure necessary for the
21 immediate preservation of the public peace, health or safety
22 within the meaning of Article IV of the Constitution and
23 shall go into immediate effect. The facts constituting such
24 necessity are:

25 This act proposes an extensive nonsubstantive revision of
26 the provisions of the Welfare and Institutions Code relating
27 to the mentally ill, and affects a great many sections of the
28 code. In order that other bills affecting these sections can be
29 directed to the code as revised, thereby eliminating the neces-
30 sity of amending both the old code sections and the proposed
31 new sections, it is essential that this act go into effect im-
32 mediately.

ACKNOWLEDGMENTS

The Office of the Legislative Counsel and particularly the work of Edward K. Purcell, Deputy Legislative Counsel, in preparing special reports, as well as drafts of proposed legislative measures, has rendered a most valuable service to the committee.

The cover for this report was designed by Bernard Stevens, graphic artist, Biostatistics Section, Department of Mental Hygiene.

Dr. A. LaMont Smith, a member of the faculty of the School of Criminology, University of California, Berkeley, acted as special consultant with the responsibility for designing the format and evaluating and selecting testimony to be included within the report. The report, based upon our hearings, was written by Dr. Smith and approved for publication following review by the committee.

APPENDIX B

STATE OF CALIFORNIA OFFICE OF LEGISLATIVE COUNSEL

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Sacramento, September 19, 1963

MENTAL COMMITMENTS—NO. 1052

The purpose of this memorandum is to indicate and summarize briefly the procedures by which a person suffering from some mental disorder may be admitted to an institution or other place for care and treatment.

A. EMERGENCY DETENTION

Emergency Detention

The law authorizes any peace officer, health officer, county physician, or assistant county physician, who has reasonable cause to believe that a person is so mentally ill as to be likely to cause injury to himself or others and to require immediate care, treatment, or restraint, to take the person into custody and to make application for his admission to a county or state hospital.

The person may be cared for and treated in the hospital for a period not to exceed 72 hours, excluding Saturdays, Sundays, and holidays. He must be discharged within that period unless a petition of mental illness is filed in the superior court and the court issues an order for his detention, or unless he is admitted as a patient under another provision of law. (W. & I.C. Sec. 5050.3.)

B. COMMITMENT OF THE MENTALLY ILL

The basic procedure for the involuntary commitment of a person alleged to be mentally ill appears in Chapter 1 (commencing with Section 5000) of Part 1 of Division 6 of the Welfare and Institutions Code.

Proceedings Are Civil

The proceedings under Chapter 1 are civil in nature, and do not control the commitment of insane persons charged with the commission of public offenses (see W. & I.C. Sec. 5160). It is declared that the chapter shall be liberally construed so that, as far as possible and consistent with the rights of mentally ill persons and others, mentally ill persons shall be treated as sick persons, and not as criminals (W. & I.C. Sec. 5155).

Section 5040 of the Welfare and Institutions Code defines "mentally ill persons" as persons who come within either or both of the following descriptions:

Who Are Mentally Ill Persons

(a) Who are of such mental condition that they are in need of supervision, treatment, care, or restraint.

(b) Who are of such mental condition that they are dangerous to themselves or to the person or property of others, and are in need of supervision, care, or restraint.

Petition

Any person may file a petition in the superior court alleging that there is in the county a person who is mentally ill and asking that examination be made of the mental health of the person and that provision be made for the welfare of the person. The district attorney, if so requested, is required to prepare the petition and all other required forms. (W. & I.C. Sec. 5047.)

The petition must set forth the name and address of the petitioner and his interest therein; the name and other relevant matter concerning the person alleged to be mentally ill; the facts upon which the allegation is based that the person is mentally ill and in need of supervision, care, or treatment; a statement whether, in the opinion of the petitioner, the alleged mental illness of the person is such as to render him in need of supervision, care, or treatment, or to render him dangerous to health, person, or property; the name of every person known or believed by the petitioner to be legally responsible for the care, support, and maintenance of the person and the address of each of those persons if known to the petitioners; and such other information as the court may require (W. & I.C. Sec. 5048).

Exemption From Liability

The law exempts the petitioner from civil and criminal liability if there was probable cause for the petition (W. & I.C. Sec. 5047).

Order for Examination and Detention

If the court is satisfied that the person is sufficiently mentally ill to require an examination, it is required to appoint two medical examiners to make the examination and to issue an order requiring the person to submit to the examination at the time and place designated by the judge. It is declared that the person shall be permitted to remain in his home pending the examination, unless it appears to the judge from a certificate of a physician and surgeon, dated not more than three days before the filing of the petition, that he has examined the person and found that he is likely to injure himself or others if not immediately hospitalized or detained. In such case the judge is authorized to issue an order to a peace officer or counselor in mental health for the detention of the person, pending hearing, in a place designated by the judge. (W. & I.C. Sec. 5050.)

Notice

A copy of the petition, order for examination, and order for detention, if any, must be served by a peace officer or counselor in mental health on the person and his representative personally as promptly as possible, and no later than one day before the time of the examination. Personal service of the documents must also be made on the person's nearest relative unless that relative is the petitioner or is not in the

county. If the relative is not in the county, personal service of the documents must be made on the person with whom the alleged mentally ill person resides, or, in the absence of that person, on a friend of the alleged mentally ill person. (W. & I.C. Sec. 5050.2.)

Right to Hearing

The alleged mentally ill person has the right to a hearing if a demand for the same is made by him or in his behalf within four days from service on him (W. & I.C. Sec. 5050.8).

Procedure in Absence of Demand for Hearing

If no demand for a hearing is made, or if the hearing is waived by the person or his attorney, the judge is authorized to proceed immediately to determine whether the person is mentally ill. The judge must consider the report of two medical examiners, and may require other proof in addition. A personal examination by the medical examiners is a prerequisite to commitment to an institution for the mentally ill. (W. & I.C. Sec. 5050.8.)

If the judge finds the person to be mentally ill, he may order the person committed or cared for in the same manner as is provided where a hearing is held. If it appears that the person is harmless and that his relatives or guardian are willing to care for him properly at some place other than an institution, the judge may order the person placed in the care and custody of his relatives or guardian. (W. & I.C. Sec. 5050.8.)

Notice of Hearing

If a hearing is demanded, notice of the time and place of hearing must be given to each person upon whom were served copies of the petition and order for examination and to such other persons as the court may order. The notice may be given by registered mail. (W. & I.C. Sec. 5050.9.)

Notice must also be given to the same persons in each instance in which the hearing is continued (W. & I.C. Secs. 5051, 5051.1).

Place of Hearing

The hearing may be held at any place within the county suitable to the physical and mental health of the person, unless one of the parties, prior to the hearing, demands that it be held at a regular courtroom. If the hearing is to be held at any place other than a regular courtroom, notice of that fact must be given to the petitioner and the person alleged to be mentally ill at least five days before the hearing, unless waived by the person or his representative. It is declared that the psychiatric ward or unit of a county hospital shall be considered a regular courtroom. (W. & I.C. Sec. 5052.)

Time of Hearing

The court is required to fix the time and place of hearing so as to give reasonable opportunity for the production and examination of witnesses (W. & I.C. Sec. 5050.9).

The court may continue the hearing for 30-day periods upon a sufficient showing that it is for the best interest of the person to do so, but if demand is made during any continuance by the person, his rela-

tives, friends, counsel, or representative, the court must set the hearing at a date not more than five days from the time the demand is made (W. & I.C. Sec. 5051).

Rights of Alleged Mentally Ill Person at Hearing

The person may demand that the hearing be public, and that it be held in a suitable place for attendance by the public (W. & I.C. Sec. 5052).

It is required that the person be present at the hearing, and he is entitled to be represented by counsel. If he requests an attorney, the judge must appoint an attorney to represent him. If the person is financially unable to employ counsel, and the county has no public defender, the county is obligated to pay the attorney fee fixed by the court. If the county has a public defender, the court may order the public defender to represent the person at the hearing. (W. & I.C. Sec. 5054.)

The court is required to issue subpoenas and to compel the attendance of witnesses as requested by the person, but no person need attend as a witness outside the county of his residence or in which he is served, unless the judge, upon affidavit that the testimony of the witness is material and that his attendance is necessary, endorses on the subpoena an order for the attendance of the witness. Witnesses are entitled to the same fees and expenses as in criminal cases. (W. & I.C. Sec. 5053.)

Procedure at Hearing

In addition to the witnesses, the judge is directed to compel the attendance of at least two medical examiners, who must hear the testimony of all witnesses, make a personal examination of the person, and testify before the judge as to the result of their examination and any other pertinent facts within their knowledge. The judge must also cause to be examined before him any person who he has reason to believe has knowledge of the mental condition of the person or of his financial condition or that of the persons liable for the person's maintenance. (W. & I.C. Sec. 5053.)

Commitment

If the judge finds the person to be mentally ill, he may order him committed to a licensed sanitarium or hospital for the mentally ill, to the Department of Mental Hygiene for placement in a state hospital designated by the court, to a community mental health service, or to a facility of the Veterans Administration or other federal agency. He may also order that the person be otherwise cared for until the further order of the court. (W. & I.C. Secs. 5100, 5100.1.)

If the judge orders the person committed to a licensed hospital or sanitarium or that he be otherwise cared for until the further order of the court, the court may subsequently make such further orders for hearing or other disposition concerning the person as it considers necessary and proper. In such case it may accept a written report and recommendation concerning the person made by a physician treating the person, if verified, in lieu of the examination by and testimony of court-appointed physicians and in lieu of the personal appearance in court of the person, but, if a demand is made by or in behalf of the

person, he has the right to a personal appearance in court. The person may not be committed to a state hospital, however, without a hearing and a written report and recommendation by two medical examiners, and he is given the right to a jury trial. (W. & I.C. Sec. 5100.5.)

No case of harmless chronic mental unsoundness may be committed to the Department of Mental Hygiene for placement in a state hospital (W. & I.C. Sec. 5102).

Jury Trial

If a person is committed to a licensed hospital or sanitarium or to a state hospital, either he or any friend in his behalf, may, within 10 days after the making of the order of commitment, demand that the question of his mental illness be tried by a judge or jury. The court must then set the case for trial not less than 5 nor more than 10 days from the date of the demand. (W. & I.C. Sec. 5125.)

The district attorney is required to present the petition and its allegations (W. & I.C. Sec. 5127).

The trial must be held in the same manner as a civil trial, and if tried by a jury, a finding of mental illness requires a three-fourths vote of the jury (W. & I.C. Sec. 5128).

If the judge adjudges or the jury finds the person to be mentally ill, the judge must order the person committed to a licensed hospital or sanitarium or to a state hospital (W. & I.C. Sec. 5128).

Any person aggrieved thereby also has the right to demand a trial, by court or jury, where the court refuses to grant a petition concerning a person alleged to be dangerous to himself or others (W. & I.C. Sec. 5129).

It is provided that the original commitment shall not be stayed pending the trial, except upon order of the judge with provision made for the temporary care and custody of the person (W. & I.C. Sec. 5126).

C. COMMITMENT OF MENTALLY DISORDERED PERSONS

Special provision is made for the commitment of so-called mentally disordered persons in Article 4 (commencing with Section 5075) of Chapter 1 of Division 6 of the Welfare and Institutions Code.

Procedure

The preliminary steps incidental to the commitment of a mentally disordered person are the same as those provided for a mentally ill person; that is, a petition, right to hearing, and the like. The disposition of the case, however, is different.

Commitment

The law provides that if the court, on examination of the person, finds him to be mentally disordered and bordering on mental illness but not dangerously mentally ill, it may commit him to the care and custody of the counselor in mental health and allow him to remain in his home subject to visitation by a counselor in mental health and subject to return to the court for further proceedings whenever such action appears necessary or desirable; or the court may commit him to be placed in a suitable home, sanitarium, or rest haven home, subject to

the supervision of the counselor in mental health and the further order of the court (W. & I.C. Sec. 5076).

Petition to Restore Competency

The person committed, if he has no guardian, or a relative or friend in his behalf, may petition the superior court of the county where the commitment was ordered for an order adjudging that the person is competent. The judge then must set the matter for hearing and it is required that notice be given, in the manner directed by the court, to the counselor in mental health, to the person committed if he is not the petitioner, and to that relative or those relatives of the person residing in the county as the court directs. It is declared that those to whom notice is given shall be given an opportunity to appear and be heard at the hearing.

The hearing must be conducted in the same manner as civil cases, and the petitioner may demand a jury trial. If it is found that the person is competent, the judge is required to make an order declaring him to be competent and discharging his commitment. The order is appealable. If three-fourths of the jury fail to unite in a verdict, or the court or jury decides that the person is not competent, the proceeding must be dismissed, and no new petition to have the person declared competent may be filed for six months thereafter. (W. & I.C. Sec. 5078.)

D. COMMITMENT OF MENTALLY DEFICIENT PERSONS

The law relating to the commitment of mentally deficient persons appears in Chapter 2 (commencing with Section 5250) of Part 1 of Division 6 of the Welfare and Institutions Code.

Who Are the Mentally Deficient

A "mentally deficient person" is defined as one, not psychotic, who is so mentally retarded from infancy or before reaching maturity that he is incapable of managing himself or his affairs independently, with ordinary prudence, or of being taught to do so, and who requires supervision, control, and care for his own welfare or for the welfare of others, or for the welfare of the community (W. & I.C. Sec. 5250).

Residence Requirement

To be eligible for commitment, the person must have resided in the state for one year preceding the presentation of the petition, or, if under one year of age, have been born in this state and be in the custody of a parent who has resided in the state for one year preceding the presentation of the petition (W. & I.C. Sec. 5251).

Petition

Only certain designated persons and agencies may petition to have a mentally deficient person committed to the Department of Mental Hygiene for placement in a state home for the feeble-minded. This right is limited to the parent, guardian, or other person charged with the support of the person; a district attorney for probation officer; the Youth Authority; any person designated for that purpose by the judge of the court; and the Director of Corrections. (W. & I.C. Sec. 5252.)

The petition must state the petitioner's reasons for supposing the person to be eligible for admission to a state home, and must be verified by the affidavit of the petitioner (W. & I.C. Sec. 5252).

Penalties for Improper Petition

A petitioner who files his petition without good cause, and with an improper motive, is subject to certain penalties. If the petition is dismissed, the court, if it considers the petition to have been filed with malicious intent, may order the petitioner to pay the expenses of the proceeding (W. & I.C. Sec. 5262). It is also declared that any person who knowingly contrives to have any person committed, unlawfully or improperly, is guilty of a misdemeanor (W. & I.C. Sec. 5263).

Time and Place of Hearing

The court is required to fix a time and place for hearing, and it is provided that the hearing shall be held at any time and place that the court deems proper and which will give opportunity for the production and examination of witnesses (W. & I.C. Sec. 5253).

Notice

The court must cause due notice of the hearing to be given to the person, and if the petition is filed by a probation officer, district attorney, the Youth Authority or the Director of Corrections, must cause such notice of the hearing as it deems proper to be given to any parent, guardian, or other person charged with the support of the person (W. & I.C. Sec. 5254).

Apprehension and Detention of Person Pending Hearing

The court is authorized, if it considers it necessary or advisable, to cause a warrant to issue for the apprehension and delivery of the person to the court, and to have the warrant executed by any peace officer (W. & I.C. Sec. 5255). Pending the hearing, the person may be left in charge of his parent, guardian, or other suitable person, or he may be placed in the county psychopathic hospital (W. & I.C. Sec. 5256).

Procedure at Hearing

The court must inquire into the condition or status of the person, and, for this purpose, may require the attendance before it of certain designated medical experts to examine the person and testify concerning the person's mentality. It may also require the attendance of such other persons as it deems advisable, to give evidence. (W. & I.C. Sec. 5257.) The law provides for the payment of compensation to the experts and other witnesses (W. & I.C. Sec. 5261).

Commitment

If the court finds that the person is mentally deficient, and that he meets the residence requirements, it may commit him to the Department of Mental Hygiene for placement in the Sonoma State Home or to the Pacific Colony. If the court finds that the person is mentally deficient, but that he does not meet the residence requirements, it may order that he be transported to the state of his legal residence. (W. & I.C. Sec. 5258.)

Refusal by Institution to Accept Person

It should be noted that the superintendent of the institution to which the person is committed is not obligated in all cases to receive him. He need not do so if the institution is full, or the fund for its support is exhausted, or if, in the opinion of the Department of Mental Hygiene, the person is not a suitable subject for admission to the institution. (W. & I.C. Sec. 5258.)

E. COMMITMENT OF EPILEPTICS

While the law contains special provisions relating to the commitment of epileptic persons, which appear in Chapter 2.5 (commencing with Section 5300) of Part 1 of Division 6 of the Welfare and Institutions Code, these provisions, in essence, simply provide that an epileptic person shall be committed in accordance with the procedure applicable to mentally ill persons unless the person is mentally deficient, in which case he shall be committed in accordance with the procedure applicable to mentally deficient persons (see W. & I.C. Secs. 5300, 5301, 5302).

F. COMMITMENT OF NARCOTIC DRUG ADDICTS

The law relating to the commitment of narcotic drug addicts appears in Article 1 (commencing with Section 5350) of Chapter 3 of Part 1 of Division 6 of the Welfare and Institutions Code.

Who Is Narcotic Drug Addict?

A "narcotic drug addict" is defined as one who habitually takes or otherwise uses to the extent of having lost the power of self-control any opium, morphine, cocaine, or other habit-forming drug as defined in Article 1 of Chapter 1 of Division 10 of the Health and Safety Code. The Health and Safety Code article mentioned commences at Section 11000 of that code and sets forth numerous drugs which it classifies as narcotics.

Affidavit

Proceedings for the commitment of a narcotic drug addict are instituted by the filing of an affidavit with any magistrate of the county (W. & I.C. Sec. 5351). The affidavit must be in substantially the same form as a petition for the commitment of a person alleged to be mentally ill (W. & I.C. Sec. 5352).

Apprehension and Detention

If the magistrate finds, on the basis of the affidavit, that the person is a narcotic drug addict, he is required to issue a warrant directing a peace officer to apprehend the person and take him before a judge of the superior court for a hearing and examination. The officer must then apprehend and detain the person until a hearing and examination can be had, and, at the time of apprehension, must serve a copy of the affidavit and warrant on the person. (W. & I.C. Sec. 5351.)

Preliminary Hearing

The person charged must be taken before a judge of the superior court, who must inform him of his rights to make a defense to the charge and to produce witnesses in relation to it (W. & I.C. Sec. 5353).

Time and Place of Formal Hearing

The judge is required to fix a time and place for hearing and examination in open court as will give a reasonable opportunity for the production and examination of witnesses (W. & I.C. Sec. 5353).

Notice

The judge is authorized to cause notice of the apprehension of the person and the hearing to be served on such relatives of the person, who reside in the county, as the judge deems necessary or proper (W. & I.C. Sec. 5353).

Hearing

The hearing and examination must be conducted in substantially the same manner as is provided for persons alleged to be mentally ill (W. & I.C. Sec. 5354).

Commitment

If, after the hearing and examination, the judge finds that the person is a narcotic drug addict, he must commit him to the Department of Mental Hygiene for placement in a designated hospital for an indeterminate period of not less than three months nor more than two years. This is subject to the qualification that the person may not be committed to a state hospital if satisfactory evidence is submitted to the judge showing that the person, apart from his habit, is of bad repute or bad character, and that there is a reasonable ground for believing that the person will not be benefited by treatment. (W. & I.C. Sec. 5355.)

Right to Trial

Any person ordered to be committed, or any friend in his behalf, within 10 days after the making of the order of commitment, may demand that the issue be tried by a judge or jury. If a demand of this nature is made, a trial must be held in the same manner as is provided for a trial of a person alleged to be mentally ill. (W. & I.C. Sec. 5355.5.)

Penalty

It is declared that any person who knowingly and maliciously attempts to have any person adjudged a narcotic drug addict, unlawfully, is guilty of a misdemeanor (W. & I.C. Sec. 5361).

F. COMMITMENT OF DIPSOMANIACS, INEBRIATES, AND HABIT-FORMING DRUG ADDICTS

The procedure for the commitment of dipsomaniacs, inebriates, and habit-forming drug addicts is set forth in Article 2 (commencing with Section 5400) of Chapter 3 of Division 6 of the Welfare and Institutions Code.

Affidavit

Proceedings are instituted by the filing of an affidavit with any magistrate of the county (W. & I.C. Sec. 5400). The affidavit must be substantially in the same form as a petition for the commitment of a person alleged to be mentally ill (W. & I.C. Sec. 5401).

Apprehension and Detention

If it appears to the magistrate, on the basis of the affidavit, that the person is so far addicted to the intemperate use of habit-forming drugs, other than narcotic drugs, as to have lost the power of self-control, or is subject to dipsomania or inebriety, the magistrate is required to issue a warrant to a peace officer directing that the person be apprehended and taken before a judge of the superior court for a hearing and examination. The officer must then apprehend and detain the person until a hearing and examination can be had, and, at the time of apprehending the person, must serve a copy of the affidavit and warrant on him. (W. & I.C. Sec. 5400.)

Preliminary Hearing

The person must be taken immediately before a judge of the superior court, and the judge is required to inform him of the charge against him and of his rights to make a defense and to produce witnesses (W. & I.C. Sec. 5402).

Commitment to Rehabilitation Center

Where a rehabilitation center for the care and treatment of inebriates is maintained in a branch of the county jail, the judge, upon the written recommendation of one medical examiner and the written consent of the person charged, may order the person confined in the center for a term not exceeding one year. Any person so confined may demand, in writing, at any time, a hearing and examination, and the judge is required to fix a time and place for hearing and examination and to proceed as in cases where no order of commitment to a rehabilitation center has been made. (W. & I.C. Sec. 5402.)

In cases where no commitment to a rehabilitation center is made, the judge is required to fix a time and place for a hearing and examination in open court as will give a reasonable opportunity for the production and examination of witnesses (W. & I.C. Sec. 5402).

Notice

The judge is authorized to cause notice of the apprehension of the person and the hearing be given such relatives of the person known to be residing in the county as the court deems necessary or proper (W. & I.C. Sec. 5402).

Hearing

The hearing and examination must be held in the same manner as is provided for persons alleged to be mentally ill (W. & I.C. Sec. 5403).

Commitment

If the judge, after the hearing and examination, finds that the person is so far addicted to the intemperate use of habit-forming drugs so as to have lost the power of self-control, or is subject to dipsomania or inebriety in such a degree as to require custodial care and treatment, he is required to commit the person to the Department of Mental Hygiene for placement in a designated hospital for the mentally ill; to a regional jail camp maintained by the Department of Corrections; to an industrial farm or an industrial road camp within the county; or, in the event the county maintains a branch of the county jail at which in-

mates thereof are required to perform agricultural and other out-of-doors labor, to such branch of the county jail. Before the person may be committed to a state hospital, however, satisfactory evidence must be submitted to the judge showing that the person, apart from his habit, is not of bad repute or bad character, and that there is reasonable ground for believing that the person will be permanently benefited by treatment. (W. & I.C. Sec. 5404.)

Probation

If the judge, after the hearing and examination, finds that the person is subject to dipsomania or inebriety, but that the condition of the person is not such as to require custodial care or treatment, the judge may place the person on probation subject to the supervision of the probation officer. It is declared that a person so placed on probation is subject to the same law relating to probation as relate to mentally disordered persons. (W. & I.C. Sec. 5407.5.)

Right to Trial

A person ordered committed to a state hospital, or any friend in his behalf, within 10 days after the making of the order of commitment, may demand that the issue be tried by a judge or jury. The trial must be held in the same manner as is provided for a trial of a person alleged to be mentally ill. (W. & I.C. Sec. 5406.5.)

G. COMMITMENT OF MENTALLY DISORDERED SEX OFFENDERS

The procedure relating to the commitment of mentally disordered sex offenders is set forth in Chapter 4 (commencing with Section 5500) of Division 6 of the Welfare and Institutions Code.

Who Is a Mentally Disordered Sex Offender?

A "mentally disordered sex offender" is defined as one who by reason of mental defect, disease, or disorder, is predisposed to the commission of sexual offenses to such a degree that he is dangerous to the health or safety of others (W. & I.C. Sec. 5500).

Institution of Proceedings

Proceedings for the commitment of a person as a mentally disordered sex offender may be instituted only in connection with judicial proceedings wherein the person has been convicted of a criminal offense other than one involving a sentence of death or subject to a punishment of death or rendering the person ineligible for probation (W. & I.C. Sec. 5500.5).

If the person is convicted of a criminal offense, whether or not a sex offense, the trial judge, on his own motion or on motion of the prosecuting attorney, or on application by or on behalf of the defendant, showing to the satisfaction of the court that there is probable cause for believing the person to be a mentally disordered sex offender, may adjourn the proceeding or suspend the sentence, and certify the person for hearing and examination by the superior court of the county to determine whether the person is a mentally disordered sex offender. The court must make such a certification where the person is convicted of a sexual offense involving a child if the offense is a felony or if it is a second offense. (W. & I.C. Sec. 5501.)

The affidavit mentioned in the preceding paragraph must be in substantially the same form as prescribed for a petition for the commitment of a person alleged to be mentally ill (W. & I.C. Sec. 5501).

Detention

If the person is before the court or is in custody, the court may order that he be detained in a place of safety. Otherwise, the court may issue and deliver to a peace officer a warrant directing that the person be apprehended and taken before a judge of the superior court for hearing and examination. The officer must then apprehend and detain the person, and serve on him a copy of the affidavit, if any, the certification, and the warrant. (W. & I.C. Sec. 5501.)

Preliminary Hearing

The person must be taken before a judge of the superior court, who must inform him that he is certified or alleged to be a mentally disordered sex offender, and inform him of his rights to make a reply and produce witnesses (W. & I.C. Sec. 5503).

Time and Place of Hearing

The judge is required to fix the time and place for the hearing and examination in open court as will give reasonable opportunity for the filing of a report by the probation officer and for the production and examination of witnesses. If the person is too ill to appear in court, or if his appearance in court would be detrimental to his mental or physical health, the judge is authorized to hold the hearing at his bedside. (W. & I.C. Sec. 5503.)

Notice

The judge must cause notice of the apprehension of the person and the hearing to be served on the district attorney and on such relatives of the person known to be residing in the county as the judge deems necessary or proper (W. & I.C. Sec. 5503).

Witnesses

The probation officer is required to make and file a report on the case, and the judge must appoint not less than two nor more than three qualified psychiatrists to examine the person and file reports as to their findings (W. & I.C. Secs. 5503.5, 5504, 5505). The judge is also authorized to compel the attendance of witnesses from any place in the State, but no witness is obliged to attend a hearing outside of the county in which he resides or is served unless the judge, upon affidavit that the evidence of the witness is material and that his attendance at the hearing is necessary, endorses on the subpoena an order for the attendance of the witness (W. & I.C. Sec. 5510).

Rights of Alleged Mentally Disordered Sex Offender

The person must be present at the hearing, and is entitled to be represented by counsel. If he has no attorney, the judge is authorized to appoint an attorney to represent him, or if he is indigent, the judge may order the public defender to represent him. (W. & I.C. Sec. 5511.)

The person also has the right to examine and cross-examine the psychiatrists appointed by the court, and to produce expert testimony in his own behalf (W. & I.C. Secs. 5506, 5508).

Procedure at Hearing

The psychiatrists appointed by the court are required to hear the testimony of all witnesses, and to testify as to the result of their examinations and any other pertinent facts within their knowledge (W. & I.C. Sec. 5505). The judge must also cause to be examined as a witness any other person whom he believes has knowledge of the mental condition of the person or of the financial condition of the person or of any person liable for his support (W. & I.C. Sec. 5509). The judge is authorized to question the psychiatrists appointed by him, but either party has the right to object to the questions asked and to cross-examine the psychiatrist in relation to those questions (W. & I.C. Sec. 5506).

Return of Person to Original Court

If, upon the hearing, the court finds that the person is not a mentally disordered sex offender, it must return him to the court in which the case originated for such disposition as that court may deem necessary or proper (W. & I.C. Sec. 5511.7).

Commitment for Observation

If the court finds that there is sufficient cause to believe that the person is a mentally disordered sex offender, it may order that the person be placed temporarily in a suitable psychiatric facility maintained by a county or in a state hospital designated by the court for observation and diagnosis for a period not to exceed 90 days. The superintendent of the hospital or person in charge of the facility must report its findings and recommendations to the court within the 90-day period. (W. & I.C. Sec. 5512.)

Disposition of Case

If the report shows that the person is not a mentally disordered sex offender or that he will not benefit by care or treatment in a state hospital and is a menace to the health and safety of others, the committing court must return the person to the court in which the criminal charge was tried. That court is required to resume its proceedings and impose sentence or make such other suitable disposition of the case as it deems necessary, but, if it is satisfied that the person is a mentally disordered sex offender who would not benefit by care or treatment in a state hospital and is a menace to the health and safety of others, it may recertify the person to the superior court. If the superior court, after hearing, reaches the same conclusion, it may commit the person for an indefinite period to the Department of Mental Hygiene for placement in a state institution or institutional unit for the care and treatment of mentally disordered sex offenders. At such hearing the person is entitled to present witnesses in his own behalf, to be represented by counsel, and to cross-examine any witnesses who testify against him. (W. & I.C. Secs. 5512, 5517.)

If the court orders the person committed for an indeterminate period, it may require the superintendent of the state hospital to make periodic reports to the court concerning the person's progress toward recovery from his illness (W. & I.C. Sec. 5512.3). At any time the superintendent

ent may submit a report to the court that the person is no longer a menace to the health and safety of others, whereupon the committing court may return the person to the court in which the criminal charge was tried (W. & I.C. Sec. 5512).

If the report shows that the person is a mentally disordered sex offender and that he could benefit by treatment in a state hospital, the court is required to commit him to the department for placement in a state hospital for an indeterminate period and to cause a copy of its order to be served on the person within five days after the making of the order. The person, within 10 days after receiving the copy of the order, may demand a hearing on the question, and the court must fix a time and place for the hearing. The court, at the hearing, may accept the report in lieu of the examination and testimony by court-appointed psychiatrists, or may consider the report as additional evidence. The court, following the hearing, may commit the person to the department for placement in a designated state hospital for an indeterminate period or may make other suitable disposition of the case. (W. & I.C. Sec. 5512.)

Right to Court Trial

It is declared that persons committed as mentally disordered sex offenders to the department for placement in a state hospital following an observation placement have the same rights to a jury trial as is provided for persons alleged to be mentally ill (W. & I.C. Sec. 5512.5).

H. COMMITMENT OF MENTALLY ABNORMAL SEX OFFENDERS

The law relating to the commitment of mentally abnormal sex offenders appears in Chapter 4.5 (commencing with Section 5600) of Part 1 of Division 6 of the Welfare and Institutions Code.

Who Is a Mentally Abnormal Sex Offender?

A "mentally abnormal sex offender" is defined as one who is not mentally ill or mentally defective, and who by an habitual course of misconduct in sexual matters has evidenced an utter lack of power to control his sexual impulses and who, as a result, is likely to attack or otherwise inflict injury, loss, pain, or other evil upon the objects of his uncontrolled and uncontrollable desires (W. & I.C. Sec. 5600).

Petition

A petition for the commitment of a person alleged to be a mentally abnormal sex offender may be filed in the superior court by the parent, spouse, or child of the person, or by the person himself. It must state the petitioner's reasons for believing that the person may be a mentally abnormal sex offender and in need of supervision, care or treatment. (W. & I.C. Sec. 5601.)

Consent of Person Required

The petition must be accompanied by the written consent of the person voluntarily requesting examination and a hearing by the court (W. & I.C. Sec. 5601).

Statement of Medical Examiner

The petition must also be accompanied by a written statement of a medical examiner, stating that in his opinion the person is a mentally abnormal sex offender, and recommending that examination be made of the person (W. & I.C. Sec. 5601).

Time and Place of Hearing; Notice

The court is required to fix a time and place for hearing, and to require that due notice of the hearing of the petition be given to the person (W. & I.C. Sec. 5602).

Conduct of Hearing

It is declared that the hearing and examination shall be had in substantially the same manner as is provided for mentally disordered sex offenders (W. & I.C. Sec. 5604).

Commitment

If, after examination and hearing, the judge finds that the person is a mentally abnormal sex offender, he has the alternatives of dismissing the petition or committing the person to the Department of Mental Hygiene for placement in a designated state hospital for a period of not to exceed two years for supervision, care, and treatment (W. & I.C. Sec. 5604). After commitment, the superintendent of the hospital may discharge the person at any time or grant him a leave of absence upon such terms and conditions as he deems proper (W. & I.C. Sec. 5605).

Pending Criminal Charge

It is provided that no proceeding for the commitment of a mentally abnormal sex offender may be instituted against a person against whom a criminal charge has been made which has not been prosecuted to final judgment (W. & I.C. Sec. 5607).

I. ADMISSION TO PRIVATE MENTAL INSTITUTIONS**1. Involuntary Admissions****Admission**

A person may be committed to a private institution upon the written statement of a physician, who is not connected in any manner with the institution, that he has made a mental examination of the person and that the person should be admitted to such place for care or treatment (W. & I.C. Sec. 5750).

Right to Hearing

At any time after admission of the person to the institution either he or any relative or friend in his behalf may file with the person in charge of the institution a written request for a court hearing to determine whether or not the person is mentally ill and in need of supervision, care, or treatment in the institution. Proceedings must then be taken for a court hearing in the same manner as is provided for mentally disordered persons. (W. & I.C. Sec. 5750.1.)

Right to Discharge

No person may be retained in the institution for more than 90 days unless he files a request to remain therein as a voluntary patient, a court order is obtained ordering his detention, or a written application is received from a relative or friend of the person to detain him and such application is accompanied by two certificates executed by two physicians attesting that they have examined the person and recommending that he be retained. (W. & I.C. Sec. 5750.2.)

2. Voluntary Admissions

Application

Any person may be admitted to a private institution, who voluntarily makes a written application for admission and who at the time of making the application is mentally competent to make the application (W. & I.C. Sec. 5750.5).

The person may not be detained in the institution for more than seven days after giving written notice of his desire to leave, unless a petition is filed in the superior court for commitment of the person as a mentally ill person (W. & I.C. Sec. 5750.5).

J. ADMISSION TO COUNTY PSYCHOPATHIC HOSPITALS

Emergency Detention

The superintendent or person in charge of a county psychopathic hospital may receive, detain, supervise, care for or treat in the hospital any person who has been placed therein pursuant to court order or court commitment or under emergency commitment (W. & I.C. Sec. 6002).

Voluntary Admission

A person may also voluntarily apply, in writing, for admission to the hospital, if, at the time of application, he is in such condition of mind as to render him competent to make the application. In the case of a minor, the application may be made by his parents or by the parent, guardian, or other person entitled to his custody. (W. & I.C. Sec. 6002.)

Right to Discharge

No adult person may be detained for more than seven days after having given notice, in writing, of his desire to leave the hospital. No minor may be detained for more than seven days after written notice of the desire to remove the minor is given by his parents or the parent, guardian or other person entitled to his custody, unless, within that period, a petition has been filed with the superior court for the commitment of the minor as a mentally ill person (W. & I.C. Sec. 6003).

K. ADMISSION OF SOLDIERS AND SAILORS

Admission

The Department of Mental Hygiene is authorized to admit to any state hospital for the mentally ill, if there is room in the hospital, any insane soldier or sailor, under agreement between the department and

the properly authorized agents, officers, or representatives of the United States Government (W. & I.C. Sec. 6601).

L. VOLUNTARY ADMISSION TO STATE HOSPITALS

Application

A person may be admitted to a state hospital upon written application made by the person, if an adult, or by his parents or his parent, guardian, or other person entitled to his custody, if a minor. If the application is made by an adult, he must be in such condition of mind when making the application as to render him competent to make it. (W. & I.C. Sec. 6602.)

Right to Discharge

No adult person may be detained in the hospital for more than seven days after giving written notice of his desire to leave, unless, within that period, a petition has been filed in the superior court for his commitment as a mentally ill person (W. & I.C. Sec. 6602).

M. TEMPORARY ADMISSION TO STATE HOSPITALS

Admission

A person may be admitted to a state hospital for observation, care, or treatment, if neither he nor any member of his family, relative, or friend objects to his admission, upon:

(a) Written application made by a member of his family, relative, friend with whom he resides, guardian of his person, a health or welfare officer of the community, or the head of a hospital, sanitarium, or other institution in which the person may be, accompanied by:

(b) the certificate of two physicians that they have examined the person and believe him to be mentally ill and in need of observation, care, or treatment, and because of his illness lacks sufficient insight or capacity to make responsible application himself. The physicians must not be related to the person by blood or marriage, and their examination must take place within 10 days prior to the application. (W. & I.C. Sec. 6605.)

Right to Discharge

A person may not be detained for more than 15 days after he, or any person in his behalf, gives written notice of his desire to leave the hospital, unless the superintendent of the hospital applies to the superior court to have the person committed as a mentally ill person (W. & I.C. Sec. 6605.1). It is provided that the court may accept the report and diagnosis of the superintendent in lieu of the appointment, certificates, and testimony of medical examiners, and shall cause notice of the hearing to be given to the superintendent, as well as to the other persons to whom notice must be given under the general commitment procedure. (W. & I.C. Sec. 6605.2.)

A person must also be released from the hospital at the expiration of 90 days following his admission, unless the superintendent finds that he is mentally ill and is in need of further care and treatment, and gives written notice of his findings to the person, to the person who made application for his admission, and to the known spouse.

parents, or children of the person. If such notice is given, the person may be retained in the hospital for an additional 15 days, and longer if no relative, friend, or other person takes steps either to care for him or to have him committed, and the superintendent applies to the superior court to commit the person as a mentally ill person in the manner described in the preceding paragraph. (W. & I.C. Sec. 6605.4.)

N. ADMISSION TO STATE HOSPITALS ON CERTIFICATION

Application

Unless a protest is received from the person or any relative or friend in his behalf, the superintendent of a state hospital is authorized to admit a person to a state hospital on application of a local health officer (W. & I.C. Secs. 6610.1, 6610.2).

Certificates of Physicians

The application must be accompanied by certificates of two physicians, dated not more than seven days prior to the presentation of the application, certifying that they have examined the person and believe him to be mentally ill and in need of supervision, care, or treatment. The certificates must show that the examination took place within three days prior to the date of the certificates, and that the physicians are not related to the person by blood or marriage and are not connected in any way with a state hospital. (W. & I.C. Sec. 6610.4.)

Termination of Proceedings

The proceedings must be stopped whenever the person or any relative or friend in his behalf protests to the health officer or to the examining physicians, and the health officer is required to notify the person of his rights in this regard (W. & I.C. Secs. 6610.3, 6611.1). The superintendent of the hospital is authorized to refuse to accept the application or admit the person if he believes the person is not mentally ill nor in need of supervision, care or treatment; if there is no room in the hospital; or if the admission of the person would violate any rule of the Department of Mental Hygiene (W. & I.C. Sec. 6610.7).

At any time after the admission of the person to the state hospital, either he or any relative or friend in his behalf may file a written request with the superintendent for a court hearing (W. & I.C. Sec. 6611.1). Upon receipt of the request, the superintendent is required to notify the Director of Mental Hygiene and the local health officer, and to transmit the request to the superior court of the county in which the application was made. The court must then proceed as in the case of regular commitment proceedings for an alleged mentally ill person, except that it may accept the report and diagnosis of the superintendent in lieu of the appointment, certificates, and testimony of medical examiners. It must also cause notice of the time and place of hearing to be given to the superintendent of the hospital. (W. & I.C. Secs. 6611.3, 6611.4.)

O. ADMISSION TO FACILITY OF VETERANS ADMINISTRATION

Facilities of Veterans Administration

A local health officer is authorized to make application for admission to a facility of the Veterans Administration of any person believed to

be mentally ill. The procedure is the same as that prescribed for admissions to state hospitals on application of local health officers. (W. & I.C. Sec. 6612.)

P. ADMISSION OF FEEBLE-MINDED PERSONS TO STATE HOSPITALS

Admission

The Department of Mental Hygiene is empowered to authorize the superintendent of each state home for the feeble-minded to admit persons suspected of being feeble-minded to the homes, without commitment, under rules and regulations prescribed by the department, for purposes of observation and diagnosis, to ascertain whether or not they are actually mentally defective and proper cases for care, treatment, and training.

Commitment

If it is found that any person so admitted is feeble-minded and a proper case for care, treatment, and training, application may be made to the superior court for an order of commitment to a home for the feeble-minded. (W. & I.C. 7007.)

Q. COMMITMENT OF CHRONIC INEBRIATES

Who Is a Chronic Inebriate?

A "chronic inebriate" is defined as one who is so far addicted to the use of alcoholic beverages as to be unable or unwilling to abstain from their use; and who has been so addicted for a period of one year or more, and who by reason thereof is rendered unable to transact ordinary business with safety to his estate, or by reason thereof, endangers himself or the person or property of others; or who, by reason thereof, so impoverishes himself as to require charitable aid for the support of himself or of others depending upon him for support; or who, by reason thereof, has become or is in danger of becoming a degrading or detrimental influence upon his family or others (W. & I.C. Sec. 7103).

Commitment

It is declared that whenever one or more state inebriate colonies have been established, a person alleged to be a chronic inebriate shall be committed thereto under the procedure governing the commitment to state hospitals of persons addicted to the intemperate use of stimulants, or subject to dipsomania or inebriety. Commitment to any other type of institution is prohibited. (W. & I.C. Sec. 7104.)

R. ADMISSION TO LANGLEY PORTER CLINIC

Admission

The clinic is conducted and maintained for the purpose of treating incipient and acute mental and nervous cases. Admissions may be either on a voluntary basis, after approval by the medical superintendent, or by transfer from another institution under jurisdiction of the Department of Mental Hygiene, after approval by the Director of Mental Hygiene. No person may be committed either directly to the clinic or to the Department of Mental Hygiene for placement therein. (W. & I.C. Sec. 7302.)

S. ADMISSION TO THE NEUROPSYCHIATRIC INSTITUTE, U.C.L.A. MEDICAL CENTER

Admission

The purpose of the Institute, in part, is to treat patients with organic and functional disorders of the nervous system. It is declared that all admissions to the Institute shall be for observation, teaching, research, diagnosis, and treatment purposes as determined by the superintendent and medical director, and that no person shall be admitted to the Institute or transferred to the Institute from any hospital under the jurisdiction of the Department of Mental Hygiene unless the superintendent and medical director of the Institute approves such admission or transfer. (W. & I.C. Sec. 7406.)

T. ADMISSION TO COMMUNITY MENTAL HEALTH SERVICES

Admission

The law authorizes counties, cities, and local health districts to establish community mental health clinics to provide various services, including care, to persons in need of psychiatric help (W. & I.C. Secs. 9000 et seq.).

U. COMMITMENT OF JUVENILE COURT WARDS

Observation Commitment

If the juvenile court, after finding that a minor is subject to its jurisdiction, is in doubt concerning the state of mental health or the mental condition of the minor, it is authorized to continue the hearing and to commit the minor to the Department of Mental Hygiene for placement in a state hospital or state home for the mentally deficient for an indeterminate period of not more than 90 days, for observation of the mental condition of the minor and recommendations concerning his future care, supervision, and treatment (W. & I.C. Sec. 703).

Commitment

The superintendent or other person in charge of the institution, if he accepts the minor, is required to examine him and report his findings and recommendations to the court within 90 days. If the report shows that the minor is not affected with any mental illness, disorder, or other mental disability for which he might be committed to a state hospital or institution, the minor must be returned to the juvenile court within seven days after the date of the report, and the court is required to proceed with the case. (W. & I.C. Sec. 703.)

If the report shows that the minor is affected with a mental illness, disorder, or other mental disability, the juvenile court must direct that a petition be filed in the superior court for commitment of the minor. It is declared that the court in which the petition for commitment is filed may accept the report of the superintendent or other person in charge of the state institution in lieu of the appointment, certificate, and testimony of medical examiners or other expert witnesses appointed by the court. (W. & I.C. Sec. 703.)

V. COMMITMENT OF YOUTH AUTHORITY WARDS

The Department of Youth Authority is authorized to enter into an agreement with the Department of Mental Hygiene to transfer persons subject to the jurisdiction of the authority to a state hospital or institution for observation, diagnosis, and such treatment as the hospital or institution finds necessary, unless the person is formally committed to the hospital or institution (W. & I.C. Secs. 1753, 1756).

It is declared that whenever the authority finds that any person committed to it is feeble-minded, insane, mentally ill, a sexual psychopath, or a defective or psychopathic delinquent, the authority may return the person to the committing court for discharge from the control of the authority and recommitment in accordance with law to the Department of Mental Hygiene for placement in the appropriate state institution (W. & I.C. Sec. 1756.5).

W. TRANSFERS FROM OTHER STATES

The Department of Mental Hygiene is authorized to give written permission for the return of any resident of the State confined in a public institution in another state, corresponding to a state hospital for the mentally ill or state home for the mentally deficient of this State, and to admit the person to any institution of the department designated by the Director of Mental Hygiene. The person may be cared for and treated for a period not exceeding seven days, during which time he must either be released or committed in accordance with law. (W. & I.C. Sec. 160.)

X. COMMITMENT OF PERSON WHO PLEADS INSANITY IN CRIMINAL PROCEEDINGS

If a person pleads not guilty by reason of insanity in criminal proceedings, the court is required to appoint two alienists, one of whom must be from the medical staff of a state hospital, and is authorized to appoint one additional alienist. The alienists must examine the person and testify as to their findings. They are subject to cross-examination and to questioning by the court, as well as to legal objections normally available against expert witnesses. The defendant may produce expert evidence in his own behalf. (Pen.C. Sec. 1027.)

If the defendant is found to be insane, the court must commit him to a state hospital for the insane, where he must remain until the court which committed him, after notice and hearing, finds that his sanity is restored (Pen.C. Sec. 1026).

Y. COMMITMENT OF PERSON INSANE AT TIME OF JUDGMENT

If a person claims to be insane at the time of judgment, and the court has a reasonable ground for believing this to be the case, the question of insanity must be tried in the manner stated in X above. If the person is found to be insane, he must be committed to a state hospital for the care and treatment of the insane, until he becomes sane. (Pen.C. Sec. 1201.)

Z. COMMITMENT OF PERSON WHO IS INSANE DURING PENDENCY OF CRIMINAL ACTION

If at any time during the pendency of an action and prior to judgment, a doubt arises as to the sanity of the defendant, the court must order the question as to his sanity to be determined by a trial (Pen.C. Sec. 1368).

If the defendant is found to be insane, the court is required to order the trial or judgment suspended until he becomes sane, and to commit him to a state hospital until that time (Pen.C. Sec. 1370).

AA. COMMITMENT OF INSANE PERSON UNDER DEATH SENTENCE

If, after a prisoner is delivered to the warden of a state prison for execution, there is good reason to believe that the person has become insane, the warden is required to call that fact to the attention of the district attorney of the county in which the prison is situated. The district attorney is required to file a petition in the superior court stating the conviction and judgment, the fact that the defendant is believed to be insane, and asking that the question of his sanity be inquired into. The court must cause to be summoned and impaneled a jury of 12 persons to hear the inquiry. (Pen.C. Sec. 3701.)

The district attorney must attend the hearing, and is authorized to produce witnesses (Pen.C. Sec. 3702).

If the defendant is found to be insane, the warden is required to suspend the execution, and the court must commit the defendant to a state hospital for the insane, until his reason is restored (Pen.C. Secs. 3703, 3704).

A. C. MORRISON
Legislative Counsel

By EDWARD K. PURCELL
Deputy Legislative Counsel

o

REPORT TO THE
SENATE FACT FINDING COMMITTEE ON
LABOR AND WELFARE

NEED FOR RESIDENTIAL CARE OF
SEVERELY HANDICAPPED CHILDREN AND ADULTS
OF NORMAL MENTALITY

By
BUREAU OF CHRONIC DISEASES
STATE DEPARTMENT OF PUBLIC HEALTH



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SENATE
OF THE STATE OF CALIFORNIA
December 1964

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President of the Senate

JOSEPH A. BEEK
Secretary

HUGH M. BURNS
President pro Tempore

LETTER OF TRANSMITTAL

SENATE CHAMBER, STATE CAPITOL
SACRAMENTO, December 14, 1964

HONORABLE GLENN M. ANDERSON, *President of the Senate*
Senate Chamber, State Capitol
Sacramento, California

MR. PRESIDENT:

Pursuant to Senate Resolution 56 read and adopted June 21, 1963, at the regular session of the Legislature, the Senate Factfinding Committee on Labor and Welfare submits the following report made to us by the State Department of Public Health on the need for residential care of severely handicapped children and adults of normal mentality.

We wish to acknowledge at this time the fine cooperation extended to the committee by Malcolm H. Merrill, M.D., Director of the Department of Public Health, Harry Howard, M.D., and Leonard Krauss of the Neurological and Sensory Disease Project, Bureau of Chronic Diseases.

Respectfully submitted,

VERNON L. STURGEON, *Chairman*
HOWARD WAY, *Vice Chairman*
CLARK L. BRADLEY
JAMES A. COBEY
ALBERT S. RODDA
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ALVIN C. WEINGAND

DEPARTMENT OF PUBLIC HEALTH

December 3, 1964

HONORABLE VERNON L. STURGEON, *Chairman*
Senate Factfinding Committee on Labor and Welfare
State Capitol
Sacramento, California

DEAR SENATOR STURGEON:

We are pleased to submit this report on the need for residential care, treatment, and training of severely handicapped persons of normal mentality. It was prepared in response to Senate Resolution No. 56 which was adopted June 21, 1963.

The generous cooperation of many individuals and organizations throughout the state was of considerable help in preparing this report and is greatly appreciated.

The findings and recommendations of this study are presented for consideration by your committee as a possible means for meeting some of the residential needs of mentally normal persons who are not able to care for themselves.

Respectfully submitted,

MALCOLM H. MERRILL, M.D.
Director of Public Health

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SENATE RESOLUTION No. 56

By Senators Cobey, Sturgeon, Rattigan, Rodda, and Weingand (at the request of the Senate Fact Finding Committee on Labor and Welfare):

Relating to continuation of a study by the Senate Fact Finding Committee on Labor and Welfare of the need for residential care, treatment, and training of severely handicapped children and adults of normal mentality

WHEREAS, The Rules Committee of the California State Senate referred to the Senate Fact Finding Committee on Labor and Welfare Senate Resolution 155 of the 1961 General Session, which authorized a study of the need for residential care, treatment, and training of severely handicapped children and adults of normal mentality; and

WHEREAS, The Senate Fact Finding Committee on Labor and Welfare has initiated a study to specifically define "severely handicapped children and adults of normal mentality"; to secure the assistance of the California Department of Public Health in conducting a survey to determine the numbers and need for care of persons within this definition; and to identify and evaluate applicable services currently available through federal, state, and local governmental and private sources; and

WHEREAS, The development of such information will permit the Senate Fact Finding Committee on Labor and Welfare to evaluate the necessity, desirability, and financial feasibility of coordinating or revising existing programs and services and establishing pilot projects or other new means to satisfy unmet needs, and to then report to the Senate its findings and recommendations; now, therefore, be it

Resolved by the Senate of the State of California, That the Senate Fact Finding Committee on Labor and Welfare is authorized to continue its study of the need for residential care, treatment, and training of severely handicapped children and adults of normal mentality and report its findings, together with any recommendations for legislation, to the Senate the 30th calendar day of the 1965 General Session of the Legislature.

Resolution read, and referred to Committee on Rules.

—State of California, *Senate Journal*, February 13, 1963, p. 394.

I. SUMMARY

Among the 18 million Californians, a substantial number have very severe physical handicaps. Some are in urgent need of suitable places to live; others are concerned, or cause their families concern, about the future when their parents or other relatives will no longer be able to care for them.

About 20,000 mentally normal, severely handicapped persons under age 65 in this state live outside of hospitals or other institutions. Most have developed satisfactory living arrangements on their own, with their families, or with public assistance. Some, however, are in urgent need of new, long-term residential care services. On the basis of the best information presently available, it appears that there are fewer than 500 such persons. The provision of services through a pilot project could determine the number of persons in urgent need of new, long-term residential care services, and the kinds and amounts of services needed.

Some private facilities exist but their costs are considerably more than most families can afford. Public facilities are generally limited to persons in financial need of public assistance. Very little in the way of services is available to persons who are not indigent but who cannot afford the full costs of private services.

The State of California provides for residential care, treatment and training of physically handicapped persons who are retarded or mentally ill. Comparable services are needed for the severely handicapped who are mentally normal.

The provision of such services by the State of California would alleviate many serious social and psychological problems of the handicapped and their families. It would also probably enable some handicapped persons to achieve partial or complete independence through rehabilitation and training programs, and thereby tend to offset public expenditures required for the care of this group of handicapped persons.

II. RECOMMENDATIONS

To determine accurately the extent of needs of severely handicapped persons of normal mentality for residential care, treatment, and training, and to determine how best to meet these needs, the California State Department of Public Health recommends that:

I. The State Department of Public Health initiate a pilot project that would obtain accurate data by providing necessary medical and social evaluations and coordinated residential care, treatment and training services. These services would encourage and assist handicapped individuals to achieve their maximum potential for independence and personal development.

A. Services would be made available to a handicapped person or his family when such services are needed to alleviate a substantial impairment to the normal functioning of the individual or the family unit.

B. Services would be purchased from private physicians, allied health personnel, and from local governmental and voluntary agencies in accordance with policies and standards of the pilot project. Such services may include medical and social evaluations, homemaker services, attendant care in the home, foster home care, long-term residential care in appropriate facilities, or other services as authorized under the project.

C. Institutional care on a long-term basis would be limited to those persons so severely handicapped that other care or services would be inappropriate. Construction of new residential facilities for this purpose would not be within the scope of the pilot project.

II. The pilot project would determine the extent of the need for various services, the costs, and the benefits to be derived by providing services and by additional investigations and surveys.

III. The pilot project would be carried out by the Department of Public Health as outlined below:

A. The pilot project would be limited to four years' duration.

B. Services would be provided to a caseload in two areas of the state estimated not to exceed 100 handicapped persons at any one time and the project authorized annual expenditures of up to \$100,000 during the first and fourth years and up to \$175,000 during the second and the third year.

1. The California State Department of Public Health will establish standards for and exercise administrative supervision of services provided by the project.

2. The department will provide medical direction to project staff. The project director and other project personnel will cooperate with personnel of local health departments and other appropriate agencies, both official and voluntary.

3. Existing community services, facilities, resources and funds will be utilized whenever possible so as to conserve project funds. The resources of the handicapped individual or his family, such

as health insurance, disability benefits, compensation, or other assistance, will be fully utilized before project resources are used, as in Crippled Children Services. Financially independent individuals or families, for example, may be offered only counseling services if such services are needed and are not otherwise available.

The project will contract with local health or welfare agencies, private physicians, nursing homes, or others to provide necessary additional services. (The pattern of the Crippled Children Services program in establishing standards, medical and financial eligibility, and in the authorization and purchase of needed services will be used as a guide.)

4. The California State Department of Public Health will assume responsibility for establishing eligibility criteria for services. The department will work with the Departments of Social Welfare, Rehabilitation, and with other appropriate agencies and organizations to develop individualized programs of care and rehabilitation and to plan for the future care of each individual in accordance with his needs and potential.

IV. The project shall terminate on June 30, 1969, and the Department of Public Health shall submit a preliminary report on the findings of the pilot project by January 31, 1967, and a final report and its recommendations to the Legislature on or before the 30th day after commencement of the 1969 Regular Session.

III. INTRODUCTION

The California State Senate expressed its concern about the needs and welfare of severely handicapped people of normal mentality in Senate Resolution No. 56 (1963). The latter authorized the Senate Factfinding Committee on Labor and Welfare to continue its study of the need for residential care, treatment, and training of severely handicapped children and adults of normal mentality, and report its findings, together with any recommendations for legislation, to the Senate.

In accordance with this resolution, the Senate committee requested the California State Department of Public Health to assist in determining the numbers and needs for care of such persons. The department was also asked to identify and evaluate the necessity, desirability, and financial feasibility of coordinating or revising existing programs and services and establishing pilot projects or other new means to satisfy unmet needs, and then to report to the Senate its findings and recommendations.

Establishment of an appropriate government-sponsored facility or program has been urged by handicapped individuals themselves, by parents' groups, and by voluntary health agencies for some time. Senate Resolution No. 56 continues the study begun under Senate Resolution No. 155 (1961). This in turn was an outgrowth of Assembly Concurrent Resolution No. 36 of 1947, which was concerned with the treatment, care, and education of "spastic and crippled persons."

To carry out its assignment, the department felt it essential to define "severely handicapped individuals of normal mentality" and the following definition was adopted for purposes of this report:

A severely handicapped child or adult of normal mentality in need of residential care, treatment, and training, is one who, because of his chronic physical handicaps:

must depend upon others for his daily care and well-being,
is below age 65,

does not have mental or emotional problems so severe as to qualify him for services of the Department of Mental Hygiene, and,
whose major handicap is not blindness, deafness, or tuberculosis.

This definition excludes persons with temporary physical handicaps, or persons who are able to care for themselves despite their handicaps. For study purposes a maximum age of 65 was set since persons beyond age 65 may be eligible for various public health and welfare programs. Also it was felt that the Senate committee was more concerned with the problems of persons whose handicaps are other than those associated with the problems of the aged.

The concept of "normal mentality" as expressed in Senate Resolution No. 56 was defined very broadly. It was the opinion of William B. Beach, Jr., M.D., Chief, Bureau of Mental Retardation and Children's Services of the Department of Mental Hygiene, that it would not be feasible to attempt to develop a precise definition of "mentally

normal." Therefore, it was decided to use the above concept, particularly since the Department of Mental Hygiene provides for the residential care, treatment, and training of retarded or mentally ill persons.

Persons whose sole major handicap is blindness, deafness, or tuberculosis were not included, because, although severely handicapped, they are often able to care for themselves, and, in addition, are covered by categorical assistance and residential care programs.

Severely handicapped persons' needs vary greatly. The range of their residential needs may include:

- Residential care unnecessary,
- Future residential care,
- Assistance needed to locate and/or modify a suitable residence,
- Financial assistance only,
- Opportunity for establishing cooperative living arrangements,
- Homemaker services,
- Visiting nurse services,
- Day-care facilities,
- Temporary or short-term residence for special situations,
- Rehabilitation or reorientation residential center ("half-way house")
- Foster-home care,
- Long-term nursing home care, or
- Permanent institutional care

Similarly, there is wide variation among the handicapped individual's needs for medical care, education, vocational training or assistance, employment, recreation, and social work services. These needs and the present or future residential care needs depend in a large part upon the degree to which the individual is or will be able to care for himself. This, in turn, is dependent upon factors such as:

- | | |
|---|--|
| Present age, and age when first handicapped | Social experiences, attitudes and adjustments, |
| Number of handicaps | Financial resources, |
| Kinds and severity of handicaps | Geographical location, and |
| Intelligence | Family situation, attitudes and relationships |
| Educational attainment and needs | |
| Work experience and potential | |

IV. NEEDS FOR RESIDENTIAL CARE, TREATMENT, AND TRAINING

A severely handicapped person under our definition may need residential care for any of the following reasons:

1. There is no one able or willing to accept responsibility for his well-being,
2. The needs and problems of the handicapped individual create an unbearable emotional strain upon himself or an emotional or financial strain upon his family,
3. He needs temporary or part-time residential care to relieve the strain upon his family in order to preserve the family unit,
4. He needs an opportunity to achieve maximum self-development through adequate medical treatment, education, therapy, rehabilitation, vocational training, or through more normal social relationships.

Some of the severely handicapped have an immediate need for residential care because their present accommodations are grossly unsatisfactory or are likely to become so in the near future. Others feel concern about the future, especially when parents or other family members will no longer be able to care for them.

Handicapped individuals have varying needs; there seems to be no single "solution" appropriate to a large portion of the severely handicapped population.

Comprehensive medical evaluations are essential in order to determine each individual's abilities and future potential as well as his disabilities, so as to accurately determine what type of residential care would be most suitable for him.

Furthermore, since the objectives of most medical care or public assistance programs are to improve the condition of the individual and help him toward maximum independence and self-care, segregation of handicapped persons in long-term or permanent institutional care away from nonhandicapped persons is not desirable. This type of care separates an individual from his family and from society and is undesirable for social reasons as well as for its deleterious effect upon rehabilitation efforts.

V. SERVICES AVAILABLE

Some long-term services related to the residential care needs of the severely handicapped are available in varying amounts to certain population groups in California, particularly veterans and indigent persons.

Veterans

Domiciliary care at the U.S. Veterans Center in Los Angeles and at Veterans Home of California in Napa County is available to eligible veterans who, because of their disabilities, are unable to earn a living but who are not in need of nursing services, constant medical supervision or hospitalization.

Inpatient hospital care is provided to eligible veterans in Veterans Administration hospitals and in certain other federal hospitals with priority given for treatment of service-connected injuries or diseases. Outpatient medical treatment is provided for service-connected disabilities.

Disabled veterans may be eligible for disability compensation payments up to \$725 a month, with additional allowances for dependents. They may also be eligible for vocational rehabilitation, education, training, and assistance in buying homes or automobiles.

Indigent Persons

Medical care and hospitalization are provided for indigents through county hospitals and other facilities. Hospital wards for the chronically ill or aged are sometimes used to house severely handicapped persons who may not require hospital care but who have no place else to go.

Handicapped persons may be eligible for low-rent housing in public projects financed by the federal government. Section 203 of the Housing Act of 1964 (PL 88-560) gives handicapped persons and families the same special treatment as the elderly. Because of the recency of this legislation its effect in California cannot be estimated.

Financial assistance under the Aid to Needy Disabled program is available to eligible persons over 18 years of age. According to preliminary figures, in August 1964 there were 50,793 recipients in California and monthly payments, exclusive of Public Assistance Medical Care, averaged \$95.77. Total program expenditures for the month came to \$5,742,685, with the State of California contributing \$3,011,783 and the federal government contributing \$2,330,167.¹

General relief is available to those handicapped persons who meet county eligibility requirements.

Other Than Veterans and/or Indigents

A wide variety of medical, rehabilitation, recreation, and other services are available from public or voluntary health agencies in different parts of California but none include long-term residential care services.

¹ California Department of Social Welfare, *Public Welfare in California, August 1964*, Statistical Series PA 3-59, Tables 1 and 1b.

Persons under 21 years of age with certain physical defects may be eligible for diagnosis, medical and surgical treatment, and hospital and rehabilitation center care provided through Crippled Children Services program administered by the California State Department of Public Health. Residential care is not provided under this program.

Special Education and Training Programs. Physically handicapped children from 3 to 21 years of age who cannot receive full benefit from ordinary educational facilities may be given home or hospital instruction. Children with cerebral palsy and similar handicapping conditions may be diagnosed and evaluated at one of the two special schools established for this purpose. Special classes to meet the education and training needs of handicapped adults are also authorized under state laws.

The California Department of Rehabilitation provides vocational rehabilitation services to handicapped persons 16 years of age or older and cooperates with the Department of Employment in the placement of physically handicapped individuals. Local communities are encouraged to develop sheltered workshops so as to extend opportunities for employment of the disabled.

Disabled workers and their dependents may qualify for social security disability insurance benefits ranging from \$40 to \$254 a month. Disability benefits are also available for persons disabled before the age of 18 whose parent is entitled to social security retirement or disability insurance benefits or was insured at the time of death.

New rental housing for the handicapped was encouraged by the Federal Housing Act of 1964 which makes long-term low-interest loans for construction costs available to nonprofit corporations, cooperatives, or public bodies. Organizations in Ohio and Washington are presently planning the construction of large buildings for handicapped persons with construction costs to be financed under the provisions of this new law.

A wide variety of other services such as homemaker services, visiting nurses' services, foster care homes, day care, sheltered workshops, and transportation and recreation, are provided by voluntary health organizations and by state, local, and federal governments. The availability of services, however, varies considerably from area to area.

Private services such as medical care, attendant care, nursing homes, boarding homes, or private schools, are available to those who can afford them or who have other resources such as workmen's compensation, disability insurance, private insurance or compensation.

VI. NUMBER OF PERSONS IN NEED

To determine the number of persons who need and who would use a social service such as residential care for handicapped persons, the most reliable and economical method is to provide the service on a trial basis through a pilot program. Valid estimates of the overall need could then be made on the basis of number and characteristics of persons applying for and using such services.

Estimates of residential care needs based on the prevalence of particular handicapping conditions usually overstate the number of persons in need of services and are too unreliable to be used in planning expensive public programs.

For example, the 1959 Legislature authorized the California State Department of Public Health to provide diagnostic and treatment services for children with epilepsy on a pilot basis over a three-year period. The 236 children applying for services were considerably fewer than the 1,400 to 1,900 children estimated to have epilepsy in the two counties in which services were provided. This study made it possible to aim at reasonably reliable estimates of the number of children needing and likely to make use of the services and the nature and cost of those services.²

Also pertinent to this problem is the experience of the United Cerebral Palsy Association of Philadelphia and vicinity with Overbrook Hall. After considerable study the Association opened a residential facility for 20 mildly to moderately involved cerebral palsied persons. At no time was this facility fully occupied; it was closed after seven and one-half years. Persons with cerebral palsy and their families who had expressed great interest and immediate need in the preliminary studies did not make use of the residence after its establishment. "They expressed very freely a desire for the existence of a residence as insurance against the time they might need it, but preferred to continue present living arrangements, although these were quite strained in some situations."³

These numbers were obtained from some of the many studies made to estimate how many Californians are covered by certain programs or services. The dates of the studies are different but, beyond this, handicapped individuals may come under more than one program or service so that the total number needing residential care is not the same as the sum of the numbers in each subcategory.

For purposes of estimating the number of Californians in need of residential care services, the following statistics are particularly pertinent:

About 16,000 mentally normal persons between the ages of 18 and 65 were receiving aid to the needy disabled in August 1962.⁴

² California State Department of Public Health, *Children With Epilepsy*, Berkeley, 1963.

³ O'Dwyer, Elizabeth M. "Overbrook Hall." *Cerebral Palsy Review*, July-August 1964, p. 14.

⁴ See Table 1, page 25.

About 3,000 Californians under 65 years of age live in licensed nursing homes and in boarding homes for the aged.⁵

As of June 30, 1964, social security disability benefits were being paid to 75,458 disabled children and adults in California.⁶

The Railroad Retirement Board estimated that in November 1963 about 1,500 of its California annuitants under 65 were totally and permanently disabled.⁷

More than 2,000 mentally normal veterans in California under 65 years of age are rated as 100 percent disabled by service-connected disabilities.⁸

There were an estimated 1,400 residents in veterans' domiciliary care facilities in California in June 1964 who were mentally normal and under 65.⁹

The effect this overlap of different groups of handicapped persons can have on estimates is illustrated in the diagram on page 20. Only three groups are shown in the diagram: rejected applicants for residential care at Pacific State Hospital¹⁰ persons included in a special survey for this report¹¹; and those covered by service programs of government and voluntary agencies. This last group can be subdivided into many separate elements, and these elements will overlap in varying degrees.

Data from the California Health Survey on the number of persons under 65 who cannot get around without help¹² or are confined to the house¹³ indicate that there are about 30,000 severely handicapped persons who live outside hospitals or other institutions. If we exclude those who are blind, deaf, mentally ill or retarded, or disabled by tuberculosis, we have in the neighborhood of 20,000 persons coming under this report's definition of severely handicapped persons of normal mentality.

Of the 20,000 fewer than 500 appear to be in urgent need of new, long-term residential care services. This estimate is based on projections made from data obtained from Pacific State Hospital and from the Survey of Severely Handicapped Children or Adults:

1. Pacific State Hospital, Pomona, is a Department of Mental Hygiene institution for retarded children and adults from southern California. About 31 percent of the state's population lives in the area it serves.

⁵ See Appendix, page 26.

⁶ See Table 2, page 26.

⁷ Information obtained in correspondence with Mr. Samuel Chmell, Director of Research, Railroad Retirement Board, November 21, 1963.

⁸ This estimate assumes that 10 percent of all disabled veterans are in California, that the proportion of veterans under 65 is the same in California as in the United States, and that the degree of service-connected disability is not related to age. The Administrator of Veterans Affairs, *Annual Report, 1962*, Washington, D.C., Government Printing Office, 1962, pp. 175, 238-239, 246-247, showed that as of June 30, 1962, 29,074 veterans were rated as 100 percent disabled by service-connected disabilities (other than tuberculosis or psychiatric and neurological diseases) and that 69.7 percent of all veterans were under 65 years of age.

⁹ This estimate is based on information provided by the Veterans Home of California, Napa County, and by the U.S. Veterans Administration Center, Los Angeles, by phone.

¹⁰ See Appendix, page 24.

¹¹ See Appendix, page 24.

¹² Table 4, page 31.

¹³ Table 5, page 32.

During the 19 months between January 1963 and July 1964, 914 applicants for admission were examined and evaluated. Seventy-four were rejected because they were not retarded. The hospital staff reviewed the case records of the 74 and found that 21 were severely handicapped, mentally normal, and in urgent need of residential care. Their ages ranged from 3 to 35 years and IQ's ranged from 65 to 95, with an average IQ of 77.

If the area served by Pacific State Hospital is representative of the entire state, we can expect an annual statewide total of about 42 persons per year in urgent need of residential care services. Since some handicapped persons or their families do not apply to an institution such as Pacific State because they do not know of it or are not referred there, or because the handicapped person's IQ is too high to even be considered for admission, the estimate should probably be at least doubled to make allowance for this. As a result, we get an annual total of about 80 persons in urgent need of residential care services, or about 400 over a five-year period.

2. A limited "Survey of Severely Handicapped Children or Adults of Normal Mentality in Need of Residential Care, Treatment, or Training" was conducted to learn more about their characteristics and needs. As described on pages ii and iii of the appendix, the questionnaires were distributed mainly in southern California and nearly three-fourths of the completed questionnaires came from that area. Slightly more than half—53 percent—of the completed questionnaires were from residents of Los Angeles County.

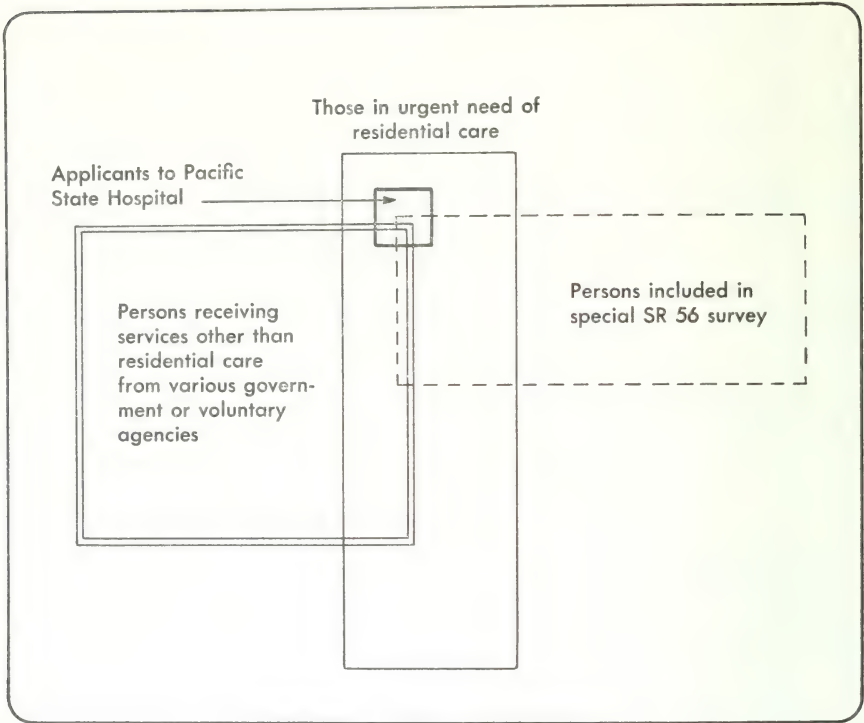
Twenty-one of the 172 questionnaires from Los Angeles County indicated an urgent need for residential care. If this is projected according to population, the statewide total would be 56. Because the survey included only persons in contact with one of the co-operating agencies, allowance must be made for persons who are not known to the voluntary health agencies as well as for those who did not submit completed questionnaires. Furthermore, since 76 percent of the replies were from persons with cerebral palsy, it appears that persons with other handicaps were underrepresented in the survey. For these reasons, the statewide estimate of 56 probably represents less than half of all severely handicapped persons of normal mentality in urgent need of residential care services.

The number of persons seeking residential care if it is made available will probably depend in large part upon the kind of care available, awareness by various social agencies, private physicians, and others that such care is available, and upon the responsiveness of individuals and families.

Reliable data on residential care needs can best be obtained through a pilot program which would provide necessary services. The extent to which the services are utilized, and the demand for more or new services, will provide the facts needed for determining the extent to which such services are needed on a continuing basis, the kinds and costs of services needed, and the benefits derived.

**A DIAGRAMATIC REPRESENTATION OF
HOW DIFFERENT ESTIMATES OVERLAP**

All severely handicapped persons of normal mentality



(Not drawn to scale or proportion)

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ESTIMATES OF NEED FOR RESIDENTIAL CARE

Estimates of the number of persons with health problems can be developed from various sources. Those most useful for estimating the number of severely handicapped persons of normal mentality in need of residential care are discussed below. Such estimates may differ considerably, however, because of different methods and criteria employed, including different concepts of "severely handicapped," "normal mentality," and "in need of residential care, treatment, and training," separately and in combination.

1. *Household interview surveys* in which a sample of the population is questioned about health problems can provide useful data on numbers, characteristics, and needs of persons with certain chronic conditions. Reliability of the data depends in part on the size of the sample and the relative frequency of the conditions. The California Health Survey and the U.S. National Health Survey are most useful and, on the basis of these, we estimate that 34,500 Californians who live outside of institutions are severely limited in their mobility and require long-term care.¹⁴ The survey, however, was not designed to determine how many of these need, want, and would use residential care services.
2. *Medical records and special morbidity studies* may yield estimates of the prevalence of certain severely handicapping conditions. Table 6 on page 33, for example, shows such estimates of cerebral palsy, epilepsy, and certain other neurological and sensory conditions in California. This type of information is not by itself a sufficient basis for estimating a need such as residential care. Persons with only a mild condition, or persons with handicaps who are able to live independently may not need or want special services. Furthermore, because severely handicapped persons often have more than one handicapping condition, the total number of conditions is greater than the number of persons with those conditions. Projections of need that are derived from such prevalence estimates are therefore likely to be less reliable than data from household surveys.
3. "*Educated opinions*" on numbers and needs are even less reliable as a basis upon which to establish a program of services. While there is agreement that services are needed, estimates of the level of services needed often tend to be unrealistically high.
4. Data on the current *caseloads of official or voluntary agencies* providing services to handicapped persons are available and may provide reliable estimates of the numbers of persons seeking the kinds of services provided by the particular programs.
 - a. About 16,000 mentally normal persons between the ages of 18 and 65 were receiving aid to the needy disabled in August 1962.¹⁵ (The total caseload for August 1964 is slightly more

¹⁴ See Table 4, page 31.

¹⁵ California Department of Social Welfare, *Characteristics of Recipients of Aid to the Needy Disabled, August 1962*, Sacramento, August 1963, p. 30.

than double the total caseload for August 1962, and the Department of Social Welfare is presently preparing a detailed analysis of the characteristics of the August 1964 recipients of aid to the needy disabled.)

- b. Records of persons applying for admission to Pacific State Hospital, Pomona, from January 1963 through July 1964 were reviewed by the hospital medical staff. Nine hundred fourteen applicants were evaluated at this state institution for the retarded and 74 were rejected because they were not retarded. Of the 74, 21 were severely handicapped and in urgent need of residential care, treatment, or training.
- c. A small number of mentally normal persons with severe physical handicaps are long-term residents of some county or state hospitals. While these persons need and are receiving residential care, there is no way to determine how many others need similar care.
5. *Special surveys* may be made to determine the need for particular services or facilities. A very extensive, and expensive, survey would be required to obtain valid information on the statewide need for residential care. Furthermore, the reliability of the information may be questionable, particularly when information is sought on the need for services or facilities that do not exist.

The Overbrook Hall experience in Philadelphia illustrates this problem. A residential facility for adults was established after much study and after a community survey to determine need. But many adults with cerebral palsy and their families did not make use of the residence after its establishment even though they had expressed great interest and immediate need in the preliminary studies.¹⁶

A limited survey of residential needs for the mentally normal, severely handicapped in California was conducted during the summer of 1964. The results of this survey are presented in Table 3 on pages 27-28; the questionnaire is on pages 29-30. Questionnaires were distributed in southern California mainly through the Crippled Childrens Society of Los Angeles County and to United Cerebral Palsy Association affiliates throughout the state. Since no casefinding was done, handicapped persons not in contact with one of the cooperating agencies were not reached. About 74 percent of the completed questionnaires came from southern California.

It is interesting to note that, with the full cooperation of the voluntary agencies, of the 4,000 questionnaires requested, fewer than 400 were returned. Thirty-seven indicated an urgent need for residential care.¹⁷

¹⁶ See pages 34-43.

¹⁷ Table 3, pages 27-28.

TABLE 1
CHARACTERISTICS OF RECIPIENTS OF AID TO NEEDY DISABLED
UNDER AGE 65, BY MAJOR DIAGNOSIS
California, August 1962

Major diagnosis ¹	Recipients under age 65							
	Total age 18-64		Age 18-29		Age 30-49		Age 50-64	
	Number	Percent	Number	Percent	Number	Percent	Number	Percent
Total.....	16,130	100.0	1,152	100.0	3,585	100.0	11,393	100.0
Infective and parasitic diseases.....	1,246	7.7	198	17.2	326	9.1	722	6.3
Neoplasms.....	523	3.2			116	3.2	407	3.6
Allergic, endocrine, metabolic and nutritional diseases.....	826	5.1			198	5.5	628	5.5
Diseases of blood and blood forming organs.....	93	.6			12	.3	81	.7
Diseases of nervous system and sense organs.....	4,505	27.9	454	39.4	1,304	36.4	2,747	24.1
Diseases of the circulatory system.....	3,596	22.3	23	2.0	454	12.7	3,119	27.4
Diseases of the respiratory system.....	838	5.2			70	2.0	768	6.7
Diseases of the digestive system.....	453	2.8			116	3.2	337	3.0
Diseases of the genitourinary system.....	23	.1					23	.2
Diseases of the skin and cellular tissue.....	12	.1					12	.1
Diseases of the bones and organs of movement.....	2,339	14.5	116	10.1	454	12.7	1,769	15.5
Congenital malformations	302	1.9	93	8.1	93	2.6	116	1.0
Accidents, poisonings, and violence (nature of injury).....	1,374	8.5	268	23.3	442	12.3	664	5.8

¹ Based on International Standard Classification of Diseases, 7th Revision, 1957.

Note: Recipients over age 65 and those with diagnoses of mental, psychoneurotic and personality disorders, or mental deficiency, were excluded from this table. Data are based on sample of approximately 9 percent of the 23,695 recipients of aid to the needy disabled in August 1962.

Source: *California Department of Social Welfare, "Characteristics of Recipients of Aid to the Needy Disabled, August 1962."* Sacramento, August 1963, page 30.

**ESTIMATED NUMBERS OF PERSONS UNDER 65 IN NURSING HOMES
AND BOARDING HOMES FOR THE AGED
California, 1964**

Approximately 2,000 Californians under 65 years are in licensed nursing homes and about 1,000 persons under 65 in licensed boarding homes for the aged.

Nursing Homes

Nursing homes licensed by the State of California had an estimated 36,711 nursing beds on June 1, 1964. A 1961 survey of nursing homes indicated that occupancy was about 85 percent and that 6.2 percent of the patients were under age 65.¹ Applying these proportions to the 1964 data on nursing home beds yields 31,204 patients, including 1,940 under 65 years of age (rounded to 2,000).

Boarding Homes

In May 1964 there were 3,279 boarding homes licensed by the Department of Social Welfare.

In 1954, there were 2,627 facilities with 26,964 residents, 3.7 percent of whom were less than 65 years of age.² By applying these proportions to the 1964 number of homes, we obtain an estimate of 1,240 residents under age 65, or a rounded estimate of 1,000.

**TABLE 2
SOCIAL SECURITY DISABILITY BENEFITS IN CALIFORNIA,
BY TYPE OF BENEFICIARY
As of June 30, 1964**

Type of beneficiary	Total monthly amount	Number of beneficiaries	Average monthly amount
Total.....	\$6,892,171	75,458	\$91.34
Disabled workers.....	6,436,591	66,619	96.62
Disabled children.....	455,580	8,839	51.54
Disabled children of:			
Deceased workers.....	275,853	4,570	60.36
Retired workers.....	162,586	3,884	41.86
Disabled workers.....	17,141	385	44.52

Source: Social Security Administration, U.S. Department of Health, Education, and Welfare, special tabulations prepared September 10, 1964.

¹ California State Department of Public Health, Bureau of Hospitals, *Nursing Supervision and Staffing in California Nursing Homes*, Berkeley, 1962.

² Public Health Service, U.S. Department of Health, Education, and Welfare, *Nursing Homes, Their Patients and Their Care*, Washington, D.C., Government Printing Office, 1957. (One quarter of all California nursing home beds were surveyed for this report. About 10.6 percent of the California patients were under 65 years of age; the proportion ranged from 6.2 to 14.1 percent among the 13 states surveyed.)

TABLE 3

**INFORMATION REPORTED IN SURVEY OF SEVERELY HANDICAPPED CHILDREN
OR ADULTS OF NORMAL MENTALITY IN NEED OF RESIDENTIAL
CARE, TREATMENT, OR TRAINING
California, 1964**

Information reported	Number of handicapped persons		
	Total	Male	Female
Total, all questionnaires.....	326	179	147
Residential need			
Urgent.....	37	22	15
Future.....	269	145	124
Not indicated.....	20	12	8
Residential need for persons with cerebral palsy			
Urgent.....	31	19	12
Future.....	207	110	97
Not indicated.....	10	6	4
Major handicap			
Cerebral palsy.....	248	135	113
Other.....	78	44	34
Seizures			
None reported.....	294	162	132
Seizures reported.....	32	17	15
With cerebral palsy.....	28	15	13
Other.....	4	2	2
Age			
Under 5 years.....	4	1	3
5-9.....	25	15	10
10-14.....	33	20	13
15-19.....	95	59	36
20-24.....	51	27	24
25-29.....	23	10	13
30-34.....	26	12	14
35-39.....	20	13	7
40-44.....	20	12	8
45-49.....	10	2	8
50-54.....	8	5	3
55-59.....	5	2	3
60-64.....	6	1	5

TABLE 3—Continued

**INFORMATION REPORTED IN SURVEY OF SEVERELY HANDICAPPED CHILDREN
OR ADULTS OF NORMAL MENTALITY IN NEED OF RESIDENTIAL
CARE, TREATMENT, OR TRAINING
California, 1964**

Information reported	Number of handicapped persons
Present living arrangements	
Living alone.....	16
Living with mother.....	55
Living with father.....	7
Living with mother and father.....	177
Living with mother and stepfather.....	13
Living with father and stepmother.....	1
Living with relatives other than parents.....	16
Living with husband or wife.....	18
Other living arrangements or living arrangements not specified.....	23

Source: Information reported in 326 questionnaires received by the Neurological and Sensory Disease Project of the California State Department of Public Health in July and August 1964. The questionnaires were completed by handicapped persons, relatives, friends, or by private or public agency representatives. Most of the questionnaires were distributed in the Los Angeles area. About 40 percent of the completed questionnaires were submitted by the Continuous Care Committee of the United Cerebral Palsy Association of California which distributed questionnaires to its units throughout the state.

Name _____

This is a confidential survey to document certain unmet needs in California.

Address _____

Agency
code

Date _____

**SURVEY OF SEVERELY HANDICAPPED CHILDREN OR ADULTS
OF NORMAL MENTALITY IN NEED OF RESIDENTIAL
CARE, TREATMENT, OR TRAINING**

County of residence _____

Agency
code☐ Male☐ Female Birthdate _____Age at onset
of disability _____

I.Q. (estimated) _____

Education

_____ Years of regular schooling (elementary and high school)

_____ Years of special schooling. (Please indicate type of special schooling: _____)

Employment

Work experience (types and duration) _____

Work potential (after vocational rehabilitation)

0 ☐ Unknown1 ☐ Good (in competitive labor market)2 ☐ Fair ("")3 ☐ Sheltered workshop only4 ☐ Poor or little work potential**Handicaps**

Major _____

Etiology (cause) _____

Other handicaps _____

Seizures: ☐ None ☐ Yes, frequency _____

Medication (present)

0 ☐ NONE1 ☐ Anticonvulsant2 ☐ Tranquilizer3 ☐ Other (please specify) _____

Sensory impairments

0 ☐ NONE or minor1 ☐ Vision _____ ☐ Blind? ☐ Severe uncorrectable vision loss2 ☐ Hearing _____ ☐ Deaf? ☐ Severe uncorrectable hearing loss3 ☐ Serious *speech* problem4 ☐ Other (please specify) _____**Personal care needs**0 ☐ NONE or minimal1 ☐ Help needed regularly for moving about2 ☐ " " " " dressing3 ☐ " " " " toilet4 ☐ " " " " eating5 ☐ Confined to wheelchair6 ☐ Confined to bed major part of day

Important—Please Return Completed Questionnaire by -----**Medical care needs (long-term)**

- 0 ☐ Average medical care needs
 1 ☐ Acute (frequent) medical care
 2 ☐ Intermittent medical care
 3 ☐ Nursing care, acute
 4 ☐ Nursing care, intermittent
 5 ☐ Physical therapy
 6 ☐ Occupational therapy
 7 ☐ Other (please specify) -----

Educational needs

- 0 ☐ NONE
 1 ☐ Elementary or high school
 2 ☐ Vocational training (other than occupational therapy)
 3 ☐ Other (please specify) -----

Family background

		Living with handicapped	
		Age—if living	Deceased
		↓	↓
		Check :	
Mother -----			
Father -----			
Brother	Sister		
<input type="checkbox"/>	<input type="checkbox"/>		
<input type="checkbox"/>	<input type="checkbox"/>		
<input type="checkbox"/>	<input type="checkbox"/>		
<input type="checkbox"/>	<input type="checkbox"/>		
<input type="checkbox"/>	<input type="checkbox"/>		
<input type="checkbox"/>	<input type="checkbox"/>		
<input type="checkbox"/>	<input type="checkbox"/>		
<input type="checkbox"/>	<input type="checkbox"/>		
Others :			

Please summarize present living arrangements, family relationships, problems, financial resources, amounts and kinds of public assistance, reasons for seeking new living arrangements, etc.

Residential need

- 0 ☐ Urgent (immediate or within six months)
 1 ☐ Future, depending on parents' health, family circumstances, etc.

Where is the handicapped now living? ☐ At home? or -----

Comments: -----

Signature -----

Please Return Completed
Questionnaire To:

Title (relation to the handicapped) : -----

Agency -----

Date -----

TABLE 4

**ESTIMATED NUMBERS OF NONINSTITUTIONALIZED PERSONS WHO, BECAUSE
OF CHRONIC CONDITION, CANNOT GET AROUND WITHOUT HELP
BY AGE AND SEX, CALIFORNIA, 1960**

(Figures are subject to sampling variation)

Age and sex	California health survey rate per 1,000 persons per year	California's noninstitutional population 1960	Estimated number of non- institutionalized persons in 1960 who cannot get around without help	Institutionalized population
0-14 years.....	2	4,752,906	9,500	10,789
Male.....	1	2,415,815	2,500	6,627
Female.....	3	2,337,091	7,000	4,126
15-44 years.....	1	6,419,651	7,000	68,249
Male.....	2	3,219,903	4,000	55,154
Female.....	1	3,199,748	3,000	13,095
45-64 years.....	6	3,053,698	18,000	35,707
Male.....	6	1,507,724	9,000	24,477
Female.....	6	1,545,974	9,000	11,230
Total.....		14,226,255	34,500	114,745

Note: Institutions on specified list for exclusion in 1954-55 survey—

1. Hospitals and nursing homes exclusive of county and general hospitals, maternity hospitals, and homes.
2. County hospitals with chronic tuberculosis, psychiatric and custodial care.
3. Veterans Administration facilities for long-term care.
4. Private institutions licensed by Department of Mental Hygiene.
5. Mental hospitals (including mentally deficient).
6. Private institutions for aged persons.
7. 24-hour group care for children.
8. Maternity homes for unwed mothers.
9. Correctional institutions.
10. City and county jails with 50 or more inmates.
11. Youth facilities, exclusive of juvenile camps.

Source: California Department of Public Health, California Health Survey, *Health in California*, Sacramento, State Printing Office, 1957. U.S. Bureau of the Census, *U.S. Census of Population, 1960, Number of Inhabitants*, PC (1)-6A; *Inmates of Institutions*, PC (2)-8A.

TABLE 5

ESTIMATED NUMBERS OF PERSONS CONFINED TO THE HOUSE (EXCEPT IN EMERGENCIES) BECAUSE OF CHRONIC CONDITIONS, BY AGE

CALIFORNIA HEALTH SURVEY, 1960-61
(Figures are subject to sampling variation)

Age and sex	Rate per 1,000 persons per year	Noninstitutional population 1960	Estimated numbers of persons confined to the house (except in emergencies) because of chronic conditions
0-64 years-----	1.8	14,226,255	26,000
0-14 years-----	1.1	4,752,906	5,000
15-44 years-----	2.0	6,419,651	13,000
45-64 years-----	2.6	3,053,698	8,000
Males			
0-64 years-----	1.9	7,143,442	13,500
0-14 years-----	1.7	2,415,815	4,000
15-44 years-----	1.5	3,219,903	5,000
45-64 years-----	3.0	1,507,724	4,500
Females			
0-64 years-----	1.7	7,082,813	12,500
0-14 years-----	0.4	2,337,091	1,000
15-44 years-----	2.5	3,199,748	8,000
45-64 years-----	2.3	1,545,974	3,500

Note: Detail may not add to total because of rounding.

Source: State of California, Department of Public Health, Bureau of Chronic Diseases, California health survey, based on 16-week sample in August-September 1960 and April-May 1961.

Population data are from the U.S. Bureau of the Census, *U.S. Census of Population, 1960, Number of Inhabitants*, PC (1)-6A; *Inmates of Institutions*, PC (2)-8A.

TABLE 6

**ESTIMATED NUMBERS OF SELECTED NEUROLOGICAL AND SENSORY CONDITIONS
CALIFORNIA, 1960, 1965, AND 1975**

Condition	1960	1965	1975
California population.....	15,860,000	18,754,000	24,816,000
Cerebral palsy.....	15,000	18,000	23,000
Epilepsy.....	51,000	60,000	79,000
Minimal cerebral dysfunction.....	187,000	230,000	292,000
(in need of special management).....	(11,000)	(14,000)	(18,000)
Multiple sclerosis.....	3,200	3,800	5,000
Muscular dystrophy.....	1,000	1,100	1,500
Myasthenia gravis.....	500	600	700
Parkinsonism.....	23,000	27,000	35,000
Residual polio.....	16,000	16,000	16,000
Tumors of the central nervous system.....	11,000	13,000	17,000
Vascular lesions affecting the central nervous system.....	35,000	41,000	55,000
Hearing impairments.....	560,000	655,000	850,000
(deaf).....	(10,000)	(11,000)	(15,000)
Speech defects.....	91,000	107,000	143,000
Visual impairments.....	316,000	370,000	482,000
severe.....	89,000	104,000	134,000
(blind).....	(29,000)	(35,000)	(46,000)
All others.....	227,000	266,000	348,000
Mental retardation.....	500,000	600,000	700,000
(moderate, severe and profound).....	(50,000)	(60,000)	(70,000)

Note: The estimated numbers apply to conditions rather than persons. Since a person may have more than one of these conditions, an estimate of the total number of persons affected cannot be obtained by adding the numbers of conditions.

The estimates are subject to sampling variation and, in many cases, this variation may be quite large. Except for the estimated numbers of persons with mental retardation, the estimates shown here should be considered only as conservative indications of the order of magnitude of the problem.

The estimates for multiple sclerosis, muscular dystrophy and myasthenia gravis were rounded to the nearest 100; estimates for mental retardation were rounded to the nearest 100,000, with estimates for moderate, severe and profound mental retardation rounded to the nearest 10,000; all other estimates were rounded to the nearest 1,000.

Source: See California State Department of Public Health, *Neurological and Sensory Diseases in California*, Berkeley, 1964, Chapter II, for a discussion of the sources and reliability of the rates used to prepare these estimates. State of California, Department of Finance, Population Estimates prepared March 1962.

OVERBROOK HALL

By ELIZABETH M. O'DWYER, Executive Director,
United Cerebral Palsy Association of Philadelphia and Vicinity

This article is a résumé of the experience of UCPA of Philadelphia and vicinity in maintaining a residence for cerebral palsied adults.

On May 1, 1955, UCPA of Philadelphia and vicinity opened its home for mild to moderately involved adult cerebral palsied persons. Seven and one-half years later, on December 15, 1962, with the departure of the last resident, the home was closed and the agency's program of maintaining a residential facility was discontinued. This did not imply a discontinuance of concern for the provision of long-term residential care, but rather a decision by the board of directors that the problem could be handled more adequately through other means.

The decision to establish a residential facility was taken only after several years of preliminary study. The question was first raised at the June 1951 meeting of the board of directors. The board requested substantiating data on actual need and methods of financing. The director making the proposal was authorized to gather facts and initiate fund-raising activities with the promise that the board would seriously consider the problem if she and her associates were able to raise \$15,000. This specific figure had no significance other than a test of the genuineness of interest in the establishment of a residential facility.

To determine the amount of concern with the problem of long-term residence, three steps were taken:

(1) Questionnaires were sent to all families known to UCPA as having a member who was cerebral palsied. The questionnaire was planned to elicit information about the number of potential residents, the number who would use a residence immediately if established, and the degree of involvement of both these groups.

(2) Expressions of opinion concerning need and feasibility were requested from members of the medical advisory committee.

(3) A conference of representatives from community agencies offering services to the cerebral palsied was held. The agencies included in this group were St. Christopher's Hospital for Children, Children's Hospital, the Shut-In Society, The Creative Workshop of Philadelphia School of Occupational Therapy, the Visiting Nurse Association, and the Health and Welfare Council. The member of the board who initiated the proposal of establishing a residential home and the executive director served with the committee.

From each inquiry, positive statements regarding the need for adequate residential facilities were received. Members of the medical advisory committee pointed out that the greatest need was for persons requiring custodial-type care but warned the agency against undertaking such a program because of the expense that would be involved. The representatives of local agencies questioned the validity of statistics concerning immediate use which had been obtained by the questionnaires to families. They pointed to two areas of special need, (1) for

children with severe physical and mental involvement needing custodial care and (2) for young adults with relatively mild involvement unable to live alone in the community and ineligible for admission to any of the existing facilities. A thorough survey prior to further planning was recommended. In the meantime, the small group of interested parents had raised \$15,000 through sales of merchandise and solicitation of donations. At its October 1952 meeting the board of directors, in accordance with their agreement, appointed a resident care study committee.

The charge to the committee was twofold:

- (1) To study the problem of resident care for the cerebral palsied.
- (2) To recommend positive action to the board of directors regarding the establishment of a resident home.

Serving on the committee were four directors of UCPA, each of whom had some special interest or knowledge to contribute, the director of one of the larger cerebral palsy clinics who is also a member of the professional advisory committee, a consultant of the Health Division of the Health and Welfare Council, a social worker from an interested agency who had worked with both cerebral palsied children and adults, and the executive director. The Eastern Area Division of the Pennsylvania Citizens Association provided a special consultant.

The committee directed its attention to determination of:

- (1) Need for residential facility for cerebral palsied persons.
- (2) The categories of cerebral palsied persons for whom provisions should be made.
- (3) The extent of the need in each category.
- (4) Sources by which the need might be met.
- (5) Possibilities of financial support from public agencies.
- (6) Sources for private funds if public aid was not available.
- (7) Existing facilities, public and private.
- (8) Other studies on this problem.

The question of need was quickly resolved since all of our hospital clinics and schools reinforced the statements of parent and CP adults regarding an almost complete lack of proper residential care facilities in the Philadelphia area. Existing private facilities were studied. It was found that CPs were not acceptable or that rates were far too high for our parents to meet. Public facilities were inadequate. Private foster homes could handle only a very small number. The public authorities agreed with committee members that provision of residential care should be tax-supported, but pointed out that realistic thinking would suggest that UCPA develop a facility with the hope that it would serve as a pilot project to demonstrate the need, to be supported by public funds at some later date.

Categories of CPs requesting residential services were studied. It was admitted that the greatest need was for CPs with severe involvement, requiring custodial care. However, since both our national organization and studies made in other areas advised strongly against the establishment of a custodial-type residence supported by a private

organization, the committee turned its attention to needs of a second category, the mild to moderately involved for whom no facilities existed. In its final report to the board of directors on November 10, 1953, the committee pointed out that in its judgment provision for resident care of the cerebral palsied is a state responsibility and urged pressure by UCPA of Philadelphia and vicinity for the acceptance by the Commonwealth of Pennsylvania of its responsibility under a law already written but poorly implemented. Continued exploration with private institutions regarding the possibility of their making available part of their facilities for resident care of the cerebral palsied was recommended. However, the committee concluded that in light of the facts uncovered in its study there existed no suitable or adequate public or private facilities for the resident care of the cerebral palsied. It was therefore recommended that the board of directors should seriously consider the establishment of a home under its sponsorship and subsidy. Capital outlay was not considered by this committee but there were included in the report prospective annual operational budgets for homes for (a) 10 or (b) 25 moderately handicapped CP adults and (c) 10 or (d) 25 severely handicapped CP adults. It suggested that since precedents for such a program were unknown, a wise course might be to begin with a residence for the group presenting the least number of problems and requiring the least in expenditures. With the experience thus gained, services might be expanded at a later date.

Upon completion of the study, the board of directors approved the establishment of a residence for mild to moderately involved cerebral palsied persons. A real estate committee was appointed to locate a property. Since the group to be served were mild to moderately handicapped persons, many of whom would be able to travel independently, it was agreed that the property should be located in, or very close to, the city limits with good public transportation facilities nearby, to permit the residents to take advantage of the health, recreational, vocational and social opportunities existing in the community.

The building selected seemed ideal in many ways. It was well located, well constructed and in good condition. A small elevator was already installed. Later we were disappointed to learn that the elevator, while approved for a private residence could not be used for an institution, and must be removed. This was typical of a number of problems related to health and safety requirements. Efforts to obtain information from both state and local authorities regarding standards to be met before the home was opened were without success because the program did not meet any of the existing categories of residences or nursing homes under public supervision. However, after the building was in operation we were constantly troubled by fire, health and safety inspectors and fairly frequent and expensive adjustments were required.

Overbrook Hall was opened on May 1, 1955, with two young adult CPs as the first residents. Eligibility requirements included:

- (1) A diagnosis of cerebral palsy.
- (2) Age between 18 and 45 years.
- (3) Ability to handle self-care needs.
- (4) A medical examination by a physician selected by UCPA to insure objectivity.

- (5) Psychological examination to include a statement regarding ability of the individual to adjust to group living.
- (6) With very few exceptions, ability to manage stairs with a railing.

A basic fee of \$100 per month was established as a trial sum, to be adjusted following experience of costs. However, inability to pay was not a deterrent for admission since adjustments down to the \$59.50 monthly allowance for room and board of the Pennsylvania Department of Public Assistance was acceptable. Occasionally there was a need to keep a resident on a free basis temporarily, pending the processing of the application for public assistance support.

We accepted both temporary and long-term residents. For the long-term resident we anticipated lifetime care but reserved the right to request the family to remove the resident should physical or psychological problems develop that made it inadvisable for the person to remain longer in the residence.

After two years of operation a cost analysis was done under the direction of Mr. Sherwood Messner of the national staff. Results indicated that with full occupancy it should be possible to cover operational costs without subsidizing by the agency if the basic fee was established at \$40 per week. This step was taken. However, very few of the residents were able to pay the full fee. Quite a few were supported by public assistance. Others were employed at modest salaries and paid at a rate which they could afford. Gross costs of operation, income and other financial data will be found in the accompanying analyses.

During most of its operation, Overbrook Hall was staffed with an administrator, cook, two maids and a maintenance man. The administrator, one maid and the maintenance man lived in the building. All were employed on a six-day-week basis. The maids were responsible for laundering and mending clothing of the residents as well as for the usual cleaning and dusting, and for substituting for the cook on her day off. At first, bed linens owned by the agency were used but after a short time renting linens proved more economical. A full-time maintenance man was required even though the heat for the building came from a community central heating firm and caring for the furnace was not a requirement.

The residence program was, from the start, without restriction as to race or religion. One of the most popular residents was a young Negro man who was with us for about four years. Accompanying charts show number of residents, sex, age, geographical distribution and other related data.

In addition to the residence, UCPA of Philadelphia and vicinity offered a broad program of services to the cerebral palsied. The residents participated in academic, recreational and social groups. Those who were potentially employable were tested, trained and placed through the vocational services department. For those needing physical, occupational or speech therapy arrangements were made with local hospitals and treatment centers. Churches of several denominations were nearby.

Living quarters for 20 cerebral palsied persons were available at Overbrook Hall. The building was never fully occupied during the 7½ years of operation. Many of the CP adults and their families who

had expressed great interest and immediate need in the preliminary studies did not make use of the residence after its establishment. They expressed very freely a desire for the existence of a residence as insurance against the time when they might need it, but preferred to continue present living arrangements although these were quite strained in some situations. In an effort to interest more persons, notices were sent to all UCPA affiliates informing them of the availability of this residence for cerebral palsied persons. Later a brochure outlining the unique possibilities of a supervised residence plus vocational evaluation were widely distributed. As indicated in the data on geographical distribution, a number of residents did come from areas outside of Philadelphia. Use of the hall as a vacation resource was suggested but not more than one or two persons took advantage of this opportunity. Occasionally adult CPs requested and obtained permission to remain overnight or spend weekends there. Persons from other cities attending the evaluation unit of our vocational services department lived at Overbrook Hall during their eight-week period of testing. Every effort was made through local and national channels to obtain a full quota of residents, but without success.

During the summer of 1959 a pilot project was carried on to determine the feasibility of admitting persons with more severe involvement. Eight young men and women between the ages of 16 and 30, all non-ambulatory and requiring custodial care, were admitted for a six-week period. Three practical nurses were added to the staff and the living and dining rooms changed about so that a small dormitory for men, and one for women, could be set up on the first floor. At the conclusion of the six-week period there was little room for doubt that handling such clients was impractical in the physical facilities available. Also, we had experienced no great rush of applicants. The fact that this was a temporary program was undoubtedly a contributing factor but a large number of contacts were required before eight persons were enrolled. Original plans had called for 10.

In July 1961 a complete review of all the agency's programs was initiated by the board of directors. The assistance of our national staff was requested. Under the leadership of Mr. Messner a very fine program study committee was assembled. In its report on Overbrook Hall the workshop group stated, "It is difficult to justify this outlay of funds for the relatively few persons who presently qualify for admission and the present function of this facility." Possibilities of using the home for training in domestic science and general homemaking skills for nonresident as well as resident clients, or expansion of the services into a nursing or convalescent-type home were suggested as possibilities warranting further study.

The report of the workshop group was an expression of a concern felt by the board of directors for some time. An ad hoc committee on custodial care facilities had been appointed prior to this study but had been relatively inactive while awaiting the workshop group report. The committee had been appointed to:

- (1) Study and consider facilities and services presently provided by city and state for the care of severely involved cerebral palsied persons and take such action, separately or in conjunction with our state asso-

ciation, as may be needed to improve existing services and facilities or to bring about needed additional services and facilities.

(2) Investigate private facilities and services presently or prospectively available for the care of severely involved CPs and take such action as may be needed to implement the use of such facilities by severely involved CPs.

(3) Study, from the standpoint of capital and operational costs, licensing, zoning and other governmental regulations, the feasibility of making such alterations to the resident home as may be necessary in order that it may accommodate a small number, on a pilot or demonstration basis, of severely involved CPs, and report its findings to the board for its decision and action.

In its final report, submitted to the board of directors on May 9, 1962, the committee made several important statements:

1. It had been found, through various recent studies, that parents of cerebral palsied children increasingly tend not to place them away from home permanently until, or unless, there is a family crisis; that it is proving more satisfactory to keep children in their own homes as long as possible; and that this is increasingly possible if supportive services, including the therapies, day care, recreation, sheltered workshops, homemaker services, etc., are supplied by private or public agencies in the community.

2. Parents have great anxiety as to what will become of their handicapped child if something happens to the family. Often they do not know where to turn for help with the problem and are frequently unaware of any resources except the state schools for the retarded. Their information about these schools is limited and sometimes erroneous and they are frequently unaware of changes in philosophy of administration or program which have taken place in recent years.

3. Experience, and the opinion of professional personnel, indicate the number of severely physically handicapped cerebral palsied with a normal or superior IQ is very limited. The bulk of the problem of long-term care away from home will, therefore, be for the physically handicapped retarded.

4. The committee accepted completely the philosophy that provision of long-term care is essentially a public responsibility, not that of a private agency. It was felt the function of a private agency should be to support (but not financially) county and state agencies which provide long-term care, and to expand and improve their services.

5. Any pilot or demonstration project concerned with custodial care of severely handicapped CPs involves the risk that if the program is not successful the persons whom it was intended to benefit may, actually, be harmed. Having undergone an adjustment in entering the project, they will be forced to undergo another adjustment if it fails or if it is not adequate for the individual. Their participation will merely have forestalled working out a permanent plan, to the disservice of both the persons and the agency involved.

An analysis of number of persons in residence, turnover, and per capita costs showed the direct cost of the program to UCPA to be in the vicinity of \$1,000 per occupant per year. While it was recognized

that the group had benefited substantially from residence at Overbrook Hall, the ad hoc committee was unanimous in the view that the residence should not be continued in its present form—it should either be expanded to include a larger number of residents or else should be discontinued.

Careful attention was given to the feasibility of making changes at Overbrook Hall in order that it might accommodate a small number of severely involved CPs on a pilot or demonstration basis. Studies were made regarding expenditures that would be required to alter and equip the building to accommodate between five and eight severely handicapped persons. Although two state departments were interested and encouraged such a development, repeated and persistent efforts were not successful in obtaining a commitment concerning the exact amount of support the state would allow for providing nursing-home care. The committee felt the expenses involved would substantially exceed the reimbursement, particularly if good quality rather than bare minimum services were provided. The committee, therefore, concluded that it would be unsound to embark on any such expansion or demonstration program. It was agreed that the funds currently being spent on Overbrook Hall would be more wisely used, to the benefit of all CPs requiring custodial care, by concentrating UCPA's efforts on locating and making available adequate foster homes, nursing homes and other facilities more suitable for the provision of custodial care. The ad hoc committee on custodial care facilities therefore recommended to the board of directors of UCPA that after adequate provisions had been made for current residents and staff, Overbrook Hall be closed and the property sold.

The problem of long-term residential care would, thereafter, be the responsibility of the social service department. Continued efforts to locate foster homes and other facilities suitable for custodial care of CPs, counseling of parents concerning the placement of CPs needing custodial care, preparation of a directory of facilities available for long-term care away from home, exploration with UCP of Pennsylvania of the possibility of higher grants by the department of public assistance to institutions or foster homes where an individual needs attendant, but not nursing care, development of a plan, jointly, with the Pennsylvania Association for Retarded Children, Mental Health Association, and Pennsylvania Citizens Association, to aid in improving existing conditions in the state schools were further recommendations of the committee to the board.

The board accepted the recommendations of the committee and proceeded to implement them. Satisfactory arrangements for the CPs then residing at Overbrook Hall were made by the social service department. This required several months of quite intensive search and the cooperation of a number of other local agencies. A primary problem was the limited financial resources of the residents.

Overbrook Hall was closed on December 15, 1962, and the property has subsequently been sold.

In the opinion of the board of directors and staff of UCPA, Overbrook Hall served as an interesting demonstration of the value of a noninstitutional type of residence for cerebral palsied persons of mild to moderate disability. It was felt that placement of the last group of

residents in the situations located for them was possible primarily because of the social and emotional adjustments they had made during their period of residence. Overbrook Hall served as a "halfway house" for persons leaving their paternal homes but not ready to move into unsupervised living in the community. For example, one client was more happily acceptable in the home of his mother and stepfather because he had learned to use public transportation and gained a greater degree of self-sufficiency. We feel the basic idea of such a program is good, particularly if, as in Philadelphia, resources for vocational, recreational and health services can be integrated with a residential program but we are convinced that the cost of maintaining such a unit makes this activity impractical for a private agency. The establishment of such residences on a tax-supported basis might well yield gratifying results in salvaging mild to moderately involved cerebral palsied adults from a lifetime of institutional placement.

ANALYSIS OF RESIDENTS

May 1, 1955–December 15, 1962

1. Number individual residents	60	2. Planned length of stay		
Male	34	Permanent		26
Female	26	Temporary		34
3. Referred by		4. Age on admission		
UCPA, Philadelphia	22		Male	Female
UCPA, other affiliates	5	Under 18	2	4
Parents	11	18-24	15	10
Relatives	8	25-29	8	4
Friends	2	30-34	4	7
Self	6	35-40	2	0
Other agencies	6	Over 40	3	1
5. Previous place of residence		6. Educational background		
Philadelphia area	44		Male	Female
Pennsylvania—other		No formal schooling	3	2
counties	9	Special class	9	3
Other states		1st to 6th grade	3	3
Massachusetts	1	6th to 8th grade	3	4
Michigan	1	Completed elemen-		
New Jersey	1	tary	5	4
New York	1	8th to 12th grade	1	1
North Dakota	1	Completed secondary	8	7
Ohio	1	College (1 year)		2
Vermont	1	Completed college	2	
7. Actual length of stay				
		Male	Female	
Less than 6 weeks	4	1		
6 to 8 weeks	12	10		
2 to 6 months	5	7		
6 to 12 months	3	3		
1 year	1			
2 years	3	2		
3 years	1	2		
6 years	4 *	1 *		
7 years	1			

* Two men and one woman left residence—returned after interval.

8. Admissions by years

	1955	1956	1957	1958	1959	1960	1961	1962	Total
Male	5	7	0	3	10	5	2	2	34
Female	3	3	0	4	4	3	4	5	26
Total	8	10	0	7	14	8	6	7	60

9. Disposition

	Male	Female
Married	3	2*
Living independently	7	5
With relatives	19	14
Hospitalized	1	1
Other institutions	2	1
Other homes	1	3
Deceased	1	-

10. Amounts paid monthly for room, board and laundry:

Monthly payments	Fiscal year and basic rate									
	\$100 per month					\$172 per month				
	1955	1956	1957	1958	1959	1960	1961	1962	1963	
80	-	1	-	-	-	-	-	-	-	-
90	-	-	1	-	1	1	-	-	-	-
100	-	-	-	-	1	-	-	-	-	-
110	-	1	-	-	-	-	-	-	-	-
120	-	1	-	-	-	-	-	-	-	-
130	-	1	2	8	7	6	4	5	3	
140	2	2	4	1	-	1	2	2	2	
150	1	-	-	-	1	1	2	1	2	
160	-	-	-	-	-	-	-	-	-	
170	1	4	5	4	1	1	1	-	-	
180	-	-	-	1	1	-	-	-	-	
190	-	-	-	-	1	-	2	-	-	
200	-	-	-	-	-	-	-	-	-	

NOTE: All figures have been rounded off to nearest 10 for convenience.

Figures represent monthly levels only. Period of residence varied from one week to full year.

Most of residents paying \$170 (actual \$172) per month spent eight weeks at Overbrook Hall while being evaluated in vocational services department.

* Married to two of men in residence.

OVERBROOK HALL—STATEMENT OF EXPENSES, RECEIPTS AND NET COST TO UCFA—FEBRUARY 11, 1964

	1951-52	1952-53	1953-54	1954-55	1955-56	1956-57	1957-58	1958-59	1959-60	1960-61	1961-62	1962-63	1963-64	Total
EXPENSES														
Operational														
Salaries				\$2,972	\$9,103	\$10,791	\$13,255	\$15,253	\$14,624	\$15,176	\$11,293	\$2,319	0	\$94,876
Food				910	3,822	5,131	6,462	7,051	6,171	6,026	4,831	825	0	41,229
Household				308	1,065	2,029	1,837	3,004	2,756	1,572	1,050	185	0	13,746
Repairs and replacements				1,137	927	1,163	3,052	2,024	3,765	1,654	675	380	\$108	14,885
Fixed charges ¹				1,236	1,404	1,544	2,383	2,814	2,279	2,461	2,141	1,336	23	17,621
General office expenses ²				466	677	771	772	640	260	280	229	56	0	4,151
Miscellaneous ³				1,806	926	1,103	0	0	561	420	374	95	44	5,329
Total operating expenses				\$8,835	\$17,954	\$22,532	\$27,761	\$30,786	\$30,416	\$27,589	\$20,593	\$5,196	\$175	\$191,837
Long-term														
Building				\$32,523	0	0	0	0	0	0	0	0	0	\$32,523
Additions and improvements				5,331	\$7,460	\$2,989	0	0	0	0	0	0	0	15,780
Furnishings				8,269	2,445	1,404	0	0	(\$1,389)	0	0	0	0	10,669
Total long-term expenses				\$46,063	\$9,905	\$4,393	0	0	(\$1,389)	0	0	0	0	\$58,972
Grand total expenses				\$54,898	\$27,859	\$26,925	\$27,761	\$30,786	\$29,027	\$27,589	\$20,593	\$5,196	\$175	\$250,809
RECEIPTS														
	\$6,236	\$5,322	\$1,268	\$23,570	\$11,962	\$19,647	\$18,126	\$11,711	\$16,371	\$13,845	\$11,815	\$3,779	\$25,196	\$168,848
Net cost to UCFA	(\$6,236)	(\$5,322)	(\$1,268)	\$31,328	\$15,897	\$7,278	\$9,635	\$19,075	\$12,656	\$13,744	\$8,778	\$1,417	(\$25,021)	\$81,961

¹ General supplies, laundry, grounds.² Heat, gas, electricity, water and sewer, insurance.³ Telephone, office supplies, social security taxes.⁴ Client's examination, clothing, transportation, etc.⁵ Includes special pilot project study.⁶ Furnishings discarded, worn out, lost, etc. Taken off books.⁷ Includes room and board, garage rent, donations for women's council chapters, bazaar and apron sales, etc. All operational and capital income included.

FINAL REPORT OF THE
SENATE FACTFINDING COMMITTEE ON
LABOR AND WELFARE
ON THE
NEED FOR RESIDENTIAL CARE OF
SEVERELY HANDICAPPED CHILDREN AND ADULTS
OF NORMAL MENTALITY



Members of the Committee

VERNON L. STURGEON, *Chairman*
HOWARD WAY, *Vice Chairman*

CLARK L. BRADLEY
JAMES A. COBEY
ALBERT S. RODDA
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RUTH M. BOYD, *Secretary*

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GLENN M. ANDERSON
President of the Senate

HUGH M. BURNS
President pro Tempore

JOSEPH A. BEEK
Secretary

LETTER OF TRANSMITTAL

SENATE CHAMBER, STATE CAPITOL
Sacramento, April 5, 1965

HON. GLENN M. ANDERSON,
President of the Senate
Senate Chamber, State Capitol
Sacramento, California

Mr. President:

Pursuant to Rule 12.5 of the Permanent Rules of the Senate and Senate Resolution No. 56 read and adopted June 21, 1963, at the regular session of the Legislature, the Senate Factfinding Committee on Labor and Welfare submits its final report on our study of the needs for residential care of severely handicapped children and adults of normal mentality.

We are indebted to so many individuals, private groups, and governmental agencies for their unstinting cooperation with us in this study that it is impossible to give them here the public acknowledgment that they so richly deserve. We are sure, however, that the enactment of the recommended pilot project by this session of the Legislature would be the most appropriate way to not only meet the great needs herein detailed but would also demonstrate California's deep appreciation to these people.

Respectfully submitted,

VERNON L. STURGEON, *Chairman*
HOWARD WAY, *Vice Chairman*
CLARK L. BRADLEY
JAMES A. COBEY
ALBERT S. RODDA
JACK SCHRADE (with reservations)
ALVIN C. WEINGAND

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SUMMARY OF FINDINGS AND RECOMMENDATIONS

1. Of the 20,000 mentally normal, severely physically handicapped persons in California who live outside hospitals and other institutions, 500 or so lack adequate residential care services.
2. The bulk of these handicapped who need more suitable living arrangements are probably young—in their late teens and early twenties, currently being cared for by their parents or siblings, and in need of residential care because their relatives can no longer adequately provide it.
3. The parents of these handicapped children and adults, the communities they live in, and the state generally have no positive, direct means by which to provide even the most urgently needed residential services. The consequent fiscal waste of diverting other resources to meet at least part of these needs is great and the human waste intolerable.
4. The Legislature is therefore urged to establish a pilot project of four years duration to determine more accurately the needs for residential care services, how best to provide them, and to furnish some immediate relief to many of those who now so desperately need assistance (see Senate Bill No. 934, Appendix A, page 17).

COMMITTEE STUDY

For years the Legislature of the State of California has shown consistent concern about many of the problems faced by physically handicapped persons of normal mentality and the concomitant problems of these individuals' parents and communities. Only sporadically, however, has legislative attention been focused on the adequacy of living arrangements.

In 1943 the Legislature adopted Assembly Concurrent Resolution No. 30, which directed the State Department of Public Health to study the unmet needs of the physically handicapped. The department's ensuing report stated that "... severely handicapped persons are more efficiently cared for in institutions separated from mentally defective persons. . . .," and it recommended a statewide program for the care and education of children with cerebral palsy. In 1947 the Legislature requested the department to study the existing programs and facilities for the care, treatment, and training of the physically handicapped (ACR 36) and, again, the department reported, in 1949, a serious problem existed because of the lack of suitable living arrangements for the nonaged physically handicapped.

Bills were introduced in both the 1949 (SB 1033) and 1951 (SB 1434 and AB 3345) sessions of the Legislature to provide for state-run residential care facilities, but none achieved passage. And, as the attention of the Legislature from 1951 to 1959 shifted to other problems of the handicapped, (*e.g.*, educational programs, vocational training, physical rehabilitation, diagnostic services, financial assistance through public welfare) the problems relating to residential care were largely bypassed and all but forgotten.

In 1961, however, Senate Resolution No. 155, requesting a fact-finding committee to study residential care needs specifically, was adopted. Although the Senate's Factfinding Committee on Labor and Welfare received this authorization too late in the 1961-63 interim period to complete and report on such a study, late in 1962 we did begin working with the State Coordinating Council on Programs for Handicapped Children to develop a definition of "severely handicapped children and adults of normal mentality" and with the State Department of Public Health for a new study of this field. The committee also introduced Senate Resolution No. 56 during the 1963 session, which was subsequently adopted, to continue authorization for the study for another two years.

The Neurological and Sensory Disease Project in the State Public Health Department (now called the Neurological and Sensory Disease Control Program) in 1963 implemented a tripurpose study to:

1. Determine the number of severely physically handicapped children and adults of normal mentality with currently unsatisfactory living arrangements;
2. Identify existing sources of residential care; and

3. Offer whatever recommendations it determined were appropriate and necessary to satisfy any unmet needs that were discovered for such care.

The department's report was completed in early December 1964. After reviewing it with the department, the committee submitted it to the Senate, it was published and copies were forwarded to all organizations and individuals who had expressed an interest in this subject. A public hearing was held by the committee on January 27, 1965, in Sacramento, at which all witnesses and persons who submitted written material for the committee's consideration supported the principle of the four-year pilot project proposed by the department (the department's report appears as Appendix B, page 19).

WHAT IS THE PROBLEM?

In defining the group to be studied, the department took the definition developed by the Coordinating Council on Programs for Handicapped Children and modified it slightly. Thus, for the purpose of their study and this report, a "severely handicapped child or adult of normal mentality":

Has a chronic physical handicap;

Is dependent upon others for his daily care and well-being;

Is below age 65;

Does not have mental or emotional problems so severe as to qualify him for services of the State Department of Mental Hygiene; and

Does not have a major handicap of blindness, deafness, or tuberculosis.

This excludes, of course, persons who, in spite of their permanent handicaps, are able to care for themselves and persons with temporary handicaps.

There are currently in California about 20,000 mentally normal, severely physically handicapped persons who would come within the department's definition and who live outside hospitals and other institutions (see Appendix B, page 25). This is a significant increase above the less than 14,000 such individuals reported in the department's 1949 study. Among the current group, the department estimates, are probably fewer than 500 persons in urgent need of long-term residential care services. Some of these individuals are in need because they and their families lack the financial resources with which to purchase needed services. Others lack such services because of the great shortage of appropriate private or public facilities. And many handicapped persons, and their immediate families who are now capable of caring for them at home, are highly anxious about the day when, because of the aging or death of the parents, they too will be in dire need of residential care services.

WHO IS AFFECTED?

Specific data concerning severely handicapped persons of normal mentality, their families, and the impact they have on their local communities and the state are only vaguely known in aggregate. The study by the State Department of Public Health has helped fill this void to some extent. Additionally, the committee has received many accounts of particular cases directly from the handicapped and their families or friends. However, the total numbers of persons affected, their medical diagnoses and residential care needs, and the precise methods by which they are able to be integrated into the community are only dimly suggested shadows.

The handicapped individual

By study definition, the ages of the severely disabled persons range from infancy to 64 years. Responses to the department's questionnaire (giving a median age of 20 years) and records of persons applying unsuccessfully for admission to Pacific State Hospital for the mentally retarded (showing a median age of 15.5 years) would indicate that it is a relatively young population which is in need of more suitable living arrangements. Data from these two sources also suggest that there is probably no significant preponderance of one sex over the other. The principle causes of disability would seem to be cerebral palsy, multiple sclerosis, muscular dystrophy, birth defects, accidents, polio, uncontrolled epilepsy, and in the persons of older age, cardiovascular accidents (strokes).

It would appear that a great preponderance of the severely physically handicapped are living and cared for in the home by parents, firstly, or, secondly, by siblings. The Department of Public Health estimates that in mid-1964 only 2,000 persons under 65 years of age (6.2 percent of the 36,711 total patients) were living in nursing homes and about 1,000 under 65 (3.7 percent of the total residents) in boarding homes (see Appendix B, page 42). Responses to the department's questionnaire indicated that in 303 of 323 cases, the handicapped individual was living at home; 253 with one or both parents (or stepparents), 18 with spouses, 16 with relatives other than parents, and 16 by themselves. And data from the records tabulated by Pacific State Hospital show that of the 21 persons applying for admission who were rejected in spite of their critical need for adequate residential care because they were of normal mentality, 18 were living in noninstitutional settings (12 in their parents' home, two with other relatives, and four in foster homes) and only three were institutionalized.

The causes generating the need for residential care of the severely handicapped person can be numerous and are probably interrelated. There may be no one in the home who is capable or willing to furnish the services needed. There may be a lack of funds with which to purchase out of the home care or, more likely, there may be a lack of facilities offering care appropriate to the person's age and needs.

There may be lacking the opportunity to achieve maximum self-development or self-care through medical, educational, therapeutic, rehabilitative, and vocational services or training. There may be, particularly on the part of the young adult handicapped person, the natural compulsion to "get out on his own" as much as possible; a drive which in itself is often upsetting to parents and their maturing children who haven't the unusual dependency problems as are faced by the severely handicapped. Or there may be other emotional problems caused or accentuated by the dependency of the stricken individual.

Again, however, only educated guesses—only a working from the known specifics in a few cases to the unknown generalities for a majority of cases—can currently be made as to the causes of the need for more satisfactory and adequate residential care. Much yet remains to be learned.

The parents of handicapped individuals

It is probable that a majority of the severely handicapped children and adults of normal mentality are given residential care by their parents (or other relatives) and it seems highly likely, from the data discussed above, that most of those handicapped individuals who are now in urgent need of more appropriate care are living with their parents. If these assumptions are substantially accurate, the parents of the severely disabled person are intimately involved and affected by his residential care problems. In fact, it would often seem that the parents' inability to continue furnishing such care, either because of their death, their inability to handle the physical work involved, or their buckling under the unrelenting emotional strain of the situation, is the prime cause leading to the need for new living arrangements.

Further, as the department's report emphasizes, parents normally feel great concern about the future of their handicapped child, especially that time when they will no longer be capable of providing him the necessary care. This reaction has been rather firmly confirmed, in the department's view, by the Overbrook Hall experience of the United Cerebral Palsy Association of Philadelphia. After operating this residential facility for $7\frac{1}{2}$ years, the association closed it due to underutilization because "They (the cerebral palsied and their families) expressed very freely a desire for the existence of a residence as insurance against the time they might need it, but preferred to continue present living arrangements, although these were quite strained in some situations" (Appendix B, page 54).

Generally, if sketchy information about the needs of the handicapped person is known in overall terms, even less is known about their parents.

The community

Local communities, voluntary health and welfare bodies, and city, county, and special district agencies are immediately affected by the overall problems of the severely physically handicapped. In the fields

of medical care and hospitalization, income maintenance and social service programs, physical and vocational, rehabilitation, recreational activities, basic education, sheltered workshops, day care centers, and homemaker and visiting nurses services, the communities of California are daily working with many of the handicapped individuals to assist them in meeting their needs. Little if anything is being done, however, to meet head-on the problem of residential care.

As a result, county hospital geriatric wards and boarding and nursing homes for the aging become the permanent residences of disabled youths in their teens and twenties; residential educational facilities keep the handicapped long past the time required for profitable educational purposes; daycare facilities are used when only full-time residential services would meet the need; specialized residential institutions in the few places they exist are prohibitively overburdened with admission requests or inadequate budgets. Thus existing community resources are diverted from their main, their most efficient, and their usually heavily demanded purposes simply because more appropriate alternative sources of residential care services do not exist. The costs of doing so, on both humane and fiscal bases, is undoubtedly extravagant.

The State

To some lesser extent, the residential care needs of the physically handicapped affect state government as they do the local community. The state's only major program incorporating residential care (excluding the penal programs)—the hospital system for the mentally ill and retarded—has constant demands placed on it to provide care for the physically but non-mentally handicapped. The two state schools for cerebral palsied, which provide residential care necessary only to their prime functions of educational, treatment, and diagnostic services, are subject to the same pressures. And increasingly the Aid to the Totally Disabled public assistance program is being brought face to face with the residential care needs of its recipients although the most it can currently offer is income maintenance and some social casework counseling.

The greatest problem for the state, however, is the one which has consistently been allowed to slip from our clear focus, to slide from our firm grasp: the primordial responsibility of the state for the health and welfare of its citizens. There has been no indication that the handicapped persons themselves or their parents and families or the local communities have been or are desirous of evading their responsibilities. The meeting of its duty by the state, however, is still very much at issue.

WHAT IS THE SOLUTION?

Initially, the State Department of Public Health has cautioned, "Handicapped individuals have varying needs; there seems to be no single 'solution' appropriate to a large portion of the severely handicapped population" (see Appendix B, page 30). This warning must

be considered in weighing each of the possible solutions listed below to remedy the needs for residential care services required by handicapped persons.

Do nothing

Doing nothing, of course, could hardly be classified as a "solution" to the problem. Such a continued lack of action on the state's part, considering the pressure for additional services from a multitude of deserving sources coupled with the grave shortage of funds with which to finance already existing programs, constitutes a very real, perhaps likely possibility. Furthermore, the difficulty of "building a case" for the relatively tiny group of 400 to 500 individuals who are estimated to be in immediate need of residential services only confirms this possibility.

Counterbalancing, and in the committee's judgment outweighing the route on inaction, however, is the hard, cold fact that an agonizing and costly problem exists which the individual handicapped person, his family, and his local community are victims of and are powerless to solve. Counterbalancing and outweighing the route of inaction is the probability that the numbers of those individuals, families, and communities will grow, both in absolute numbers and in proportion to the total population, as the science of medicine adds years to the lives of the handicapped but cannot unaided add life to those years. Above all, counterbalancing and outweighing the route of inaction must be the basic integrity of our form of government; a system which is neither mob rule, motivated solely by the hue and cry of the many, nor is despotic, activated only by the will and for the good of the few; but rather a system in which our policies must be responsive as well as responsible, our representatives leaders as well as followers, our programs just as well as expedient.

Build new facilities

At the other end of the scale from doing nothing would be the construction of a facility or facilities by the state for the long-term residential care of the severely physically handicapped. This possible solution, likewise, is fraught with problems and possibly would create more than it would solve. Initially such an approach would present a most inflexible solution in terms of the geographic location of the centers of residential care and the estimated localities where the handicapped and their families live. Such a facility even if built to the most functional design for and humane operation of an institution, would be capable of rendering only a relatively limited type of residential care. For these reasons alone, the concept of institutionalization is being discarded in many other fields as mental health, foster care, and even acute and chronic hospitalization. Furthermore, institutions would require the most profligate use of personnel and of funds for both capital and operational purposes. Lastly, from the viewpoint of the vast majority of the handicapped and their families, institutionalization is probably unnecessary and

undesirable. It is unnecessary because many of the handicapped can live with their families, friends, or even independently if they are provided the particular care they need. It is undesirable because institutionalization often can produce emotional side effects which deter self-care rehabilitation.

Convert existing facilities

Tentative proposals were made to the committee suggesting the conversion of or additions to the Schools for Cerebral Palsied Children in Northern and Southern California (San Francisco and Los Angeles) so that long-term residential care could be offered in addition to the educational, diagnostic, and treatment services already provided. If needed residential care services could best be furnished through an institution-type facility for at least a significant number of handicapped, this proposal would appear superior to that requiring the construction of an entirely new facility. As emphasized above, however, there is currently little demonstrated need specifically for institutional-type care. This with the inherent weaknesses of institutionalism makes the alteration of existing facilities an inappropriate solution.

Expand the ATD program

It would be possible, as a solution, to expand the Aid to the Totally Disabled program to provide recipients with more money with which to purchase residential care services from private sources. Firstly, there is no assurance that such care in suitable facilities or through appropriate means is available at all. In fact, it would seem that the lack of money to purchase care is not as much a problem as is the shortage of the sources of services themselves. Secondly, this possible solution would also present the problem of a high degree of inflexibility. Once the statutes governing ATD were amended, it is probable such a change would be enduring whether it met the problem of residential care needs or not. Too little is known about these needs to warrant such a permanent change in the ATD program. Thirdly, although the inclusion of money for residential care under ATD would be very costly—about \$1,100,000 cost to the state and \$190,000 cost to the counties on a yearly basis as estimated by the State Department of Social Welfare—no help could be provided nonindigent persons through this source.

Pilot project

The State Department of Public Health has recommended the establishment of a pilot project for four years to, first, more accurately determine the extent of need of severely handicapped persons of normal mentality for residential care services and second, to determine how best to meet those needs. The department contends, and the committee agrees, that such a limited project would: provide reliable information on the number of persons who need residential care services, what kinds of services are needed, and what those services cost; flexibly

meet the differing needs of individuals; effectively utilize the individual's resources and the services and facilities already available in his community; and permit differing approaches and the changing of such methods in meeting residential care needs.

The pilot project proposal would be limited in size—an estimated maximum caseload at any one time of 100 cases, in location—two areas of the state, and in financial resources—a four-year total of \$550,000 for administration and purchase of services. Under it, however, the department would be authorized to provide necessary medical and social evaluations and to purchase services from private physicians and allied health personnel, homemaker services, attendant care in the home, foster home care, and residential care in other appropriate facilities. The project would be directed to cooperate with local health departments and other community agencies and with the State Departments of Rehabilitation and Social Welfare. Furthermore, the project would be required to utilize existing family and community resources to provide needed services, as the department does in the Crippled Children's program, before using project funds. Lastly, the project would terminate on June 30, 1969, and the department would be required to submit to the Legislature a preliminary report by January 31, 1967, and its final report by the 30th calendar day after the commencement of the 1969 Regular Session of the Legislature.

In spite of the shortcomings of such a pilot project as far as providing long-term assistance on a universal basis and in spite of the **current** extraordinarily difficult fiscal position of state government, the committee urges the prompt adoption of Senate Bill No. 934 (see Appendix A page 17) by the Legislature. This bill is being introduced to implement the recommendations initially proposed by the State Department of Public Health; recommendations which were supported in principle by all witnesses who testified to the committee. Through the passage of SB 934 the Legislature will not only be enabled more surely to evaluate the needs for and best means of providing residential care services, but we will also furnish immediate relief to many of those who now so desperately need assistance.

APPENDIX A

SENATE BILL NO. 934

Introduced by Senators Sturgeon, Way, Bradley, Cobey, Rodda,
and Weingand

(Senate Factfinding Committee on Labor and Welfare)

An act to add Article 3.3 (commencing with Section 310) to Chapter 2, Part 1, Division 1 of the Health and Safety Code, relating to a handicapped persons pilot project, and making an appropriation therefor.

The people of the State of California do enact as follows:

SECTION 1. Article 3.3 (commencing with Section 310) is added to Chapter 2, Part 1, Division 1 of the Health and Safety Code, to read:

Article 3.3. Handicapped Persons Pilot Project

310. The State Department of Public Health shall initiate and carry out a pilot project in two areas of the state for the purpose of determining the extent of the needs of severely handicapped persons of normal mentality for residential care and to determine how best to meet these needs.

310.1. In conducting the pilot project, the state department shall provide necessary medical and social evaluations and coordinated residential care, treatment and training services, which will encourage and assist handicapped individuals to achieve their maximum potential for independence and personal development.

The services may include, but shall not be limited to, medical and social evaluations, homemaker services, attendant care in the home, foster home care, and residential care in appropriate facilities. Institutional care shall, however, be limited to care of persons so severely handicapped that other care or services would be inappropriate.

310.2. The state department shall make the services available to a handicapped person or his family if the services are needed to alleviate a substantial impairment to the normal functioning of the individual or the family unit.

310.3. The services shall be purchased from private physicians, allied health personnel and from local governmental and volunteer agencies in accordance with policies and standards established by the state department. New residential facilities for the care of handicapped individuals shall not be constructed with any of the state funds which are made available to the state department for the pilot project.

310.4. The state department shall determine from the pilot project the extent of the need for the various services, the costs of providing the

necessary services, and the benefits which would be derived from providing the services to handicapped persons.

310.5. The pilot project shall be limited to a period of four years. Services shall be provided as a part of the project to caseloads in the two areas of the state selected by the state department for the project.

310.6. The state department shall establish such policies and standards for the pilot project as it determines are necessary to carry out the purposes of the pilot project and it shall exercise administrative supervision of the services which are provided as a part of the project.

310.7. The state department shall provide medical and administrative direction to the project staff. The project director and other project personnel shall cooperate with personnel of local health departments and other appropriate agencies, both public and voluntary.

310.8. Existing community services, facilities, resources, and funds shall be utilized whenever possible in carrying out the pilot project in order to conserve the state funds which are made available for the project. The resources of the handicapped individual or his family, such as income and savings, health insurance, disability benefits, workmen's compensation, or other assistance, shall be fully utilized before state funds which are made available for the project are used.

310.9. The pattern of the physically handicapped children services programs shall be used by the state department as a guide in establishing standards, medical and financial eligibility, and in the authorization and purchase of necessary services and supplies.

311. The state department shall establish such eligibility criteria for the services which are provided by the pilot project as it determines are necessary to carry out the purposes of the project. It shall work with the Department of Social Welfare, the Department of Rehabilitation, and other appropriate governmental and private agencies and organizations to develop individual programs of care and rehabilitation and to plan for the future care of each individual for whom services are rendered as a part of the field project in accordance with such person's needs and potential.

311.1. The pilot project shall terminate June 30, 1969. The state department shall submit a preliminary report on the findings of the pilot project to the Legislature by January 31, 1967, and a final report and its recommendations to the Legislature on or before the 30th calendar day after the commencement of the 1969 Regular Session of the Legislature.

SEC. 2. The sum of \$550,000 is hereby appropriated from the General Fund to the State Department of Public Health for expenditure, without regard to fiscal years, for the pilot project which the department is required to initiate and carry out by Article 3.3 (commencing with Section 310), Chapter 2, Part 1, Division 1 of the Health and Safety Code. The sum appropriated by this section shall, however, be reduced by the amount of any appropriation which the Federal Government may make to the state for the pilot project authorized under such article.

APPENDIX B

**NEED FOR RESIDENTIAL CARE OF
SEVERELY HANDICAPPED CHILDREN AND ADULTS
OF NORMAL MENTALITY**

REPORT TO THE
SENATE FACTFINDING COMMITTEE ON
LABOR AND WELFARE

by

Bureau of Chronic Diseases
State Department of Public Health

DEPARTMENT OF PUBLIC HEALTH

December 3, 1964

HON. VERNON L. STURGEON, *Chairman*
Senate Factfinding Committee on Labor and Welfare
State Capitol, Sacramento

DEAR SENATOR STURGEON:

We are pleased to submit this report on the need for residential care, treatment, and training of severely handicapped persons of normal mentality. It was prepared in response to Senate Resolution No. 56 which was adopted June 21, 1963.

The generous cooperation of many individuals and organizations throughout the state was of considerable help in preparing this report and is greatly appreciated.

The findings and recommendations of this study are presented for consideration by your committee as a possible means for meeting some of the residential needs of mentally normal persons who are not able to care for themselves.

Respectfully submitted,

MALCOLM H. MERRILL, M.D.
Director of Public Health

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SENATE RESOLUTION No. 56

By Senators Cobey, Sturgeon, Rattigan, Rodda, and Weingand (at the request of the Senate Fact Finding Committee on Labor and Welfare):

Relating to continuation of a study by the Senate Fact Finding Committee on Labor and Welfare of the need for residential care, treatment, and training of severely handicapped children and adults of normal mentality

WHEREAS, The Rules Committee of the California State Senate referred to the Senate Fact Finding Committee on Labor and Welfare Senate Resolution 155 of the 1961 General Session, which authorized a study of the need for residential care, treatment, and training of severely handicapped children and adults of normal mentality; and

WHEREAS, The Senate Fact Finding Committee on Labor and Welfare has initiated a study to specifically define "severely handicapped children and adults of normal mentality"; to secure the assistance of the California Department of Public Health in conducting a survey to determine the numbers and need for care of persons within this definition; and to identify and evaluate applicable services currently available through federal, state, and local governmental and private sources; and

WHEREAS, The development of such information will permit the Senate Fact Finding Committee on Labor and Welfare to evaluate the necessity, desirability, and financial feasibility of coordinating or revising existing programs and services and establishing pilot projects or other new means to satisfy unmet needs, and to then report to the Senate its findings and recommendations; now, therefore, be it

Resolved by the Senate of the State of California, That the Senate Fact Finding Committee on Labor and Welfare is authorized to continue its study of the need for residential care, treatment, and training of severely handicapped children and adults of normal mentality and report its findings, together with any recommendations for legislation, to the Senate the 30th calendar day of the 1965 General Session of the Legislature.

Resolution read, and referred to Committee on Rules.

—State of California, *Senate Journal*, February 13, 1963, p. 394.

I. SUMMARY

Among the 18 million Californians, a substantial number have very severe physical handicaps. Some are in urgent need of suitable places to live; others are concerned, or cause their families concern, about the future when their parents or other relatives will no longer be able to care for them.

About 20,000 mentally normal, severely handicapped persons under age 65 in this state live outside of hospitals or other institutions. Most have developed satisfactory living arrangements on their own, with their families, or with public assistance. Some, however, are in urgent need of new, long-term residential care services. On the basis of the best information presently available, it appears that there are fewer than 500 such persons. The provision of services through a pilot project could determine the number of persons in urgent need of new, long-term residential care services, and the kinds and amounts of services needed.

Some private facilities exist but their costs are considerably more than most families can afford. Public facilities are generally limited to persons in financial need of public assistance. Very little in the way of services is available to persons who are not indigent but who cannot afford the full costs of private services.

The State of California provides for residential care, treatment and training of physically handicapped persons who are retarded or mentally ill. Comparable services are needed for the severely handicapped who are mentally normal.

The provision of such services by the State of California would alleviate many serious social and psychological problems of the handicapped and their families. It would also probably enable some handicapped persons to achieve partial or complete independence through rehabilitation and training programs, and thereby tend to offset public expenditures required for the care of this group of handicapped persons.

II. RECOMMENDATIONS

To determine accurately the extent of needs of severely handicapped persons of normal mentality for residential care, treatment, and training, and to determine how best to meet these needs, the California State Department of Public Health recommends that:

I. The State Department of Public Health initiate a pilot project that would obtain accurate data by providing necessary medical and social evaluations and coordinated residential care, treatment and training services. These services would encourage and assist handicapped individuals to achieve their maximum potential for independence and personal development.

A. Services would be made available to a handicapped person or his family when such services are needed to alleviate a substantial impairment to the normal functioning of the individual or the family unit.

B. Services would be purchased from private physicians, allied health personnel, and from local governmental and voluntary agencies in accordance with policies and standards of the pilot project. Such services may include medical and social evaluations, homemaker services, attendant care in the home, foster home care, long-term residential care in appropriate facilities, or other services as authorized under the project.

C. Institutional care on a long-term basis would be limited to those persons so severely handicapped that other care or services would be inappropriate. Construction of new residential facilities for this purpose would not be within the scope of the pilot project.

II. The pilot project would determine the extent of the need for various services, the costs, and the benefits to be derived by providing services and by additional investigations and surveys.

III. The pilot project would be carried out by the Department of Public Health as outlined below:

A. The pilot project would be limited to four years' duration.

B. Services would be provided to a caseload in two areas of the state estimated not to exceed 100 handicapped persons at any one time and the project authorized annual expenditures of up to \$100,000 during the first and fourth years and up to \$175,000 during the second and the third year.

1. The California State Department of Public Health will establish standards for and exercise administrative supervision of services provided by the project.

2. The department will provide medical direction to project staff. The project director and other project personnel will cooperate with personnel of local health departments and other appropriate agencies, both official and voluntary.

3. Existing community services, facilities, resources and funds will be utilized whenever possible so as to conserve project funds. The resources of the handicapped individual or his family, such as health insurance, disability benefits, compensation, or other assistance, will be fully utilized before project resources are used, as in Crippled Children Services. Financially independent individuals or families, for example, may be offered only counseling services if such services are needed and are not otherwise available.

The project will contract with local health or welfare agencies, private physicians, nursing homes, or others to provide necessary additional services. (The pattern of the Crippled Children Services program in establishing standards, medical and financial eligibility, and in the authorization and purchase of needed services will be used as a guide.)

4. The California State Department of Public Health will assume responsibility for establishing eligibility criteria for services. The department will work with the Departments of Social Welfare, Rehabilitation, and with other appropriate agencies and organizations to develop individualized programs of care and rehabilitation and to plan for the future care of each individual in accordance with his needs and potential.

IV. The project shall terminate on June 30, 1969, and the Department of Public Health shall submit a preliminary report on the findings of the pilot project by January 31, 1967, and a final report and its recommendations to the Legislature on or before the 30th day after commencement of the 1969 Regular Session.

III. INTRODUCTION

The California State Senate expressed its concern about the needs and welfare of severely handicapped people of normal mentality in Senate Resolution No. 56 (1963). The latter authorized the Senate Factfinding Committee on Labor and Welfare to continue its study of the need for residential care, treatment, and training of severely handicapped children and adults of normal mentality, and report its findings, together with any recommendations for legislation, to the Senate.

In accordance with this resolution, the Senate committee requested the California State Department of Public Health to assist in determining the numbers and needs for care of such persons. The department was also asked to identify and evaluate the necessity, desirability, and financial feasibility of coordinating or revising existing programs and services and establishing pilot projects or other new means to satisfy unmet needs, and then to report to the Senate its findings and recommendations.

Establishment of an appropriate government-sponsored facility or program has been urged by handicapped individuals themselves, by parents' groups, and by voluntary health agencies for some time. Senate Resolution No. 56 continues the study begun under Senate Resolution No. 155 (1961). This in turn was an outgrowth of Assembly Concurrent Resolution No. 26 of 1947, which was concerned with the treatment, care, and education of "spastic and crippled persons."

To carry out its assignment, the department felt it essential to define "severely handicapped individuals of normal mentality" and the following definition was adopted for purposes of this report:

A severely handicapped child or adult of normal mentality in need of residential care, treatment, and training, is one who, because of his chronic physical handicaps:

must depend upon others for his daily care and well-being,
is below age 65,

does not have mental or emotional problems so severe as to qualify him for services of the Department of Mental Hygiene, and,
whose major handicap is not blindness, deafness, or tuberculosis.

This definition excludes persons with temporary physical handicaps, or persons who are able to care for themselves despite their handicaps. For study purposes a maximum age of 65 was set since persons beyond age 65 may be eligible for various public health and welfare programs. Also it was felt that the Senate committee was more concerned with the problems of persons whose handicaps are other than those associated with the problems of the aged.

The concept of "normal mentality" as expressed in Senate Resolution No. 56 was defined very broadly. It was the opinion of William B. Beach, Jr., M.D., Chief, Bureau of Mental Retardation and Children's Services of the Department of Mental Hygiene, that it would not be feasible to attempt to develop a precise definition of "mentally

normal." Therefore, it was decided to use the above concept, particularly since the Department of Mental Hygiene provides for the residential care, treatment, and training of retarded or mentally ill persons.

Persons whose sole major handicap is blindness, deafness, or tuberculosis were not included, because, although severely handicapped, they are often able to care for themselves, and, in addition, are covered by categorical assistance and residential care programs.

Severely handicapped persons' needs vary greatly. The range of their residential needs may include:

- Residential care unnecessary,
- Future residential care,
- Assistance needed to locate and/or modify a suitable residence,
- Financial assistance only,
- Opportunity for establishing cooperative living arrangements,
- Homemaker services,
- Visiting nurse services,
- Day-care facilities,
- Temporary or short-term residence for special situations,
- Rehabilitation or reorientation residential center ("half-way house")
- Foster-home care,
- Long-term nursing home care, or
- Permanent institutional care

Similarly, there is wide variation among the handicapped individual's needs for medical care, education, vocational training or assistance, employment, recreation, and social work services. These needs and the present or future residential care needs depend in a large part upon the degree to which the individual is or will be able to care for himself. This, in turn, is dependent upon factors such as:

- | | |
|---|--|
| Present age, and age when first handicapped | Social experiences, attitudes and adjustments, |
| Number of handicaps | Financial resources, |
| Kinds and severity of handicaps | Geographical location, and |
| Intelligence | Family situation, attitudes and relationships |
| Educational attainment and needs | |
| Work experience and potential | |

IV. NEEDS FOR RESIDENTIAL CARE, TREATMENT, AND TRAINING

A severely handicapped person under our definition may need residential care for any of the following reasons:

1. There is no one able or willing to accept responsibility for his well-being,
2. The needs and problems of the handicapped individual create an unbearable emotional strain upon himself or an emotional or financial strain upon his family,
3. He needs temporary or part-time residential care to relieve the strain upon his family in order to preserve the family unit,
4. He needs an opportunity to achieve maximum self-development through adequate medical treatment, education, therapy, rehabilitation, vocational training, or through more normal social relationships.

Some of the severely handicapped have an immediate need for residential care because their present accommodations are grossly unsatisfactory or are likely to become so in the near future. Others feel concern about the future, especially when parents or other family members will no longer be able to care for them.

Handicapped individuals have varying needs; there seems to be no single "solution" appropriate to a large portion of the severely handicapped population.

Comprehensive medical evaluations are essential in order to determine each individual's abilities and future potential as well as his disabilities, so as to accurately determine what type of residential care would be most suitable for him.

Furthermore, since the objectives of most medical care or public assistance programs are to improve the condition of the individual and help him toward maximum independence and self-care, segregation of handicapped persons in long-term or permanent institutional care away from nonhandicapped persons is not desirable. This type of care separates an individual from his family and from society and is undesirable for social reasons as well as for its deleterious effect upon rehabilitation efforts.

V. SERVICES AVAILABLE

Some long-term services related to the residential care needs of the severely handicapped are available in varying amounts to certain population groups in California, particularly veterans and indigent persons.

Veterans

Domiciliary care at the U.S. Veterans Center in Los Angeles and at Veterans Home of California in Napa County is available to eligible veterans who, because of their disabilities, are unable to earn a living but who are not in need of nursing services, constant medical supervision or hospitalization.

Inpatient hospital care is provided to eligible veterans in Veterans Administration hospitals and in certain other federal hospitals with priority given for treatment of service-connected injuries or diseases. Outpatient medical treatment is provided for service-connected disabilities.

Disabled veterans may be eligible for disability compensation payments up to \$725 a month, with additional allowances for dependents. They may also be eligible for vocational rehabilitation, education, training, and assistance in buying homes or automobiles.

Indigent Persons

Medical care and hospitalization are provided for indigents through county hospitals and other facilities. Hospital wards for the chronically ill or aged are sometimes used to house severely handicapped persons who may not require hospital care but who have no place else to go.

Handicapped persons may be eligible for low-rent housing in public projects financed by the federal government. Section 203 of the Housing Act of 1964 (PL 88-560) gives handicapped persons and families the same special treatment as the elderly. Because of the recency of this legislation its effect in California cannot be estimated.

Financial assistance under the Aid to Needy Disabled program is available to eligible persons over 18 years of age. According to preliminary figures, in August 1964 there were 50,793 recipients in California and monthly payments, exclusive of Public Assistance Medical Care, averaged \$95.77. Total program expenditures for the month came to \$5,742,685, with the State of California contributing \$3,011,783 and the federal government contributing \$2,330,167.¹

General relief is available to those handicapped persons who meet county eligibility requirements.

Other Than Veterans and/or Indigents

A wide variety of medical, rehabilitation, recreation, and other services are available from public or voluntary health agencies in different parts of California but none include long-term residential care services.

¹ California Department of Social Welfare, *Public Welfare in California, August 1964*, Statistical Series PA 3-59, Tables 1 and 1b.

Persons under 21 years of age with certain physical defects may be eligible for diagnosis, medical and surgical treatment, and hospital and rehabilitation center care provided through Crippled Children Services program administered by the California State Department of Public Health. Residential care is not provided under this program.

Special Education and Training Programs. Physically handicapped children from 3 to 21 years of age who cannot receive full benefit from ordinary educational facilities may be given home or hospital instruction. Children with cerebral palsy and similar handicapping conditions may be diagnosed and evaluated at one of the two special schools established for this purpose. Special classes to meet the education and training needs of handicapped adults are also authorized under state laws.

The California Department of Rehabilitation provides vocational rehabilitation services to handicapped persons 16 years of age or older and cooperates with the Department of Employment in the placement of physically handicapped individuals. Local communities are encouraged to develop sheltered workshops so as to extend opportunities for employment of the disabled.

Disabled workers and their dependents may qualify for social security disability insurance benefits ranging from \$40 to \$254 a month. Disability benefits are also available for persons disabled before the age of 18 whose parent is entitled to social security retirement or disability insurance benefits or was insured at the time of death.

New rental housing for the handicapped was encouraged by the Federal Housing Act of 1964 which makes long-term low-interest loans for construction costs available to nonprofit corporations, cooperatives, or public bodies. Organizations in Ohio and Washington are presently planning the construction of large buildings for handicapped persons with construction costs to be financed under the provisions of this new law.

A wide variety of other services such as homemaker services, visiting nurses' services, foster care homes, day care, sheltered workshops, and transportation and recreation, are provided by voluntary health organizations and by state, local, and federal governments. The availability of services, however, varies considerably from area to area.

Private services such as medical care, attendant care, nursing homes, boarding homes, or private schools, are available to those who can afford them or who have other resources such as workmen's compensation, disability insurance, private insurance or compensation.

VI. NUMBER OF PERSONS IN NEED

To determine the number of persons who need and who would use a social service such as residential care for handicapped persons, the most reliable and economical method is to provide the service on a trial basis through a pilot program. Valid estimates of the overall need could then be made on the basis of number and characteristics of persons applying for and using such services.

Estimates of residential care needs based on the prevalence of particular handicapping conditions usually overstate the number of persons in need of services and are too unreliable to be used in planning expensive public programs.

For example, the 1959 Legislature authorized the California State Department of Public Health to provide diagnostic and treatment services for children with epilepsy on a pilot basis over a three-year period. The 236 children applying for services were considerably fewer than the 1,400 to 1,900 children estimated to have epilepsy in the two counties in which services were provided. This study made it possible to aim at reasonably reliable estimates of the number of children needing and likely to make use of the services and the nature and cost of those services.²

Also pertinent to this problem is the experience of the United Cerebral Palsy Association of Philadelphia and vicinity with Overbrook Hall. After considerable study the Association opened a residential facility for 20 mildly to moderately involved cerebral palsied persons. At no time was this facility fully occupied; it was closed after seven and one-half years. Persons with cerebral palsy and their families who had expressed great interest and immediate need in the preliminary studies did not make use of the residence after its establishment. "They expressed very freely a desire for the existence of a residence as insurance against the time they might need it, but preferred to continue present living arrangements, although these were quite strained in some situations."³

These numbers were obtained from some of the many studies made to estimate how many Californians are covered by certain programs or services. The dates of the studies are different but, beyond this, handicapped individuals may come under more than one program or service so that the total number needing residential care is not the same as the sum of the numbers in each subcategory.

For purposes of estimating the number of Californians in need of residential care services, the following statistics are particularly pertinent:

About 16,000 mentally normal persons between the ages of 18 and 65 were receiving aid to the needy disabled in August 1962.⁴

² California State Department of Public Health, *Children With Epilepsy*, Berkeley, 1963.

³ O'Dwyer, Elizabeth M. "Overbrook Hall." *Cerebral Palsy Review*, July-August 1964, p. 14.

⁴ See Table 1, page 41.

About 3,000 Californians under 65 years of age live in licensed nursing homes and in boarding homes for the aged.⁵

As of June 30, 1964, social security disability benefits were being paid to 75,458 disabled children and adults in California.⁶

The Railroad Retirement Board estimated that in November 1963 about 1,500 of its California annuitants under 65 were totally and permanently disabled.⁷

More than 2,000 mentally normal veterans in California under 65 years of age are rated as 100 percent disabled by service-connected disabilities.⁸

There were an estimated 1,400 residents in veterans' domiciliary care facilities in California in June 1964 who were mentally normal and under 65.⁹

The effect this overlap of different groups of handicapped persons can have on estimates is illustrated in the diagram on page 36. Only three groups are shown in the diagram: rejected applicants for residential care at Pacific State Hospital¹⁰; persons included in a special survey for this report¹¹; and those covered by service programs of government and voluntary agencies. This last group can be subdivided into many separate elements, and these elements will overlap in varying degrees.

Data from the California Health Survey on the number of persons under 65 who cannot get around without help¹² or are confined to the house¹³ indicate that there are about 30,000 severely handicapped persons who live outside hospitals or other institutions. If we exclude those who are blind, deaf, mentally ill or retarded, or disabled by tuberculosis, we have in the neighborhood of 20,000 persons coming under this report's definition of severely handicapped persons of normal mentality.

Of the 20,000 fewer than 500 appear to be in urgent need of new, long-term residential care services. This estimate is based on projections made from data obtained from Pacific State Hospital and from the Survey of Severely Handicapped Children or Adults:

1. Pacific State Hospital, Pomona, is a Department of Mental Hygiene institution for retarded children and adults from southern California. About 31 percent of the state's population lives in the area it serves.

⁵ See Appendix, page 42.

⁶ See Table 2, page 42.

⁷ Information obtained in correspondence with Mr. Samuel Chmell, Director of Research, Railroad Retirement Board, November 21, 1963.

⁸ This estimate assumes that 10 percent of all disabled veterans are in California, that the proportion of veterans under 65 is the same in California as in the United States, and that the degree of service-connected disability is not related to age. The Administrator of Veterans Affairs, *Annual Report, 1962*, Washington, D.C., Government Printing Office, 1962, pp. 175, 238-239, 246-247, showed that as of June 30, 1962, 29,074 veterans were rated as 100 percent disabled by service-connected disabilities (other than tuberculosis or psychiatric and neurological diseases) and that 69.7 percent of all veterans were under 65 years of age.

⁹ This estimate is based on information provided by the Veterans Home of California, Napa County, and by the U.S. Veterans Administration Center, Los Angeles, by phone.

¹⁰ See Appendix, page 40.

¹¹ See Appendix, page 40.

¹² Table 4, page 47.

¹³ Table 5, page 48.

During the 19 months between January 1963 and July 1964, 914 applicants for admission were examined and evaluated. Seventy-four were rejected because they were not retarded. The hospital staff reviewed the case records of the 74 and found that 21 were severely handicapped, mentally normal, and in urgent need of residential care. Their ages ranged from 3 to 35 years and IQ's ranged from 65 to 95, with an average IQ of 77.

If the area served by Pacific State Hospital is representative of the entire state, we can expect an annual statewide total of about 42 persons per year in urgent need of residential care services. Since some handicapped persons or their families do not apply to an institution such as Pacific State because they do not know of it or are not referred there, or because the handicapped person's IQ is too high to even be considered for admission, the estimate should probably be at least doubled to make allowance for this. As a result, we get an annual total of about 80 persons in urgent need of residential care services, or about 400 over a five-year period.

2. A limited "Survey of Severely Handicapped Children or Adults of Normal Mentality in Need of Residential Care, Treatment, or Training" was conducted to learn more about their characteristics and needs. As described on page 40 of the appendix, the questionnaires were distributed mainly in southern California and nearly three-fourths of the completed questionnaires came from that area. Slightly more than half—53 percent—of the completed questionnaires were from residents of Los Angeles County.

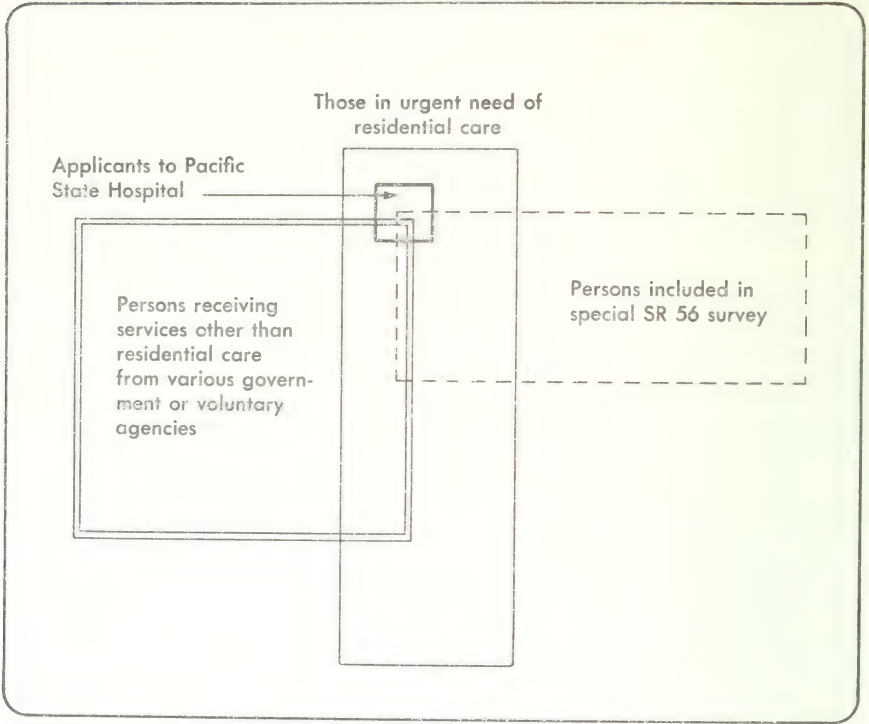
Twenty-one of the 172 questionnaires from Los Angeles County indicated an urgent need for residential care. If this is projected according to population, the statewide total would be 56. Because the survey included only persons in contact with one of the co-operating agencies, allowance must be made for persons who are not known to the voluntary health agencies as well as for those who did not submit completed questionnaires. Furthermore, since 76 percent of the replies were from persons with cerebral palsy, it appears that persons with other handicaps were underrepresented in the survey. For these reasons, the statewide estimate of 56 probably represents less than half of all severely handicapped persons of normal mentality in urgent need of residential care services.

The number of persons seeking residential care if it is made available will probably depend in large part upon the kind of care available, awareness by various social agencies, private physicians, and others that such care is available, and upon the responsiveness of individuals and families.

Reliable data on residential care needs can best be obtained through a pilot program which would provide necessary services. The extent to which the services are utilized, and the demand for more or new services, will provide the facts needed for determining the extent to which such services are needed on a continuing basis, the kinds and costs of services needed, and the benefits derived.

**A DIAGRAMATIC REPRESENTATION OF
HOW DIFFERENT ESTIMATES OVERLAP**

All severely handicapped persons of normal mentality



(Not drawn to scale or proportion)

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ESTIMATES OF NEED FOR RESIDENTIAL CARE

Estimates of the number of persons with health problems can be developed from various sources. Those most useful for estimating the number of severely handicapped persons of normal mentality in need of residential care are discussed below. Such estimates may differ considerably, however, because of different methods and criteria employed, including different concepts of "severely handicapped," "normal mentality," and "in need of residential care, treatment, and training," separately and in combination.

1. *Household interview surveys* in which a sample of the population is questioned about health problems can provide useful data on numbers, characteristics, and needs of persons with certain chronic conditions. Reliability of the data depends in part on the size of the sample and the relative frequency of the conditions. The California Health Survey and the U.S. National Health Survey are most useful and, on the basis of these, we estimate that 34,500 Californians who live outside of institutions are severely limited in their mobility and require long-term care.¹⁴ The survey, however, was not designed to determine how many of these need, want, and would use residential care services.
2. *Medical records and special morbidity studies* may yield estimates of the prevalence of certain severely handicapping conditions. Table 6 on page 49, for example, shows such estimates of cerebral palsy, epilepsy, and certain other neurological and sensory conditions in California. This type of information is not by itself a sufficient basis for estimating a need such as residential care. Persons with only a mild condition, or persons with handicaps who are able to live independently may not need or want special services. Furthermore, because severely handicapped persons often have more than one handicapping condition, the total number of conditions is greater than the number of persons with those conditions. Projections of need that are derived from such prevalence estimates are therefore likely to be less reliable than data from household surveys.
3. "*Educated opinions*" on numbers and needs are even less reliable as a basis upon which to establish a program of services. While there is agreement that services are needed, estimates of the level of services needed often tend to be unrealistically high.
4. Data on the current *caseloads of official or voluntary agencies* providing services to handicapped persons are available and may provide reliable estimates of the numbers of persons seeking the kinds of services provided by the particular programs.
 - a. About 16,000 mentally normal persons between the ages of 18 and 65 were receiving aid to the needy disabled in August 1962.¹⁵ (The total caseload for August 1964 is slightly more

¹⁴ See Table 4, page 44.

¹⁵ California Department of Social Welfare, *Characteristics of Recipients of Aid to the Needy Disabled, August 1962*, Sacramento, August 1963, p. 30.

than double the total caseload for August 1962, and the Department of Social Welfare is presently preparing a detailed analysis of the characteristics of the August 1964 recipients of aid to the needy disabled.)

- b. Records of persons applying for admission to Pacific State Hospital, Pomona, from January 1963 through July 1964 were reviewed by the hospital medical staff. Nine hundred fourteen applicants were evaluated at this state institution for the retarded and 74 were rejected because they were not retarded. Of the 74, 21 were severely handicapped and in urgent need of residential care, treatment, or training.
 - c. A small number of mentally normal persons with severe physical handicaps are long-term residents of some county or state hospitals. While these persons need and are receiving residential care, there is no way to determine how many others need similar care.
5. *Special surveys* may be made to determine the need for particular services or facilities. A very extensive, and expensive, survey would be required to obtain valid information on the statewide need for residential care. Furthermore, the reliability of the information may be questionable, particularly when information is sought on the need for services or facilities that do not exist.

The Overbrook Hall experience in Philadelphia illustrates this problem. A residential facility for adults was established after much study and after a community survey to determine need. But many adults with cerebral palsy and their families did not make use of the residence after its establishment even though they had expressed great interest and immediate need in the preliminary studies.¹⁶

A limited survey of residential needs for the mentally normal, severely handicapped in California was conducted during the summer of 1964. The results of this survey are presented in Table 3 on pages 43-44; the questionnaire is on pages 45-46. Questionnaires were distributed in Southern California mainly through the Crippled Childrens Society of Los Angeles County and to United Cerebral Palsy Association affiliates throughout the state. Since no casefinding was done, handicapped persons not in contact with one of the cooperating agencies were not reached. About 74 percent of the completed questionnaires came from southern California.

It is interesting to note that, with the full cooperation of the voluntary agencies, of the 4,000 questionnaires requested, fewer than 400 were returned. Thirty-seven indicated an urgent need for residential care.¹⁷

¹⁶ See pages 50-59.

¹⁷ Table 3, pages 43-44.

TABLE 1
**CHARACTERISTICS OF RECIPIENTS OF AID TO NEEDY DISABLED
 UNDER AGE 65, BY MAJOR DIAGNOSIS**
California, August 1962

Major diagnosis ¹	Recipients under age 65							
	Total age 18-64		Age 18-29		Age 30-49		Age 50-64	
	Number	Percent	Number	Percent	Number	Percent	Number	Percent
Total.....	16,130	100.0	1,152	100.0	3,585	100.0	11,393	100.0
Infective and parasitic diseases.....	1,246	7.7	198	17.2	326	9.1	722	6.3
Neoplasms.....	523	3.2			116	3.2	407	3.6
Allergic, endocrine, metabolic and nutritional diseases.....	826	5.1			198	5.5	628	5.5
Diseases of blood and blood forming organs.....	93	.6			12	.3	81	.7
Diseases of nervous system and sense organs.....	4,505	27.9	454	39.4	1,304	36.4	2,747	24.1
Diseases of the circulatory system.....	3,596	22.3	23	2.0	454	12.7	3,119	27.4
Diseases of the respiratory system.....	838	5.2			70	2.0	768	6.7
Diseases of the digestive system.....	453	2.8			116	3.2	337	3.0
Diseases of the genitourinary system.....	23	.1					23	.2
Diseases of the skin and cellular tissue.....	12	.1					12	.1
Diseases of the bones and organs of movement.....	2,339	14.5	116	10.1	454	12.7	1,769	15.5
Congenital malformations	302	1.9	93	8.1	93	2.6	116	1.0
Accidents, poisonings, and violence (nature of injury).....	1,374	8.5	268	23.3	442	12.3	664	5.8

¹Based on International Standard Classification of Diseases, 7th Revision, 1957.

Note: Recipients over age 65 and those with diagnoses of mental, psychoneurotic and personality disorders, or mental deficiency, were excluded from this table. Data are based on sample of approximately 9 percent of the 23,695 recipients of aid to the needy disabled in August 1962.

Source: *California Department of Social Welfare, "Characteristics of Recipients of Aid to the Needy Disabled, August 1962."* Sacramento, August 1963, page 30.

ESTIMATED NUMBERS OF PERSONS UNDER 65 IN NURSING HOMES AND BOARDING HOMES FOR THE AGED California, 1964

Approximately 2,000 Californians under 65 years are in licensed nursing homes and about 1,000 persons under 65 in licensed boarding homes for the aged.

Nursing Homes

Nursing homes licensed by the State of California had an estimated 36,711 nursing beds on June 1, 1964. A 1961 survey of nursing homes indicated that occupancy was about 85 percent and that 6.2 percent of the patients were under age 65.¹ Applying these proportions to the 1964 data on nursing home beds yields 31,204 patients, including 1,940 under 65 years of age (rounded to 2,000).

Boarding Homes

In May 1964 there were 3,279 boarding homes licensed by the Department of Social Welfare.

In 1954, there were 2,627 facilities with 26,964 residents, 3.7 percent of whom were less than 65 years of age.² By applying these proportions to the 1964 number of homes, we obtain an estimate of 1,240 residents under age 65, or a rounded estimate of 1,000.

TABLE 2
SOCIAL SECURITY DISABILITY BENEFITS IN CALIFORNIA,
BY TYPE OF BENEFICIARY
As of June 30, 1964

Type of beneficiary	Total monthly amount	Number of beneficiaries	Average monthly amount
Total.....	\$6,892,171	75,458	\$91.34
Disabled workers.....	6,436,591	66,619	96.62
Disabled children.....	455,580	8,839	51.54
Disabled children of:			
Deceased workers.....	275,853	4,570	60.36
Retired workers.....	162,586	3,884	41.86
Disabled workers.....	17,141	385	44.52

Source: Social Security Administration, U.S. Department of Health, Education, and Welfare, special tabulations prepared September 10, 1964.

¹ California State Department of Public Health, Bureau of Hospitals, *Nursing Supervision and Staffing in California Nursing Homes*, Berkeley, 1962.

² Public Health Service, U.S. Department of Health, Education, and Welfare, *Nursing Homes, Their Patients and Their Care*, Washington, D.C., Government Printing Office, 1957. (One quarter of all California nursing home beds were surveyed for this report. About 10.6 percent of the California patients were under 65 years of age; the proportion ranged from 6.2 to 14.1 percent among the 13 states surveyed.)

TABLE 3
INFORMATION REPORTED IN SURVEY OF SEVERELY HANDICAPPED CHILDREN
OR ADULTS OF NORMAL MENTALITY IN NEED OF RESIDENTIAL
CARE, TREATMENT, OR TRAINING
California, 1964

Information reported	Number of handicapped persons		
	Total	Male	Female
Total, all questionnaires.....	326	179	147
Residential need			
Urgent.....	37	22	15
Future.....	269	145	124
Not indicated.....	20	12	8
Residential need for persons with cerebral palsy			
Urgent.....	31	19	12
Future.....	207	110	97
Not indicated.....	10	6	4
Major handicap			
Cerebral palsy.....	248	135	113
Other.....	78	44	34
Seizures			
None reported.....	294	162	132
Seizures reported.....	32	17	15
With cerebral palsy.....	28	15	13
Other.....	4	2	2
Age			
Under 5 years.....	4	1	3
5-9.....	25	15	10
10-14.....	33	20	13
15-19.....	95	59	36
20-24.....	51	27	24
25-29.....	23	10	13
30-34.....	26	12	14
35-39.....	20	13	7
40-44.....	20	12	8
45-49.....	10	2	8
50-54.....	8	5	3
55-59.....	5	2	3
60-64.....	6	1	5

TABLE 3—Continued

**INFORMATION REPORTED IN SURVEY OF SEVERELY HANDICAPPED CHILDREN
OR ADULTS OF NORMAL MENTALITY IN NEED OF RESIDENTIAL
CARE, TREATMENT, OR TRAINING
California, 1964**

Information reported	Number of handicapped persons
Present living arrangements	
Living alone.....	16
Living with mother.....	55
Living with father.....	7
Living with mother and father.....	177
Living with mother and stepfather.....	13
Living with father and stepmother.....	1
Living with relatives other than parents.....	16
Living with husband or wife.....	18
Other living arrangements or living arrangements not specified.....	23

Source: Information reported in 326 questionnaires received by the Neurological and Sensory Disease Project of the California State Department of Public Health in July and August 1964. The questionnaires were completed by handicapped persons, relatives, friends, or by private or public agency representatives. Most of the questionnaires were distributed in the Los Angeles area. About 40 percent of the completed questionnaires were submitted by the Continuous Care Committee of the United Cerebral Palsy Association of California which distributed questionnaires to its units throughout the state.

Name _____

This is a confidential survey to document certain unmet needs in California.

Address _____

Agency
code

Date _____

**SURVEY OF SEVERELY HANDICAPPED CHILDREN OR ADULTS
OF NORMAL MENTALITY IN NEED OF RESIDENTIAL
CARE, TREATMENT, OR TRAINING**

County of residence _____

Agency
code☐ Male
☐ Female Birthdate _____Age at onset
of disability _____

I.Q. (estimated) _____

Education

_____ Years of regular schooling (elementary and high school)

_____ Years of special schooling. (Please indicate type of special schooling: _____)

Employment

Work experience (types and duration) _____

Work potential (after vocational rehabilitation)

0 ☐ Unknown1 ☐ Good (in competitive labor market)2 ☐ Fair ("")3 ☐ Sheltered workshop only4 ☐ Poor or little work potential**Handicaps**

Major _____

Etiology (cause) _____

Other handicaps _____

Seizures: ☐ None ☐ Yes, frequency _____

Medication (present)

0 ☐ NONE1 ☐ Anticonvulsant2 ☐ Tranquilizer3 ☐ Other (please specify) _____

Sensory impairments

0 ☐ NONE or minor1 ☐ Vision _____ ☐ Blind? ☐ Severe uncorrectable vision loss2 ☐ Hearing _____ ☐ Deaf? ☐ Severe uncorrectable hearing loss3 ☐ Serious *speech* problem4 ☐ Other (please specify) _____**Personal care needs**0 ☐ NONE or minimal1 ☐ Help needed regularly for moving about2 ☐ " " " " dressing3 ☐ " " " " toilet4 ☐ " " " " eating5 ☐ Confined to wheelchair6 ☐ Confined to bed major part of day

Important—Please Return Completed Questionnaire by _____

Medical care needs (long-term)

- ☐ 0 Average medical care needs
☐ 1 Acute (frequent) medical care
☐ 2 Intermittent medical care
☐ 3 Nursing care, acute
☐ 4 Nursing care, intermittent
☐ 5 Physical therapy
☐ 6 Occupational therapy
☐ 7 Other (please specify) _____

Educational needs

- ☐ 0 NONE
☐ 1 Elementary or high school
☐ 2 Vocational training (other than occupational therapy)
☐ 3 Other (please specify) _____

Family background

		Living with handicapped	
		Age—if living	Deceased
		↓	↓
		Check :	
Mother	_____		
Father	_____		
Brother	_____		
Sister	_____		
<input type="checkbox"/>	<input type="checkbox"/>		
<input type="checkbox"/>	<input type="checkbox"/>		
<input type="checkbox"/>	<input type="checkbox"/>		
<input type="checkbox"/>	<input type="checkbox"/>		
<input type="checkbox"/>	<input type="checkbox"/>		
<input type="checkbox"/>	<input type="checkbox"/>		
<input type="checkbox"/>	<input type="checkbox"/>		
<input type="checkbox"/>	<input type="checkbox"/>		
Others :	_____		
_____	_____		
_____	_____		
_____	_____		

Please summarize present living arrangements, family relationships, problems, financial resources, amounts and kinds of public assistance, reasons for seeking new living arrangements, etc.

Residential need

- ☐ 0 Urgent (immediate or within six months)
☐ 1 Future, depending on parents' health, family circumstances, etc.

Where is the handicapped now living? ☐ At home? or _____

Comments : _____

Signature _____

Please Return Completed
Questionnaire To: _____

Title (relation to the handicapped) : _____

Agency _____

Date _____

TABLE 4

**ESTIMATED NUMBERS OF NONINSTITUTIONALIZED PERSONS WHO, BECAUSE
OF CHRONIC CONDITION, CANNOT GET AROUND WITHOUT HELP
BY AGE AND SEX, CALIFORNIA, 1960**

(Figures are subject to sampling variation)

Age and sex	California health survey rate per 1,000 persons per year	California's noninstitutional population 1960	Estimated number of non- institutionalized persons in 1960 who cannot get around without help	Institutionalized population
0-14 years.....	2	4,752,906	9,500	10,789
Male.....	1	2,415,815	2,500	6,627
Female.....	3	2,337,091	7,000	4,126
15-44 years.....	1	6,419,651	7,000	68,249
Male.....	2	3,219,903	4,000	55,154
Female.....	1	3,199,748	3,000	13,095
45-64 years.....	6	3,053,698	18,000	35,707
Male.....	6	1,507,724	9,000	24,477
Female.....	6	1,545,974	9,000	11,230
Total.....		14,226,255	34,500	114,745

Note: Institutions on specified list for exclusion in 1954-55 survey—

1. Hospitals and nursing homes exclusive of county and general hospitals, maternity hospitals, and homes.
2. County hospitals with chronic tuberculosis, psychiatric and custodial care.
3. Veterans Administration facilities for long-term care.
4. Private institutions licensed by Department of Mental Hygiene.
5. Mental hospitals (including mentally deficient).
6. Private institutions for aged persons.
7. 24-hour group care for children.
8. Maternity homes for unwed mothers.
9. Correctional institutions.
10. City and county jails with 50 or more inmates.
11. Youth facilities, exclusive of juvenile camps.

Source: California Department of Public Health, California Health Survey, *Health in California*, Sacramento, State Printing Office, 1957. U.S. Bureau of the Census, *U.S. Census of Population, 1960, Number of Inhabitants*, PC (1)-6A; *Inmates of Institutions*, PC (2)-8A.

TABLE 5
**ESTIMATED NUMBERS OF PERSONS CONFINED TO THE HOUSE (EXCEPT IN
 EMERGENCIES) BECAUSE OF CHRONIC CONDITIONS, BY AGE**
CALIFORNIA HEALTH SURVEY, 1960-61
 (Figures are subject to sampling variation)

Age and sex	Rate per 1,000 persons per year	Noninstitutional population 1960	Estimated numbers of persons confined to the house (except in emergencies) because of chronic conditions
0-64 years.....	1.8	14,226,255	26,000
0-14 years.....	1.1	4,752,906	5,000
15-44 years.....	2.0	6,419,651	13,000
45-64 years.....	2.6	3,053,698	8,000
Males			
0-64 years.....	1.9	7,143,442	13,500
0-14 years.....	1.7	2,415,815	4,000
15-44 years.....	1.5	3,219,903	5,000
45-64 years.....	3.0	1,507,724	4,500
Females			
0-64 years.....	1.7	7,082,813	12,500
0-14 years.....	0.4	2,337,091	1,000
15-44 years.....	2.5	3,199,748	8,000
45-64 years.....	2.3	1,545,974	3,500

Note: Detail may not add to total because of rounding.

Source: State of California, Department of Public Health, Bureau of Chronic Diseases, California health survey based on 16-week sample in August-September 1960 and April-May 1961.

Population data are from the U.S. Bureau of the Census, *U.S. Census of Population, 1960, Number of Inhabitants*, PC (1)-6A; *Inmates of Institutions*, PC (2)-8A.

TABLE 6

**ESTIMATED NUMBERS OF SELECTED NEUROLOGICAL AND SENSORY CONDITIONS
CALIFORNIA, 1960, 1965, AND 1975**

Condition	1960	1965	1975
California population.....	15,860,000	18,754,000	24,816,000
Cerebral palsy.....	15,000	18,000	23,000
Epilepsy.....	51,000	60,000	79,000
Minimal cerebral dysfunction.....	187,000	230,000	292,000
(in need of special management).....	(11,000)	(14,000)	(18,000)
Multiple sclerosis.....	3,200	3,800	5,000
Muscular dystrophy.....	1,000	1,100	1,500
Myasthenia gravis.....	500	600	700
Parkinsonism.....	23,000	27,000	35,000
Residual polio.....	16,000	16,000	16,000
Tumors of the central nervous system.....	11,000	13,000	17,000
Vascular lesions affecting the central nervous system.....	35,000	41,000	55,000
Hearing impairments.....	560,000	655,000	850,000
(deaf).....	(10,000)	(11,000)	(15,000)
Speech defects.....	91,000	107,000	143,000
Visual impairments.....	316,000	370,000	482,000
severe.....	89,000	104,000	134,000
(blind).....	(29,000)	(35,000)	(46,000)
All others.....	227,000	266,000	348,000
Mental retardation.....	500,000	600,000	700,000
(moderate, severe and profound).....	(50,000)	(60,000)	(70,000)

Note: The estimated numbers apply to conditions rather than persons. Since a person may have more than one of these conditions, an estimate of the total number of persons affected cannot be obtained by adding the numbers of conditions.

The estimates are subject to sampling variation and, in many cases, this variation may be quite large. Except for the estimated numbers of persons with mental retardation, the estimates shown here should be considered only as conservative indications of the order of magnitude of the problem.

The estimates for multiple sclerosis, muscular dystrophy and myasthenia gravis were rounded to the nearest 100; estimates for mental retardation were rounded to the nearest 100,000, with estimates for moderate, severe and profound mental retardation rounded to the nearest 10,000; all other estimates were rounded to the nearest 1,000.

Source: See California State Department of Public Health, *Neurological and Sensory Diseases in California*, Berkeley, 1964, Chapter II, for a discussion of the sources and reliability of the rates used to prepare these estimates. State of California, Department of Finance, Population Estimates prepared March 1962.

OVERBROOK HALL

By ELIZABETH M. O'DWYER, Executive Director,
United Cerebral Palsy Association of Philadelphia and Vicinity

This article is a résumé of the experience of UCPA of Philadelphia and vicinity in maintaining a residence for cerebral palsied adults.

On May 1, 1955, UCPA of Philadelphia and vicinity opened its home for mild to moderately involved adult cerebral palsied persons. Seven and one-half years later, on December 15, 1962, with the departure of the last resident, the home was closed and the agency's program of maintaining a residential facility was discontinued. This did not imply a discontinuance of concern for the provision of long-term residential care, but rather a decision by the board of directors that the problem could be handled more adequately through other means.

The decision to establish a residential facility was taken only after several years of preliminary study. The question was first raised at the June 1951 meeting of the board of directors. The board requested substantiating data on actual need and methods of financing. The director making the proposal was authorized to gather facts and initiate fund-raising activities with the promise that the board would seriously consider the problem if she and her associates were able to raise \$15,000. This specific figure had no significance other than a test of the genuineness of interest in the establishment of a residential facility.

To determine the amount of concern with the problem of long-term residence, three steps were taken:

(1) Questionnaires were sent to all families known to UCPA as having a member who was cerebral palsied. The questionnaire was planned to elicit information about the number of potential residents, the number who would use a residence immediately if established, and the degree of involvement of both these groups.

(2) Expressions of opinion concerning need and feasibility were requested from members of the medical advisory committee.

(3) A conference of representatives from community agencies offering services to the cerebral palsied was held. The agencies included in this group were St. Christopher's Hospital for Children, Children's Hospital, the Shut-In Society, The Curative Workshop of Philadelphia School of Occupational Therapy, the Visiting Nurse Association, and the Health and Welfare Council. The member of the board who initiated the proposal of establishing a residential home and the executive director served with the committee.

From each inquiry, positive statements regarding the need for adequate residential facilities were received. Members of the medical advisory committee pointed out that the greatest need was for persons requiring custodial-type care but warned the agency against undertaking such a program because of the expense that would be involved. The representatives of local agencies questioned the validity of statistics concerning immediate use which had been obtained by the questionnaires to families. They pointed to two areas of special need, (1) for

children with severe physical and mental involvement needing custodial care and (2) for young adults with relatively mild involvement unable to live alone in the community and ineligible for admission to any of the existing facilities. A thorough survey prior to further planning was recommended. In the meantime, the small group of interested parents had raised \$15,000 through sales of merchandise and solicitation of donations. At its October 1952 meeting the board of directors, in accordance with their agreement, appointed a resident care study committee.

The charge to the committee was twofold:

- (1) To study the problem of resident care for the cerebral palsied.
- (2) To recommend positive action to the board of directors regarding the establishment of a resident home.

Serving on the committee were four directors of UCPA, each of whom had some special interest or knowledge to contribute, the director of one of the larger cerebral palsy clinics who is also a member of the professional advisory committee, a consultant of the Health Division of the Health and Welfare Council, a social worker from an interested agency who had worked with both cerebral palsied children and adults, and the executive director. The Eastern Area Division of the Pennsylvania Citizens Association provided a special consultant.

The committee directed its attention to determination of:

- (1) Need for residential facility for cerebral palsied persons.
- (2) The categories of cerebral palsied persons for whom provisions should be made.
- (3) The extent of the need in each category.
- (4) Sources by which the need might be met.
- (5) Possibilities of financial support from public agencies.
- (6) Sources for private funds if public aid was not available.
- (7) Existing facilities, public and private.
- (8) Other studies on this problem.

The question of need was quickly resolved since all of our hospital clinics and schools reinforced the statements of parent and CP adults regarding an almost complete lack of proper residential care facilities in the Philadelphia area. Existing private facilities were studied. It was found that CPs were not acceptable or that rates were far too high for our parents to meet. Public facilities were inadequate. Private foster homes could handle only a very small number. The public authorities agreed with committee members that provision of residential care should be tax-supported, but pointed out that realistic thinking would suggest that UCPA develop a facility with the hope that it would serve as a pilot project to demonstrate the need, to be supported by public funds at some later date.

Categories of CPs requesting residential services were studied. It was admitted that the greatest need was for CPs with severe involvement, requiring custodial care. However, since both our national organization and studies made in other areas advised strongly against the establishment of a custodial-type residence supported by a private

organization, the committee turned its attention to needs of a second category, the mild to moderately involved for whom no facilities existed. In its final report to the board of directors on November 10, 1953, the committee pointed out that in its judgment provision for resident care of the cerebral palsied is a state responsibility and urged pressure by UCPA of Philadelphia and vicinity for the acceptance by the Commonwealth of Pennsylvania of its responsibility under a law already written but poorly implemented. Continued exploration with private institutions regarding the possibility of their making available part of their facilities for resident care of the cerebral palsied was recommended. However, the committee concluded that in light of the facts uncovered in its study there existed no suitable or adequate public or private facilities for the resident care of the cerebral palsied. It was therefore recommended that the board of directors should seriously consider the establishment of a home under its sponsorship and subsidy. Capital outlay was not considered by this committee but there were included in the report prospective annual operational budgets for homes for (a) 10 or (b) 25 moderately handicapped CP adults and (c) 10 or (d) 25 severely handicapped CP adults. It suggested that since precedents for such a program were unknown, a wise course might be to begin with a residence for the group presenting the least number of problems and requiring the least in expenditures. With the experience thus gained, services might be expanded at a later date.

Upon completion of the study, the board of directors approved the establishment of a residence for mild to moderately involved cerebral palsied persons. A real estate committee was appointed to locate a property. Since the group to be served were mild to moderately handicapped persons, many of whom would be able to travel independently, it was agreed that the property should be located in, or very close to, the city limits with good public transportation facilities nearby, to permit the residents to take advantage of the health, recreational, vocational and social opportunities existing in the community.

The building selected seemed ideal in many ways. It was well located, well constructed and in good condition. A small elevator was already installed. Later we were disappointed to learn that the elevator, while approved for a private residence could not be used for an institution, and must be removed. This was typical of a number of problems related to health and safety requirements. Efforts to obtain information from both state and local authorities regarding standards to be met before the home was opened were without success because the program did not meet any of the existing categories of residences or nursing homes under public supervision. However, after the building was in operation we were constantly troubled by fire, health and safety inspectors and fairly frequent and expensive adjustments were required.

Overbrook Hall was opened on May 1, 1955, with two young adult CPs as the first residents. Eligibility requirements included:

- (1) A diagnosis of cerebral palsy.
- (2) Age between 18 and 45 years.
- (3) Ability to handle self-care needs.
- (4) A medical examination by a physician selected by UCPA to insure objectivity.

- (5) Psychological examination to include a statement regarding ability of the individual to adjust to group living.
- (6) With very few exceptions, ability to manage stairs with a railing.

A basic fee of \$100 per month was established as a trial sum, to be adjusted following experience of costs. However, inability to pay was not a deterrent for admission since adjustments down to the \$59.50 monthly allowance for room and board of the Pennsylvania Department of Public Assistance was acceptable. Occasionally there was a need to keep a resident on a free basis temporarily, pending the processing of the application for public assistance support.

We accepted both temporary and long-term residents. For the long-term resident we anticipated lifetime care but reserved the right to request the family to remove the resident should physical or psychological problems develop that made it inadvisable for the person to remain longer in the residence.

After two years of operation a cost analysis was done under the direction of Mr. Sherwood Messner of the national staff. Results indicated that with full occupancy it should be possible to cover operational costs without subsidizing by the agency if the basic fee was established at \$40 per week. This step was taken. However, very few of the residents were able to pay the full fee. Quite a few were supported by public assistance. Others were employed at modest salaries and paid at a rate which they could afford. Gross costs of operation, income and other financial data will be found in the accompanying analyses.

During most of its operation, Overbrook Hall was staffed with an administrator, cook, two maids and a maintenance man. The administrator, one maid and the maintenance man lived in the building. All were employed on a six-day-week basis. The maids were responsible for laundering and mending clothing of the residents as well as for the usual cleaning and dusting, and for substituting for the cook on her day off. At first, bed linens owned by the agency were used but after a short time renting linens proved more economical. A full-time maintenance man was required even though the heat for the building came from a community central heating firm and caring for the furnace was not a requirement.

The residence program was, from the start, without restriction as to race or religion. One of the most popular residents was a young Negro man who was with us for about four years. Accompanying charts show number of residents, sex, age, geographical distribution and other related data.

In addition to the residence, UCPA of Philadelphia and vicinity offered a broad program of services to the cerebral palsied. The residents participated in academic, recreational and social groups. Those who were potentially employable were tested, trained and placed through the vocational services department. For those needing physical, occupational or speech therapy arrangements were made with local hospitals and treatment centers. Churches of several denominations were nearby.

Living quarters for 20 cerebral palsied persons were available at Overbrook Hall. The building was never fully occupied during the 7½ years of operation. Many of the CP adults and their families who

had expressed great interest and immediate need in the preliminary studies did not make use of the residence after its establishment. They expressed very freely a desire for the existence of a residence as insurance against the time when they might need it, but preferred to continue present living arrangements although these were quite strained in some situations. In an effort to interest more persons, notices were sent to all UCPA affiliates informing them of the availability of this residence for cerebral palsied persons. Later a brochure outlining the unique possibilities of a supervised residence plus vocational evaluation were widely distributed. As indicated in the data on geographical distribution, a number of residents did come from areas outside of Philadelphia. Use of the hall as a vacation resource was suggested but not more than one or two persons took advantage of this opportunity. Occasionally adult CPs requested and obtained permission to remain overnight or spend weekends there. Persons from other cities attending the evaluation unit of our vocational services department lived at Overbrook Hall during their eight-week period of testing. Every effort was made through local and national channels to obtain a full quota of residents, but without success.

During the summer of 1959 a pilot project was carried on to determine the feasibility of admitting persons with more severe involvement. Eight young men and women between the ages of 16 and 30, all non-ambulatory and requiring custodial care, were admitted for a six-week period. Three practical nurses were added to the staff and the living and dining rooms changed about so that a small dormitory for men, and one for women, could be set up on the first floor. At the conclusion of the six-week period there was little room for doubt that handling such clients was impractical in the physical facilities available. Also, we had experienced no great rush of applicants. The fact that this was a temporary program was undoubtedly a contributing factor but a large number of contacts were required before eight persons were enrolled. Original plans had called for 10.

In July 1961 a complete review of all the agency's programs was initiated by the board of directors. The assistance of our national staff was requested. Under the leadership of Mr. Messner a very fine program study committee was assembled. In its report on Overbrook Hall the workshop group stated, "It is difficult to justify this outlay of funds for the relatively few persons who presently qualify for admission and the present function of this facility." Possibilities of using the home for training in domestic science and general homemaking skills for nonresident as well as resident clients, or expansion of the services into a nursing or convalescent-type home were suggested as possibilities warranting further study.

The report of the workshop group was an expression of a concern felt by the board of directors for some time. An ad hoc committee on custodial care facilities had been appointed prior to this study but had been relatively inactive while awaiting the workshop group report. The committee had been appointed to:

(1) Study and consider facilities and services presently provided by city and state for the care of severely involved cerebral palsied persons and take such action, separately or in conjunction with our state asso-

ciation, as may be needed to improve existing services and facilities or to bring about needed additional services and facilities.

(2) Investigate private facilities and services presently or prospectively available for the care of severely involved CPs and take such action as may be needed to implement the use of such facilities by severely involved CPs.

(3) Study, from the standpoint of capital and operational costs, licensing, zoning and other governmental regulations, the feasibility of making such alterations to the resident home as may be necessary in order that it may accommodate a small number, on a pilot or demonstration basis, of severely involved CPs, and report its findings to the board for its decision and action.

In its final report, submitted to the board of directors on May 9, 1962, the committee made several important statements:

1. It had been found, through various recent studies, that parents of cerebral palsied children increasingly tend not to place them away from home permanently until, or unless, there is a family crisis; that it is proving more satisfactory to keep children in their own homes as long as possible; and that this is increasingly possible if supportive services, including the therapies, day care, recreation, sheltered workshops, homemaker services, etc., are supplied by private or public agencies in the community.

2. Parents have great anxiety as to what will become of their handicapped child if something happens to the family. Often they do not know where to turn for help with the problem and are frequently unaware of any resources except the state schools for the retarded. Their information about these schools is limited and sometimes erroneous and they are frequently unaware of changes in philosophy of administration or program which have taken place in recent years.

3. Experience, and the opinion of professional personnel, indicate the number of severely physically handicapped cerebral palsied with a normal or superior IQ is very limited. The bulk of the problem of long-term care away from home will, therefore, be for the physically handicapped retarded.

4. The committee accepted completely the philosophy that provision of long-term care is essentially a public responsibility, not that of a private agency. It was felt the function of a private agency should be to support (but not financially) county and state agencies which provide long-term care, and to expand and improve their services.

5. Any pilot or demonstration project concerned with custodial care of severely handicapped CPs involves the risk that if the program is not successful the persons whom it was intended to benefit may, actually, be harmed. Having undergone an adjustment in entering the project, they will be forced to undergo another adjustment if it fails or if it is not adequate for the individual. Their participation will merely have forestalled working out a permanent plan, to the disservice of both the persons and the agency involved.

An analysis of number of persons in residence, turnover, and per capita costs showed the direct cost of the program to UCPA to be in the vicinity of \$1.000 per occupant per year. While it was recognized

that the group had benefited substantially from residence at Overbrook Hall, the ad hoc committee was unanimous in the view that the residence should not be continued in its present form—it should either be expanded to include a larger number of residents or else should be discontinued.

Careful attention was given to the feasibility of making changes at Overbrook Hall in order that it might accommodate a small number of severely involved CPs on a pilot or demonstration basis. Studies were made regarding expenditures that would be required to alter and equip the building to accommodate between five and eight severely handicapped persons. Although two state departments were interested and encouraged such a development, repeated and persistent efforts were not successful in obtaining a commitment concerning the exact amount of support the state would allow for providing nursing-home care. The committee felt the expenses involved would substantially exceed the reimbursement, particularly if good quality rather than bare minimum services were provided. The committee, therefore, concluded that it would be unsound to embark on any such expansion or demonstration program. It was agreed that the funds currently being spent on Overbrook Hall would be more wisely used, to the benefit of all CPs requiring custodial care, by concentrating UCPA's efforts on locating and making available adequate foster homes, nursing homes and other facilities more suitable for the provision of custodial care. The ad hoc committee on custodial care facilities therefore recommended to the board of directors of UCPA that after adequate provisions had been made for current residents and staff, Overbrook Hall be closed and the property sold.

The problem of long-term residential care would, thereafter, be the responsibility of the social service department. Continued efforts to locate foster homes and other facilities suitable for custodial care of CPs, counseling of parents concerning the placement of CPs needing custodial care, preparation of a directory of facilities available for long-term care away from home, exploration with UCP of Pennsylvania of the possibility of higher grants by the department of public assistance to institutions or foster homes where an individual needs attendant, but not nursing care, development of a plan, jointly, with the Pennsylvania Association for Retarded Children, Mental Health Association, and Pennsylvania Citizens Association, to aid in improving existing conditions in the state schools were further recommendations of the committee to the board.

The board accepted the recommendations of the committee and proceeded to implement them. Satisfactory arrangements for the CPs then residing at Overbrook Hall were made by the social service department. This required several months of quite intensive search and the cooperation of a number of other local agencies. A primary problem was the limited financial resources of the residents.

Overbrook Hall was closed on December 15, 1962, and the property has subsequently been sold.

In the opinion of the board of directors and staff of UCPA, Overbrook Hall served as an interesting demonstration of the value of a noninstitutional type of residence for cerebral palsied persons of mild to moderate disability. It was felt that placement of the last group of

residents in the situations located for them was possible primarily because of the social and emotional adjustments they had made during their period of residence. Overbrook Hall served as a "halfway house" for persons leaving their paternal homes but not ready to move into unsupervised living in the community. For example, one client was more happily acceptable in the home of his mother and stepfather because he had learned to use public transportation and gained a greater degree of self-sufficiency. We feel the basic idea of such a program is good, particularly if, as in Philadelphia, resources for vocational, recreational and health services can be integrated with a residential program but we are convinced that the cost of maintaining such a unit makes this activity impractical for a private agency. The establishment of such residences on a tax-supported basis might well yield gratifying results in salvaging mild to moderately involved cerebral palsied adults from a lifetime of institutional placement.

ANALYSIS OF RESIDENTS

May 1, 1955—December 15, 1962

1. Number individual residents_____ 60	2. Planned length of stay		
Male _____ 34	Permanent _____ 26		
Female _____ 26	Temporary _____ 34		
3. Referred by	4. Age on admission		
UCPA, Philadelphia _____ 22		Male	Female
UCPA, other affiliates _____ 5	Under 18 _____ 2		4
Parents _____ 11	18-24 _____ 15		10
Relatives _____ 8	25-29 _____ 8		4
Friends _____ 2	30-34 _____ 4		7
Self _____ 6	35-40 _____ 2		0
Other agencies _____ 6	Over 40 _____ 3		1
5. Previous place of residence	6. Educational background		
Philadelphia area _____ 44		Male	Female
Pennsylvania—other	No formal schooling 3		2
counties _____ 9	Special class _____ 9		3
Other states	1st to 6th grade _____ 3		3
Massachusetts _____ 1	6th to 8th grade _____ 3		4
Michigan _____ 1	Completed elemen-		
New Jersey _____ 1	tary _____ 5		4
New York _____ 1	8th to 12th grade _____ 1		1
North Dakota _____ 1	Completed secondary 8		7
Ohio _____ 1	College (1 year) _____ 2		2
Vermont _____ 1	Completed college _____ 2		.
7. Actual length of stay			
	Male	Female	
Less than 6 weeks _____ 4		1	
6 to 8 weeks _____ 12		10	
2 to 6 months _____ 5		7	
6 to 12 months _____ 3		3	
1 year _____ 1			
2 years _____ 3		2	
3 years _____ 1		2	
6 years _____ 4 *		1 *	
7 years _____ 1			

* Two men and one woman left residence—returned after interval.

8. Admissions by years

	1955	1956	1957	1958	1959	1960	1961	1962	Total
Male	5	7	0	3	10	5	2	2	34
Female	3	3	0	4	4	3	4	5	26
Total.....	8	10	0	7	14	8	6	7	60

9. Disposition

	Male	Female
Married	3	2 *
Living independently ..	7	5
With relatives	19	14
Hospitalized	1	1
Other institutions	2	1
Other homes	1	3
Deceased	1	-

10. Amounts paid monthly for room, board and laundry :

Monthly payments	Fiscal year and basic rate									
	\$100 per month		\$172 per month							
	1955	1956	1957	1958	1959	1960	1961	1962	1963	
\$0	-	1	-	-	-	-	-	-	-	-
20	-	-	1	-	1	1	-	-	-	-
30	-	-	-	-	1	-	-	-	-	-
40	-	1	-	-	-	-	-	-	-	-
50	-	-	-	-	-	-	-	-	-	-
60	-	1	2	8	7	6	4	5	3	-
70	2	2	4	1	-	1	2	2	2	-
80	-	1	-	-	1	1	2	1	2	-
90	-	-	-	-	-	-	-	-	-	-
100	1	4	5	4	1	1	1	-	-	-
110	-	-	-	1	1	-	-	-	-	-
120	-	-	-	-	1	-	2	-	-	-
130	-	-	-	-	-	-	-	-	-	-
140	-	-	-	-	-	-	-	-	-	-
150	-	-	-	-	-	-	-	-	-	-
160	-	-	-	-	3	1	1	-	-	-
170	-	-	-	2	3	8	13	7	4	-
200	-	-	-	-	-	-	-	-	1	-

NOTE: All figures have been rounded off to nearest 10 for convenience.

Figures represent monthly levels only. Period of residence varied from one week to full year.

Most of residents paying \$170 (actual \$172) per month spent eight weeks at Overbrook Hall while being evaluated in vocational services department.

* Married to two of men in residence.

OVERBROOK HALL--STATEMENT OF EXPENSES, RECEIPTS AND NET COST TO UCPA--FEBRUARY 11, 1964

	1951-52	1952-53	1953-54	1954-55	1955-56	1956-57	1957-58	1958-59	1959-60	1960-61	1961-62	1962-63	1963-64	Totals
EXPENSES														
Operational														
Salaries.....				\$2,972	\$9,193	\$10,791	\$13,255	\$15,253	\$14,624	\$15,176	\$11,293	\$2,319	0	\$94,876
Food.....				910	3,822	5,131	6,462	7,051	6,171	6,026	4,831	895	0	\$1,229
Household.....				308	1,005	2,029	1,837	3,004	2,756	1,572	1,050	185	0	13,746
Repairs and replacements				1,137	927	1,163	3,052	2,024	3,765	1,654	675	380	\$108	14,885
Fixed charges ²				1,256	1,404	1,544	2,383	2,279	2,461	2,461	2,141	1,336	23	17,621
General office expenses ³				466	677	771	772	640	260	280	229	56	0	4,151
Miscellaneous ⁴				1,806	926	1,103	0	0	561	420	374	95	44	5,329
Total operating expenses.....				\$8,835	\$17,954	\$22,592	\$27,761	\$30,786	\$30,416	\$27,589	\$20,593	\$5,196	\$175	\$191,837
Long-term														
Building.....				\$32,523	0	0	0	0	0	0	0	0	0	\$32,523
Additions and improvements				5,331	\$7,460	\$2,989	0	0	0	0	0	0	0	15,780
Furnishings.....				8,209	2,445	1,404	0	0	6 (\$1,389)	0	0	0	0	10,669
Total long-term expenses.....				\$46,063	\$9,905	\$4,393	0	0	(\$1,389)	0	0	0	0	\$58,972
Grand total expenses.....				\$54,898	\$27,859	\$26,925	\$27,761	\$30,786	\$29,027	\$27,589	\$20,593	\$5,196	\$175	\$250,809
RECEIPTS ⁵				\$23,570	\$11,962	\$19,647	\$18,126	\$11,711	\$16,371	\$13,845	\$11,815	\$3,779	\$25,196	\$108,848
Net cost to UCPA.....				\$31,328	\$15,897	\$7,278	\$9,635	\$19,075	\$12,656	\$13,744	\$8,778	\$1,417	(\$25,021)	\$81,961

¹ General supplies, laundry, grounds.

² Heat, gas, electricity, water and sewer, insurance.

³ Telephone, office supplies, social security taxes.

⁵ Includes special pilot project study

includes special pilot project study.

[illegible]

1.2707—850 4-65 1M

⁶ Furnishings discarded, worn out, lost, etc. Taken off books

7 Includes room and board, garage rent, donations for work, furnishings discarded, wornout, lost, etc. Taken oil books.

cil chapters, bazaar and apron sales, etc. All operational

tal income included.

Printed in California Office of State

REPORT OF THE
SENATE FACTFINDING COMMITTEE
ON LABOR AND WELFARE

STATE VETERANS' HOME IN
SOUTHERN CALIFORNIA

MEMBERS OF THE COMMITTEE

VERNON L. STURGEON, *Chairman*

HOWARD WAY, *Vice Chairman*

CLARK L. BRADLEY

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1965

GLENN M. ANDERSON
President of the Senate

HUGH M. BURNS
President pro Tempore

JOSEPH A. BEEK
Secretary

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LETTER OF TRANSMITTAL

SENATE CHAMBER, STATE CAPITOL
Sacramento, California, January 28, 1965

HON. GLENN M. ANDERSON
President of the Senate
Senate Chamber, State Capitol
Sacramento, California

Mr. President:

Pursuant to Rule 12.5 of the Permanent Rules of the Senate and Senate Resolution No. 270, read and adopted June 21, 1963, at the regular session of the Legislature, the Senate Factfinding Committee on Labor and Welfare submits this report on the proposal to create a state veterans' home in southern California.

It is particularly appropriate that the committee formally acknowledge its debt to the California Department of Veterans Affairs, the United States Veterans Administration, the California Association of County Service Officers, and the many private veterans' organizations who have so significantly contributed to this study and report.

Respectfully submitted,

VERNON L. STURGEON, *Chairman*
HOWARD WAY, *Vice Chairman*
CLARK L. BRADLEY
JAMES A. COBEY
ALBERT S. RODDA
JACK SCHRADE
ALVIN C. WEINGAND

SUMMARY OF FINDINGS AND RECOMMENDATIONS

1. Although the welfare of all of its needy citizens is a principal responsibility of state government, the care of veterans as a separate and distinct group is the duty of the federal government rather than the state.

2. Essentially the same level of services are available to veterans living in southern California from the U.S. Veterans Administration as are available to veterans living in northern California from the Veterans Administration and the State Veterans' Home.

3. Because of the approximate equality in the services currently available from all sources to veterans in northern and southern California, and because of the federal government's paramount responsibility for furnishing veteran care, it is recommended that no action be taken by the Legislature to establish a state veterans' home in southern California.

4. On the basis of total beds provided, an average level of overall services is accorded veterans who reside in California by the U.S. Veterans Administration when compared to the services provided veterans who live elsewhere. Nevertheless, these services in California lag significantly behind the growing veteran population and its demand for services.

5. There is a shockingly critical shortage of psychiatric beds operated by the Veterans Administration in California as measured by the demand for such beds, when compared to the psychiatric beds provided to each of the other seven states with the greatest veteran population, and as compared to the national average.

6. It is recommended that the Congress and the U.S. Veterans Administration be memorialized by the Legislature to promptly provide, at least as a **minimum, an average number of psychiatric facilities** in California (see SJR No. 14 and SJR No. 15, Appendix D, page 46).

STATE VETERANS' HOME IN SOUTHERN CALIFORNIA

I. BACKGROUND TO COMMITTEE'S STUDY

Requests to expand to southern California the custodial and medical care already furnished by state government to California veterans at the Yountville, Napa County, Veterans' Home have not newly arisen. Since 1933, the California Department of the American Legion has formally been on record and has been working for a second state veterans' facility located in the South.¹ In 1960 the California Association of County Service Officers, representing the veteran service officers of 54 of the state's 58 counties, also unanimously endorsed the establishment of such a facility.² Other veteran groups and organizations subsequently added their voices and efforts to this proposal for obtaining more adequate and convenient care for the veterans who reside in the South.

During the 1963 Regular Session of the Legislature two bills were introduced which would have created a southern California veterans' home. SB 605—1963, introduced by Senator Aaron Quick, Imperial County, was referred to and heard in the Senate Standing Committee on Military and Veterans Affairs and was ordered to interim study³ (see Appendix B, page 37, for text of this bill). The Senate Factfinding Committee on Labor and Welfare was assigned this measure and subject matter for study. On January 15, 1964, the committee held a one-day public hearing in San Bernardino at which 21 persons, representing groups or speaking as individuals, testified or submitted material for the record (see Appendix C, page 44, for list of witnesses).

Assembly Bill 2984 by Assemblyman Charles Meyers of San Francisco, identical to SB 605, was referred to and heard by the Assembly Standing Committee on Military and Veterans Affairs. It also was sent to interim study. The Assembly interim committee devoted portions of two days of public hearing to the subject.⁴

This report will delineate the facts and opinions amassed by the Senate Factfinding Committee on Labor and Welfare as follows: The history of state and federally provided domiciliary and medical care for veterans; existing and planned facilities providing care for veterans in southern California; the current demands for care made upon veteran facilities; other sources of care; and the responsibilities of federal and state governments for providing care for veterans.

IIA. HISTORY OF GOVERNMENTALLY PROVIDED CARE FOR VETERANS⁵

As with so many of our conventions in the New World, the roots of governmental provision of custodial and medical services to war vet-

¹ *Transcript*, January 15, 1964, hearing, L. Burr Belden, chairman, Veterans Facility Committee, 25th District, California Department of American Legion, p. 91.

² *Ibid.*, Thomas G. Goetz, director, San Diego County Veterans Service Department, p. 101.

³ *Final Calendar of Legislative Business*, 1963 Regular Session, 1963 First Extraordinary Session, California Legislature, p. 191.

⁴ Assembly Interim Committee on Military and Veterans Affairs, *Transcript*, November 8, 1963, hearing and *Transcript*, December 5, 1963, hearing.

⁵ Basic resource material used in this section includes *History of Veterans' Medicine*, mimeographed monograph, Information Service of the United States Veterans Administration, February 1962; "Brief History of Legislation Pertaining to Veterans' Benefits," Title 38, *United States Code Annotated*, West Publishing Co., pp. 1-37, 1959; and *Report of the President and Other Officers of the Veterans' Home Association of California*, 1884-86, 1887, 1889, and 1890.

erans go back to policies initially established in the Old World. Almost two centuries before the United States became a nation, the 1592-93 session of Parliament enacted a statute for the "reliefe of Souldiors" (including mariners) who had served in the year of the Armada (1588) or who would serve later. This act, financed from local tax funds, was principally a pension; and although the provision of medical care was not to take place for nearly one hundred years, this act did formally acknowledge England's obligations to disabled veterans.

In 1681, King Charles II authorized the establishment of Chelsea Hospital for the custodial care and ancillary medical needs of soldiers who had become lame or infirm while in the service of the Crown. Fundamentally this "hospital" was a shelter, in the archaic sense of the word, but inpatient medical care was rendered to resident veterans. Pensions, but not medical care, were also provided the "outpensioners" who had been precluded from admittance into Chelsea Hospital because of its limited capacity. By 1776, it has been estimated, there were 14,000 of these outpensioners in England in addition to the nearly 500 veterans in Chelsea.

With this heritage, it was logical that the English colonists in America should also provide for disabled, needy veterans. Plymouth Colony, in 1636, was the first to do so; followed by Virginia in 1664; Maryland in 1678; New York in 1691; and Rhode Island in 1718. A common requirement in these colonial laws was that a wound or injury must have resulted in indigency and the incapability of earning a living. Again, direct medical services per se were not furnished.

The first national veterans' law enacted in the United States resulted from a study ordered by the Continental Congress. This occurred prior to the signing of the Declaration of Independence. The recommendations made as a result of the study were enacted on August 26, 1776. Pensions were to be given to any officer, soldier, or sailor disabled while in the military service to an extent which made him incapable of earning a livelihood. The states were requested to execute this law and to make payments on account of the United States. The federal government, after its establishment under the Constitution, was authorized by Congress (Ch. 24, 1 Stat. 95) to continue these pensions for a period of one year. There were subsequent one-year extensions, and eventually an indefinite extension during the life of the pensioners. Whatever direct medical and hospital care were given to veterans in the post-Revolutionary War period, however, were provided by the individual states or communities.

The first domiciliary (or custodial) care furnished veterans by the United States government was authorized by the Congress in 1811 (Ch. 26, 2 Stat. 650) with the establishment of the U.S. Naval Home in Philadelphia. Some medical needs of the home's residents were met on an incidental basis until 1868 when the Naval Hospital in Philadelphia was constructed. In 1851, another congressional enactment (Ch. 25, 9 Stat. 595) established the U.S. Soldiers' Home in Washington, D.C. Outside of these facilities, however, medical, hospital, and domiciliary care were left to the lower levels of government until the Civil War. With the advent of the War Between the States, a crisis arose. There was no system for giving necessary care to men who were being discharged from military duty because of service-connected wounds or

disabilities. The Sanitary Commission, organized in 1861 to study the medical and hospital problems of the Union Armies, set up 25 domiciliary and hospital facilities along the Union lines to furnish needed care to discharged soldiers until they were physically able to return to their homes. The average length of stay in these facilities was short—about three days—and the facilities themselves left untouched the more serious problem of assisting men whose chronic needs for domiciliary and medical care resulted from military service. The commission's recommendation for a national system of sanatoria was initially rejected by the Congress in favor of a hometown-care approach of absorbing such disabled veterans in local facilities.

The length and the casualty rates of the Civil War proved too massive for the hometown programs, and Congress, in 1866, established the National Home for Disabled Volunteer Soldiers (Ch. 21, 14 Stat. 10; originally called "asylum" instead of "home"). Authorized care ran from strictly domiciliary through medical and hospital treatment for all injuries and diseases whether of service origin or not. Successive amendments opened the national home to veterans of other wars and campaigns and to sailors and marines.

By 1887, the national home had five branches covering the eastern half of the nation: facilities for 1,600 veterans in Togus, Maine; 2,000 in Hampton, Virginia; 6,000 in Dayton, Ohio; 1,500 in Milwaukee, Wisconsin; and the not yet completed branch in Leavenworth, Kansas. No branch had been established in the West, however, and pressures rapidly mounted on the Congress to authorize one in that area.

Actions to provide for the needs of veterans following the Civil War were not limited to those of the federal government. Throughout the country, state and local governments and private groups had moved to meet the challenges posed by over 2,000,000 Union veterans. In California in 1881 a benevolent and charitable organization was jointly formed by the Associated Veterans of the Mexican War and the Encampment of the Department of California, Grand Army of the Republic (Union veterans of the Civil War) for the purpose of obtaining ". . . a lease or grant from the Board of Supervisors of the City and County of San Francisco, State of California, of Block number One hundred and sixty (160) outside lands and in connection therewith erect and establish thereon suitable buildings to suitably furnish the same as a home for and maintain and support therein worthy, aged, indigent, and maimed veterans. . . ." ⁶

The Veterans' Home Association of California, thusly formed, reincorporated a year later with the somewhat altered intent of ". . . the founding of a home for the relief and support of worthy officers, soldiers, marines, and sailors who honorably served in the army or navy of the United States during the war with Mexico, or of the Rebellion, or in any other war, and who are in indigent circumstances, and by reason of age, infirmity or wounds received in service, are incapable of self support. . . ." ⁷

From its inception, then, as these articles of incorporation indicate, the purpose of what was to become the California Veterans' Home was

⁶ Articles of Incorporation, Veterans' Home Association of California, filed in the office of the Secretary of State, April 13, 1881.

⁷ Articles of Incorporation, Veterans' Home Association of California, filed in the office of the Secretary of State, March 10, 1882.

principally that of providing a home for veterans and medical and hospital care were incidental to this chief function.

In the same year, 1882, property was purchased by the association near Yountville, Napa County, and the construction of the home was begun. The first occupants entered in 1884, and soon the home was filled to capacity. However, the Veterans' Home Association had been experiencing serious financial difficulties and prevailed upon the 1883 Session of the Legislature to assist in maintaining and operating the home. The Legislature responded by enacting an appropriation measure to provide \$150 per year for each veteran residing in the Veterans' Home, not to exceed a total of \$15,000 a year (Ch. 31, Stats. 1883). In the calendar year 1884, \$2,105—about 23 percent of the home's operating expense—was received from the State of California. \$10,721 was paid by the state in 1885—83 percent of the total operating costs, and \$8,086—71 percent in 1886.

Although much of the burden had been lifted from the Veterans' Home Association, both the remainder of the maintenance and operating costs not paid by state government and the mounting pressures to enlarge the home led the association to resort to two possible ways out of its continuing precarious financial position. The first was to seek an increase in state funds. The second was to completely relinquish the home to either the federal or the state government.

In 1886, the association again went to the Legislature and was successful in increasing the appropriation ceiling for veterans' care to \$30,000 per year (Ch. 10, Stats. 1886) and in obtaining the first state appropriation for capital outlay, an amount of \$10,000 for a new residence cottage and other facility improvements (Ch. 12, Stats. 1886).

The main thrust of the association's efforts to resolve its chronic fiscal dilemma, however, was its attempt to have the responsibility for the home taken over by the National Home for Disabled Volunteer Soldiers.

In 1887 the Congress finally authorized the establishment of the Pacific branch of the national home on an unspecified site (Ch. 316, 24 Stat. 444). The association had anticipated Congress' action:

"We hope to have the institution transferred to the United States within a few months, and if that hope should be realized, the State will be entirely relieved of this burden, while the old veterans will be better cared for than at present. . . . It is apparent, from an examination of the liberal (congressional) appropriations made in past years, and from an investigation as to the management of the various (Branch) Homes (for Disabled Volunteer Soldiers), that the (Federal) Government can do much better for the veterans than any single State corporation, or even any State can do. . . . We have already tendered the property (of the State Home) to the Board of Managers of the National Home. . . . It may, however, take several months for the Board of Managers to decide upon the location. If they should not accept our property, we can give it to the State."⁸

After visiting the state home, the board of managers did, in fact, reject the offer of this institution and instead selected a location near

⁸ *Report of the President, etc., 1886, op. cit., James A. Waymire, president, pp. 8-10; parenthetical material added.*

Glendale, Los Angeles County. The resulting facility is still in operation today as the U.S. Veterans Administration Center (or, as it is commonly referred to, "Sawtelle").

Having failed in their first attempt, the Veterans' Home Association turned toward giving the Yountville home to the State of California. In 1888 the Congress enacted further veteran care legislation which provided yearly payments of \$100 for each disabled veteran cared for in homes established by the states or territories (Ch. 914, 25 Stat. 450). In order to qualify for this subvention as well as furthering their surrender of the Veterans' Home to the state, the association sponsored legislation which was enacted by the 1889 Session of the Legislature declaring the home to be a state facility (Ch. 268, Stats. 1889).⁹ Although there was still strong sentiment that the care of veterans was a federal rather than a state responsibility,¹⁰ the State of California assumed full responsibility for the home in 1897 (Ch. 101, Stats. 1897).

At the federal governmental level, the provision of domiciliary care and ancillary medical services to veterans remained the exclusive function of the national home until 1917, and new branches were established in Marion and Danville, Illinois; Johnson City, Tennessee; Hot Springs, South Dakota; and Bath, New York.¹¹ With the passage of amendments to the War Risk Insurance Act in that year, however, direct medical, surgical, and hospital care were provided veterans by the Bureau of War Risk Insurance (Ch. 105, 40 Stat. 398). The bureau, not possessing the necessary medical staff and facilities, arranged for the use of those under the Public Health Service and as the need for additional beds grew, money was appropriated to the Public Health Service for the construction of many new veteran hospitals and sanitarium. By the end of World War I, this loose system of caring for veterans began to disintegrate under the pressure of the vast number of disabled veterans and the breakdown of interagency operations involving the national home, the Bureau of War Risk Insurance, and the Public Health Service. A presidential commission appointed in 1921 to study the problem recommended unifying the powers, functions, and duties of these agencies, and the Congress immediately responded by establishing the United States Veterans Bureau (Ch. 57, 42 Stat. 147) to effect partial consolidation. In 1930, the final merging of divided federal administrative responsibilities for domiciliary, medical, and hospital care was effected by the Congress' authorizing the President to consolidate governmental activities affecting veterans (Ch. 863, 46 Stat. 1016) and

⁹ Although nominally proclaimed a "state home," the property of the Veterans' Home remained vested in the Veterans' Home Association and the existing board of directors of the association was merely constituted as a state body for purposes of managing the facility. Further, the state, through the office of the Governor, although given the authority to replace for cause any member of the board, was not responsible for the initial selection of the board's members.

¹⁰ "The recent action of Congress in making liberal provisions in aid of State Homes has given rise to the suggestion that, as a matter of justice the United States Government ought to take charge of and support all the State Homes exclusively. The argument in favor of such a policy is, that all the men who require the assistance of Soldiers' Homes were in the service of the general government, not of the States, . . . and consequently the general government should bear the expense of caring for them in their old age. Another argument is that the revenue of the general government is now so great that it can afford to be more liberal in this direction than the State can." *Report of the President, etc., 1889, op. cit., James A. Waymire, president, p. 7.*

¹¹ A minor exception was the furnishing of artificial limbs to veterans of all services under a program administered by the Surgeon General of the Army.

the President's Executive Order of July 21, 1930, creating the United States Veterans Administration followed.

Since 1930, the VA has operated what has now become the largest organized medical system in the country—169 hospitals, 18 domiciliarys, and 217 outpatient clinics as of June 30, 1963. This hospital system accounts for over 7 percent of both the nation's hospital beds and the average daily hospital patient load in the country.¹²

IIB. ELIGIBILITY REQUIREMENTS FOR CARE

To be eligible for admission to the Veterans' Home of California, a veteran, by state law, must have served in the armed forces of the United States during a period of war; have received a discharge from that service under conditions other than dishonorable; be disabled to such an extent that he cannot pursue a gainful occupation¹³; be in need of care or treatment or domiciliation which he cannot financially provide for himself; have been a bona fide resident of California for five years immediately preceding the date of application; and be eligible for admission to a United States Veterans Administration facility.¹⁴

Eligibility requirements for admission to a federal VA institution vary somewhat depending on whether medical care or domiciliary care is to be provided. To be admitted for medical treatment, an applicant is required to be :

1. A veteran of any war for a service-connected disability incurred or aggravated during a period of war, or for any other disability for such a veteran.

2. A veteran whose discharge or release from the active service was for a disability incurred or aggravated in line of duty; and

A person who is in receipt of, or, but for the receipt of retirement pay would be entitled to, disability compensation.

3. A veteran of any war, having no service-connected disabilities, if the veteran certifies he is unable to defray the expenses for the necessary care and a bed is available.

4. A veteran of peacetime service only who has a service-connected disability incurred or aggravated during his period of service, or for any other disability if the service-connected disability is rated to a compensable degree.

To be admitted for domiciliary care, an applicant is required to be either a veteran who was discharged or released from active service for a disability incurred or aggravated in line of duty, or who is in receipt of disability compensation when he is suffering from a permanent disability and is incapacitated from earning a living and has no adequate means of support; or a veteran of any war who swears he is unable to defray the expense of domiciliary care and who is suffering from a chronic disease which is producing disablement of such a degree

¹² *Annual Report, 1963, Administrator of Veterans Administration, U.S. Government Printing Office, Washington, 1963, p. 16.*

¹³ No distinction is made in state law between service- and non-service-connected disability.

¹⁴ Sections 1012, 1012.1, 1024, and 1043, Military and Veterans Code. Also see 12 Cal. Adm. Code 600-606.

and probable persistency that he will be incapacitated from earning a living. In either case, the applicant must be able to maintain a minimum level of independence, such as being able to dress himself with little assistance, proceed to and from the dining area without aid, feed himself, and make rational decisions as to his desire to remain or leave the facility.¹⁵

III. EXISTING AND PLANNED VETERAN FACILITIES

A. CALIFORNIA

The fundamental purpose of the California Veterans' Home from its inception has been to provide a place of residence for disabled and aged war veterans who have resided in California and are indigent. However, and likewise from its inception, the California Veterans' Home has been intimately involved in providing nursing and hospital care to its residents.

"... (M)any of our men have been taken from city and county hospitals, where they have been under treatment for chronic diseases for years. . . ." ¹⁶

In 1886, of a total of 210 residents of the home during the year, 44 needed hospitalization and only eight required no medical attention. Within six years after its opening on April 1, 1884, the home was provided with its first building constructed specifically for furnishing hospital services.

This same pattern has been carried on down to the present time.

"... (T)he hospital at the Veterans' Home was designed primarily to provide care for those members of the home who lived in the domiciliary units. From the time it began nearly 80 years ago this was the purpose of the hospital. We have nevertheless tried, because of the dire need, to make it available whenever beds are vacant for the use of California veterans at large who are not members of the home. . . ." ¹⁷

The great bulk of admittances to the hospital, notwithstanding, are from within the home. In the fiscal year 1963-64, a total of 875 veterans was admitted to the home's hospital; 828 admissions were from within the home—94.6 percent. Of the 47 nonresidents who were admitted to the hospital, 25 were taken from the hospital waiting list of eligible veterans—2.9 percent of the total admissions; 15 were on an emergency basis; and seven were actually readmitted as transfers from U.S. Veterans Administration hospitals to which they had been sent originally as acute, temporary patients. It is clearly evident that the hospital facilities were and are almost exclusively used for the care of the Veterans' Home residents.

¹⁵ 38 U.S.C.A. 601, 610, and 612. Also see 38 C.F.R. 17.30, 17.35, 17.45, 17.46, 17.47, 17.48, 17.49, 17.50, and 17.100.

¹⁶ *Report of the President*, etc., 1886, *op. cit.*, W. B. Lovett, M.D., commandant and medical director, p. 17.

¹⁷ *Transcript*, January 15, 1964, hearing, Larry E. Gould, M.D., medical deputy director and acting commandant, Veterans' Home of California, State Department of Veterans Affairs, p. 48.

Currently, the California Veterans' Home has the following care facilities:

<i>Facility</i>	<i>Capacity</i>
Hospital	450
Intermediate (nursing care)	415
Domiciliary	1,515
Men	1,462
Women	53
Total	2,380

Regarding additions to the home, in 1964 the Legislature provided a total of \$415,600 to construct and equip an intermediate care ward of 28 beds for women veterans.¹⁸ Another request for fund authorizations in the amount of \$1,629,150, however, for construction of an additional wing to the hospital and for conversion of one vacant domiciliary care barrack to an intermediate care facility was refused passage by the Legislature.¹⁹

B. OTHER STATES

Excluding California, a total of 27 other states operated veteran facilities during 1962-63. These homes, as shown in Table 1, had a total average daily occupancy of 7,348 veterans. Massachusetts, New Jersey, and the State of Washington each had two veterans' homes and Oklahoma operated three. The largest of the state facilities, again excluding California, were those administered by Massachusetts whose two homes had a joint average occupancy of 836 veterans. California's State Veterans' Home, however, was by far the largest single

TABLE 1
Average Daily Occupancy in State Veterans' Homes
1962-63

State and home	Average daily occupancy*	State and home	Average daily occupancy*
State homes—total	9,161	New Jersey:	
California: Napa County	1,813	Menlo Park	75
Colorado: Homelake	75	Vinland	113
Connecticut: Rocky Hill	684	New York: Oxford	8
Georgia: Milledgeville	239	North Dakota: Lisbon	89
Idaho: Boise	89	Ohio: Erie County	676
Illinois: Quincy	559	Oklahoma:	
Indiana: Lafayette	247	Arlmore	172
Iowa: Marshalltown	312	Norman	197
Kansas: Fort Dodge	94	Sulphur	175
Massachusetts:		Pennsylvania: Erie	180
Chelsea	641	Rhode Island: Bristol	243
Holyoke	195	South Dakota: Hot Springs	135
Michigan: Grand Rapids	729	Vermont: Bennington	54
Minnesota: Minneapolis	395	Washington:	
Missouri: St. James	73	Orting	164
Montana: Columbia Falls	58	Retsil	212
Nebraska: Grand Island	150	Wisconsin: King	289
New Hampshire: Tilton	34	Wyoming: Buffalo	12

* Based on total member days during year divided by number of days in year.

Source: Annual Report, Administrator of Veteran Affairs, 1963, Table 10, p. 207.

¹⁸ Budget Act of 1964, Chapter 2, Second Extraordinary Session, California Legislature, Item 367 (b) and (c), pp. 111-12.

¹⁹ AB 1, 1964 Regular Session, California Legislature, Item 370, pp. 102-3.

state home, and its 1,813 residents actually comprised 19.8 percent of all veterans residing in state-operated veteran homes.

C. FEDERAL

As previously mentioned, the United States Veterans Administration administers the largest organized medical care system in the country, comprising 169 hospitals, 18 domiciliaries, and 27 outpatient clinics as of June 30, 1963. As these figures indicate, the chief emphasis of the VA facilities is the provision of medical rather than custodial or domiciliary care with only 16,770 beds—or 13.9 percent—of the VA's total of 120,304 beds devoted to principally nonmedical care cases.

The 169 VA hospitals are typed on the basis of the predominant kinds of care furnished. One hundred thirty were general hospitals (with 41,160 medical beds and 20,124 surgical beds—a total of 61,284) and 39 psychiatric hospitals (with 59,021 beds). There were VA hospitals operating in 48 of the 50 states in 1963, with only Hawaii and Alaska without facilities.²⁰

The 18 federally operated domiciles were located in 17 states. State-operated but federally subvented domiciliary facilities were found in 28 states (as indicated in Table 1); 19 of these states had no VA-operated domicile.

In California, the United States Veterans Administration operates the following facilities:

TABLE 2
Veterans Administration Facilities in California; by Region, Number of Beds, and Type of Care During 1962-63

	Total beds†	Psychiatric beds	Medical beds	Surgical beds	Domiciliary beds
Northern California*	3,804	1,828	1,187	789	0
Fresno	250	23	104	123	0
Livermore	169	9	369	100	0
Oakland	558	36	281	241	0
Palo Alto					
(Menlo Park Division)	1,120	1,120	0	0	0
Palo Alto					
(Palo Alto Division)	1,000	649	343	108	0
San Francisco	406	0	190	217	0
Southern California*	9,141	2,753	2,851	930	2,607
Long Beach	1,569	62	1,176	331	0
Los Angeles					
(Brentwood)	2,021	2,021	0	0	0
Los Angeles					
("Sawtelle")	2,607	0	0	0	2,607
Los Angeles					
(Wadsworth)	1,469	0	1,012	457	0
San Fernando	519	0	471	48	0
Sepulveda	956	670	192	94	0
State totals	12,945	4,581	4,038	1,719	2,607

* Southern California defined as comprising Imperial, Inyo, Kern, Los Angeles, Orange, Riverside, San Bernardino, San Diego, San Luis Obispo, Santa Barbara, and Ventura Counties. Northern California is the balance—47 of the state's counties.

† Total VA beds and breakdown from *Annual Report, Administrator of Veterans Affairs*, 1963, Table 5, pp. 196-201. The beds in southern California as shown are 57 more than for January 1, 1964, as detailed by L. C. Like, director, Veterans Administration Center, Los Angeles, *Transcript*, January 15, 1964, Table 2, p. 37. This represents a 0.6 percent differential. For comparability of figures, data for both northern and southern California were taken, therefore, from the *Annual Report*.

Source: As indicated above.

²⁰ *Annual Report, 1963, Administrator of Veterans Administration, op. cit.*, pp. 16-18. and Table 5, pp. 196-201.

Excluded from these data is the new VA hospital of 498 beds in Martinez which opened in August 1963. Upon its opening, however, the 697-bed facility in Oakland was closed, with a resulting net decrease of 199 beds in northern California.

The Veterans Administration recently announced plans to build two new hospitals in California: one in Hazard Park, Los Angeles, with construction to begin in 1965 and completion due in 1967 or 1968; the other in San Diego, to be started in 1966 and to be completed in 1968 or 1969. Each will have approximately 1,040 beds, 240 of which will be for neuropsychiatric patients and 800 to meet general medical and surgical needs.²¹

IV. CURRENT DEMANDS FOR SERVICES

The demands for services at the State Veterans' Home and the various Veterans Administration facilities in California are generated principally by this state's 2,361,000 veterans.²² These veterans represent 13.4 percent of California's total population²³ and 11.2 percent of the veterans in the nation.²⁴ Inasmuch as Californians account for 9.4 percent of the country's total population²⁵, it is evident California has an above-average incident of veterans in its population. Within California, 61.2 percent of the veterans reside in the southernmost counties.²⁶

California's veterans are comprised of 40.3 percent (951,000) who served only in World War II, 28.8 percent (679,000) who served in both World War II and Korea, 21.1 percent (499,000) who served only in the Korean conflict, 9.1 percent (215,000) in World War I, and 0.7 percent (17,000) in the Spanish-American War, Indian Wars, or in the Regular Establishment (peacetime).²⁷

The average age of World War II veterans, including those who served in Korea, was 44.0 years for the United States as a whole on June 30, 1963, 31.9 years for "Korea only" veterans, 69.1 years for the World War I veterans, and 44.2 years for the balance.²⁸ Thus the average of all veterans in California was about 43.7 years at the end of June 1963, or approximately one-half a year younger than the national average of 44.2 years.

²¹ Los Angeles Times, July 19, 1964, p. 17J, and San Diego Union, November 19, 1964, p. A11.

²² Annual Report, *op. cit.*, Table 3, p. 193, estimated as of June 30, 1963. Although the state's home requires five years' residence in California, there is no required period of residence for admittance to the federal facilities. Thus some, although probably not a significant number, of the patients in and applicants for the VA facilities are not Californians.

²³ California Population, 1963, Financial Population Research Section, State Department of Finance, Sacramento, Table 13, p. 23, estimated as of July 1, 1963.

²⁴ Annual Report, *op. cit.*, Table 3, p. 193.

²⁵ California Statistical Abstract—1964, State Economic Development Agency, Sacramento, Table G-5, p. 48, estimated as of July 1, 1963.

²⁶ For definition of northern and southern California as used in this report see footnote *, Table 2, page 17. Geographic distribution of veterans within California has been extracted from U.S. census data for veteran and total population, April 1, 1960, and California Population, 1963, *op. cit.*, Table 13, p. 23, as follows: 4-1-60 population of southern California = 0.60773; 7-1-63 population of southern California = 0.60338; therefore 7-1-63 veteran population of southern California = 0.61238.

²⁷ Annual Report, *op. cit.*, Table 3, p. 193.

²⁸ Ibid., Table 1, p. 191.

A. STATE VETERANS' HOME

Information given to the committee at its public hearing in January 1964 indicated the following relative to the demand for services at the State Veterans' Home:²⁹

<i>Type of care</i>	<i>Capacity</i>	<i>Vacancies</i>	<i>Waiting list</i>
Hospital -----	452	None	114
Intermediate -----	415	None	27
Domiciliary			
Men -----	1,462	520	None
Women -----	53	None	21

The latest figures available show that as of November 30, 1964, there were waiting lists of 168 veterans for hospital care, 56 for intermediate care, and 10 women veterans for domiciliary care and that vacancies in the men's domiciliary units had increased to 617.

The State Department of Veterans Affairs emphasized the long-term trend in the demand for services at the State Veterans' Home:

"Because of economic conditions such as the advent of social security, the number of applications for domiciliary care are rapidly declining. At the same time applications for nursing home type care and hospitalization are rising because the veterans do not have sufficient funds to pay for this more costly type care."³⁰

This analysis was generally agreed to by other witnesses who appeared before the committee, although it was pointed out that the waiting lists are not absolute measures of demand for services as many veterans probably do not apply for admission because of the well-known shortages of intermediate and hospital beds.³¹

Concurrent with the increasing need for nursing and acute hospital care among the noninstitutionalized veterans' population is the great demand for these services among those veterans who are residents of the state home. During the January 15 hearing, Senator Bradley asked Dr. Larry E. Gould, Medical Deputy Director of the Veterans' Home of California:

"As a matter of fact do you not have veterans who, by continuing old age, graduate, I might say, from domiciliary to intermediate and from intermediate into hospitalization right there on the facility?"

Dr. Gould replied:

"Very definitely. In fact, that is the very thing that keeps our hospital filled all the time. These individuals, we cannot turn them to someone else. We must provide care for them, and this is the source of our admissions primarily."³²

²⁹ *Transcript*, January 15, 1964, hearing, John Handsaker, administrative deputy director, State Department of Veterans Affairs, p. 10.

³⁰ *Ibid.*

³¹ *Ibid.*, W. Keith Garrison, director, Ventura County Veterans' Service Bureau, representing the California Association of County Service Officers, p. 60; Allen J. Martin, state senior vice commander, Veterans of Foreign Wars, p. 85; and Thomas G. Goetz, director, San Diego County Veterans Service Department, p. 101. That there is an increasing need for domiciliary beds, however, was the contention of R. Pete Ostrander, Imperial County veterans service officer and chairman, Special Committee for Southern California Veterans' Home and Hospital, California Department of the American Legion, pp. 73-4.

³² *Ibid.*, p. 52.

Over the last 17-month period (July 1963 through November 1964), 95.5 percent of the total admissions to the hospital wards at the state home was made from within the institution—1,124 out of 1,177. Of the remaining 53 admissions (4.5 percent), 31 were from the waiting list, 15 on emergency basis, and 7 were readmissions from VA facilities.³³

As might be expected, the overwhelming majority of residents and applicants for the State Veterans' Home since its inception has been from northern California.³⁴ In 1886 it was reported that of the first 219 veterans admitted to the home, 201 (95 percent) were from northern California, 14 from southern California, and 4 from out-of-state.³⁵ During the calendar year 1963, only 8.7 percent (55 of 628) of the veterans admitted to the home were from the South.³⁶ And the State Department of Veterans Affairs' official waiting lists for the home as of July 1, 1964, show that: 5 veterans of 160 waiting hospitalization, 5 of 68 waiting for intermediate care, and 4 of 14 women pending placement for domiciliary care—an aggregate of 5.8 percent—were from southern California.

Thus 90 to 95 percent of the demands for care in the state home come from veterans who reside in northern California although the majority of California veterans live in the southern area. The reasons given for this ranged from the distances involved, the inability of relatives and friends to visit, the reluctance of veterans to leave their home communities, the inability of the state to pay the costs of transportation necessary in moving to the home, to the change from one climate to another.³⁷ It was even suggested that "... we do not get the same consideration of our veterans from the South that they do in the North . . ." ³⁸, although no evidence was submitted to substantiate the charge and none has been discovered by the committee.

It would be expected that the average age of the veterans residing in the state home would be high and that the degree of medical care needed would increase with advancing age. Although the committee could not obtain the ages of members of the home, it did secure the ages of applicants who were eligible for admission and were on the waiting lists.³⁹ These data show that the average age of male applicants for intermediate or nursing care was 64.9 years, of male applicants for hospital care was 67.1 years and of women for domiciliary care was 69.1 years. There was no waiting list, of course, for the men's domiciliary unit. The average of all veterans on the lists was 66.6 years.

CONCLUSIONS

In summary, the state's policy regarding the care of veterans has remained basically unchanged since it assumed full responsibility for the Veterans' Home in 1897; that the home's chief function would be a residence for qualified veterans; that although veterans would

³³ "Commandant's Reports" for the months of July 1963 through November 1964, Veterans' Home of California, State Department of Veterans Affairs.

³⁴ For definition of northern and southern California as used in this report see footnote *, Table 2, page 17.

³⁵ *Report of the President, etc.*, 1886, *op. cit.*, p. 8.

³⁶ *Transcript, op. cit.*, Handsaker, p. 16.

³⁷ *Ibid.*, Garrison, *op. cit.*, p. 63; Ostrander, *op. cit.*, pp. 71-2; and Belden, *op. cit.*, p. 91.

³⁸ *Ibid.*, Ostrander, *op. cit.*, p. 75.

³⁹ "Waiting Lists as of July 1, 1964," Veterans' Home of California, Department of Veterans Affairs, Sacramento. This is more current than that appearing in the committee's *Transcript*, pp. 10-14.

be admitted directly into the hospital and intermediate care wards if vacancies otherwise existed, members of the home would have first priority on the ancillary medical care provided in these facilities. Thus in spite of the outside demands for hospitalization and nursing care which have so completely overwhelmed the home's capacity, expansion of these medical units has been authorized only to meet the needs of the home's members as these needs have increased.

There appear to be no reasons for not assuming that the demands for male domiciliary care will not continue to decrease over the short run, unless eligibility requirements are significantly changed. The high wave of applications to be expected from World War I veterans seems to be cresting now. The home's hospital facilities, however, while not being inundated by members, is being completely utilized and, together with the intermediate care unit, has scant margin for satisfying increased demands from within the home. And it seems inevitable that such demands will be increasing in the home as they have for the general population.⁴⁰ Just as the medical sciences have extended the life span, they have increased the demands on chronic and acute care facilities.

In the long run, as the massive numbers of World War II veterans approach their sixties, demands on the state home's domiciliary unit will probably increase and may well exceed its existing capacity. This new wave will be felt in significance in 10 to 15 years and will assume tsunamilike proportions as far as intermediate and hospital care demands are concerned.

The foregoing estimates are based on the expectation that veterans residing in southern California will continue, by and large, to bypass the opportunity to apply for domiciliary care in the home. This anticipation could be upset by several factors, however, such as whether the Veterans Administration expands its facilities in California and whether the federal government changes its attitude toward the provision of domiciliary care to veterans. The VA has established rehabilitation centers at Hines, Illinois, and East Orange, New Jersey, to "... restore disabled patients who have attained maximum hospital benefits and may be returned to community living within a reasonable time."⁴¹ This program has been interpreted by some as an indication that the VA could be seeking a way out from providing domiciliary care.⁴²

In any case, however, it appears certain that a new state veterans' home in southern California, such as the 1,150-bed facility proposed in the detailed statement submitted by the California Department of the American Legion, would be fully utilized.⁴³ The current waiting lists for domiciliary and medical care in the southern California VA facilities attest to this (see page 22). Nevertheless, the decision as to the state's providing such a facility must be made in context with the

⁴⁰ It is difficult to assess the possible effects of a medical care extension of the old age, survivors and disability insurance program ("social security medicare") on such demands, particularly since so little is currently known of the effects of the medical assistance for the aged and the aid to the totally disabled programs on the veteran population.

⁴¹ *Annual Report, op. cit.*, p. 31.

⁴² *Transcript, op. cit.*, Ostrander, p. 72.

⁴³ *Ibid.*, Ostrander, *op. cit.*, p. 69. Also see Garrison, *op. cit.*, p. 61; Martin, *op. cit.*, p. 88; and Cloy Williams, senior vice commander, Department of California Veterans of World War I, pp. 109-110.

responsibility of the federal government and a discussion of this begins on page 33.

B. VETERANS ADMINISTRATION FACILITIES

Information collected by the committee regarding the demand for services in the VA's facilities covered only those in southern California. The care in greatest demand is psychiatric, and veterans waiting admission to VA psychiatric beds comprise 70.7 percent of all waiting lists as of January 1964.⁴⁴ There were no waiting lists for only one type of care—tuberculosis. Table 3 gives a complete breakdown of the VA facilities in southern California by hospital, type of care, number of beds, and current waiting lists.

TABLE 3
Veterans Administration Facilities in Southern California
by Type of Care, Number of Beds, and Waiting Lists

Number of Beds by Type (in actual use, i.e., present operating capacity)

Hospital	Medical	Surgical	Psychiatric	TB	Domiciliary	Total
Long Beach.....	1,239	299	62	0	0	1,600
San Fernando.....	175	44	0	300	0	519
Sepulveda.....	107	107	4701	(NP)41		956
VA Center, Los Angeles						
Brentwood.....	0	0	21,981	0	0	1,981
Domiciliary.....	0	0	0	0	2,550	2,550
Wadsworth.....	1,011	4457	0	0	0	1,468
Total.....	2,532	907	2,744	341	2,550	9,074

Current Waiting List (January 7, 1964)

Hospital	Medical	Surgical	Psychiatric	TB	Domiciliary	Total
Long Beach.....	154	142	0	0	0	296
San Fernando.....	0	0	0	0	0	0
Sepulveda.....	4	0	260	0	0	264
VA Center, Los Angeles						
Brentwood.....	0	0	1,086	0	0	1,086
Domiciliary.....	0	0	0	0	164	164
Wadsworth.....	69	26	0	0	0	95
Total.....	227	168	1,346	0	164	1,905

¹ Includes 50 beds for female psychiatric patients.

² Includes 80 beds for female psychiatric patients.

³ Includes 74 domiciliary beds for females.

⁴ Includes 10 surgical beds for females.

Source: *Transcript, op. cit.*, Like, p. 38.

Again, caution must be used in equating the formal waiting lists for the VA's facilities, as with the State Veterans' Home, as an absolute measure of the demands for medical and custodial services.

"The figures above do not necessarily reflect the total actual need for hospital beds or domiciliary beds for veterans in southern California. Such events, for example, as redefining the criteria

⁴⁴ Most of these veterans are currently in non-VA hospitals, principally state mental hospitals, receiving care. See *Transcript, op. cit.*, Like, pp. 24-25 and 28.

of 'ability to pay' in the past year or so, with the attendant publicity given to the revised policy, may have inhibited the flow of applications. Additionally, an awareness of the tight situation generally prevailing in our southern California hospitals, may also act as a deterrent to filing applications for hospital or domiciliary care."⁴⁵

Another relative measure of the demands for VA-supplied services is the number of applications which are rejected. Many of the 23,693 applicants for admissions in southern California VA hospitals rejected nominally for medical reasons during 1963 (a rejection rate of 43 of every 100 applicants) had non-service-connected medical needs, but because of the lack of beds and their low priority of need, were rejected forthwith rather than being placed on a waiting list with no practical hope of being admitted. Nevertheless, no one with service-connected disabilities was rejected in this manner.⁴⁶ Both the waiting lists and the rejection data are useful, however, as relative indicators of demands for care, demands which are significantly overtaxing the VA's existing facilities.

As in the case with the State Veterans' Home, the committee could not obtain information on the county of residence of patients in the Veterans Administration's southern California facilities nor on the specific ages of these patients. A statistical analysis of selected waiting lists by county of residence and age groupings was presented, however, for the domiciliary unit at the VA's Center in Los Angeles (Sawtelle), and for the medical and surgical hospitals in Los Angeles (Wadsworth) and Long Beach.⁴⁷ These data indicate that the vast majority of demands for service on the VA's southern California facilities come from that area. Of the total of 555 veterans on the waiting lists for these three facilities, 92.8 percent (515) lived in southern California, 3.6 percent (20) was from out of state, and 3.6 percent (20) resided in the northern part of the state. The average age of all veterans waiting admission approximated 59.8 years, those seeking domiciliary care was about 57.1 years, and medical and surgical, 60.9 years.⁴⁸

Lowell C. Like, director of the U.S. Veterans Administration Center in Los Angeles, reported that the short-run trend in the demand for hospital beds has been relatively stable⁴⁹—that is, massive waiting lists and rejections of applications for psychiatric and general medical and surgical care, demands for domiciliary care somewhat in excess of the supply of beds, and such a lack of demand for TB care that many of these beds have been converted to medical and surgical care.

Nationally, the Veterans Administration has emphasized that the major trends in their veteran-patient load are significant increases

⁴⁵ *Transcript, op. cit.*, Like, p. 39.

⁴⁶ *Ibid.*, pp. 32, 34, and 39.

⁴⁷ *Ibid.*, pp. 40-1.

⁴⁸ The average age figures are not comparable to those for the State Veterans' Home and are, in fact, only estimates. The data on age, as submitted, were grouped rather than on a person-by-person basis. The average age in each group was, therefore, multiplied by the number of persons in that group, such totals were added together and then divided by the total number of veterans. As 10 of the 12 age groupings, which included 98.5 percent of the total veterans in the sample, were spans of only five years, the resulting averages should be fairly accurate.

⁴⁹ *Transcript, op. cit.*, p. 31.

in both their elderly and psychiatric patients.⁵⁰ The average age of the veterans who were patients in VA and non-VA hospitals in 1953 was 47.9 years; in 1962 it was 53.2 years. Nearly one of three of all patients in 1962 was 65 years of age or older, and the chronic conditions associated with aging, especially psychiatric conditions, were becoming more prominent. The older patient, regardless of his disability, requires longer periods of hospital care than a younger patient for similar conditions. For instance, in 1962 medical and surgical patients under 35 years of age had a median stay of 13.2 days; those of 75 and over, 22 days. The long range effects of the aging trend is in itself eloquent. Coupled with the trend of increasing numbers with psychiatric conditions, it is for California highly disturbing! For only California among the other states with the largest veteran populations is losing ground in meeting the growing demand for VA supplied psychiatric care (see Table 5, page 27).

Nationally, psychiatric patients comprised 55 percent of the VA's patient census in 1962, a jump from 53 percent in 1955. Although syphilis-caused psychotic cases decreased about 1,250 during these seven years, psychosis from other organic causes increased by 2,700 cases (37.5 percent) and neurological diseases climbed 1,500 (27 percent). These psychiatric patients, as the aged patients, require extended periods of treatment. Whereas the median length of stay of all veterans admitted to VA hospitals during 1962 was 21 days, veterans admitted for psychiatric conditions other than psychosis had a median stay of 27.4 days, those with neurological conditions required 28.8 days of care, and veterans treated for psychosis had a median stay of 76.1 days. Of the 47,700 patients in VA hospitals in 1962 who had been continuously under VA care for more than one year, 87.6 percent (41,800) were being treated for psychotic disorders.

In summary, the significance of "bed freezing" caused by the increasing numbers of elderly and psychiatric veteran patients is compounding the already insufficient number of VA beds available to the hard-pressed veteran population of California.

But how does the situation in California compare to that in other states with large veteran populations and in the nation as a whole? For it is only through an answer to this question that judgment can be made as to the relative equity with which the California veteran is treated by the Veterans Administration. Table 4 gives the ratios for 1959 and 1963 of the veteran population to the total number of VA hospital and domiciliary beds in the eight states with the largest number of veterans and for the country as a whole. It also shows the percentage of veterans cared for in their state of residence. These data do not include planned or announced changes in the VA's facilities in either California, the other seven major states, or the country as a whole.

⁵⁰ This, and the following data, are contained in the *Annual Report—1963, op. cit.*, pp. 26-29.

TABLE 4

Ratio of VA Hospital and Domiciliary Beds to Number of Veterans and Percentage of Veterans Cared for In-state for 8 States With Largest Veteran Population, 1959 and 1963

States by 1963 ranking	Total number veterans July 1	Total VA beds	Psy-chiatric beds	Medical beds*	Surgical beds*	Domi-ciliary beds	Ratio of veterans per bed	Percent veterans cared for in-state†
1. California								
1963.....	2,361,000	12,945	4,581	4,038	1,719	2,607	1:182	94.6
1959.....	2,024,000	12,532	4,206		5,606	2,720	1:162	93.7
2. New York								
1963.....	2,173,000	14,140	6,846	4,314	2,036	944	1:154	93.8
1959.....	2,176,000	14,607	6,773		6,444	1,390	1:149	94.2
3. Pennsylvania								
1963.....	1,450,000	6,690	3,311	2,369	920	0	1:220	80.9
1959.....	1,589,000	6,610	3,255		3,355	0	1:240	75.2
4. Illinois								
1963.....	1,254,000	7,775	3,939	2,494	1,222	120	1:161	83.8
1959.....	1,346,000	7,701	4,031		3,670	0	1:175	81.7
5. Ohio								
1963.....	1,247,000	6,764	2,968	1,548	648	1,600	1:184	79.1
1959.....	1,232,000	6,141	2,097		1,906	2,138	1:201	71.1
6. Texas								
1963.....	1,125,000	6,842	2,703	2,214	1,206	719	1:164	88.9
1959.....	1,157,000	6,829	2,640		3,474	715	1:169	89.0
7. Michigan								
1963.....	926,000	3,862	2,096	1,144	622	0	1:240	87.0
1959.....	1,019,000	3,856	2,089		1,767	0	1:264	86.0
8. New Jersey								
1963.....	856,000	2,959	2,119	621	219	0	1:289	76.0
1959.....	821,000	2,960	1,627		1,333	0	1:277	76.2
Total (and average) for 8 states								
1963.....	11,392,000	61,887	28,563	18,742	8,592	5,990	1:184	87.5
1959.....	11,364,000	61,236	26,718		27,555	6,963	1:186	85.6
Grand total (and average) for 50 states.....								
1963.....	22,130,000	120,304	59,021	41,160	20,124	16,770	1:184	77.9
1959.....	22,622,000	120,489	57,942		62,547	17,454	1:188	75.6

* Breakdown between medical and surgical beds not available for 1959.

† For November 30, 1958, and October 31, 1962. Includes hospitalization in both VA and non-VA facilities.

Sources: *Annual Reports, Administrator of Veterans Affairs*:

1959: Table 3, p. 153; Table 5, pp. 155-9;

Table 9, p. 163; Table 22, pp. 182-3.

1963: Table 3, p. 193; Table 5, pp. 196-201;

Table 10, p. 207; Table 21, pp. 226-7.

CONCLUSIONS--CALIFORNIA IN TOTO

Certain initial conclusions can be drawn from the data in Table 4:

1. There are more veterans in California than in any other state.
2. The number of veterans in California is increasing (up 16.7 percent between 1959 and 1963) although it is decreasing in five of the other top seven states and in the nation as a whole.

3. The total number of Veteran Administration beds in California increased between 1959 and 1963 (up 3.3 percent) as it had for four other states in the top eight. The nation's total of VA beds, including those in three of the top eight states, had decreased during the same period.
4. The increase in the total number of VA beds in California (3.3 percent), however, had not been enough to stay even with the increase in California's veteran population (16.7 percent).
5. Thus the ratio of veterans to each VA bed in California rose from one bed to each 162 veterans (1:162) in 1959 to 1:182 in 1963. Conversely, however, the veterans-to-bed ratios for the average of all eight major states (including California) and for the country as a whole has fallen—1:186 to 1:184 for the eight states, and 1:188 to 1:184 for the country.
6. In spite of this trend, the most current ratio of veterans to beds in California (1:182) is still slightly higher than those for the top eight states and the nation (both 1:184).
7. There was a small increase in the percentage of hospitalized California veterans who were cared for in-state as there was for three other states in the top eight and for the entire country.
8. California's high percentage of veterans cared for in-state (94.6 percent as compared to 77.9 percent nationally and 87.5 percent as the average of the top eight states) is probably due to this state's great distance from other large centers of population concentration.

From these initial conclusions, then, it seems evident that on the basis of total beds provided, there is currently no inequity in the overall services operated by the U.S. Veterans Administration to meet the demands of veterans who live in California. However, the trend, such as it has been since 1959, shows that the VA in California is quite rapidly losing ground in keeping even an average number of beds available. It is presumed that the recent announcements by the Veterans Administration of future construction of 2,080 hospital beds in California⁵¹ is evidence of the VA's awareness of this trend and its resolution to counteract it. The Veterans Administration is, therefore, commended. Simultaneously, however, the VA is respectfully urged to keep its level of service in this state (i.e., beds) at, as a minimum, the national average to meet the growing demands of the veterans who live in, or are dependent upon, its facilities in California.

From this generalized review of California's situation compared to that in other states with large veteran populations and the entire aggregate of the 50 states, our position seems average, even if no longer excellent. There is deeper in these data, however, one inescapable conclusion which, as has already been stated, is highly disturbing: California is alone among the eight states with the largest veteran populations in losing ground in meeting the rising demands for VA-supplied psychiatric care. Not only has the ratio of veterans to psychiatric beds

⁵¹ See footnote 21, page 18.

increased solely in California among the top eight states (1:481 in 1951, 1:515 in 1963), but:

1. The ratio in California is the very highest among these states (which together contain over 50 percent of the nation's veterans);
2. It is even higher, more significantly, than the average across the country (1:375);
3. And it runs counter to the average all-state trend of receding ratios of veterans to psychiatric beds (1:390 in 1959, 1:375 in 1963).

These are the conclusions which are evident in Table 5.

TABLE 5
Ratio of VA Psychiatric Beds to Number of Veterans for 8 States
With Largest Veteran Population, 1959 and 1963

Year	Calif.	N.Y.	Pa.	Ill.	Ohio	Texas	Mich.	N.J.	Average	
									8 states	50 states
1959..	1:481	1:321	1:488	1:334	1:588	1:438	1:488	1:505	1:425	1:390
1963..	1:515	1:317	1:438	1:318	1:420	1:416	1:442	1:404	1:399	1:375

Source: Extracted from Table 4.

It is difficult to ascribe with absolute certainty the reasons for the inordinate scarcity of Veterans Administration psychiatric beds in California. That this state has a large and growing veterans population is irrefutable. That spiraling demands for psychiatric care are and will continue to be made is the VA's own analysis of the future. That nearly 71 percent of all veterans on waiting lists for admission to the VA's facilities in southern California are seeking psychiatric care although psychiatric beds represent only 30 percent of the total beds; this has been the Veterans Administration's own testimony (see Table 3, page 22).

It seems possible, perhaps even likely, that the Veterans Administration may be taking advantage of California's own hospitals and clinics for the mentally ill. These facilities, administered by the State Department of Mental Hygiene and city and county governments, comprise a system that is uniquely high in quality and uncommonly available in numbers and location relative to any other in the country.

During the 1963-64 fiscal year,⁵² 3,651 veterans were admitted into the state's mental hospitals. This comprised 11.2 percent of all hospital admissions that year. The Veterans Administration, however, would make full payment for the care of only about 59 of the veterans on an average, approximately 1.6 percent of the total admitted. These payments by the VA resulted in the receipt by the state of \$244,884 during 1963-64. As soon as psychiatric beds are vacated in the VA's

⁵² Data relating to the State Department of Mental Hygiene have been obtained from unpublished materials.

hospitals, such patients are transferred from the state hospitals into them.

The principal reason for the Veterans Administration's extremely limited payment for psychiatric care furnished veterans in state mental hospitals is the requirement that such mental disabilities must be service connected. Although this same "service-connected" requirement also applies to physical disabilities, it is more difficult to establish for mental illnesses, particularly as the time of the veteran's initial point of hospitalization becomes further removed from his active war-time service.

Thus the vast majority of veterans whose psychiatric conditions are not definitely established as service connected cannot, as a practical matter, be treated in a VA hospital because of the inordinate psychiatric bed shortage, and cannot be treated in the state mental hospitals or clinics at VA expense. The State Department of Mental Hygiene in certain instances can receive partial reimbursement from the veterans' pensions in the form of care and maintenance or institutional awards, but such funds indirectly furnished to the state by the VA amounted to only slightly over \$200,000 for approximately 3,600 veterans in 1963-64.

The level of psychiatric services available to veterans in California could be increased either by an authorization of the Congress to increase the number of allocated VA beds or by administrative action initiated by the Veterans Administration.

This committee, therefore, recommends that the State Legislature memorialize both the Congress and the U.S. Veterans Administration to promptly increase to at least the national average the level of the VA's psychiatric services available to veterans who reside in California (see Senate Joint Resolutions 14 and 15, Appendix D, page 46).

CONCLUSIONS—SOUTHERN AS COMPARED TO NORTHERN CALIFORNIA

Table 6 shows the U.S. Veterans Administration's facilities in California broken down regionally. The data in this table demonstrate that although northern California has an estimated 38.8 percent of the state's veteran population, it has only 29.4 percent of the VA-operated beds. Thus the ratios of veterans to beds show a disparity of 1:241 for northern California as compared to 1:158 for southern California.

One of the reasons cited to establish the need for a new state veterans' home in southern California is the current inequality of northern California's having one while the southern region did not.⁶³ This inequality, however, is almost totally compensated for by the number of VA beds in southern California. When comparing the total number of state and federal beds available to veterans in northern California (6,184) to those in southern California, the north's share is 40.4 percent of beds relative to its 38.8 percent of the veteran population. The ratios of veterans to beds, in turn, becomes 1:148 for northern California to 1:158 for southern California. Thus the obvious inequity in the regional availability of veteran beds operated by the state is largely adjusted by the inequity in the regional availability of beds operated by the federal government. Furthermore, what difference

⁶³ *Transcript, op. cit.*, Garrison, p. 61.

still remains favoring northern California will be eliminated by the completion in 1967 of the first of the two new 1,010 bed VA hospitals planned for southern California.

TABLE 6
Ratio of VA Hospital and Domiciliary Beds to Number of Veterans
for Northern and Southern California, 1963 *

	Total beds†	Psy- chiatric beds	Medical beds	Surgical beds	Domi- ciliary beds	Veteran popu- lation 7-1-63‡	Percent of veterans	Percent of beds	Ratio of veterans per bed
Northern California	3,804	1,828	1,187	789	0	915,500	38.8	29.4	1:241
Fresno.....	250	23	104	123	0				
Livermore.....	469	0	369	100	0				
Oakland.....	558	36	281	241	0				
Palo Alto (Menlo Park Division).....	1,120	1,120	0	0	0				
Palo Alto (Palo Alto Division).....	1,000	649	243	108	0				
San Francisco.....	406	0	190	217	0				
Southern California	9,141	2,753	2,851	930	2,607	1,445,500	61.2	70.6	1:158
Long Beach.....	1,569	62	1,176	331	0				
Los Angeles (Brentwood).....	2,021	2,021	0	0	0				
Los Angeles ("Sawtelle").....	2,607	0	0	0	2,607				
Los Angeles (Wadsworth).....	1,469	0	1,012	457	0				
San Fernando.....	519	0	471	48	0				
Sepulveda.....	556	670	192	94	0				
State totals.....	12,945	4,581	4,038	1,719	2,607	2,361,000	100	100	1:182

* Southern California defined as comprising Imperial, Inyo, Kern, Los Angeles, Orange, Riverside, San Bernardino, San Diego, San Luis Obispo, Santa Barbara, and Ventura counties. Northern California is the balance—47 of the state's counties.

† Total VA beds and breakdown taken from *Annual Report, Administrator of Veterans Affairs*, 1963, Table 5, pp. 196-201. The beds in southern California as shown are 57 more than for January 1, 1964 as detailed by L. C. Like, director, Veterans Administration Center, Los Angeles, *Transcript*, January 15, 1964, Table 2, p. 37. This represents a 0.6 percent differential. For comparability of figures, data for both northern and southern California were taken, therefore, from the *Annual Report*.

‡ Extracted from U. S. Census data for veteran and total population, April 1, 1960, and *California Population, 1963*, Financial and Population Research Section, State Department of Finance, Table 13, p. 23, as follows: 4-1-60 population of southern California = 0.59873; 4-1-60 veteran population of southern California = 0.60773; 7-1-63 population of southern California = 0.60338; therefore 7-1-63 veteran population of southern California = 0.61238. State veteran population as of 6-30-63 taken from *Annual Report, Administrator of Veterans Affairs*, 1963, Table 3, p. 193.

Sources: As indicated above.

V. ALTERNATIVE SOURCES OF CARE

Veterans in California comprise one group among many who are potentially eligible for a comprehensive range of income maintenance, medical care, and social service programs. Some of these programs are nationwide in scope, such as old age, survivors, and disability insurance (commonly referred to as "social security"). Others have been established by various units of local government such as county hospitals, local mental health clinics, and county indigent aid (general home relief). Most, however, have state government as the principal

policy making and administering or supervising body. These programs run an impressive gamut:

Workmen's compensation and disability insurance, which are required in most employment situations in the state;

The income maintenance and social service features of old age security, aid to the blind and aid to the potentially self-supporting blind, and aid to the disabled, in addition to the availability of extra funds through these public welfare programs to purchase in-the-home attendant care and boarding home (i.e., domiciliary) care;

The preventative medical services available through the prevention of blindness and crippled children programs (although this latter would be utilized principally by the minor dependents of veterans and others);

The availability of medical and dental services and drugs on an outpatient basis to public welfare recipients through the public assistance medical care program;

The acute and chronic hospitalization and nursing home services furnished by the medical assistance to the aged program; and

The specialized programs established to render services to individuals afflicted by certain diseases, as the system of state hospitals and clinics for the mentally ill and the retarded, the State Department of Public Health's programs for the treatment of alcoholism and tuberculosis, and the State Department of Correction's rehabilitation program for narcotic addicts.⁵⁴

All of these programs have, of course, certain eligibility requirements which generally relate to a person's age, length of residence in California, personal and real property holdings, income, needs, physical or mental disabilities, and so forth. It is generally held, nevertheless, that the liberality of such requirements together with the generous entitled benefits furnished, make California's extensive package of welfare, health, and social insurance programs unequalled elsewhere in the country. As an example, in November 1964, 896,711 Californians (about 5 percent of the state's population) were recipients of \$70,-249,939 in income and health care assistance administered through the public welfare programs alone.⁵⁵

⁵⁴ For more specific information on the programs mentioned above see: "What You Should Know About Workmen's Compensation," State Compensation Insurance Fund, California State Department of Industrial Relations, Sacramento, 1962-63. "Disability Insurance Provisions—State Plan (DE 2515)," California State Department of Employment, Sacramento, January 1965 (Rev. 18). "Public Assistance and Welfare Services in California," State Department of Social Welfare, Sacramento, February 1964. (OAS, AB, APSB, ATD, PAMC, MAA, and Prevention of Blindness programs.) "Programs and Services for Handicapped Children in California," California Coordinating Council on Programs for Handicapped Children, Sacramento, 1962-63. "Patterns of Progress," 1962, and "Progress Report," 1964, State Department of Mental Hygiene, Sacramento. "Progress for Educationable Mentally Retarded in the Public Schools of California," State Department of Education, Sacramento, 1965. "Alcoholism: California Faces the Problem," 1960 and "Directory of California Alcoholic Recovery Houses," 1962, Division of Alcoholic Rehabilitation, California State Department of Public Health, Berkeley. "Inventory of Hospitals and Related Facilities as of March 31, 1963," Bureau of Hospitals, State Department of Public Health, Sacramento (tuberculosis). "Treatment and Control of Narcotic Addicts," Ronald W. Wood, Superintendent, California Rehabilitation Center (Corona), State Department of Corrections, Sacramento, 1964.

⁵⁵ "Public Assistance Caseloads and Expenditures, November 1964," State Department of Social Welfare, December 18, 1964, a one-page summary of the month's activities.

These alternative sources of care are available to all Californians, veteran and nonveteran alike. This fact, from the veteran organizations' point of view is more of a liability than an asset.

"Our county hospital here is a charitable institution as I presume it is in most counties. The treatment is excellent. The medical facilities are good, the plant is almost a 95 percent new plant which has only been open the last two or three years. They are getting excellent treatment, but these men who served their country should not be charity objects in a county institution."⁵⁶

"Allowing veterans who are struck down by some longterm chronic conditions to languish as nonentities in some inadequate nursing home or other such facility is a breach of faith."⁵⁷

"Furthermore, it is not believed that the members of our State Legislature, or the citizens of California want to see the time come when its former defenders in time of national emergency are forced to depend on the various relief agencies for assistance. Their faith and confidence in the Legislature and the public in general is that they will see to it that California's former war veterans who are now ill and become chronically ill, unemployed and in need of care will receive it in a manner they can maintain their dignity which they so richly deserve."⁵⁸

CONCLUSIONS

The sentiments expressed above are understandable and were sympathetically received by all of the committee members, a majority of whom are themselves veterans. We must point out, nevertheless, that the special treatment of veterans in need of domiciliary and medical care has been fully and carefully considered in the legislative halls of Sacramento and Washington. At the national level the decision has been that the country should assume complete responsibility for the care and treatment of veterans' service-connected disabilities, whereas non-service-connected disabilities should be treated only to the extent possible in existing facilities and only in those cases where the veteran cannot defray the costs himself. And at the state level, the Legislature has concluded that domiciliary care, with such ancillary medical services as are required by the state home's members, should be provided only to those veterans who are disabled to such an extent that they cannot pursue a gainful occupation and, additionally, who do not have the means to provide such care for themselves.⁵⁹

It is the committee's deep-seated conviction that these have been equitable decisions and that we would be derelict in our policy and fiscal responsibility, not only to California's veterans but to all of our state's citizens, if we were to ignore the alternative sources of service available to veteran and nonveteran alike.

⁵⁶ *Transcript, op. cit.*, L. Burr Belden, chairman, Veterans Facility Committee, 25th District, California Department of American Legion, p. 92.

⁵⁷ *Ibid.*, Allen J. Martin, senior vice commander, Veterans of Foreign Wars of the State of California, p. 86.

⁵⁸ *Ibid.*, Ostrander, *op. cit.*, pp. 72-3.

⁵⁹ See page 14.

The rich multitude of aid has not been begrudgingly authorized by the Legislature; its receipt is not reviled by the vast majority of our citizens.⁶⁰ It is offered with and it is received in dignity, with a common understanding of our moral obligation and of our compassionate desire to help those who cannot help themselves.

VI. PROPOSED SOUTHERN CALIFORNIA STATE VETERANS' HOME

Although there were some minor differences among the specific proposals submitted to the committee for the creation of a state veterans' home in southern California⁶¹, that of the Special Committee for Southern California Veterans' Home, California Department of American Legion, was widely supported:

"It is our opinion that the minimum number of beds provided by initial construction of a Veteran Home in Southern California should be 1,150, broken down as follows:

"250 General Medical and Surgical Hospital

"400 Intermediate type care

"500 Domiciliary

"We are firm in our opinion that the minimum care provided for eligible war veterans in a Veteran Home of Southern California should be the same as that offered at the Veteran Home of Northern California, which would include general hospital care, intermediate care (sometimes referred to as nursing and attendant care), and domiciliary care. The designs and plans for such a project should also include adequate facilities for various types of therapy (such as physio- and occupational therapy)

"In considering a location the proximity of a local fire department should be considered, as well as sewage and water. Transportation and easy access to the Home should also be considered and the amount of interest shown by local people, as well as Veterans, to having such a home built in their neighborhood. Also it has been suggested that the Home and Hospital be built near a Medical College and an already established hospital staff.

"Our Committee would like to suggest the location for a Home and Hospital in Southern California be located near the present Loma Linda Seventh Day Adventist facilities in the town of Loma Linda, which lies just off the new freeway between Redlands and Colton, and just a few miles from San Bernardino and Riverside. All of the above named requirements can easily be met at this site, including the services of competent medical consultants and attending physicians from the Loma Linda University School of Medicine."⁶²

⁶⁰ E.g., Welfare and Institutions Code, Section 13: "The purpose of this code is to provide for protection, care, and assistance to the people of the state in need thereof, and to promote the welfare and happiness of all of the people of the state by providing appropriate public assistance and service to all of its needy and distressed. It is the legislative intent that assistance shall be administered and services provided promptly and humanely, with due regard for the preservation of family life, and without discrimination on account of race, religion, or political affiliation; and that assistance shall be so administered and services so provided as to encourage self-respect, self-reliance, and the desire to be a good citizen, useful to society."

⁶¹ See footnote 31, page 19.

⁶² *Transcript, op. cit.*, Ostrander, pp. 69-70.

The construction and equipment costs of such a facility, excluding land acquisition, was variously estimated at \$11,550,000⁶³ to \$15,832,060.⁶⁴ Annual operating expenses would probably run around \$7,750,000 gross⁶⁵, less approximately \$1,050,000 received from the U.S. Veterans Administration on the basis of their subvention of \$2.50 per day per home member.

In this context, the gross operating costs of the State Home at Yountville for 1963-64 was estimated at \$5,117,927, of which \$1,656,047 was received from the federal government.⁶⁶ Additionally, during the fiscal year 1962-63 the U.S. Veterans Administration expended \$104,081,039 for the operation and maintenance of its facilities in California.⁶⁷

There was universal agreement that the existing facilities of the Veterans Administration in southern California were insufficient to meet the total demand for services emanating from that area.⁶⁸ The committee agrees that all of the information submitted and collected supports this contention. Yet we must emphasize again that, as the previously discussed data reveal, the veterans of this area—and this state—are not apparently receiving less than average care in quantity or quality from the Veterans Administration with the notable exception of psychiatric care.

There was, however, a dichotomy of opinion as to the responsibility of state government to meet the need for additional facilities devoted exclusively to veteran care. It is this debate which is examined and resolved, at least as far as this committee is concerned, in the next, and concluding, section.

VII. FEDERAL VS. STATE RESPONSIBILITY FOR VETERANS' CARE

Proponents of the creation of a new state facility for veterans in southern California contend that the care of needy veterans is the joint responsibility of the state and federal governments; that if the U.S. Veterans Administration is unable or unwilling to furnish care in amounts adequate to meet the needs of veterans who reside in California it then becomes incumbent upon the state to provide that care which is lacking.⁶⁹

This view is also held by the State Department of Veterans Affairs:

" . . . (The care of veterans) is basically the responsibility of the federal government. If the State has the funds, we certainly wouldn't object to it (the proposed southern California facility). We wouldn't oppose it. . . . Basically the veterans were called into service by the federal government and that is the reason why we feel that it is primarily their responsibility. As Mr. Farber (Joseph M. Farber, Director, State Department of Veterans Affairs) mentioned in his communication to you, if the federal gov-

⁶³ *Ibid.*, p. 69.

⁶⁴ *Ibid.*, John R. Derry, chief, Bureau of Hospitals, State Department of Public Health, p. 56.

⁶⁵ *Ibid.*, p. 57.

⁶⁶ *Ibid.*, Handsaker, *op. cit.*, p. 18.

⁶⁷ Letter from F. R. Hood, director, Information Service, Veterans Administration, Washington, D.C., under date of January 31, 1964.

⁶⁸ See discussion of Current Demands for Service, Veterans Administration Facilities, beginning on page 22.

⁶⁹ *Transcript, op. cit.*, Eldridge, p. 112.

ernment is unable to furnish the necessary facilities, then it is probably the responsibility of the states to take care of their own veterans." ⁷⁰

The state's administration, however, opposed the notion that California has any responsibility to resident veterans other than to supplement federally granted benefits:

"Our opposition to the establishment of a second Veterans' Home is based on the position that the federal government is already responsible for the basic care and welfare of veterans. It is true, of course, that the State of California has undertaken to provide veterans' benefits in addition to those covered by the federal government--in some cases even more generously (for example, the Cal-Vet Home Loan Program and the Veterans' Home). However, the California veterans' program was not intended to replace or relieve the federal government of its responsibility, but rather to augment and provide supplemental benefits. . . . We must request your committee to urge the federal government to meet their responsibility for hospital care for veterans, rather than attempt to divert existing funds from the present home, or from other critical needs which cannot be met from other sources." ⁷¹

The committee believes that there is no basic responsibility of state governments to assist needy veterans in any way significantly different from the methods employed in assisting any other residents needing aid. The veteran is a veteran of the armed forces of the *United States of America*, not of the State of California or of any other specific state. Thus it is the exclusive duty of the government of the United States to meet such needs as are indigenous to veterans as a distinguishable group.

History has shown that the State of California, together with other states, became involved in providing residential care and ancillary medical services to veterans simply because the federal government failed to do so. Nationwide, this lack of federal action has been long remedied. Locally, the federal government has equitably met the demands for care of veterans residing in California, with the glaring exception, of course, of psychiatric services. This committee, therefore, sees no compelling reason for the state's construction of new facilities exclusively for the care of veterans.

By no means, however, should this policy position be interpreted as detracting from the necessity for immediate action to solve the critical problems relating to psychiatric care and for responsive alertness to guarantee fair, equitable, and sufficient treatment of veterans who live in California in relation to that received by veterans residing in other states. That these needs and problems exist has been eloquently attested. Their fulfillment and resolution is, however, a test of the national government's responsiveness.

⁷⁰ *Ibid.*, Handsaker, *op. cit.*, p. 53.

⁷¹ *Ibid.*, Letter from Daniel M. Luevano, chief deputy director, State Department of Finance, Sacramento, under date of January 10, 1964, p. 55.

APPENDIX A

RULE 12.5 OF THE PERMANENT STANDING RULES OF THE SENATE

12.5. Thirteen Senate Permanent Fact Finding Committees herein-after described are hereby created pursuant to Section 37 of Article IV of the California Constitution.

Whenever the Senate or a standing committee thereof recommends that the subject matter of a bill be referred to a fact finding committee for interim study, or a Member of the Senate requests in writing that a study be made, the Committee on Rules may assign such study to the Permanent Fact Finding Committee to which the general subject matter involved in the study has been allocated by this rule. The Permanent Fact Finding Committee to which such an assignment is made is authorized and directed to ascertain, study and analyze all facts relating to or bearing upon the subject so assigned including, but not limited to, the operation, effect, administration, enforcement and needed revision of any and all laws in any way bearing upon or relating thereto, and to report thereon to the Senate, including in its reports its recommendations for appropriate legislation. When a specific study has been assigned as herein provided, the Committee on Rules may, in writing, authorize the extension of the study to any closely related subject which the Committee on Rules deems to be sufficiently connected with the matter originally assigned.

Each such committee shall consist of the number of Members of the Senate determined and appointed by the Senate Committee on Rules. The chairman and vice chairman of each committee shall be appointed by the Committee on Rules, except that the President pro Tempore of the Senate shall be chairman of the General Research Committee. After the first appointments are made, new appointments shall be made at the close of each subsequent general session. Vacancies occurring in the membership of each committee shall be filled by the appointing power.

Each such committee has continuous existence until such time as its existence is terminated by resolution adopted by the Senate, and each such committee is authorized to act both during and between sessions of the Legislature, including any recess.

Each such committee shall file a final report with the Senate by not later than the thirtieth calendar day of each general session.

Each such committee and its members shall have and exercise all of the rights, duties and powers conferred upon investigating committees and their members by the provisions of the Joint Rules of the Senate and Assembly and of the Standing Rules of the Senate, which provisions are incorporated herein and made applicable to said committees and their members. Except for the General Research Committee a majority of the members appointed to each committee shall constitute a

quorum of the committee, and except for the General Research Committee no subcommittee shall be appointed consisting of less than a quorum of the committee.

Each such committee has the following additional powers and duties:

(a) To contract with such other agencies, public or private, as it deems necessary for the rendition and affording of such services, facilities, studies and reports to the committee as will best assist it to carry out the purposes for which it is created.

(b) To co-operate with and secure the co-operation of county, city, city and county, and other local law enforcement agencies in investigating any matter within the scope of this resolution and to direct the sheriff of any county to serve subpoenas, orders and other process issued by the committee.

(c) To meet and act at any place within the State of California and, when authorized to do so in writing by the Senate Committee on Rules, to meet and act outside the State carrying out its duties.

(d) To report its findings and recommendations to the Legislature and to the people from time to time and at any time, not later than herein provided.

(e) To do any and all other things necessary or convenient to enable it fully and adequately to exercise its powers, perform its duties, and accomplish the objects and purposes of this resolution.

The committees created by this resolution and the subjects allocated to them are: . . .

(6) The Fact Finding Committee on Labor and Welfare is allocated the subject matter embraced in the Labor Code, the Military and Veterans Code, and uncodified legislation on these subjects, as well as problems and proposed legislation relating to the Department of Social Welfare, aid to the aged, to the blind, to children, to the indigent and to other public assistance. . . .

APPENDIX B

SENATE BILL

No. 605

Introduced by Senator Quick

February 6, 1963

REFERRED TO COMMITTEE ON MILITARY AND VETERANS AFFAIRS

An act to amend the heading of Chapter 1 (commencing with Section 1010) of Division 5 of, and Sections 1010, 1011, 1012, 1012.1, 1013, 1014, 1018, 1019, 1023, 1024, 1025, 1026, 1030, 1030.1, 1031, 1032, 1033, 1034, 1035, 1035.1, 1036, 1037, 1038, 1039, 1041, 1042.1, 1043, 1045, 1046, 1047, 1048, 1049 of, the Military and Veterans Code, relating to California veterans' homes, and making an appropriation therefor.

The people of the State of California do enact as follows:

SECTION 1. The heading of Chapter 1 (commencing with Section 1010) of Division 5 of the Military and Veterans Code is amended to read:

CHAPTER 1. CALIFORNIA VETERANS' ~~HOME~~ HOMES
OF CALIFORNIA

SEC. 2. Section 1010 of said code is amended to read:
1010. As used in this chapter:

(a) "Home" means the Northern California Veterans' Home of California or the Southern California Veterans' Home.

(b) "Department" means the Department of Veterans Affairs.

(c) "Veteran" means a member of ~~the~~ a home provided for by this chapter.

1 SEC. 3. Section 1011 of said code is amended to read:

2 1011. There is in the Department of Veterans Affairs a
3 *Northern California Veterans' Home of California*, which is
4 situated at Veterans' Home, Napa County, and a *Southern*
5 *California Veterans' Home, which is situated at Veterans'*
6 *Home, ----- County.*

7 SEC. 4. Section 1012 of said code is amended to read:

8 1012. The ~~home~~ *is homes are* for aged and disabled persons
9 who served in the armed forces of the United States during
10 a war period as defined by law; who were discharged under
11 honorable conditions from such service, and who are eligible
12 for hospitalization or domiciliary care in a veterans' facility
13 in accordance with the rules and regulations of the United
14 States Veterans Administration, and who have been bona fide
15 residents of this state for 10 years immediately preceding the
16 date of application. The property of the ~~home~~ *homes* shall be
17 used for this purpose. The provisions of this section shall not
18 be retroactive.

19 SEC. 5. Section 1012.1 of said code is amended to read:

20 1012.1. Prior to the admission of a veteran as a member of
21 ~~the a home~~, and at any time during which a veteran is a mem-
22 ber of ~~the a~~ home, the department may investigate the veter-
23 an's financial status to insure that the veteran is unable to
24 pay for necessary hospital or domiciliary care outside of the
25 home. The department may contract with any other state
26 agency to conduct such an investigation in its behalf.

27 SEC. 6. Section 1013 of said code is amended to read:

28 1013. All property conveyed to and accepted by the state
29 under the provisions of Chapter 101, Statutes of 1897, and
30 any other property convey to an accepted for ~~the a~~ home
31 shall be the property of the home the same as though the de-
32 scription of such property and acceptance thereof were herein
33 set forth.

34 SEC. 7. Section 1014 of said code is amended to read:

35 1014. The ~~home~~ *homes* shall be under the management and
36 control of the department and, subject to the policies adopted
37 by the California Veterans Board and the direction of the
38 Director of Veterans Affairs, shall be administered by the
39 Commandant, Veterans' ~~Home~~ *Homes* of California, known
40 as the Manager of the Division of Veterans Homes.

41 SEC. 8. Section 1018 of said code is amended to read:

42 1018. The commandant, executive officer, chief surgeon,
43 quartermaster or supply officer, adjutant, chaplain, physicians
44 and surgeons, dental officers, hospital administrative officer,
45 and the utilities officer in office shall remain in office as pro-
46 vided in the State Civil Service Act. Thereafter the comman-
47 dant shall appoint, subject to civil service, qualified persons to
48 fill such offices. *The commandant shall also appoint deputy*
49 *commandants and deputy executive officers to administer the*
50 *homes and shall appoint, subject to civil service, such other*
51 *qualified persons necessary to administer the homes.*

1 SEC. 9. Section 1019 of said code is amended to read:

2 1019. Officers of the ~~home~~ *homes* shall take the oath of office
3 required of state officers, shall file a bond in form and amount
4 approved by the department, and shall reside at the ~~home~~
5 *homes* providing quarters are available. Officers may be re-
6 moved by the Director of Veterans Affairs for cause as pro-
7 vided in the State Civil Service Act.

8 SEC. 10. Section 1023 of said code is amended to read:

9 1023. The department may sue and be sued in any of the
10 courts of this State. All property held by the department
11 shall be held in trust for the State and for the use and benefit
12 of the ~~home~~ *homes*. The commandant shall manage the ~~home~~
13 *homes*, and administer ~~its~~ *their* affairs, and subject to the
14 direction of the Director of Veterans Affairs adopt rules and
15 regulations for the government of the ~~home~~ *homes*, in con-
16 formity as nearly as possible, to the rules and regulations of
17 the United States Veterans Administration for their facilities.

18 SEC. 11. Section 1024 of said code is amended to read:

19 1024. The department may conduct such investigation as
20 may be required to determine the total value of the property
21 and assets of any veteran applying for admission to ~~the a~~
22 *home*, and may contract with any other state agency to con-
23 duct such an investigation in its behalf.

24 SEC. 12. Section 1025 of said code is amended to read:

25 1025. The ~~home~~ *homes* shall be open at any time to the
26 inspection of the Director of the United States Veterans Ad-
27 ministration or his authorized representative.

28 SEC. 13. Section 1026 of said code is amended to read:

29 1026. The records, reports, and accounts kept by the ~~home~~
30 *homes* shall conform, as nearly as possible to the requirements
31 of the United States Veterans Administration.

32 SEC. 14. Section 1030 of said code is amended to read:

33 1030. The department shall report to the Governor before
34 the 1st day of January of each year stating all receipts and
35 expenditures, the condition of the ~~home~~ *homes*, the number of
36 veterans received and discharged during the preceding fiscal
37 year, and such other matters touching upon the management,
38 conduct, and interest of the ~~home~~ *homes* as the department
39 deems proper, or as are required by the Governor.

40 The department shall also make any other reports which the
41 Governor requires. All reports shall be verified by the Director
42 of Veterans Affairs and shall be certified by the commandant.

43 SEC. 15. Section 1030.1 of said code is amended to read:

44 1030.1. The department may enter into contracts with the
45 United States or any agency thereof, any governmental agency,
46 any person, or any corporation for the performance of services
47 or manufacture of articles by disabled members of the ~~home~~
48 *homes*. The proceeds of any such contract, less the actual op-
49 erating expenses, shall be paid to the individual disabled vet-
50 erans who perform the services or labor.

1 SEC. 16. Section 1031 of said code is amended to read:

2 1031. All moneys received by the state from the United
3 States for the use of the ~~home~~ homes shall be placed to the
4 credit of and shall augment the current appropriation for the
5 support of the ~~home~~ homes.

6 SEC. 17. Section 1032 of said code is amended to read:

7 1032. The department shall fix a schedule of wages for
8 veterans who are employed at the ~~home~~ homes, subject to the
9 approval of the Director of Finance.

10 SEC. 18. Section 1033 of said code is amended to read:

11 1033. All bills and charges against the ~~home~~ homes for sup-
12 plies, salaries, or other expenses, from state appropriations
13 shall be prepared and audited in the manner provided by law
14 and warrants therefor shall be paid out of any money available
15 for such purposes according to the directions of the comman-
16 dant approved by the Department of Finance.

17 SEC. 19. Section 1034 of said code is amended to read:

18 1034. Except money received from this state for disburse-
19 ment, all moneys received by the ~~home~~ homes, or by any offi-
20 cer of the ~~home~~ homes, including pension and other moneys
21 belonging to veterans and other trust moneys, shall be im-
22 mediately paid to the executive officer of the ~~home~~ homes. On
23 or before the 10th day of each month the executive officer of
24 the ~~home~~ homes shall forward to the State Treasurer all moneys
25 in his possession, except pension and other moneys belonging to
26 veterans, trust moneys, the post funds, and the emergency
27 fund, hereinafter mentioned, together with a statement of the
28 sources from which the same have been received. The moneys
29 shall be deposited by the State Treasurer to the credit of the
30 General Fund of the State; provided, however, that abate-
31 ments of support expenditures shall be credited to the support
32 appropriation current at the time of collection.

33 SEC. 20. Section 1035 of said code is amended to read:

34 1035. Any balance of moneys of any veteran held by the
35 ~~home~~ homes, or by its ~~their~~ authority, shall, upon the death of
36 the veteran, where undisposed of by will, executed prior to the
37 date of the veteran's admission to ~~the a~~ home, be held as a trust
38 fund to be paid by the ~~home~~ homes upon proof deemed to be
39 proper to the commandant, directly and without probate, to
40 the spouse, dependent children, or dependent father or mother
41 of the veteran; provided, that the commandant is hereby em-
42 powered to disburse funds of any deceased veteran for pay-
43 ment of such funeral expenses.

44 If no spouse, dependent children, or dependent father or
45 mother are discovered within five years after the death of
46 the veteran, or if the spouse, dependent children, or dependent
47 father or mother discovered within such time are not entitled
48 to the whole thereof, the moneys not paid to the spouse, de-
49 pendent children, or dependent father or mother, and undis-
50 posed of by will executed prior to the date of the veteran's
51 admission to ~~the a~~ home or by will executed thereafter, leaving
52 such property to the spouse, dependent children, or dependent

1 father or mother, shall be paid to the post fund of the ~~home~~
2 ~~homes~~ which fund shall be used for the common benefit of
3 the veterans under the direction of the commandant.

4 SEC. 21. Section 1035.1 of said code is amended to read:

5 1035.1. If any member of ~~the a~~ home dies, any balance of
6 money or personal property held by the home shall be dis-
7 tributed in the manner prescribed in this chapter, and any
8 will executed subsequent to the date of the veteran's admission
9 to the home shall not be valid as it relates to money or personal
10 property held by the home, except to the extent that such will
11 disposes of the money or property to the spouse, dependent
12 children, or dependent father or mother of the veteran.

13 SEC. 22. Section 1036 of said code is amended to read:

14 1036. The veterans may voluntarily deposit money with
15 ~~the a~~ home, which the home shall receive and keep without
16 charge as a trust fund.

17 SEC. 23. Section 1037 of said code is amended to read:

18 1037. The money belonging to a veteran and voluntarily
19 deposited with ~~the a~~ home may be withdrawn, in whole or
20 in part, at the will of the veteran. Any balance remaining
21 upon his death, undisposed by will, executed prior to the
22 veteran's admission to the home, and not paid to his spouse,
23 dependent children, or dependent father or mother pursuant
24 to a will or within the time and in the manner hereinbefore
25 provided, shall be paid to the post fund.

26 SEC. 24. Section 1038 of said code is amended to read:

27 1038. All money deposited with ~~the a~~ home for a veteran
28 shall be paid to him on demand, upon his discharge from or
29 voluntary leaving the home. If such money is not so demanded
30 at the time of discharge or leaving or within a period of five
31 years thereafter, or demanded by the spouse, dependent chil-
32 dren, dependent father or mother, devisees, or legatees in case
33 of his decease after his discharge or voluntary leaving, the
34 same shall be paid to the post fund.

35 SEC. 25. Section 1039 of said code is amended to read:

36 1039. All moneys received by ~~the a~~ home under specific
37 trust agreements shall be paid into the post fund five years
38 after the trust agreement terminates if not claimed by the
39 spouse, dependent children, dependent father or mother, de-
40 visees, or legatees of the veteran as hereinabove provided.

41 SEC. 26. Section 1041 of said code is amended to read:

42 1041. If the personal property of a veteran is unclaimed
43 for a period of one year after the date of his death or the date
44 of his discharge or voluntary departure from ~~the a~~ home, the
45 commandant ~~of the home~~ may proceed by public auction or
46 private sale to sell the property. The sale shall take place at
47 a public place in the home, and notice of sale shall be posted
48 in such place at least 10 days previous to the date of sale. The
49 proceeds of sale shall be credited to the post fund.

50 SEC. 27. Section 1042.1 of said code is amended to read:

51 1042.1. If any check is drawn upon any trust fund of ~~the~~
52 ~~a~~ home and remains unclaimed, or is not cashed, for a period

1 of one year, it shall be canceled and the amount thereof shall
2 be turned over to the executive officer and be deposited to the
3 credit of the post fund and used for the common benefit of the
4 members of the home.

5 SEC. 28. Section 1043 of said code is amended to read :

6 1043. With the exception of officers and employees and
7 their families, no person shall be admitted to reside in ~~the~~ a
8 home, who is not eligible under Section 1012.

9 SEC. 29. Section 1045 of said code is amended to read :

10 1045. Nothing in this chapter shall prevent the State from
11 transferring the property and management of the ~~home~~ homes
12 to the United States for a home of similar character.

13 SEC. 30. Section 1046 of said code is amended to read :

14 1046. If it appears necessary or proper that a guardian of
15 the estate of a veteran be appointed, the court in its discretion
16 may, upon application of the commandant, acting through his
17 designated officer, appoint ~~the~~ a home as guardian of such es-
18 tate and cause letters of guardianship of such estate to be is-
19 sued to the home.

20 For the purposes of this chapter, the ~~home~~ is homes are
21 made ~~a corporation~~ corporations and, acting through an officer
22 designated by the commandant, may act as guardian of es-
23 tates, assignee, receiver, depository or trustee, under appoint-
24 ment of any court or by authority of any law of this State,
25 and transact business in such capacity in like manner as an
26 individual, and for this purpose may sue and be sued in any
27 of the courts of this state.

28 The ~~home~~ homes shall be appointed as guardian, assignee,
29 receiver, depository or trustee without bond. The officer desig-
30 nated by the commandant shall be required to give a surety
31 bond in such amount as may be deemed necessary from time
32 to time by the commandant, but in no event shall the initial
33 bond be less than ten thousand dollars (\$10,000) which bond
34 shall be for the joint benefit of the several estates, the com-
35 mandant, and the State of California. The ~~home~~ homes shall
36 receive such reasonable fees as shall be allowable for its ex-
37 penses for filing fees, attorneys' fees, and bond premiums. The
38 court shall allow to ~~the~~ a home at the time of its appointment
39 as guardian of an estate an amount which the court estimates
40 would be the bond premium for the estate if a separate bond
41 were required for the estate. The fees paid to the home may
42 be used as a trust account from which may be drawn expenses
43 for filing fees, attorneys' fees and bond premiums in all es-
44 tates it undertakes to administer. Whenever the balance re-
45 maining in such trust account shall exceed a sum deemed
46 necessary by the commandant for the payment of the filing
47 fees, attorneys' fees and bond premiums incurred in the vari-
48 ous estates, such excess shall be paid annually into the post
49 fund of the ~~home~~ homes .

50 The ~~home~~ homes when acting as guardian of a veteran may
51 deposit the funds of the estate in the special deposit fund of
52 the ~~home~~ homes , and may invest and reinvest such funds in

1 securities which are legal investments for savings banks in
2 this state.

3 SEC. 31. Section 1047 of said code is amended to read:

4 1047. The commandant shall maintain a post fund which
5 shall be used, at the discretion of the commandant subject to
6 the approval of the Director of Veterans Affairs, to provide
7 for the general welfare of the ~~home~~ *homes* and ~~its~~ *their* mem-
8 bers to include but not limited to providing for operations of
9 the post ~~exchange~~ *motion picture theater, library, band ex-*
10 *changes, motion picture theaters, libraries, bands*, and to pay
11 for newspapers, chapel expenses, welfare and entertainment
12 expenses, sport activities, celebrations, and to pay for any
13 necessary insurance to protect property of the fund or the
14 post ~~exchange~~ *exchanges*, or any other activity for the benefit
15 of the ~~home~~ *homes* or ~~its~~ *their* members.

16 SEC. 32. Section 1048 of said code is amended to read:

17 1048. The post fund shall include any profits from opera-
18 tions of the post ~~exchange~~ *exchanges*, all donations to the
19 fund, and any money from the estates of deceased members
20 which have been held for five years and unclaimed by the
21 heirs.

22 SEC. 33. Section 1049 of said code is amended to read:

23 1049. The post fund may be used to establish or operate a
24 post ~~exchange~~ *exchanges* which may conduct any lawful en-
25 deavor which in the judgment of the commandant will benefit
26 the members of ~~the~~ *a* home. The commandant may establish
27 the post ~~exchange~~ *exchanges* to operate at a profit.

28 SEC. 34. The sum of _____ (\$_____) is hereby ap-
29 propriated out of any moneys in the State Treasury in the
30 General Fund to the Department of Veterans Affairs to con-
31 struct the Southern California Veterans Home.

APPENDIX C

PERSONS PRESENTING TESTIMONY OR SUBMITTING STATEMENTS TO THE SENATE FACTFINDING COMMITTEE ON LABOR AND WELFARE

Belden, L. Burr

Chairman, Veterans Facility Committee, 25th District, California
Department of American Legion, San Bernardino

Best, R. T.

Commander, 6th District of Veterans of World War I Yucca Valley

Carter, Ken

President, Twentynine Palms Chamber of Commerce, Twentynine
Palms

Derry, John R.

Chief, Bureau of Hospitals, State Department of Public Health,
Berkeley

Submitted Letter: January 6, 1964

Eldridge, Rile G.

Past Department Commander, Veterans of World War I, Santa Ana

Friestedt, Willis D.

Commander of Fred MacDougal Post 256, Victorville

Garrison, W. Keith

Ventura County Veterans Service Bureau

Representing: California Association of County Service Officers,
Ventura

Godwin, Nell B.

Adjutant and Legislative Chairman, Disabled American Veterans,
Auxiliary No. 60, Twentynine Palms

Submitted Resolution: February 1, 1964

Goetz, Thomas G.

Director, San Diego County Veterans Service Department, San Diego

Gould, Larry E., M.D.

Medical Deputy Director, State Department of Veterans Affairs,
Napa

Gross, Arthur B.

Director, Trade and Industrial Development, Representing: San
Bernardino County Board of Supervisors, San Bernardino

Handsaker, John

Administrative Deputy Director, State Department of Veterans
Affairs, Sacramento

Leidner, Calvin B.

Representing: Department of California Jewish War Veterans, San
Bernardino

Like, Lowell C.

Center Director, U.S. Veterans Administration Center, Los Angeles

Luevano, Daniel M.

Chief Deputy Director, State Department of Finance, Sacramento

Martin, Allen J.

State Senior Vice Commander, Veterans of Foreign Wars, La Puente

Murphy, Harold C.

Director, San Bernardino County Department of Veterans Affairs,
San Bernardino

Orth, G. L., M.D.

Bureau of Hospitals, State Department of Public Health, Berkeley

Ostrander, R. Pete

Imperial County Veterans Service Officer and Chairman, Special
Committee for Southern California Veterans Home and Hospital,
California Department of American Legion, El Centro

Stratton, Richard

Commander of Chapter 87 of Disabled American Veterans, Representing: Fontana Veterans Council, Fontana

Williams, Cloy

Senior Vice Commander, Department of California Veterans of
World War I, Alhambra

APPENDIX D

SENATE JOINT RESOLUTION NO. 14

Relating to increasing psychiatric services available through the U.S. Veterans Administration to veterans who reside in California

WHEREAS, Nationally and in California there are increasing demands on the United States Veterans Administration for psychiatric care and this trend will continue and be intensified in the future; and

WHEREAS, California has the largest number of veterans of any state in the union, and its veteran population is continuing to grow although the nation's total number of veterans is decreasing; and

WHEREAS, the ratio of veterans residing in California to Veterans Administration-furnished psychiatric beds in this state has risen from 481 veterans per bed in 1959 to 515 veterans per bed in 1963; and

WHEREAS, Among the eight states with largest veteran populations, California has the highest ratio of veterans per Veterans Administration psychiatric bed and is the only state in which this ratio has risen; and

WHEREAS, The psychiatric beds allocated by the Veterans Administration to California have increasingly fallen behind the national average number and trend of 390 veterans per bed in 1959 and 375 veterans per bed in 1963; now, therefore, be it

Resolved by the Senate and the Assembly of the State of California, jointly, That the Congress of the United States is respectfully memorialized to promptly authorize and direct the United States Veterans Administration to provide and maintain in California, at least as a minimum, the nation's average ratio of psychiatric beds to veterans; and be it further

Resolved, That the Secretary of the Senate be hereby directed to transmit copies of this resolution to the President pro Tempore of the United States Senate, the Speaker of the House of Representatives, and to each Senator and Representative in this state's delegation to the Congress of the United States.

SENATE JOINT RESOLUTION NO. 15

Relating to increasing psychiatric services available through the U.S. Veterans Administration to veterans who reside in California

WHEREAS, Nationally and in California there are increasing demands on the United States Veterans Administration for psychiatric care and this trend will continue and be intensified in the future; and

WHEREAS, California has the largest number of veterans of any state in the union, and its veteran population is continuing to grow although the nation's total number of veterans is decreasing; and

WHEREAS, The ratio of veterans residing in California to Veterans Administration-furnished psychiatric beds in this state has risen from 481 veterans per bed in 1959 to 515 veterans per bed in 1963; and

WHEREAS, Among the eight states with largest veteran populations, California has the highest ratio of veterans per Veterans Administration psychiatric bed and is the only state in which this ratio has risen; and

WHEREAS, The psychiatric beds allocated by the Veterans Administration to California have increasingly fallen behind the national average number and trend of 390 veterans per bed in 1959 and 375 veterans per bed in 1963; now, therefore, be it

Resolved by the Senate and the Assembly of the State of California, jointly, That the United States Veterans Administration is memorialized to promptly take such administrative action as may be necessary to provide and maintain in California, at least as a minimum, the nation's average ratio of psychiatric beds to veterans and be it further

Resolved, That the Secretary of the Senate be hereby directed to transmit copies of this resolution to the President and the Vice President of the United States and to the Administrator of the United States Veterans Administration.

o

REPORT OF THE
SENATE FACT FINDING COMMITTEE
ON LABOR AND WELFARE

**CALIFORNIA'S
PUBLIC ASSISTANCE PROGRAMS**



MEMBERS OF THE COMMITTEE

VERNON L. STURGEON, *Chairman*

HOWARD WAY, *Vice Chairman*

CLARK L. BRADLEY

JACK SCHRADE

JAMES A. COBEY

ALVIN C. WEINGAND

ALBERT S. RODDA

STAFF

ANDREW W. OPPMANN, JR., *Consultant*

RUTH M. BOYD, *Secretary*

Published by the
SENATE
OF THE STATE OF CALIFORNIA

1965

GLENN M. ANDERSON
President of the Senate

HUGH M. BURNS
President pro Tempore

JOSEPH A. BEEK
Secretary

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LETTER OF TRANSMITTAL

SENATE CHAMBER, STATE CAPITOL
SACRAMENTO, CALIFORNIA, JUNE 17, 1965

HON. GLENN M. ANDERSON
President of the Senate
Senate Chamber, State Capitol
Sacramento, California

Mr. President:

Pursuant to Rule 12.5 of the Permanent Rules of the Senate and Senate Resolution No. 270 read and adopted June 21, 1963, the Senate Fact Finding Committee on Labor and Welfare submits its report and recommendations on California's public assistance programs.

Respectfully submitted,

VERNON L. STURGEON, *Chairman*
HOWARD WAY, *Vice Chairman*
CLARK L. BRADLEY
JAMES A. COBEY
ALBERT S. RODDA
JACK SCHRADER
ALVIN C. WEINGAND

PREFACE

It is not often that a legislative investigating body will introduce as many as 29 measures covering as broad a subject matter as this committee has. But then, few are the fields as complex, as costly, as intimately involved with hard practical realities and lofty aspirations of people's lives as our public assistance programs. Few are the fields in which a greater and more critical need for reform exists than in public welfare.

This committee, in its 1961 report, warned:

"We wish to emphasize, however, that these (recommendations) do not purport to be a panacea for problems plaguing the program."

The same warning is appropriate for the 29 measures authored by the committee this session, four years later.

If anything, the problems in public assistance have become more entangled, intermeshed, insoluble. This crisis has been half consciously and half inadvertently born.

A convenience marriage of state administration's total preoccupation with "improving" the size of welfare (rather than its quality) to California county government's concern with replacing local tax funds with those expropriated by state or federal jurisdictions has taken place.

The resultant muddle of confused policy, fiscal responsibilities, and objectives which permeate public assistance is being compounded by newer and more "stylish" attacks on the poverty problem—the Economic Opportunities Act, the Manpower Development and Training Act, and so on. Most of these new thrusts avoid the now mundane, even lackluster, channels of present public assistance methods in a simultaneous effort to sell a new product and to avoid errors which three decades of commitment have ground into the system.

Nevertheless, the public assistance caseworker, administrator, and educator have been caught up in the search for "prevention" and "rehabilitation." They clamor for a change in role. They are no longer satisfied with being "bottom of the barrel," "end of the road," the last source of formalized aid and assistance.

Thus, "solving" the problems of public assistance is growing progressively more difficult when these problems are viewed in context with the flow of bureaucratic and political life which surrounds them. This overall view has not been pursued in depth nor to specific conclusions and recommendations. The committee has, however, closely inspected the public assistance programs.

Although all categories of assistance were reviewed by the committee, primary emphasis has been placed on the Aid to Families with Dependent Children (AFDC) program. The so-called "adult" categories—Old Age Security, Aid to the Blind, Aid to the Totally Disabled, and Medical Assistance for the Aged—have been programs dealing princi-

pally with people who have very minute, if any, potential for self support. The aged, the blind, the severely disabled are by definition persons who generally cannot be expected to reassume productive roles in the economy. The emphasis in working with them has to be limited to assisting them to live comfortable, dignified, integrated lives. It is within the AFDC program that the greatest potential and, conversely, the greatest problems exist.

The greatest flaw in AFDC is its isolation from moral standards of the public. This is a conscious—even self-proclaimed—detachment. In the pre-Social Security Act period, eligibility for welfare was largely limited to those who were considered “worthy” of assistance. The Social Security Act changed the “worthy poor” approach and used, instead, the criterion of aid applicant’s “needs.”

The frame of reference of the judgmental process in public welfare shifted from an evaluation of the applicant’s worthiness for assistance to an evaluation of only his need for aid.

Furthermore, the agents who made such judgments were also changed by the Social Security Act. Before the mid-1930’s the individual caseworker and the individual local agency and its director were the principal judgment-making parties. With the entry of the federal government into the public welfare field and the greater reliance upon state welfare plans, individual judgments were supplanted by those of the majority of the community as represented by laws passed by federal and state legislative bodies.

These changes, by themselves, have been highly desirable, have led to greater equity, and have, in fact, followed advances in moral concepts of our communities. In this process, however, the public welfare worker, supervisor, administrator, and educator, in their desire to avoid being judgmental, have denied the existence of any criteria (even the community’s standard of morality) except “needs.”

Every community of man has had its own body of common-law morality, a code of ethics, discernible standards of behavior and responsibility. These mores have been essential not only to the growth and strength of man’s societies but also to the individual himself. They keynote man collectively and individually. They are the bootstraps man possesses by which he hauls himself closer to the image of what he might be.

When public assistance merely feeds, clothes, and houses families without placing reasonable expectations upon them—expectations relative to their behavior, to their responsibility to care for themselves, their families, their fellow man—it not only illy prepares them for independent life, it strips from them the essence of human life. They would continue to exist, of course. But the ghetto of unaccountability is no more a fitting place for man to live than are the secret slums of our cities.

If the dependent are to be led out of their house of bondage, California’s public assistance programs must help them live within the moral fabric of society, not, as currently, live outside of it. Our public assistance programs must be concerned with the obligations of aid recipients as well as with their rights. Our public assistance programs must reflect that as surely as being poor is in itself not wrong, the creation of separate standards for the poor is fallacious.

SUMMARY OF RECOMMENDATIONS REQUIRING LEGISLATION AFFECTING PUBLIC ASSISTANCE PROGRAMS AND ADMINISTRATION

THE AID TO FAMILIES WITH DEPENDENT CHILDREN PROGRAM (AFDC)

1. Aid should be paid to families in behalf of children up to 21 years of age, instead of 18, if such children are regularly attending school or are enrolled in and attending job training programs (SB 785, page 65).
2. Aid on the basis of the unemployment of the parent (Aid to Families with Dependent Children—Unemployed) (AFDC—U) should not be paid in California after July 1, 1967, unless the federal law is extended to permit financial participation in such aid (SB 786, page 67).
3. Legislative intent should specify that AFDC—U is to assist children of unemployed parents who are unable to meet their obligation to support, who cannot procure any employment, and who have no other source of aid. An applicant for AFDC—U should be required to obtain certificates from the local employment service office and the farm labor office of the State Department of Employment, issued within the previous week, to be submitted simultaneously with his application for aid. These certificates should be issued on the basis that the applicant has registered for employment and, considering only his physical and mental capacity, that no part- or full-time work exists to which he could be referred. An AFDC—U recipient should be required to obtain an identical recertification semimonthly. The period for which eligibility is established should be the same as the period prescribed for the payment of aid (SB 787, page 68).
4. Aid should not be granted if the parent is unemployed because of a bona fide labor dispute. If a parent voluntarily terminates his employment he should not be eligible for AFDC—U for three months following such termination (SB 788, page 70).
5. An unemployed parent, whose children are receiving AFDC—U, should be presumed to have failed to support his children for purposes for prosecution under Section 270 of the Penal Code if he refuses without good cause to accept an offer of employment (SB 789, page 72).
6. County welfare departments should be permitted to pay for AFDC work or training project supervisors from other governmental agencies. The state should pay one-half of special needs, not to exceed \$12.50 monthly, of the recipient who is otherwise receiving the maximum grant when such needs are caused by his participation in a work or training project. Aid grants should be reduced in an

amount equal to the assigned dollar value of work missed because of unauthorized absences from work or job training projects (SB 790, page 73).

7. Federal law should permit private employers to establish and maintain job training projects for AFDC recipients (SJR 33, page 76).
8. The "good causes" for refusing offers of employment should be the same for regular Aid to Families with Dependent Children—Family Group (AFDC—FG) parents as those currently used for unemployed (AFDC—U) recipients, and the referral of mentally competent and physically able AFDC—FG parents to the Department of Employment to register for work should be required rather than permitted (SB 791, page 78).
9. The state's medical and welfare programs should furnish family planning information, services, drugs, and materials to all persons who voluntarily seek them. Medical and social work personnel should be free to volunteer information regarding the availability of such services (SCR 47, page 80).
10. Federal law should permit youths receiving AFDC to keep for their own personal, unrestricted use up to 50 percent of their earnings, rather than requiring all of such earnings to be subtracted from the aid paid (SJR 34, page 82).

MULTIPROGRAM PROBLEMS

1. Claims should be taken on the real property of aid recipients of all programs as a condition of granting aid. Such claims should not be enforced during the lifetime of the recipient, his spouse, if any, or during the minority of his children, if any. No interest should be charged (SB 792, page 84).
2. Counties should be permitted, rather than required, to pay aid on the basis of presumed eligibility pending completion of thorough eligibility checks (SB 793, page 86).
3. The dollar amounts of earned income currently permitted under federal law to be exempted from consideration in computing aged and blind aid should be specified in state law rather than granting such exemptions by a carte blanche reference to whatever federal law will permit. State law should also permit youths under 18 years receiving AFDC to keep 50 percent of their earnings for their personal unrestricted use and this amount should be exempt from the personal property limitations together with earned income saved by the youths for their future educational or job training needs (SB 794, page 87).

THE MEDICAL ASSISTANCE FOR THE AGED PROGRAM (MAA)

1. The fee schedule for nursing home care should be established on a cost reimbursable basis, averaging all homes in each area of the state, and should be determined by industry-financed cost audits (SB 795, page 89).
2. State law should permit the concurrent receipt of MAA and Old Age Security (OAS) during the same month (SB 796, page 90).

3. Federal law should also permit the concurrent receipt of MAA and Old Age Assistance during the same month (SJR 35, page 92).
4. The liability and scale of required contributions currently in force in the Old Age Security program regarding the responsibility of adult children to support their dependent parents should also apply to MAA program (SB 797, page 94).

**THE AID TO THE TOTALLY DISABLED (ATD)
AND
AID TO THE BLIND PROGRAMS (AB)**

1. The definitions of "needy disabled person," "permanently impaired," and "totally disabled" as currently (February 1, 1965) used in the State Department of Social Welfare's regulations should be frozen into state law (SB 798, page 95).
2. The State Department of Social Welfare should be permitted, when feasible, to delegate to county welfare departments the responsibility of determining medical eligibility of ATD applicants (SB 799, page 97).
3. Federal regulations also should permit the states to delegate medical eligibility determinations in the ATD and AB programs (SJR 36, page 98).
4. Federal law should permit the payment of ATD to an interested person when the recipient, because of alcoholism, drug addiction, or mental problems, is unable to use his grant to his own benefit and best self-interest (SJR 37, page 100).
5. Persons blinded or disabled while residents of other states should, after moving to California, be in residence here five years before becoming eligible for AB or ATD (SB 800, page 102).

THE ADMINISTRATION OF PUBLIC ASSISTANCE

1. County welfare administrative projects which would safeguard funds by the detection of fraud and improving the accuracy of eligibility determinations should be eligible for subventions from the state under the County Demonstration Projects Act (SB 801, page 104).
2. The regulations, orders, and standards adopted or issued by the State Department of Social Welfare should be published in the California Administrative Code (SB 802, page 106).
3. Federal regulations should minimize rigid caseload and supervisory standards and emphasize, instead, the results achieved through public assistance programs (SJR 38, page 107).
4. Federal law should entitle the states, their political subdivisions, and welfare recipients to secure judicial review of administrative decisions affecting public assistance made by the U.S. Department of Health, Education, and Welfare (SJR 39, page 109).
5. A systems analysis of public assistance administration by the state and counties should be undertaken immediately under contract with California's business and technological industries (SCR 48, page 111).

6. Comprehensive study should be undertaken by the Legislature during 1965-67 of public assistance costs, cost-sharing ratios, and state administration. No action should be taken on these interrelated subjects until such a study is completed (see SR 108, page 112).
7. Further study should be undertaken by the Legislature during 1965-67 of child care centers, Welfare and Institutions Code revision and simplification, one unified adult category of aid, and flat grants (see SR 109, page 112).

INTRODUCTION

The Senate Fact Finding Committee on Labor and Welfare has approached the subjects embraced in California's public assistance programs from three directions. The first has been through the Medical Assistance for the Aged program, with particular emphasis given to the rates paid to medical facilities for care furnished recipients. The second approach has been through a study of the provisions embodied in Assembly Bill 59 which was passed by the 1963 Regular Session of the Legislature and which affected every category of public assistance. The third has been an appraisal of the effect and success of the implementation in California of the "services amendments" to the Social Security Act (PL 87-543) through State Department of Social Welfare Bulletin No. 629.

MEDICAL ASSISTANCE FOR THE AGED ¹

Prior to 1957 medical services for the aged were, in general, considered a local responsibility. The needy aged received medical services either from county facilities at county expense, local private charities, or through the generosity of the medical professions. If they had to pay for medical care from their own resources, it was generally at the expense of some other necessity. However, about one-third of the aged on welfare were eligible to get some special needs allowances for medical care.

The 1957 Legislature passed California's first statewide medical care program for public assistance recipients (Chapter 1068, Statutes of 1957). Effective October 1, 1957, this vendor-payment, pooled-fund program provided limited outpatient care such as doctor's visits, x-ray and drugs. In its original form, this new Public Assistance Medical Care program (PAMC) was financed from \$3 of federal and \$3 of state funds per adult recipient per month. The federal funds had become available due to amendments to the Federal Social Security Act in 1956. The 1959 Legislature passed legislation which resulted in an increase in the total amount available from \$6 to \$8.51, and 1960 amendments to the Federal Social Security Act provided additional federal funds which increased the average monthly amount per adult category recipient to \$15.

These same 1960 amendments, known as the Kerr-Mills Act (PL 86-778), also established the Medical Assistance for the Aged program. The intended purpose of the new MAA program was to encourage states to establish comprehensive medical care services for aged persons who were financially able to support themselves, but unable to pay for their medical needs. California implemented the Medical Assistance for the Aged program by passing the Rattigan-Burton Act (Chapter 1227, Statutes of 1961) which became effective January 1, 1962. It

¹ Based, in part, on testimony submitted to the committee by Milton E. B. Von Damm, Associate Administrative Analyst, Joint Legislative Budget Committee, *Transcript*, October 24, 1963, pp. 7-19.

initially provided payment for long term care in hospitals and nursing homes after the first 30 days of confinement for persons 65 years of age and over.

The program is financed by 50 percent federal, 25 percent state, and 25 percent county funds. Additionally, counties are responsible for providing up to \$15 per month for beneficiaries' incidental expenses. Eligibility requirements are the same as for Old Age Security recipients, except that there is no residence requirement. In addition to hospital and nursing home care, MAA beneficiaries are entitled to outpatient services up to 12 months from the date of discharge.

Beginning May 21, 1963, aged persons, who were otherwise qualified, became eligible to receive hospitalization benefits from the first day of their confinement, instead of the 31st day, if they utilized county or county-contract hospitals. The cost of the first 30 days of care is paid 50 percent from federal funds and 50 percent from county funds (AB 59, Chapter 49, Statutes of 1963). Previously, counties assumed the entire cost of care for the first 30 days of confinement in most instances.

Also effective May 21, 1963, otherwise eligible aged persons were entitled to MAA benefits from the day of admission into a nursing home if they were transferred from a county hospital. Other potential recipients of aid in noncounty hospitals and those admitted directly into a nursing home from their private homes, however, were not eligible until the first of the month following their admission or from the day their cost of care exceeded \$2,000 (AB 59, *op. cit.*, and SB 497, Chapter 2166, Statutes of 1963).

The enactment of these provisions, chiefly motivated by a desire to ease the cost burden of public assistance programs placed on property-owning taxpayers at the county level, proved to be highly inequitable. They differentiated between types of facilities, not on the basis of care provided or any other reasonable basis, but on the basis of giving fiscal advantage to the operators of some of the facilities, thus denying equal benefits to all facilities and all applicants. Additionally, these changes unjustifiably discriminated between applicants for aid, not on the basis of their need, but rather on the type of facility into which they had been admitted.

These changes, as noted, were made by AB 59. Other unforeseen inequities which developed will be discussed elsewhere in our report.

The State Department of Social Welfare is responsible for establishing rules and regulations governing the Medical Assistance for the Aged program. Late in 1961, by executive order, the Governor granted the Department of Finance authority to establish all medical care rates and fees. This order applies to medical care services offered by all state agencies. The purpose is to create uniform fee schedules and rates for identical services.

Prior to the implementation of the MAA program, the State Social Welfare Board had to determine how much should be paid for nursing home care. As a temporary expedient, the rates for nursing homes were frozen at the level of those actually charged by a home or group of homes as of October 1 of the previous year. These rates were a result of negotiations between the homes and the county welfare department under whose jurisdiction they fell. To provide a more substantial basis for future determination of rates, the State Department of Social Wel-

fare made a survey of costs in 80 nursing homes during the last three months of 1962. Based on this study, the Department of Finance then prepared a schedule of maximum allowances which became effective February 1, and mandatory May 1, 1963. This schedule established maximum allowances for basic and extensive care in northern counties (called the northern region) and in southern counties (southern region), costs being slightly higher for both basic and extensive care in the north. The new maximum allowances set an upper limit of \$272 for extensive care and \$219 for basic care. Provision was also made for higher rates in exceptional circumstances. Effective May 1, 1963, the Department of Finance provided for higher maximum allowances in homes with high wage costs or capital investments.

The nursing home industry and various counties, especially those in the bay area, raised strong objections to the maximum allowances prescribed by the Department of Finance. They complained that rates were too low to cover costs and provide adequate profit. Two specific points of dissatisfaction were that some nursing homes would be paid less than previously and that only a small percentage of the MAA nursing home patients would be eligible to receive extensive care.

Senate Concurrent Resolution No. 19, 1963 (see Appendix A, page 117) stated that State Department of Social Welfare regulations have the effect of limiting the exercise of free choice of facilities and that such regulations be amended. It requested the State Departments of Finance, Social Welfare, and Public Health to thoroughly study the maximum allowances in effect on May 1, 1963.

Another principal area of controversy involves the question of whether friends and/or relatives of nursing home recipients *can* supplement welfare payments to obtain a better quality of care without causing a corresponding reduction in the public contribution. In *Straus and Shea v. The State Social Welfare Board*, Superior Court Judge William F. Traverso concluded that the State Social Welfare Board was granted the authority by the Rattigan-Burton Act to set maximum allowances and that the term "maximum allowance" meant the total amount to be paid for care rather than the maximum amount of the state's participation, and supplementation was therefore an offset. Aside from the legal issue, the important philosophical or ideological issue of whether relatives and/or friends *should* be permitted to supplement established maximum rates still exists.

The degree of concern by the nursing home industry regarding rates and supplementation are brought into focus more sharply when it is realized that approximately 55 percent of all private nursing home beds in California are occupied by MAA recipients. Thus, the MAA program has a major influence on the whole industry.

Effective November 1, 1963, rates for both basic and extensive care were increased slightly to accommodate wage increases necessitated under increases in the national minimum wage (PL 87-30) and the north-south regional rates were abolished. Since then there have been no changes in the specific rates paid to nursing homes nor in the system under which such payments are made.

The Medical Assistance for the Aged program marks California's first attempt to provide a comprehensive statewide hospital care pro-

gram for the elderly. As mentioned, the primary group of aged persons for whom this program has been established are those over 65 who are able to support themselves, but unable to pay for major medical expenses. Thus, Old Age Security recipients, by federal law, are not eligible for MAA. However, only 23.8 percent of the MAA applicants for both hospital and nursing home care approved during the calendar year 1962 had not been either recipients or transferees from Old Age Security or other public assistance programs. Of the total amount expended for hospital care, between 90 and 95 percent was paid to county hospitals. The balance went to private and district hospitals.

Hospital rates paid under California's MAA program vary according to the type of hospital. Rates are established, as in the case of nursing home maximum allowances, with the final determination being made by the Department of Finance. There is a legal limit, however, to the maximum monthly average amount paid for care under the present program. It is currently \$380 (Section 4750, W. & I. Code).

There are four types of hospitals, two public and two private. Public hospitals consist of county and district hospitals, and private facilities are either voluntary or proprietary. Voluntary hospitals are nonprofit hospitals such as those constructed by community donations or operated by specific organizations such as churches. Proprietary hospitals are profitmaking institutions.

Temporary rates for both public and private hospitals were put into effect at the start of the MAA program in January 1962. County hospitals were initially reimbursed at their actual per diem hospital rates in effect as of October 1, 1961. This was referred to as the "frozen rate." Effective October 1, 1962, county hospitals were permitted to go onto a cost reimbursable system if they adhered to the cost accounting system devised by the California Hospital System. This permissive fee structure was made mandatory as of July 1, 1964.

Rates for district hospitals are negotiated individually with the welfare department of the county in which they are located. There are specific maximum all-inclusive per diem rates established by the State Department of Public Health and approved by the Department of Finance. Any negotiated per diem rates can not exceed these maximums. Ancillary services billed separately by district hospitals are discounted 25 percent because of certain tax and purchase advantages which apply to this category of public hospitals.

Private hospital rates, including those of both voluntary and proprietary types, are also negotiated on an individual hospital basis with county welfare departments within the above stated regional maximums. Ancillary services are billed separately but are not discounted.

Effective November 1, 1964, MAA rates being paid under a negotiated rate or under the regional maximum to all noncounty and county-contract hospitals were increased up to 15 percent. All of these hospitals, however, which were operating under a Crippled Children Services program schedule of rates were paid on the basis of the CCS schedule for their MAA patients.

The committee devoted two full days of public hearings to problems in the Medical Assistance to the Aged program, October 24, 1963, in San Francisco and December 12, 1963, in Los Angeles. Thirty-three persons testified or submitted statements. Additionally, the afternoon

of Thursday, December 10, 1964, was devoted to the specific subject of the payment of exceptional rates to nursing homes under MAA, at which four witnesses testified. The committee's detailed examination and recommendations bearing on this program begin on page 46 of this report.

All through the hearing on AB 59 the subject of Medical Assistance to the Aged appeared.

ASSEMBLY BILL 59—1963

The second route used by the committee to evaluate California's public assistance programs was to carefully weigh the provisions of AB 59—1963. This was one of the most complex measures to be passed by the Legislature in recent years.

In the first place, AB 59 was complex because it was dealing with public welfare. California's welfare programs, and state and federal statutes governing them, and the tripartite administrative responsibilities involving county, state, and federal governmental agencies, all combine to make welfare a normally intricate field. Secondly, AB 59 was not a normal bill sizewise. The chaptered version was 22 pages long and it changed state law by adding 40 new sections to the Welfare and Institutions Code, amending 16 sections, and repealing 27 sections. Thirdly, this was a complex measure because it attempted to neutralize the highly polarized opinions and desires of several divergent groups by giving each something it wanted. Fourthly, AB 59, like Topsy, just grew—and it grew rapidly. With dispatch and in an apparently extemporaneous fashion, what was at first a measure of relatively minor meaning became a momentous landmark in public welfare. Lastly, and perhaps most importantly, AB 59 was complex because of the confusion which surrounded, and still envelop, the reasons for its enactment and the way in which it was enacted.

At the committee's first public hearing on it in May 1964, in San Luis Obispo, John M. Wedemeyer, Director of the State Department of Social Welfare, said that AB 59 “. . . was primarily a means of providing assistance to the poor, and not a revenue measure geared to solve all the property tax problems of local government. . . .”² This view ignores the fact that AB 59 was explained, supported, and approved chiefly as an instrument of local tax relief. Although the bill received support from several groups, that given it by the staff of the County Supervisors Association of California was most important.³ The bill itself and many of the substantive provisions it contained, undoubtedly would not have been adopted without the supervisors association's strong pleadings. This support was motivated not by an evaluation of the policy changes proposed by the bill, but rather by the financial savings that supposedly would accrue to county governments. AB 59 was accepted by the supervisors association and, at its urging, by the Legislature because of its purported fiscal effect, not because of its public welfare policy changes.

The way in which AB 59 was advanced through the Legislature, and particularly the Senate, also explains the complexity of the measure's provisions and the flaws in many of them.

² *Transcript*, Vol. I, May 26, 1964, p. 4.

³ *Ibid.*, May 27, 1964, pp. 322–324.

As introduced, it was a minor measure, providing only that, to the extent permitted under federal law, aid recipients' earned income and interest on savings accounts would not be considered resources and would not be deducted from their grants. After a hearing devoted to a discussion of some technical amendments, the bill was reported out of the Assembly Committee on Social Welfare under the date of March 18, with an "amend and do pass as amended" recommendation.

These technical author's amendments were put into the bill on March 19, 1963, and the measure was sent from the Assembly floor to the Committee on Ways and Means. Here the author proposed amendments which removed everything from the bill that would have required a two-thirds vote of approval on the Assembly floor (54 "yes" votes) instead of a simple majority (41 "yes" votes). On April 2, the bill was favorably reported out of the Ways and Means Committee with these amendments incorporated.

On April 5, AB 59 was voted on by the Assembly and passed by a 48-to-4 rollcall vote.⁴

When the bill was received by the Senate, it was referred for policy consideration to the Senate Committee on Governmental Efficiency. At the first hearing before this committee, on April 10, the author proposed substantive amendments to the measure, and the committee ordered that the bill be reprinted and heard in its amended form the following week.

The author's amendments, inserted under date of April 11, added to AB 59:

1. The "presumptive eligibility" provisions and the change in the regular starting date of aid for all programs;
2. The 12-month exemption of regular limits on income and personal property for the Aid to the Blind;
3. The major elements of the Aid to the Disabled liberalizations; and
4. The basic elements of the Medical Assistance for the Aged package.

There was no public objection to the bill in its new form and, in fact, it was supported by the County Supervisors Association of California and contained the State Welfare Study Commission's recommendations regarding presumptive eligibility and the disabled program. Consequently, it was given a "do pass" recommendation and re-referred to the Senate Committee on Finance for consideration of its fiscal impact.

Just before its first hearing in the Senate Finance Committee, AB 59 was added to again by author's amendments on April 22. These amendments put into the bill the prohibition on personal property liens in the adult aid programs, required that general relief be paid at a level equal to Old Age Security to discharged MAA patients until they received their OAS assistance, and permitted blind recipients who seemed eligible for aid under the disabled program to receive, without transferring, attendant care.

At the hearing on April 25 before the Senate Finance Committee more amendments were proposed by the author. These were accepted by the committee after his explanation; the committee heard testimony

⁴ *Assembly Journal*, April 5, 1963, p. 1867.

supporting the amended bill from the supervisors association; the bill was given an "amend and do pass as amended" recommendation, and was sent to the Senate floor. On April 30, however, before the Senate had ordered the bill amended, a motion was made from the floor to re-refer the bill to the finance committee so that the latest amendments could be reviewed more thoroughly. The Senate so ordered.⁵

Upon receipt of the bill, the Senate Finance Committee appointed a subcommittee to review the fiscal details of the proposed amendments with AB 59's author, the Administrator of the Governor's Health and Welfare Agency, representatives of the County Supervisors Association of California, and the State Department of Social Welfare.

The compromises agreed upon by this group and the majority of the subcommittee members were those which were added into AB 59 on May 3. They provided the Aid to Families with Dependent Children program be extended to families where the breadwinner is unemployed or underemployed, and for some MAA changes, including repeal of the responsible relatives' provision.

The full finance committee held a hearing on the measure on May 7. During the course of this hearing, several amendments were proposed and adopted by the committee members. The only major change in the bill's provisions was the amendment which made the cost-of-living adjustment factor in the grants of the adult aid programs effective downward as well as upward. This and other changes which were technical were amended into the bill on May 8. The committee, after hearing the support offered by the supervisors association and the testimony of the bill's opponents (the California Taxpayers' Association and the County Taxpayers' League of Sacramento), gave it an "amend and do pass as amended" recommendation.

AB 59 was made a special order of business in the Senate for 4 p.m., May 15, 1963. The first action was taken on a series of amendments offered from the floor. By a 9-to-29 vote the Senate refused to adopt these changes which would have deleted the AFDC—U extension from the bill.⁶ Then on votes of 37 to 1 and 30 to 9, respectively, the Senate adopted the urgency clause and passed the bill.⁷

Assembly approval of the urgency clause and the Senate's amendments had to be obtained; therefore, AB 59 was returned to that House for further consideration. Because of the substantive nature of these amendments, an attempt was made on the Assembly Floor on May 20, to rerefer the bill to the Social Welfare Committee. This motion was defeated by a 48-to-24 vote.⁸ The urgency clause was approved by a 54-to-19 rollcall vote, and the Senate's amendments were concurred in by a 56-to-19 vote.⁹

Finally, the Governor, on May 21, signed AB 59 into law as Chapter 510 of the 1963 Statutes.

It is obvious that in following this course through the Legislature, the author of AB 59 successfully avoided a hearing before the policy committees of either House on the full provisions of the Bill.¹⁰

⁵ *Senate Journal*, April 30, 1963, p. 2113.

⁶ *Ibid.*, May 15, 1963, p. 2621.

⁷ *Ibid.*

⁸ *Assembly Journal*, May 20, 1963, p. 3647.

⁹ *Ibid.*, p. 3648.

¹⁰ The Senate's and, on the return of the bill for concurrence, the Assembly's tolerance of this lack of policy consideration lends added evidence that AB 59 was thought of as a tax relief rather than a public assistance measure.

Now the significance of the problems caused by AB 59's enactment and of the methods used in accomplishing such enactment are clear. It indicates the necessity of avoiding confusion over a measure's—any measure's—fiscal effects with its policy implications, and that there are inherent and inexorable disadvantages in significantly sidestepping the time-proven committee system.

STATE DEPARTMENT OF SOCIAL WELFARE BULLETIN NO. 629

The third approach used by this fact finding committee in evaluating California's public assistance programs has been to review the administration of them, beginning with the requirements imposed by the 1962 "services amendments" to the Social Security Act (PL 87-543). The federal mandates on the states have, in turn, been made requirements of California's county welfare departments by State Department of Social Welfare Bulletin No. 629.

The ensuing "services program" has had no direct relationship to AB 59 or the MAA program. Its effects, however, which have been significant on the administration of public welfare in California, have been intermeshed with the effects of the provisions of AB 59 and MAA, and in many instances it has been impossible to determine where one stops and the others begin.

The most noteworthy aspect of Bulletin No. 629 is that, in spite of the momentous changes to which it has committed the state and counties, it was considered and adopted with no consultation with, at a minimum, or prior approval of, at the optimum, the Legislature. It is true that the federal requirements regarding public welfare administration are mandatory on the states, currently only in part; eventually (July 1, 1967), in whole. Nevertheless, such significant changes in the staffing requirements and in program services should in the committee's judgment have been authorized by the Legislature either as a budgetary request or as a specific enabling bill before they had been translated from a mere federal requirement into formal state policies and mandates.

The committee conducted six days of public hearings on the combined subjects of AB 59 and Bulletin No. 629—May 26, 27, and 28, 1964 in San Luis Obispo and December 9, 10, and 11, 1964 in San Diego. A total of 126 individuals presented verbal testimony or submitted prepared statements. Among these were 55 of California's 58 counties. Because of the tremendous policy and fiscal changes implemented in AB 59 and Bulletin No. 629 and because of wide-spread county dissatisfaction with some of these changes, the committee sent out a questionnaire to all boards of supervisors prior to its May hearings (see Appendix B, page 118). All but three county boards responded and the data submitted has been of invaluable assistance to us in our task.

In view of the vast scope of material considered by the committee and the large number of recommendations submitted to us, this report will be organized on a program-by-program basis, and appropriate cross references will be made to subject matters which cut across program demarcations. Also, only those recommendations and suggestions will

be discussed which were either proposed by a significant number of witnesses or which were of significant merit or feasibility. A summary of all recommendations made to the committee, keyed to witnesses and transcript page numbers, however, appears in Appendix C, beginning on page 119.

AID TO FAMILIES WITH DEPENDENT CHILDREN

BACKGROUND

Before the passage of AB 59, a needy family was eligible for Aid to Families with Dependent Children (AFDC) when the loss of parental support or care was caused by death, physical or mental incapacity, or continued absence from the home because of divorce, desertion, separation, incarceration, or deportation. These cases were, and are, known as Family Group (AFDC-FG) cases. One of the most important changes made by AB 59 was to extend AFDC to families whose need was caused by the unemployment or underemployment of the parents (AFDC-U). The AFDC-U provisions went into effect February 1, 1964, and since that date the following number of cases and individuals on a monthly basis has been assisted ¹¹:

February	1964—	6,517 cases with unknown persons
March	1964—	10,262 cases with unknown persons
April	1964—	12,411 cases with 72,402 persons
May	1964—	12,056 cases with 70,358 persons
June	1964—	9,418 cases with 55,359 persons
July	1964—	8,693 cases with 50,387 persons
August	1964—	8,213 cases with 47,974 persons
September	1964—	7,621 cases with 44,313 persons
October	1964—	7,910 cases with 45,851 persons
November	1964—	9,318 cases with 53,883 persons
December	1964—	12,702 cases with 73,868 persons
January	1965—	16,115 cases with 92,299 persons
February	1965—	17,777 cases with 102,532 persons

Total aid costs, including county supplementation, for AFDC-U for the first 11 months it was in effect (February through December 1964) have run to \$22,395,438, with \$19,315,093 from the federal government, \$7,969,675 from the state, and \$4,020,770 from the counties. Aid costs for the 1963-64 fiscal year (actually only five months because of the February 1 effective date), with the State Department of Social Welfare's previous estimates shown in brackets, ran to a total \$11,031,923 (\$18,564,700), with the federal share at \$4,953,578 (\$10,332,700), state share \$4,045,116 (\$5,071,200), and counties share \$2,033,229 (\$3,160,800).¹² The department's cost estimates were considerably over actual expenditures for the first five months principally because they had overestimated the number of cases which would apply and receive aid. This overestimate occurred chiefly because of the very mild winter experienced during 1963-64 which permitted higher employment than is normally possible in such industries as logging, farm work, and construction.

Concomitant with the initiation of the AFDC-U program, a tremendous increase took place in the regular AFDC-FG program. For ex-

¹¹ Statistical Summary, PA 2-53 through 65, Bureau of Research and Statistics, California Department of Social Welfare.

¹² *Ibid.*, PA 3-63, and letter of July 12, 1963 to Senator James A. Cobey, Chairman, Senate Fact Finding Committee on Labor and Welfare, from Tom Moore, Assistant to the Director, California Department of Social Welfare, enclosing cost estimates on AB 59 as corrected July 1, 1963.

ample, in February 1962, about 87,900 cases involving 318,300 persons were receiving AFDC-FG. In February 1963, 88,200 cases with 338,700 persons were on aid. In February 1964, however, 101,000 cases with 389,300 persons were receiving aid, and in February 1965, 116,600 cases involving 454,100 parents and children were getting AFDC-FG.¹³ This represents an increase of 15.4 percent in cases and an increase of 16.7 percent in individuals between February 1964 and the same month in 1965, and an increase of 32.7 percent in cases and 42.5 percent in individual family group recipients between February 1962 and February 1965.

The state's employment and unemployment figures for the months of February 1962 through 1965 show a trend, however, of increasing employment and decreasing unemployment. During the four years from February 1962 through February 1965, civilian employment in California rose by 611,000, an increase of 10.2 percent. Unemployment dropped 7,000, a decrease of 1.6 percent. The employment rate, as a percentage of the total civilian labor force, went from 7.6 percent in February 1962, to 6.9 percent in the same month in 1965. Moreover, these have been steady, nonfluctuating trends for the last four Februaries. Total civilian employment has continued to rise and the total number, and the percent, of unemployment has steadily fallen.¹⁴

The sizeable increases in the AFDC-FG caseload, particularly during the period when the AFDC-U program became operative and the general employment situation on the upturn, do not seem particularly logical. However, the State Department of Social Welfare argues that periods of sustained high (above 4 percent) unemployment causes the AFDC-FG caseload to increase. In fact, they have submitted data which would indicate that the AFDC-FG caseload has, over the long-run, equaled about 24 percent of the number of unemployed (see Figure 1).¹⁵ In the AFDC-FG program, of course, a high sustained level of unemployment would affect not only a mother's ability to obtain employment or stay employed, but it would also directly affect the absent father's ability to support his family. In both instances, according to the department, the only source of assistance to many persons is public welfare.¹⁶ Also it is emphasized, and apparently correctly, the AFDC-FG recipient (adult head of family) is, because of lack of education, job skills, and vocational training, together with other causes such as racial prejudice, low motivation, and mental health problems, the last to be hired and the first to be fired. Finally, it is surmised, the widespread publicity accompanying the passage of AB 59, particularly the AFDC-U program, together with the active "recruitment" of prospective recipients by such groups as the Community Service Organization, the Citizens for Farm Labor, and some labor unions, caused the extraordinarily large number of requests for aid.

One specific factor is not generally mentioned for the unusual and completely unexpected increase in AFDC-FG cases. This is the requirement that when unemployed persons apply for aid and are determined eligible, their need be ascribed to anything other than unemployment

¹³ *Statistical Summary*, PA 3-41 and 65, *op. cit.*

¹⁴ *A Report of Activities*, for months of February 1962, 1963, 1964, and 1965, California Department of Employment.

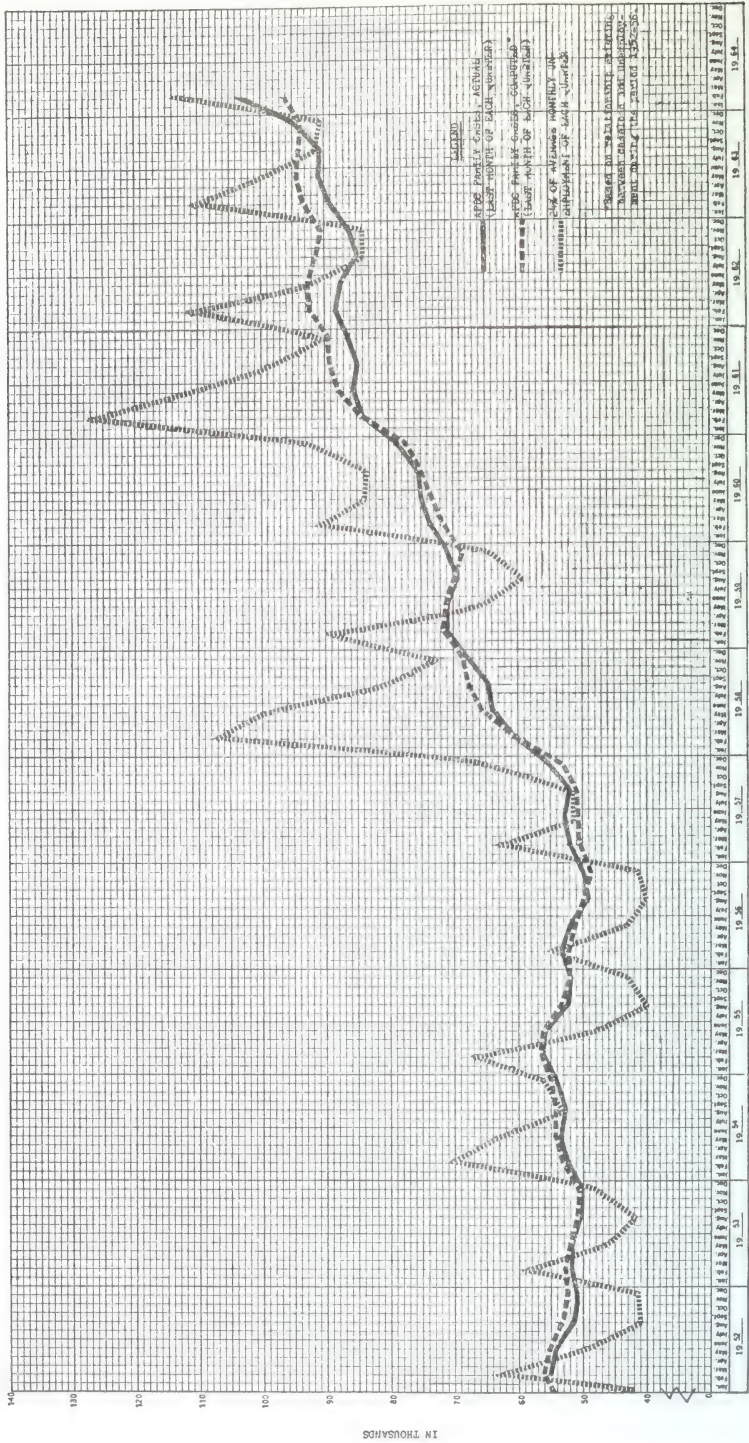
¹⁵ *Transcript*, Vol. I, May 26, 1964, pp. 41-43.

¹⁶ Also see *First Annual Report*, State Social Welfare Board, California Department of Social Welfare, January 1965, Chapter II, pp. 10-22.

Research and Statistics
May 22, 1964

FIGURE 1
RELATIONSHIP BETWEEN AFDC FAMILY CASES AND UNEMPLOYMENT
Quarter I, 1952 through Quarter I, 1964

State of California
Department of Social Welfare



although such unemployment may be the instigating cause of dependency or the reason, in the family's mind, why application was made.¹⁷ It is, thus, highly probable that a substantial number of cases which eventually have shown up as being aided on the AFDC-FG program, and have helped swell this category so unexpectedly, had initially sought aid on the basis of their unemployment! One of the implications of these requirements is, of course, that of understating the true costs and caseload size of the new program (AFDC-U). Also distorted by these regulations is the need for assistance caused by unemployment and underemployment.

On the one hand, although its admitted costs have been great, its actual costs even greater, and its eventual costs astronomical, very little support has been lent to the cause of repealing the AFDC-U program. Certainly it has not deterred fathers from deserting their families—one of the "reasons" given for its enactment—as the burgeoning AFDC-FG caseload amply demonstrates. On the other hand, it has raised serious difficulties relative to problems which should be handled through minimum wage and unemployment insurance,¹⁸ undue administrative complexities,¹⁹ maligners,²⁰ the government's role in labor disputes,²¹ and the inadequacy in many instances of other child aid benefits.²²

The granting of aid, however, because of the unemployment of basically employable persons is a proper acknowledgment that we no longer live in a society and an economy where anyone who wants to work can always obtain employment or stay employed. AFDC-U also is an acknowledged improvement on the abysmally low aid standards of some county General Relief programs, the only source of public assistance before its enactment. Finally, AFDC-U has not only helped needy families, but, to some extent, it has assisted many counties in replacing tax dollars raised from property taxes with state and federal moneys (generally accruing from sales, income, and business taxes).

In summary, then, it is this committee's finding that the granting of aid on the basis of the unemployment of the family's breadwinner was a proper and generally desirable extension of the AFDC program. Although there are many aspects of AFDC-U that need improvement and refinement, principally because of the lack of policy consideration when AB 59 was before the Legislature, it is our belief that these can be made within the context of the existing statutes and we, therefore, recommend no action by the Legislature to repeal the program.

UNEMPLOYMENT INSURANCE FOR FARM WORKERS

There were during 1964 about 93,500 year-round hired farm workers and a maximum of 160,800 seasonally hired domestic farm workers

¹⁷ "Deprivation is to be based on unemployment only when no other reason applies." SDSW Regulation No. C-160. Also see *Handbook of Public Assistance Administration*, U.S. Department of Health, Education, and Welfare, Part IV, Sec. 3424.21.

¹⁸ See pages 25-30.

¹⁹ See pages 129-130.

²⁰ See pages 34-36.

²¹ See page 35.

²² See page 120.

in California.²³ Few, if any, of these hired employees are covered by the economic protection afforded by unemployment insurance and they constitute the second largest noncovered employee group in California, exceeded only by a larger number of noncovered state and local governmental employees.²⁴ Yet farm workers experience extraordinary rates of unemployment and underemployment which, combined with their generally low wage rates (averaging only \$1.36 per hour²⁵), have made them prime candidates for public assistance.²⁶

Before the passage of AB 59, General Relief (or general assistance) was the principal source of economic aid to unemployed farm workers. Unless the worker was 65 years of age or older, blind or otherwise permanently disabled, or left home and did not support his family, he (or his family in the last case) was not qualified to receive aid from the categorical assistance programs (*i.e.*, Old Age Security, Aid to the Blind, Aid to the Totally Disabled, or Aid to Families with Dependent Children). General Relief, however, as a significant source of assistance, was full of practical limitations. Many counties required one year's county residence before they would grant GR benefits. Likewise, it was common for extreme limits to be placed upon the length of time able-bodied, unemployed men and their families could receive aid. Finally, the amount of the General Relief grant in California's 48 nonurban counties²⁷ was usually inadequate to meet even the most basic needs of the unemployed workers and their families. In April 1962, General Relief was granted to 4,011 family cases and 3,086 one-person cases in these 48 counties. The average aid payment for that month was \$40.32 *per family* and \$39.44 *per one-person case*. Only 27 percent of the aid, furthermore, was in cash; the balance was given in-kind.²⁸

The yearly farm work cycle of many of these people, comprised of two or three months of unrelenting work opportunity, six months of underemployment, and three to four months of unemployment, together with their inadequate earnings and submarginal assistance through General Relief, has extracted a costly toll:

"Mr. Rible: We are finding among these unemployed families (on AFDC-U), a rather substantial group, 20 or possibly 30 families (out of a monthly average of 200 AFDC-U cases during February, March, and April) who are not primarily unemployed but unemployable. They are real bottom of the barrel people. They have been worn down you might say for years and years through malnutrition and poor housing to the extent that they are in poor shape to work for anybody. They are badly in need of (physical) rehabilitation. . . .

"Senator Weingand: Mr. Rible, were those 20 or 30 families on relief in the county before this program developed?

²³ *Economic Report of the Governor*, March 8, 1965, p. 80.

²⁴ *California's Farm Labor Problems, Part II*, report of the Senate Fact Finding Committee on Labor and Welfare, January 28, 1963, p. 18.

²⁵ *Farm Labor Report*, April 9, 1965, U.S. Department of Agriculture, composite hourly wage rate paid in California as of April 1, 1965.

²⁶ *California's Farm Labor Problems, Part II, op. cit.*, pp. 18-19.

²⁷ Alameda, Contra Costa, Los Angeles, Marin, Orange, Sacramento, San Diego, San Francisco, San Mateo, and Santa Clara Counties are regarded here as urban counties and are excluded from consideration.

²⁸ *Statistical Summary*, PA 3-21, *op. cit.*

"Mr. Rible: Some years they have been on the General Relief program, the emergency winter relief we have had for many years.

"Senator Weingand: Am I to infer that the General Relief program in Kings County was not sufficient to keep these people on a minimal level, that they were not only deprived of adequate housing, but also were not properly fed?

"Mr. Rible: I think as far as the food component during the winter months on our General Relief program, this probably has been more generous in terms of calories of food and variety than you would find in their diet that they have had during their underemployment period. Many of these families when they have been off our General Relief program—we only give General Relief to employable families during winter months when there is no cotton and other activities . . . during the eight months of the year that they have been employed in agriculture, they haven't been properly fed because they have been underemployed." ²⁹

Under these circumstances, it is not surprising that approximately one-quarter of the AFDC-U recipients indicated that their usual occupation is farm work.³⁰ Some of the problems referred to above will be heightened if not completely resolved by the inclusion of unemployed as well as underemployed farm laborers on the higher relief standards of the AFDC program. But this inclusion also raises a problem which was obviated by the usual General Relief program: Are levels of assistance higher in AFDC-U than the level of income a person can reasonably expect to earn by doing farm work? If so, will a significant number of potential farm workers be tempted to try to stay on aid even though such work is available?

In brief, the answer to both questions would appear to be "yes." A study done for the State Social Welfare Board by Earl Raab, Consultant for the Survey Research Center, University of California at Berkeley, indicates that 35 percent of the AFDC-U families could "earn" more on aid than they could gross doing farm work even when more than one member of the family is working. If only one family member worked, 60 percent of AFDC-U families would have higher "earnings" from aid than from actual employment.³¹ Another study, this authored by Fred H. Schmidt, research specialist at the Institute of Industrial Relations, University of California at Los Angeles, found that nearly half of those interviewed who were recipients of public assistance said they would not voluntarily do farm work.³² Schmidt points out that:

"Without trying to resolve at this point whether this is a situation where welfare payments are too high or farm wages too low, it would appear that, if the description of the situation is accurate, the person on welfare realistically cannot be criticized for

²⁹ *Transcript*, Vol. I, May 28, 1964, Henry Rible, Director, Kings County Welfare Department, pp. 467-70, parenthetical material added.

³⁰ *Ibid.*, pp. 48-49.

³¹ *First Annual Report*, *op. cit.*, p. 12.

³² *After the Bracero*, "An Inquiry into the Problems of Farm Labor Recruitment," by Fred H. Schmidt, U.C.L.A., October 1964, p. 72.

the choice he makes. It is largely an economic choice made between the possibilities." ³³

The point at hand is whether the situation described above is found in other industries and if it is not, what should be done to tackle the problem of farm wage rates (or earnings) *v.* welfare benefits which Schmidt so conveniently sidesteps.

According to Raab, 98 percent of the skilled blue-collar employees now on AFDC-U, 100 percent of the semiskilled operatives, 60 percent of the service workers, and 90 percent of the unskilled (nonfarm) laborers on AFDC-U received less in aid than they could receive in earnings from their usual occupations. The only occupational exception, then, to the apparent economic disadvantage in receiving AFDC-U is that of farm work. ³⁴

There is no debate that the entitlement of farm workers to unemployment insurance benefits would not necessarily reduce their number on AFDC-U. ³⁵ It would generally, however, reduce the amount of General Fund expenditures ³⁶ for such cases as outside income, such as U.I. benefits, is deducted from the welfare grant unless the family has recognized special needs. In those instances where special needs do exist, the addition of unemployment insurance benefits to the welfare grant would provide a more adequate level of living to the family. Additionally, workers usually employed in other industries covered by unemployment insurance might, when unemployed, not be so reluctant to do agricultural work because, as they do now, they would not jeopardize their coverage under U.I. if agriculture were also a covered industry. Again, assistance costs could be reduced. From a public assistance viewpoint, then, the extension of unemployment insurance benefits to agricultural employment could have some desirable effects.

Undesirable effects, however, could also arise from such an extension. Many unskilled or partially disabled persons, unemployable in other labor markets, can and do earn part if not all of their living in agriculture. Their earnings in farm work are low principally because their productivity is low. They are doing farm work because they are "poor" rather than being made "poor" because they are farm workers. The continued hiring of such marginally productive workers even at piece rates would be increasingly difficult, and probably impossible, if farm employers were taxed for unemployment insurance for them. Denied the opportunity of even partial self-support, these persons would become fully dependent upon public assistance, swelling even more the burgeoning welfare rolls.

From the farm labor market point of view ³⁷ the inclusion of agricultural employment under U.I. could also have several advantages as well as disadvantages. As pointed out above, a greater flow of labor would

³³ *Ibid.*, p. 55.

³⁴ *First Annual Report, op. cit.*, p. 11.

³⁵ An unemployed person receiving U.I. is not disqualified from receiving AFDC-U.

³⁶ These General Fund expenditures for welfare grants are actually another subsidy to farm employers. Such expenditures, in part, are in lieu of unemployment insurance benefits, benefits which are financed by an employer tax.

³⁷ *California's Farm Labor Problems, Part II, op. cit.*, pp. 17-21.

result between agriculture and covered industries if credits toward U.I. were earnable in farm work. Further, the higher annual "earnings" which would result from the addition of unemployment insurance benefits to earned income would attract to and retain in the farm labor market a more competent, qualified, and stable work force. And thirdly, the payment of unemployment insurance payroll tax by farm employers would be another incentive for them to minimize as much as possible their demands for seasonal labor through such means as increased mechanization and crop diversification, and utilize more efficiently the seasonal labor they must have. From this perspective, also, the extension of unemployment insurance would seem to have some beneficial effects.

There would also be a concomitant disadvantage if U.I. coverage were granted to farm wage workers. A significant proportion of those who toil in the fields are "quota workers." They establish earning quotas for themselves for the month, the week, and even the day. When the quota is reached, in spite of the need for their services or the potential for additional earnings, they quit. It is, therefore, highly probable that the receipt of U.I. benefits by these workers would result in their working less and a diminishing of the farm labor supply would occur.

From the agricultural industry's viewpoint, the rationalization of demands for labor and the stabilization of the labor supply that could result from the coverage under unemployment insurance of work on the farm would be a great asset. Liabilities of a significant nature arise, however, when one examines the ability of agriculture to successfully bear the costs of such coverage. In fact, it is highly likely that the lack of any opposition from the agricultural interests to the creation of the AFDC-U program arose from this fear of the costs of unemployment insurance. Under the AFDC-U program, the farm workers are provided for during the period when no work is available at no direct cost to the employer.³⁸ The State Department of Employment has estimated that the payroll tax on farm employers for unemployment insurance would amount to \$17,600,000 a year.³⁹ Agriculture's ability to handle such increased costs is severely limited by the "cost-price squeeze" of which it is a victim; that is, the input costs which agriculture has to pay, and over which it exercises little control, have increased much more rapidly than the prices farm products bring, and over which it also exercises little control.⁴⁰

Furthermore, California's farmers market a great volume of their crops in the large population centers of the East and Middle West where they are already at a competitive disadvantage with growers from lower labor-cost areas. The costs of unemployment insurance enacted at the state level would merely compound this disadvantage.

Lastly, from the generalized industry's point of view, unemployment insurance for farm workers would be a mixed economic blessing.

³⁸ Other, that is, than necessary increases in sales taxes, property taxes, income taxes, *et al.*, which are borne not by the employer alone, but by the total community.

³⁹ *After the Bracero, op. cit.* AB 2926—1965 proposes extending unemployment insurance coverage to farm workers who had earnings of at least \$50 in each of three calendar quarters of the base period. Additionally the contribution tax required of all employers would be increased from 0.5 percent to 1.1 percent. Benefits to farm workers would reach about \$48,000,000 a year on a full-year basis with farm employers paying about \$24,000,000 as estimated by the California Department of Employment in Report 439 C No. 6.

⁴⁰ *California's Farm Labor Problems, Part I*, report of the Senate Fact Finding Committee on Labor and Welfare, June 15, 1961, pp. 33-40.

It is estimated that employers in other industries would have to make up a \$48.8 million deficit between benefits payable to farm workers (\$66.0 million per year) and the yield of the payroll tax paid by farm employers (\$17.6 million per annum).⁴¹ This is a significant amount to ask other industries to bear, and their opposition to such a request (or requirement) would be understandable, at least on the surface of the argument. It would be expected, however, that this amount would decrease as agriculture lessens its seasonal demands for labor through increased mechanization, crop diversification, and efficiency in labor utilization. Furthermore, such a subsidy by all of industry to a specific industry and its employees is not unusual. Almost one of every five (19.5 percent) industrial accounts in California's unemployment compensation system was rated in 1964 as negative reserve; that is, they were exactly in the same position as agriculture would be subsidized by the positive reserve industries. These negative reserve industries include motion picture production, meat products, public warehousing, logging camps and logging contractors, and canning and preserving fruits and vegetables.⁴²

Such a subsidy to agriculture, however, could have a positive effect not only on the industries providing it, but also on the economy of the whole state.

"It has been estimated that for each person employed on the farm in California, at least 2.61 jobs are created in industries such as fertilizer, agricultural equipment, container manufacturing, transportation, and wholesale trade industries, retailers and suppliers selling to farmers, and the financial institutions that supply farmers with credit."⁴³

To a significant degree, the economic health of agriculture in California is a key indicator of and an important causative factor on the economic health of the state as a whole. Conversely, the supply and the adequacy of domestic farm workers is a chief element in agriculture's health, particularly since the supply of foreign farm labor has been dried up. Thus, to the extent to which unemployment insurance beneficially influences domestic farm labor in the long run, it would also benefit the whole agricultural industry and that, in turn, would be of salutary effect on the entire state, and the degree of adverse effect to agriculture would also be immediately felt by the state's entire economy.

Because there would appear to be no clear-cut advantage to be gained by the extension at the state level of unemployment insurance benefits to farm workers from the points of view of public assistance, the farm labor market, the agricultural economy, or the state's economy, and because of its many unresolved technical and fiscal problems, this committee cannot recommend such an extension at this time.

⁴¹ *After the Bracero*, op. cit., p. 92. See, also, Footnote 39.

⁴² *Taxable and Total Wages*, Report 352 No. 17, California Department of Employment, October 14, 1963, and *California Rated Employers with Negative Reserve Balances*, Rating Year 1964, Report 285 No. 26, California Department of Employment, June 3, 1964.

⁴³ *California Agricultural Labor Requirements and Adjustments*, Division of Agricultural Science, University of California, September 1964, pp. 2-3.

MAXIMUM AGE OF CHILDREN RECEIVING AID

California's AFDC program currently provides that aid can be granted to children up to their 18th birthday. In order to be eligible for assistance, however, a needy youth between 16 and 18 years of age must:

- (a) Be regularly attending school or a training program; or
- (b) Be physically or mentally disabled; or
- (c) Be employed and contributing to the family or applying his earnings to an approved plan for his future educational or vocational needs.⁴⁴

Under these provisions there are great pressures from many families of the 18-year-olds who have just become ineligible for aid to earn whatever they can, whether they are thereby forced to drop out of school or job training or not. This is particularly a danger when the youngster involved is the youngest child and the entire family unit is made ineligible for assistance because of his age. Furthermore, many families on aid do not particularly value education and except for the requirement that now makes the receipt of assistance for the 16- and 17-year-olds contingent upon their regular school attendance, even this level of education would be sacrificed to parental pressures to seek employment. In these families the chances of continuing schooling past the 18th birthday and beyond the period for which aid can now be paid are nil.

In 1964, the Social Security Act was amended to provide federal sharing in the aid and administration costs of furnishing assistance to youths from 18 up to 21 years.⁴⁵ If California were to take advantage of this liberalized federal provision, we would have at our disposal a major tool with which to break the circle of poverty that has trapped many AFDC families for generations. By enabling and encouraging these young people to finish their schooling or job training, we would be giving them that much more of an opportunity to lead productive, normal lives. And we would be decreasing the probability that in the future they would have to apply for public welfare because of their lack of education or job skills.

The State Department of Social Welfare in a bill estimate has indicated the total aid costs of extending the age under which children can remain eligible for AFDC from 18 to 21 years would be about \$1,248,000 on a full year basis. \$691,000 would be paid by the federal government, \$390,000 by the state, and \$167,000 by the counties. An estimated 1,635 children in families already being aided would qualify for this additional assistance as well as 570 families with one child, which under present law would be discontinued, would continue to be eligible.

This committee feels quite strongly that generally services and assistance to persons already receiving public welfare must be vastly improved before additional persons are brought into these programs. Nevertheless, extending aid to the 18-, 19-, and 20-year-olds who are in school or job training would appear to have a most desirable effect

⁴⁴ Welfare and Institutions Code Sections 1500 and 1500.2.

⁴⁵ PL 88-641.

on the future of these youths. Furthermore, there seems little doubt that by expending the additional amount of funds required to implement this preventative extension now, society will probably be saved from having to expend larger sums for curative purposes.

We recommend, therefore that California's statutes be amended to provide that aid be paid to families in behalf of children up to 21 years of age, instead of 18, if such children are regularly attending school or are enrolled in and attending job training programs (see SB 785, page 65).

CUTOFF DATE FOR AFDC-U

The federal law which established the Aid to Families with Dependent Children-Unemployed Parents program, and which authorizes federal sharing in the grant and administrative costs of such state programs, now contains an effective date through June 30, 1967.⁴⁶ It is not likely that the Congress will let this "unemployed parent" program expire. If it should, however, such cases would continue to remain eligible for AFDC under California's laws with aid and administrative costs borne entirely by state and county funds. We would lose federal sharing in the aid costs, approximately 46 percent of the total, which, based on the February 1965 caseload in AFDC-U, runs about \$1,900,000 per month. California would also lose what is currently a 69 percent federal subvention of state and county administrative expenses.

Because of the fiscal impact of losing such federal moneys, state law must provide a safety valve so that AFDC would not be paid on the basis of the unemployment of a parent after July 1, 1967, unless the federal law permitting federal financial participation in the payment of such aid is extended. It would be desirable to continue unabated our unemployed parent program if the federal program is extended. If the federal program is not extended, however, then California's AFDC-U program should automatically terminate and the Legislature should have the opportunity to consider whether to reinitiate it using only state and county funds.

It is therefore recommended that aid on the basis of the unemployment of a parent should not be paid in California after July 1, 1967, unless the federal law is extended so as to permit federal financial participation in such aid (see SB 786, page 67).

LEGISLATIVE INTENT RE: AFDC-U

By specific requirements and by inference, the Welfare and Institutions Code already expresses the intent of the Legislature that AFDC shall be granted to unemployed parents and their families only when they have exhausted other sources of assistance. For instance, rather rigorous limits are placed on the maximum amount of personal property a family may own in order to be qualified for aid—\$600.⁴⁷ A family is expected to utilize its savings before it comes to the welfare department for help. An unemployed parent on aid is required to ac-

⁴⁶ 42 USCA 606 (a) (2).

⁴⁷ Welfare and Institutions Code Section 1521.

cept any "part-time, full-time, temporary or permanent employment without reference to his customary occupation or skill."⁴⁸ The Legislature has also directed that the AFDC program be administered in an "effective, humane, and economical" way.⁴⁹ The responsibility of the parents to support their families is also detailed in the law.⁵⁰

Such expressions of legislative intent are, however, scattered throughout the AFDC statutory provisions. They need to be consolidated and concisely expressed regarding AFDC-U as unequivocal guides to the program's administrators and expressed mandates for the courts to follow.

It is recommended that the legislative intent should specify that Aid to Families with Dependent Children-Unemployed is to assist children of unemployed parents who are unable to meet their obligation to support, who cannot procure any employment, and who have no other source of aid (see SB 787, page 68).

SEEKING EMPLOYMENT

Currently there are neither legal nor administrative requirements that an unemployed or underemployed parent look for work before applying for public welfare. Just as society has a responsibility to assist families who are in need because of unemployment, the parent has the responsibility to actively seek work before asking society to support him and his family. An equitable means must be established to insure the public that the unemployed and underemployed parent is meeting this responsibility.

Further, the same criteria must be established for seeking work before an unemployed parent and his family are granted aid as is now used after assistance has been given; that is, the parent must be considered a suitable candidate for any job he is physically and mentally capable of doing without reference to his normal occupation or acquired skills.

Lastly, once on aid, the unemployed or underemployed parent should be required to continue to actively seek employment. The existing statutory provision that he "seek and . . . keep himself currently available for employment" has been undercut by the rulings of the State Department of Social Welfare.⁵¹ The principal means of securing employment available to all communities and all persons is the employment service and farm labor offices maintained by the California State Department of Employment. Regulation C-172 (2) adopted by the State Department of Social Welfare requires:

"Registering with the California State Employment Service and Farm Labor Office, when indicated, at the time of application for aid and keeping the registration current while in receipt of aid."

This regulation was interpreted by the state department in Circular Letter No. 1546 (AFDC) issued under date of November 12, 1964.

⁴⁸ *Ibid.*, Section 1523.7.

⁴⁹ *Ibid.*, Section 1503.

⁵⁰ *Ibid.*, Sections 1570, *et seq.*

⁵¹ *Ibid.*, Section 1523.7.

"A person should not be expected to report to CSES (California State Employment Service) more frequently than CSES requires in order to keep his registration current."

The Department of Employment requires a person to check in at their offices only once every 8 to 11 weeks to keep his registration current, depending upon when during the month initial registration took place. The State Welfare Department requires as little from the unemployed parent as possible. It is equally obvious that requiring such a parent to physically go to the employment department once every two months cannot be considered requiring a very diligent search for work on his part.

Therefore it is recommended that an applicant for AFDC—U be required to obtain certificates from the local employment service office and the farm labor office of the State Department of Employment, issued within the previous week, to be submitted simultaneously with his application for aid. These certificates should be issued on the basis that the applicant has registered for employment and, considering only his physical and mental capacity, that no part- or full-time work exists to which he could be referred. The AFDC—U recipient should also be required to obtain an identical recertification semimonthly (see SB 787, page 68).

PERIOD OF ELIGIBILITY FOR ASSISTANCE

Under existing statutory provisions, AFDC must be paid "at periods most nearly consistent with prevailing patterns for wages in local industry."⁵² Under this requirement aid is usually paid semimonthly. However, another requirement of the code stipulates "If on the first day of the month a child is eligible for aid, aid for the entire month shall be paid."⁵³ These two provisions are, therefore, in conflict.

It is recommended that the period for which eligibility is established should be the same as the period prescribed for the payment or aid (see SB 787, page 68).

VOLUNTARY QUILTS

The State Department of Social Welfare holds that, for purposes of eligibility for the Aid to Families with Dependent Children-Unemployed program, the reasons for a person's unemployment are immaterial. The fact that need exists, regardless of how need was caused, is the only valid criterion, according to the department. As the statutes are currently silent on this subject, two specific areas are open to exploitation by applicants who, in spite of the department's position, should not be eligible for assistance. The first area is that of the person who voluntarily terminates his employment and then applies for AFDC-U for himself and his family on the basis of his unemployment. That this is a practical, rather than a theoretical, problem is attested to in the department's bill analysis which estimates during the period September 1965 through June 1966, 2,000 AFDC—U cases will be

⁵² *Ibid.*, Section 1552.4.

⁵³ *Ibid.*, Section 1552.3.

come eligible for aid because the breadwinner voluntarily left his job. Yet there is no method prescribed by law or regulations to either discourage this practice or to temporarily deny aid to those cases involving even the most flagrant abuses.

Therefore, it is recommended that if a parent voluntarily terminates his employment, he should not be eligible for AFDC—U for three months following such termination (see SB 738, page 70).

STRIKE BENEFITS

The second problem area caused by the law's and regulations' silence on the reasons for unemployment is that of loss of work caused by labor disputes. The payment of aid in such cases really constitutes "strike benefits," and it is clearly evident that the receipt of public assistance strengthens the economic position of one of the parties engaged in such a dispute. It is equally evident that through the payment of this aid government—county, state, and federal—and society—the public—vacate their historic and necessary position of neutrality in labor disputes.

Currently in the AFDC—U program, government is forbidden from forcing unemployed parents to be strikebreakers or scab labor. The statutes specify that an unemployed parent has good cause for refusing a job which "is available because of a bona fide labor dispute, the existence of which has been established by the State Department of Employment."⁵⁴ This provision protects the striking employees in a dispute from "government-furnished" strikebreakers. There is now, however, no counterbalancing provision protecting the employer in a dispute from government-provided strike benefits strengthening the employees' bargaining position.

It is recommended that California statutes be amended to provide that aid should not be granted if the parent is unemployed because of a bona fide labor dispute (see SB 788, page 70).

REFUSAL TO ACCEPT EMPLOYMENT WITHOUT GOOD CAUSE

Existing law already provides that when an unemployed parent who is receiving Aid to Families with Dependent Children on the basis of his unemployment refuses or fails to accept a bona fide offer of employment without good cause, that parent and his family *shall* be denied aid.⁵⁵ Exactly 1,100 AFDC—U cases were discontinued assistance because of the failure of the breadwinner to accept employment during the first 11 months of the program's operation in California.⁵⁶

This is an appropriate and a just requirement in many cases. In some instances, however, the enforcement of this statutory mandate causes real hardship to the family, especially the children. These children become victims, as it were, of their parents' lack of responsibility—their

⁵⁴ *Ibid.*, Section 1523.7(b)(2).

⁵⁵ *Ibid.*, Section 1523.7(b). For statutory definition of "good cause" see W. & I.C. Sec. 1523.7(b)(1)–(4).

⁵⁶ "Unemployed-Parent Segment of Aid to Families with Dependent Children," February 1964 through January 1965, Division of Program Statistics and Analysis, Bureau of Family Services, U.S. Department of Health, Education, and Welfare.

parents' willingness to let the public support their families rather than doing it themselves when they can. Welfare departments, however, are authorized to follow no alternative course of action.

Therefore, it is recommended that an unemployed parent, whose children are receiving AFDC-U, should be presumed to have failed to support his children for purposes of prosecution under Penal Code Section 270 ("failure to provide") if he refuses without good cause to accept an offer of employment (see SB 789, page 72).

SUPERVISORS OF JOB TRAINING AND WORK EXPERIENCE PROJECTS

A number of specific problems have arisen around the job training and work experience projects county welfare departments are required, when feasible, to establish for adult recipients of Aid to Families with Dependent Children. One of these is the supervision of such projects.

Currently, supervisors of specific projects are normally supplied and paid by the governmental agency which, in cooperation with the county welfare department, has established the project. Such an agency may be the county public works department, a school district, or a city park department. Occasionally such agencies which could cooperate are hesitant to establish projects for AFDC parents because of the supervisory costs involved.

County welfare departments, therefore, should be authorized to pay for AFDC work or training project supervisors who are employed by other governmental agencies (see SB 790, page 73).

SPECIAL NEEDS CAUSED BY WORK PROJECT PARTICIPATION

Pursuant to federal and state regulations,⁵⁷ a \$25 a month special needs allowance is paid in California to AFDC parents who are participating in job training and work experience projects. This "grooming fee," as it is often called, is paid to cover the parent's extra needs for travel, clothes, special tools, etc., caused by his participation in the project. If the family is not receiving the maximum AFDC grant, the costs of the grooming fee is shared by state and county governments in the same proportion as the regular grant (*i.e.*, 67.5 percent state and 32.5 percent county). However, when the family is receiving the maximum grant, the \$25 must be paid entirely from county funds.

This situation, of course, is inequitable to the counties. Federal sharing in these costs is not possible because the AFDC grant in California is far in excess of the maximum participating base established for such federal sharing. The state, however, could share in the grooming fee, at a cost estimated in a bill analysis by the State Department of Social Welfare to be about \$383,000 a year. Since these county costs are directly caused by federal and state requirements, it seems justified, on the basis of equity, that the state, at least, pay its own fair share.

⁵⁷ 42 USCA 409(1)(D) and C-204(3)(b), AFDC Manual, California Department of Social Welfare.

It is recommended that the state should pay one-half of special needs, not to exceed \$12.50 monthly, of the recipient who is otherwise receiving the maximum grant when such needs are caused by his participation in a work or training project (see SB 790, page 73).

UNAUTHORIZED ABSENCES FROM JOB TRAINING PROJECTS

California's AFDC statutes currently provide that a parent, and his family, shall be denied aid if he willfully fails to report to a job training or work experience project.⁵⁸ In AFDC-U in California from February 1964 through January 1965, nearly 1,000 families were denied assistance because a parent refused an assignment or failed to report to such a project.⁵⁹

In some instances, the use of this full penalty is more than justified. In other cases, however, complete denial of aid is not warranted and is not in the best interests of the family or of the community. Yet no other deterrent to unauthorized absences exists.

The committee recommends, therefore, that AFDC aid grants be reduced in an amount equal to the assigned dollar value of work missed because of unauthorized absences from work or job training projects (see SB 790, page 73).

WORK PROJECTS ESTABLISHED BY PRIVATE EMPLOYERS

The provisions of the federal Social Security Act have been interpreted by the United States Department of Health, Education, and Welfare as limiting the sponsorship of job training projects for AFDC recipients to those established and maintained by governmental agencies.⁶⁰ This limitation seriously restricts the type of training recipients can obtain and, in turn, deters their employment potential in private enterprise. There are many occupations and jobs in private industry for which there are no equivalent positions or training opportunities in government.

In public welfare, most recipients by-and-large are limited in their employment potential. Most AFDC recipients are not prime candidates for such sophisticated training as is offered through the apprenticeship programs or the Manpower Development and Training Act (MDTA).

For instance, nearly half of all AFDC-U parents have less than an eighth grade education and only 17 percent have graduated from high school. In the regular AFDC-FG program, the average mother has had only 9.2 years of schooling—she is basically a junior high school graduate. Additionally, the vast majority of AFDC-FG and -U parents also have few job skills. They are basically unskilled laborers in experience and in potential.

In addition to these "natural" deterrents to the average AFDC parent's becoming employed or employable, a significant and unnatural barrier has been erected by the Congress to the practical training many

⁵⁸ Welfare and Institutions Code Section 1523.9.

⁵⁹ "Unemployment-Parent Segment . . ." *op. cit.*

⁶⁰ 42 USCA 409(a)(1) and Part IV, Section 3462.41 *Handbook of Public Assistance Administration*, U.S. Department of Health, Education, and Welfare.

of these persons could receive through private-employer established job training projects.

There is ample precedent for utilizing private employers in governmental job training projects. The MDTA, the Area Redevelopment Act, and the Trade Expansion Act all provide—even encourage—the private sector of the economy to do its share in offering training programs.⁶¹ It would seem only equitable that welfare recipients be offered the same opportunity to develop new skills as are other more fortunate persons among our unemployed and displaced workers.

It is recommended that the Congress be memorialized to amend federal law so as to permit private employers to establish and maintain job training projects for AFDC recipients (see SJR 33, page 76).

REFERRAL TO, AND GOOD CAUSES FOR REFUSING, EMPLOYMENT

Currently the State Departments of Social Welfare and Employment have too much discretion granted them by statute to exempt AFDC-FG parents from being required to register for employment, and from casework and employment services which could lead to employment and self-support. The governing W. & I.C. provision, Section 1523.6, is based on the principle that such parents are not available for employment unless their availability is established. Moreover, the denial of aid when a FG parent refuses to accept suitable employment is permissive (may) rather than mandatory (shall).

It is essential that the state welfare and employment departments be impressed with the Legislature's expectation that all-out and continuing efforts must be undertaken to assist all parents of needy children to obtain employment.

It is recommended, therefore, that the "good causes" for refusing offers of employment should be the same for regular AFDC-FG parents as those currently used for unemployed recipients (AFDC-U) and the referral of mentally competent and physically able AFDC-FG parents to the Department of Employment to register for work should be required rather than permitted (see SB 791, page 78).

BIRTH CONTROL INFORMATION AND SERVICES

No federal or state law now prohibits social workers from providing information regarding public health and other agencies where family planning services may be obtained to those who voluntarily seek such information. Yet these agencies have been reluctant to include such services without an expression of approval by the Legislature.

The state has a great responsibility to help provide education and services, within the broad framework of adequate medical care, for low income families who must rely on public health and public assistance agencies for this care.

Responsible parenthood not only cuts taxes and welfare costs, but more importantly, it prevents much human misery. Family planning

⁶¹ 42 USCA 2571, 42 USCA 2501, and 19 USCA 1301, respectively.

is a proper part of good medical care. No one should be denied such counseling and services simply because of ignorance or a lack of money.

Children who are brought into the world unwanted and, too often, unloved, face tremendous odds against becoming responsible and productive citizens in our complex society. All levels of government are striving to break the tragic cycle of poverty by improving opportunities for education, housing, and health. New ways must be found to rescue those who are trapped in conditions of poverty. New methods must be devised to improve opportunities for education, housing, and health.

A most essential part of breaking this cycle of poverty should be properly planned families. However, at present, in most localities family planning services are not only unavailable to the persons needing them most, but even where such services are available, medical and social workers do not feel free to offer assistance to those who could benefit from professional medical counseling.

The person on relief whose need often is the greatest in regard to family limitation and planning, too often finds it difficult to get birth control information.

Substantial strides have been made throughout California at the local governmental level in establishing family planning clinics. Today public birth control clinics are *not* causing a general uproar of indignation. Five public health officers recently told the Conference of Local Health Officers in San Francisco that the clinics are accepted by the general public. "These programs will not be as controversial as you might think now," Gordon Cumming, Administrator of Sacramento County Hospital advised.⁶²

A recent memo by the Bureau of Maternal and Child Health, State Department of Public Health, reveals that 34 counties and cities have established family planning programs through their own clinics, private hospitals, or by referral to interested citizen groups.⁶³ These counties and cities include San Francisco, Sacramento, Los Angeles, San Diego, San Mateo, Alameda, and Contra Costa.

To argue that government does not have a responsibility is to set up a strawman. Local government has taken positive action; the state must have a voluntary program of its own.

The current AFDC statewide average grant per month per child is \$61.20. The average cost from birth to 18 years for the first child on AFDC is \$13,400. In December 1964, 517,000 persons were on AFDC. During 1965-66 an estimated average of 588,000 persons will receive aid each month. State costs for 1965-66 will be \$143,000,000. An estimated 10,000 babies born last year are now on AFDC.⁶⁴

According to a recent report of the Santa Barbara County Anti-poverty Committee, following studies in the community of Guadalupe, 46 percent of the population of 2,614 were under the age of 20. In 1962, there were 149 births, or 60 per 1,000. This compares with the U.S. rate of 25. Fifty percent of the families qualified for poverty requirements and the report states "The community has a young *dependent* population with huge families, a high infant mortality.

⁶² Speech to the California Conference of Local Health Officers, April 1, 1965, as reported in the *San Francisco Chronicle*, 4-2-65.

⁶³ Memo to Local Health Officers, *et al.*, from Leslie Corsa, Jr., M.D., Chief, Bureau of Maternal and Child Health, dated February 24, 1965.

⁶⁴ Memo to State Senator Alvin C. Weingand from Philip E. Keller, Chief, Bureau of Research, California Department of Social Welfare, dated February 15, 1965.

percentage of violent deaths, alcoholism, drug addiction, and tuberculosis.⁶⁵

It is incumbent upon the Legislature, in attempting to alleviate poverty, to find new approaches that do not indelibly place upon the poor the badge of their poverty. The poor must have in their health care programs the same access to family planning aids as the more fortunate sectors of society. The lack of this information is merely one more in a series of disadvantages which constantly face low-income families, either on or off aid.

In providing such information and services, however, it is essential that such a program will not violate the religious principles or conscience of either public employees or public health and welfare recipients. No coercion can be tolerated.

Therefore, this committee recommends the adoption of a formal legislative expression of the desirability of the state's medical and welfare programs furnishing family planning information, services, drugs, and materials to all persons who voluntarily seek them and that medical and social worker personnel be free to volunteer information regarding the availability of such services (see SCR 47, page 80).

EXEMPT EARNED INCOME

Unlike its treatment of recipients of other programs, federal law permits no unqualified exemption of income earned by children receiving Aid to Families with Dependent Children. The only earnings not automatically subtracted from the grant are those which are set aside under a specific plan for the child's education, employment, or other needs in the future.

Either a minute number of AFDC youths are working or there is widespread failure to report their employment and earnings. According to a State Department of Social Welfare bill analysis only 1.4 percent of the AFDC family group cases and 0.4 percent of the unemployed parent cases contain one or more employed children. Obviously these youngsters are being brought up in family environments and under welfare program provisions that expect and exact little of them in terms of employment and which provide no motivation to them to seek or take work.

What better motivation could be provided than allowing working youngsters to keep half of their earnings to spend or to save as they choose? What better way to learn responsibility—and the success of satisfying ones duties—than to have the other half of their earnings go to the support of their families? Exempting in federal law 50 percent of the AFDC youth's earned income would serve well both of these goals. It would provide one of the strongest incentives to get more youngsters working. As more AFDC youths become employed, the amount of money contributed to families on assistance would increase, thus reducing net aid costs.

It is recommended that Congress be memorialized to amend federal law to permit youths receiving AFDC to keep for their own personal, unrestricted use up to 50 percent of their earned income, rather than require all such earnings to be subtracted from the aid paid (see SJR 34, page 82 and discussion of SB 794, page 87).

⁶⁵ Lompoc, California, *Record*, "Courthouse Notes" by Dick Praul, 3-2-65.

MULTIPROGRAM PROBLEMS

CLAIM ON REAL PROPERTY

Although California is the only major industrial state which does not require that a claim or lien be taken on the real property owned by recipients of public assistance, our statutory limitations on the amount of real property which may be owned are very liberal.

State law permits recipients of Old Age Security, Aid to the Blind, Aid to the Totally Disabled, and Medical Assistance for the Aged—the “adult categories”—to own property of *any* value if it is being used as a home.⁶⁶ Additional real property may also be retained if the income it produces is used for the recipient's support and it has an *assessed* value not greater than \$5,000—that is, a *market* value in the neighborhood of \$25,000.⁶⁷ AFDC recipients are permitted real property used as a home so long as it does not exceed \$5,000 *net assessed* value—that is, a home owned free and clear of about \$25,000 market value. Any encumbrances of record are subtracted from the *assessed* value.⁶⁸

*Old Age Security*⁶⁹—As of June 1962, the State Department of Social Welfare reports that nearly 72,000 recipients, over one-quarter of all OAS recipients, had property considered a home. The *average* assessed value of these homes is \$1,464—or of an approximate market value of \$7,300.⁷⁰ However, over 20 percent of all homes owned by OAS recipients were assessed at or in excess of \$2,000, that is, \$10,000 or more in market value.

In addition to those recipients owning real property used as a home, 7,127 OAS recipients (3 percent of the caseload) owned income producing real property not used as a home. The average assessed value of this property was \$1,190, or nearly \$6,000 market value.

*Aid to the Blind*⁷¹—As of August 1962, 2,925 Aid to the Blind recipients owned property considered a home. This was 23.7 percent of all blind recipients, nearly one out of four. The average assessed value of these homes was \$1,566 or about \$7,800 market value. Nearly three of every ten homes owned by blind recipients, however, were assessed at \$2,000 or more; they were worth \$10,000 or more on the market.

Furthermore, 249 blind recipients (2 percent of the caseload) owned income producing real property not used as a home. The average assessed value of this property was \$1,023, or about \$5,100 market value. Since 1962, however, state and federal laws have been changed to permit recipients of blind aid to own real property other than a

⁶⁶ Welfare and Institutions Code Section 453.

⁶⁷ *Ibid.*, Section 455.

⁶⁸ *Ibid.*, Section 1520.

⁶⁹ *Characteristics of Recipients of Old Age Security*, June 1, 1962, Research Series Report No. 18, California Department of Social Welfare, Tables 10, 11, and 12.

⁷⁰ The Board of Equalization has advised that residences are usually assessed at about 20 percent of the market value. Therefore, assessed values have been multiplied by 5 and have been rounded to the lowest \$100.

⁷¹ *Characteristics of Recipients of Aid to the Blind*, August 1962, Research Series Report No. 19, California Department of Social Welfare, Tables 13, 14, and 15.

home of any value.⁷² Specifically how this may have changed the figures above is not known.

*Aid to the Totally Disabled*⁷³—As of August 1962, 2,886 ATD recipients owned property considered a home. This was approximately one out of every eight recipients (12.2 percent of the total caseload). The average assessed value of these homes was \$1,325, indicating an average market value of \$6,000. Of these homes 17.7 percent were assessed at \$2,000 and above.

Additionally, 442 ATD recipients (1.9 percent of the caseload) had income-producing real property which had an average assessed value of \$1,546, or about \$7,700 market value.

*Medical Assistance for the Aged*⁷⁴—The State Department of Social Welfare has no data on the property owned by MAA recipients used as residences. It would seem a logical assumption, however, to estimate the percentage of the caseload with such holdings as being at least equal to the percentage in the aged and blind programs—that is, about 25 percent (4,200 recipients)—and that the average value of such property would be at least equal to that held by OAS and AB recipients—of about \$1,500 assessed value or about \$7,500 market value.

Data supplied to the committee in October 1963, showed that during 1962 about 7 percent of the MAA caseload (1,184 recipients) had income-producing real property which averaged about \$1,500 assessed value or \$7,500 market value.⁷⁵

*Aid to Families with Dependent Children*⁷⁶—About one of every twelve AFDC cases during 1965-66 will have real property (8 percent of the caseload), as estimated by the State Social Welfare Department. By category, 9,700 AFDC-FG cases will own real property used as a home, the average assessed value being \$2,239, and an average market value of \$10,130. An average encumbrance of \$5,400 is estimated to be on each of these homes.

In AFDC-U, 1,550 cases will own real property. The average assessed valuation is \$1,788, indicating an average market value of \$8,100. The average encumbrance is about \$5,700.

In summary, the real property owned by all aid recipients who would be affected by a claim provision would total to a conservative estimate of \$766,000,000 in market value owned by approximately 85,000 recipients (see Figure 2). Because of the anticipated increase of 58 percent in the caseloads in 1965-66 over the 1962 cases, the real property in question may currently be worth closer to \$1 billion in market value.

There is precedent for the State of California to adopt such a recovery provision. California is currently one of only 18 states without such a provision in the Old Age Assistance program according to the 1964 report of the Advisory Commission on Inter-governmental Relations.⁷⁷ Seven of the 18 states that do not have a real property claim

⁷² Welfare and Institutions Code Section 3084.6 and 42 USCA 1202(a)(8)(B).

⁷³ *Characteristics of Recipients of Aid to the Needy Disabled*, August 1962, Research Series Report No. 21, California Department of Social Welfare, Tables 13, 14, and 15.

⁷⁴ About 57 percent of MAA recipients in 1962 had previously been on other categorical aids (OAS and AB). The balance, 43 percent, had not been on public assistance until they became ill. They would be expected to have, on the average, greater resources, including real property, than recipients of OAS or AB.

⁷⁵ *Transcript*, October 24, 1963, Table 14, p. 120.

⁷⁶ Data furnished by phone on April 26, 1965 by the California State Department of Social Welfare.

⁷⁷ *Statutory and Administrative Controls Associated with Federal Grants for Public Assistance*, U.S. Advisory Commission on Intergovernmental Relations, May 1964.

procedure are southern states. Of the 15 states with the highest percentage of aged residents on aid in 1963—and California was the only populous industrial state among the group—in 13th place—only two had recovery provisions. Conversely, of the 15 states with the lowest aged recipient rates—including such states as Michigan, Illinois, Pennsylvania, New York, and New Jersey—only one, Delaware, did not have a recovery provision (see Figure 3).

FIGURE 2

**TOTAL MARKET VALUE OF REAL PROPERTY OWNED BY
CATEGORICAL AID RECIPIENTS, CALIFORNIA, 1962**

OLD AGE SECURITY

Home -----	72,000 recipients @	\$7,300 =	\$525,600,000
Income producing -----	7,127 recipients @	6,000 =	42,762,000

AID TO THE BLIND

Home -----	2,925 recipients @	7,800 =	22,815,000
Income producing -----	249 recipients @	5,100 =	1,269,900

AID TO THE TOTALLY DISABLED

Home -----	2,886 recipients @	6,600 =	19,047,600
Income producing -----	442 recipients @	7,700 =	3,403,000

MEDICAL ASSISTANCE TO**THE AGED**

Home -----	4,200 recipients @	7,500 =	31,500,000
Income producing -----	1,184 recipients @	7,500 =	8,880,000

AID TO FAMILIES WITH DEPENDENT CHILDREN—(1965-66)

Home—FG -----	9,700 cases @	10,130 =	98,261,000
Home—U -----	1,550 cases @	8,090 =	12,539,500

TOTALS

93,261 recipients owned property used as a home.

9,002 recipients owned income-producing real property.

\$766,078,400=total market value of all real property.

The committee recommends that claims should be taken on real property of aid recipients of all programs as a condition of granting aid. Such claims should not be enforceable during the lifetime of the recipient, his spouse, if any, or during the minority of his children, if any. No interest should be chargeable (see SB 792, page 84).

PRESUMPTIVE ELIGIBILITY

Under existing statutory provisions, when an applicant for any category of aid is in immediate need of assistance and he *appears* to be eligible, aid must be granted to him at once even though the thoroughgoing eligibility investigation has not been begun or completed.⁷⁸

In some instances the immediate payment of aid, based on presumed eligibility, is desirable. The applicant may be well-known to the county welfare department. His eligibility may be clearly evident during the initial interview; and his need may be immediately critical.

In other instances, however, and for equally valid reasons, the social worker may wish to withhold the instantaneous payment of public funds to the applicant. Such reasons might include the desirability of a complete eligibility check even though on initial appearance the applicant seems eligible or the detrimental effect the immediate payment of aid could have on the applicant's achieving self-support. The social worker

⁷⁸ Welfare and Institutions Code Section 449.6.

FIGURE 3

PROPORTION OF INDIVIDUALS AGE 65 AND OVER RECEIVING OLD-AGE ASSISTANCE AND A COMPARISON OF SELECTED CHARACTERISTICS OF STATE PROGRAMS, JUNE 1963

State	Persons aided per 1,000 population age 65 and over	Liens, recoveries or assignments provided	Relative support required	Percentage of local participation in nonfederal share of assistance costs
Louisiana.....	498	No.....	*Yes.....	X
Alabama.....	393	No.....	No.....	X
Mississippi.....	383	No.....	*Yes.....	X
Oklahoma.....	315	No.....	No.....	X
Georgia.....	301	No.....	Yes.....	4
Arkansas.....	281	No.....	*Yes.....	X
Texas.....	278	No.....	*Yes.....	X
Colorado.....	267	No.....	No.....	X
Alaska.....	230	Yes.....	*Yes.....	X
Missouri.....	208	No.....	No.....	X
New Mexico.....	192	No.....	Yes.....	X
Kentucky.....	177	No.....	Yes.....	X
California.....	170	No.....	Yes.....	14 $\frac{3}{4}$
South Carolina.....	169	Yes.....	No.....	X
Tennessee.....	148	No.....	No.....	20
North Carolina.....	134	Yes.....	No.....	50
Arizona.....	125	No.....	No.....	X
Vermont.....	124	Yes.....	*Yes.....	X
Minnesota.....	118	Yes.....	Yes.....	33 $\frac{1}{3}$
Washington.....	116	No.....	No.....	X
Nevada.....	111	No.....	Yes.....	X
Florida.....	110	No.....	No.....	X
Wyoming.....	105	Yes.....	*Yes.....	50
Maine.....	104	Yes.....	Yes.....	X
South Dakota.....	101	Yes.....	*Yes.....	X
Kansas.....	99	Yes.....	*Yes.....	150
North Dakota.....	99	Yes.....	*Yes.....	10
Massachusetts.....	96	Yes.....	Yes.....	233 $\frac{1}{3}$
Iowa.....	90	Yes.....	Yes.....	X
Ohio.....	90	Yes.....	Yes.....	X
West Virginia.....	90	Yes.....	Yes.....	X
Montana.....	86	Yes.....	Yes.....	33 $\frac{1}{3}$
Utah.....	84	Yes.....	*Yes.....	X
Idaho.....	83	Yes.....	*Yes.....	X
Oregon.....	79	Yes.....	Yes.....	30
Nebraska.....	77	Yes.....	Yes.....	X
Michigan.....	75	Yes.....	Yes.....	X
Wisconsin.....	74	Yes.....	Yes.....	4
New Hampshire.....	66	Yes.....	*Yes.....	4
Rhode Island.....	65	Yes.....	Yes.....	X
Illinois.....	62	Yes.....	Yes.....	X
Indiana.....	53	Yes.....	*Yes.....	40
Virginia.....	42	Yes.....	Yes.....	37 $\frac{1}{2}$
Pennsylvania.....	41	Yes.....	Yes.....	X
Maryland.....	38	Yes.....	Yes.....	5
Hawaii.....	35	Yes.....	Yes.....	X
Connecticut.....	33	Yes.....	Yes.....	X
New York.....	31	Yes.....	Yes.....	50
New Jersey.....	30	Yes.....	Yes.....	75
Delaware.....	28	No.....	Yes.....	X

¹ Of nonfederal share of assistance costs, state pays \$5 per recipient from special fund. Of balance, state 50 percent, local 50 percent.

² For cases without local settlement state pays 100 percent of nonfederal share.

³ State pays 30 percent of total cost, county pays remainder less federal share.

⁴ Of total costs, state 75 percent less federal share, local 25 percent.

⁵ County pays 16 $\frac{2}{3}$ percent of total costs.

⁶ State pays 100 percent of cost for cases with residence in state less than 1 year.

⁷ The local share for institutional cases is 50 percent.

⁸ Denotes states in which there are statutory provisions without income scale for determining ability of relative or where there is only general support legislation not specifically applying to OAA. There is reason to believe that the relative support provisions are not as effectively administered as in those states listed with a nonqualified "Yes."

X denotes no participation.

SOURCE: *Statutory and Administrative Controls Associated with Federal Grants for Public Assistance*, U.S. Advisory Commission on Intergovernmental Relations, May 1964, Table XII, pp. 52-3.

is now precluded from legally implementing her own best judgment in these instances.

Not only do social workers need an added degree of flexibility in administering the payment of aid on presumed eligibility, but there must be a reduction in the number of cases in which aid is mistakenly paid under this provision. The State Department of Social Welfare estimates in a bill analysis that about 5,000 AFDC cases and 1,300 ATD cases, together with lesser numbers of blind and aged cases were erroneously granted assistance on presumptive eligibility during 1964. In such cases the aid paid and administrative costs are not shared in by the federal government and all cost must be borne by the state and counties.

The committee recommends, therefore, that the counties should be permitted, rather than required to pay aid on the basis of presumed eligibility pending completion of thorough eligibility checks (see SB 793, page 86).

EXEMPT EARNED INCOME

Recipients of Old Age Security and Aid to the Blind are permitted under existing state law to keep, without being subtracted from their grants, whatever earned income the federal law permits.⁷⁹ It is questionable whether the Legislature should permit such a *carte blanche* acceptance of *anything* permitted by the federal government. It is the Legislature's responsibility, both policywise and fiscally, to determine eligibility requirements for and benefits payable under California's public assistance programs. Although the principle of allowing employed recipients of the aged and blind programs to retain part of their earnings is desirable, the specific dollar amounts or percentage should be decided by the state Legislature rather than relinquishing this responsibility to the Congress.

A full discussion of the advantages to be gained in allowing youngsters receiving AFDC to retain part of their earned income is discussed on page 40.

It is recommended that the dollar amounts of the recipient's earned income currently permitted under federal law to be exempted from consideration in computing aged and blind aid should be specified in state law rather than granting such exemptions by a *carte blanche* reference to whatever federal law permits.

State law should also permit youths under 18 years receiving AFDC to keep 50 percent of their earnings for their personal, unrestricted use and this amount should be exempt from the personal property limitations together with earned income saved by the youths for the future educational or job training needs (see SB 794, page 87).

⁷⁹ *Ibid.*, Section 443.

MEDICAL ASSISTANCE FOR THE AGED

RATES PAYABLE TO NURSING HOMES

When the Medical Assistance for the Aged program became operative, on January 1, 1962, the rates payable to nursing homes were frozen at the level which the individual counties had paid as of October 1, 1961. This frozen rate continued until May 1, 1963, when the current fee schedule became mandatory. The existing schedule of maximum rates was based on a cost accounting survey of 80 nursing homes in the state and reimburses homes at the *average* level of costs of these 80 homes for two levels of care—basic care and intensive care. A small additional supplement can also be paid to those facilities that have extraordinarily high investment or wage costs, but only if there is a shortage of lower cost beds in the county.

The current schedule of maximum rates has many serious drawbacks. These inherent weaknesses in the rate system have been summarized by the State Department of Social Welfare:

“The industry states the rate system does not recognize the variances in costs of care, different patient care requirements, compensation for high expenses inherent in different regions. The county welfare departments claim the rate is not flexible enough to allow them the latitude in placement that will assure a patient adequate services. There are numerous homes that will not accept ‘basic care’ patients or a state patient at all, and the county’s as well as the private physician’s ability to recommend adequate placement is greatly limited.

“Former methods of rate determination have been inadequate and resulted in the following:

“1. Overcompensation to homes that provide a minimum range of services with better quality.

“2. Failure to create an incentive to upgrade and increase services or to develop meaningful and effective restorative care programs.

“3. Planning directed toward fiscal aspects of the program rather than the patient’s needs or levels of services provided.

“4. Opportunity for the less scrupulous operators to exploit the patient and the program.

“5. The department forced to find loopholes in its own regulations (exception clause) to meet patient need and to set precedents that are not defensible, thus leaving the program open to criticism.”⁸⁰

Evidence submitted to the committee at its hearings on the Medical Assistance for the Aged program emphasizes that the problem lies not

⁸⁰ “A Recommendation for a Cost and Service Survey of Nursing and Convalescent Homes to Implement an Effective Long Range Payment Method,” Division of Medical Care, California Department of Social Welfare, 1965, pp. 6-7.

so much in what is being paid for nursing home care, but rests upon the system by which payments are made. The need for a more valid method of making nursing home payments is paramount.

This new system must, initially, allow a reasonable profit for operators of privately owned homes. Secondly, it must be based on the costs (*e.g.*, wage rates, land values, food costs, etc.). Yet the new system must avoid the extremes of a "cost plus" schedule for each facility and the averaging of all costs of all homes on a statewide basis (as the current method does). Thirdly, the price paid for care must be directly related to the care needed by and furnished to patients. And lastly, there is no reason why the nursing home industry should not bear the costs of the audits necessary to develop and implement a new, cost-related method of payment.

The committee recommends, therefore, that the fee schedule for nursing home care should be established on a cost reimbursable basis, averaging all homes in each area of the state, and should be determined by industry-financed cost audits (see SB 795, page 89).

CONCURRENT RECEIPT OF MAA AND OAS

One unforeseen problem which developed in implementing AB 59 to significantly decrease the amounts of new federal moneys received by the counties is the federal and state prohibition against the concurrent receipt of Medical Assistance for the Aged and Old Age Security.⁸¹

A hypothetical case, for example, receives his OAS check on the 1st of April for the entire month. On the 5th of April he becomes ill and has to be admitted to the county hospital. Under existing law, he is automatically precluded from eligibility for MAA during the balance of April even though his needs are much greater. Under these circumstances, the ill, aged person must pay as best he can the additional costs with his personal resources, if any, until May 1, and the county, medical practitioners, or medical facility must make up the difference.

A similar problem exists when an MAA patient is discharged from a medical care facility in the middle of the month. He is precluded from receiving OAS during the balance of the month because of his receipt of MAA. He does, under state law, however, become eligible for county General Relief paid at the same level as OAS, but such costs are shared only by the state and county.⁸² There is no federal sharing as there would be if he received OAS itself.

Although there are these restrictions on the concurrent receipt of OAS and MAA, both federal and state law do not prohibit concurrent receipt of MAA and Aid to the Blind or Aid to the Totally Disabled. Thus an unjustified inequity exists between aged, ill recipients of these three programs.

It is, therefore, recommended that state law be amended to permit the concurrent receipt of MAA and Old Age Security (see SB 796, page 90).

⁸¹ 42 USCA 301(b) and Welfare and Institutions Code Section 4701(b)4.

⁸² Welfare and Institutions Code Section 4737.

Additionally, it also is recommended that the Congress be memorialized to amend federal law so as to permit the concurrent receipt of MAA and OAS (see SJR 35, page 92).

RELATIVES' SUPPORT LIABILITY

Under existing state law there is no legal responsibility for adult children to support, or to contribute to the support of, their ill aged parents who apply for or receive MAA.⁸³ There are, however, compelling fiscal and policy reasons for reestablishing such a legal duty.⁸⁴

If the same support contributions and system were to be used in MAA as are currently applicable in OAS pursuant to W. & I.C. Section 2181, an adult son's income from the following sources would be considered in determining his liability:

1. His own earnings;
2. His separate income from property, pensions, or any other source; and
3. All community income except earnings of his wife.

If the responsible relative is a married daughter, only her own earnings and her separate (not community property) income from other sources are taken into consideration.

Section 2181 contains what is referred to as a "relatives' contribution scale," a copy of which appears as Figure 4. This scale measures the relative's ability to support by two criteria: the number of persons dependent on the relative's income, and the NET monthly income. In computing net income, Section 2181 specifies that net income equals the gross income less a flat 25 percent deduction to meet the costs of income, disability, and social insurance taxes, and other expenses necessary to produce the income, such as transportation costs, meals eaten at work, union dues, and costs of tools, equipment, and uniforms.

Examining Figure 4, it becomes evident that an adult child with only himself to support would not be required to contribute to his aged, ill mother or father if he were grossing less than \$534.67 a month. At \$534.67 gross income a month his *net* income, after deducting the 25 percent, would be \$401 and he would be required to contribute \$5 monthly. At the other end of the scale, a single adult child who grossed \$1,501.34 per month would have a *net* income, as per the scale, of \$1,126 and would, therefore, be required to contribute \$90 monthly to his parent on MAA.

Using a family of six as an example—the adult son, his wife, and their four children—a minimum gross income of \$1,601.33 a month would have to be earned before the son would be required to contribute \$5 monthly.

In addition to these already most generously defined requirements, if the adult child has major and unusual expenses which limit his ability to contribute, he may request and be granted a waiver, to permit even lower contributions.

Thus the amount of money received by MAA recipients from their responsible relatives would constitute a relatively minor savings to the

⁸³ *Ibid.*, Section 4735.

⁸⁴ AB 59 repealed from the MAA program such a legal support liability in 1963.

FIGURE 4
RELATIVES' CONTRIBUTION SCALE

If gross monthly income is	Then net monthly income is	Maximum required monthly contribution if number of persons dependent upon income is					
		1	2	3	4	5	6 or more
\$534.66 or under	\$400 or under	\$0	\$0	\$0	\$0	\$0	\$0
534.67- 601.33	401- 450	5	0	0	0	0	0
601.34- 667.99	451- 500	10	0	0	0	0	0
668.00- 734.66	501- 550	15	0	0	0	0	0
734.67- 801.33	551- 600	20	0	0	0	0	0
801.34- 867.99	601- 650	25	5	0	0	0	0
868.00- 934.66	651- 700	30	10	0	0	0	0
934.67-1,001.33	701- 750	35	15	0	0	0	0
1,001.34-1,067.99	751- 800	40	20	0	0	0	0
1,068.00-1,134.66	801- 850	45	25	5	0	0	0
1,134.67-1,201.33	851- 900	50	30	10	0	0	0
1,201.34-1,267.99	901- 950	55	35	15	0	0	0
1,268.00-1,334.66	951-1,000	60	40	20	0	0	0
1,334.67-1,367.99	1,001-1,025	65	45	25	5	0	0
1,368.00-1,401.33	1,026-1,050	70	50	30	10	0	0
1,401.34-1,434.66	1,051-1,075	75	55	35	15	0	0
1,434.67-1,467.99	1,076-1,100	80	60	40	20	0	0
1,468.00-1,501.33	1,101-1,125	85	65	45	25	5	0
1,501.34-1,534.66	1,126-1,150	90	70	50	30	10	0

SOURCE: *Handbook for Old Age Security*, State Department of Social Welfare, Section A-153.4.

state. The Legislative Analyst's office estimates that approximately \$175,000 would be received by recipients from relatives.

There would be additional savings, however, in those instances where the mere existence of the relatives' responsibility requirement would deter would-be applicants. Such a deterrent effect would usually result from either the adult child's reluctance to reveal his financial status to the welfare department, and his assumption of the entire costs of care, or from the would-be applicant's reluctance to ask for his or her child's help. In this latter instance, it is extremely doubtful whether a person who was really in need of financial assistance to cover medical costs would hesitate too long in applying for aid because of the \$5 or \$10 that might be required from his adult children. The responsible relative's requirement in MAA would only deter from aid those people who, if needy at all, already have other sources of assistance. The Legislative Analyst estimates these additional savings could vary, based on 0.2 percent to 2.4 percent reduction in caseload, between \$454,000 to \$3,554,000.

In addition to its desirable fiscal effects, AB 797 is also urgently needed because of its policy implications. In our society adult children are expected, as far as possible, to care for and support their dependent parents just as parents are expected, as far as possible, to care for and support their dependent children. These are responsibilities of the most basic, fundamental type. These duties cut across all economic groups — adherence to them is expected of the rich as well as of the poor. These responsibilities are an integral part of what is commonly

referred to as the "moral fiber" of our society; or as a sociologist might say, the mores of our community.

When the adult child is not capable of furnishing complete help for his aged parents, or when the parent is not able to adequately support his young children, it becomes society's—government's—responsibility to help. Society's duty is, however, secondary; the principal obligation is that of the individual members of the family for the other family members.

The statutory provisions of the Medical Assistance for the Aged program, however, does not currently reflect these expectations, these responsibilities. And it seems to the committee that there is no valid reason for its not doing so.

It could be argued that a relative's responsibility provision might cause unpleasantness between the aged parent and his adult child. No assurance can be given that anyone's responsibilities in life will be pleasant. It is regrettable if they are not. A person's feelings about his duties cannot alter the fact that they are, just the same, duties.

It could be argued that a parent might have deserted his children and it is not just to require them to help him in his old age. In response, it could be inquired whether two wrongs make a right.

Or, it could be argued that the administrative costs would make relatives' responsibility undesirable. Firstly, this does not seem to be the case as estimated by the State Department of Social Welfare or the Legislative Analyst. Secondly, federal regulations require that all relatives of applicants must be queried as to whether they are or intend to give support. Thirdly, this argument does not invalidate or cancel the duties involved any more than unpleasantness does.

It is recommended that the liability and scale of required contributions currently in force in the Old Age Security program regarding the responsibility of adult children to support their dependent parents should be applied to the MAA program (see SB 797, page 94).

AID TO THE TOTALLY DISABLED AND AID TO THE BLIND PROGRAMS

DEFINITION OF "NEEDY DISABLED PERSON"

The existing statutory definition of "needy disabled person," "permanently impaired," and "totally disabled" is loosely and inexplicitly drawn.⁸⁵ It is as wide open as a barn door to virtually any administrative definition the State Department of Social Welfare would wish to make through regulations. The department is, therefore, currently free to significantly expand these definitions without being required to obtain prior approval of the Legislature on either the policy or the fiscal implications.

Among the specific disabilities which are not now granted aid under departmental regulations, but which could be under state law, are:

- (1) Alcoholics who have no demonstrable physical disease or other mental disability;
- (2) Persons with personality disorders but no other medically verifiable impairment, and other addictions; and
- (3) Homemakers who live by themselves.

The point at issue is not whether aid should be granted to these currently excluded persons; it is whether the department should be required to obtain legislative approval before granting them aid.

This blank check should be withdrawn from the department and it should be required to present the policy and fiscal implications to the Legislature before it can enlarge the scope of the program.

The committee recommends that the definitions of "needy disabled person," "permanently impaired," and "totally disabled" as currently (February 1, 1965) used in the State Department of Social Welfare's regulations should be frozen into state law (see SB 798, page 95).

DETERMINATION OF MEDICAL ELIGIBILITY

Under existing federal regulatory and state statutory provisions, the State Department of Social Welfare must make the determinations of medical eligibility of applicants for Aid to the Totally Disabled.⁸⁶ This eligibility determination is a paper determination; the state department's teams seldom see the applicant face to face. The resulting flow of paper is heavy; the administration of ATD is made more complex; the time lost to the applicant and the county agency is often great.

The counties now make other types of eligibility determinations and, generally, do so as efficiently and equitably as the state agency could. Furthermore, such determinations are under regulations and criteria

⁸⁵ Welfare and Institutions Code Section 4000.

⁸⁶ Part IV, Section 3830(4), *Handbook of Public Assistance Administration* and Welfare and Institutions Code Sections 4135 and 4181.5.

developed and enforced by the state department and are subject to both state and federal audits.

Regarding medical determinations, many of the smaller counties that would lack sufficient caseload or necessary medically trained staff would not have to be delegated such responsibilities by the state.

Therefore it is recommended that state law be amended to permit the State Department of Social Welfare, when feasible, to delegate to county welfare departments the responsibility of determining medical eligibility of ATD applicants (see SB 799, page 97).

It is also recommended that the U.S. Department of Health, Education, and Welfare be memorialized to amend its regulations to permit the states to delegate medical eligibility determinations in the ATD and AB programs (see SJR 36, page 98).

PROTECTIVE PAYMENTS OF ATD

The federal Social Security Act requires that aid granted in behalf of a disabled person either be paid directly to him or to his court-appointed guardian or conservator.⁸⁷ In the ATD program a significant number of recipients are unable, because of alcoholism or their mental condition (*e.g.*, senility, retardation) to manage a direct grant to their own benefit and best self-interest. In fact, state law already provides that in such cases, aid may be paid to a responsible person designated in accordance with the state department's regulations.⁸⁸

Normally the costs of aid paid to such cases would not be shared by the federal government. During the calendar year 1965, however, the Department of Health, Education, and Welfare has approved federal sharing under the authority granted it by 42 USCA 1315 permitting the establishment of pilot projects. It is apparent, nevertheless, that assistance must be continued in behalf of these individuals who are now receiving "protective payments" of aid even if federal sharing is stopped. It would, therefore, be in the best interests of state and county governments to secure permanent federal approval of ATD payments made on the protective basis.

The system of protective payment of aid has been used in California and other states in the AFDC program for several years as permitted by and shared in by the federal government.⁸⁹ Complete controls have been established in both federal and state regulations to govern when and how aid may be paid on this basis to insure protection of recipients. The experience has been most satisfactory to all parties concerned.

We recommend, therefore, that the Congress be memorialized to amend federal law to permit the payment of ATD to an interested person in behalf of the recipient who, because of alcoholism, drug addiction, or mental problems, is unable to use his grant to his own benefit and best self-interest (see SJR 37, page 100).

RESIDENCE REQUIREMENTS

Policywise, one of the most significant changes made in 1963 by AB 59 was the elimination of durational residence requirements in the

⁸⁷ 42 USCA 1355.

⁸⁸ Welfare and Institutions Code Section 4183.

⁸⁹ 42 USCA 606(b)(2).

Aid to the Blind program and the sharp reduction of such provisions in the Aid to the Totally Disabled program. For several years California permitted immediate eligibility to any state resident who became blind, but required persons who became blinded while a resident of another state to wait until they had lived in California five of the previous nine years, including the year immediately preceding application. Now anyone who is a resident, regardless of where or when he became blinded, immediately is eligible.⁹⁰ In ATD prior to the passage of AB 59, five years' residence in California out of the last nine, including the year immediately preceding application was required. Changes made by AB 59 affecting residence stipulated that no period of residence is required if the applicant becomes disabled while a resident. If the person is disabled while a resident of another state, he must live in California three of the last nine years, including the year immediately preceding application, unless there is a reciprocal agreement regarding immediate eligibility with his original state of reference.⁹¹

These liberalizations have raised three major problems. The first is the immediate fiscal effect on state, county, and federal governments. It was estimated at the time of AB 59's passage by the State Department of Social Welfare that there would be a total cost of \$1,047,000 during 1964-65 for these liberalizations of residence requirements.⁹² Costs during 1965-66 would, of course, be even higher as the ATD amendment did not go into effect until the last half of the 1964-65 fiscal year.

The second problem raised by liberalizing the ATD and AB residence requirements is its "whip-saw" effect on the Old Age Security program. In OAS, the five-out-of-the-last-nine-year residence requirement is still in force.⁹³ Because of the inequity between AB and ATD applicants, on the one hand, and applicants for OAS, on the other, great pressures will be exerted to reduce or eliminate the durational residence requirement in OAS. This change would be extremely expensive to all levels of government.

The third problem relates more to the policy rather than the fiscal effects of eliminating or significantly reducing requirements relating to state residence. California is a very desirable place to live. Our public assistance grants are among the highest in the 50 states, and our eligibility requirements already are among the least restrictive. These public assistance programs have been established, and in bulk are financed, by Californians for Californians. Our responsibilities in public assistance run to the state's borders and no further. To permit residents of other states who become dependent in other states to move to California and become immediately eligible for public assistance would be the height of irresponsibility.

The committee recommends that persons blinded or disabled while residents of other states should, after moving to California, be in residence here five years becoming eligible for Aid to the Blind or Aid to the Disabled (see SB 800, page 102).

⁹⁰ Welfare and Institutions Code Section 3040.

⁹¹ *Ibid.*, Section 4160.

⁹² Letter of July 12, 1963, to Senator James A. Cobey from Tom Moore, Assistant to the Director, California Department of Social Welfare, enclosing cost estimates of AB 59 as corrected on July 1, 1963.

⁹³ Welfare and Institutions Code Section 2160.

THE ADMINISTRATION OF PUBLIC ASSISTANCE

ADMINISTRATIVE PROJECTS SAFEGUARDING PUBLIC FUNDS

In 1961, the Legislature authorized the State Department of Social Welfare to subvene demonstration projects undertaken by county welfare department which would improve the administration of public assistance.⁹⁴ Generally, the county welfare department meets the cost of equipment, supplies, and facilities required, while the state, for the length of the project, picks up the costs of the project staff.

Welfare and Institutions Code Section 403 specifies the types of projects for which such subventions can be made. It has been suggested to the committee that projects which would safeguard public funds by the detection of fraud and improve the accuracy of eligibility determination be added to this authorization.

The subjects of welfare fraud and eligibility can be emotionally discussed and distorted in importance. It is important to emphasize, therefore, there is *nothing* the committee has discovered which would tend to claim, much less prove, that California's counties are not doing a very creditable job in minimizing these problems. As in all fields of human endeavor, however, the possibility of improvement exists. The public will have the assurances it is entitled to—that every reasonable effort is being made to control abuses—by encouraging and making possible improvements in the safeguarding of public funds through demonstration project programs (just as improvements in the administration of and the services offered through public welfare programs in other problem areas).

It is recommended county welfare administrative projects which would safeguard funds by the detection of fraud and improving the accuracy of eligibility determinations should be eligible for subventions from the state under the County Demonstration Projects Act (see SB 801, page 104).

PUBLICATION OF STATE DEPARTMENT OF SOCIAL WELFARE'S REGULATIONS

The only state agency exempt from the requirement that all administrative regulations be published in the Register of the Administrative Code is the State Department of Social Welfare. This exemption has been the root of innumerable policy and administrative problems.

One of the greatest problems—in fact, perhaps the most serious administrative problem—is the amount, types, and purposes of regulatory material which pours out of the State Department of Social Welfare to cascade unendingly upon the caseworkers at the county level.

The analysis of the 1965-66 Budget by the office of the Legislative Analyst points out this grave problem and states that, "Since Septem-

⁹⁴ *Ibid.*, Sections 400 *et seq.*

ber 1964 (through January 1965—less than half a year), the department has revised 51 sheets in its procedure manual. In the past 18 months, the department has issued 188 circular letters, 259 pages of information relating to departmental bulletins, 57 procedure memorandums, and has made 1,655 revisions in nine programs and activity manuals. Copies of the 22 bound procedure and program manuals and record handbooks extend approximately five feet in length.”⁹⁵

At the committee's public hearings in May 1964, Yolo County reported that *each* month their welfare department had to submit 180 reports to the state. They said, in relation to this load:

“If the constructive goals of the Legislature are to be achieved, the job of caseworker should not be destroyed or effectiveness mitigated by excess paperwork, and the job of the county welfare director should be protected from intrusions by overemphasis on paperwork as is now required.”⁹⁶

Yolo County's experience, opinions, and plea were repeated by every county that testified or submitted statements to the committee—and we heard from 55 of the 58 counties. Furthermore, the situation has steadily become worse, rather than better.

During the 1963 Session of the Legislature, the Senate Fact Finding Committee on Labor and Welfare authored and achieved passage of SB 1117. This measure changed the role of the State Social Welfare Board and made the Director of the State Department of Social Welfare the regulation-promulgating agent of the department rather than the board. The committee authored this bill, in part, with the hope that the director and his staff would aggressively seize this new opportunity to bring order out of chaos. Unfortunately, this has not happened. Whereas in 1963 we recommended that requiring the publication of the department's regulatory material in the Administrative Procedure Code and Registry be deferred, in 1965 we can no longer do so.

The flood of regulations and interpretative materials from the state department gushed forth from three headwaters—the federal agency, the state department itself, and the counties.

Realistically, there is little California can do to stem the tide of federal regulations and reporting requirements. We will undoubtedly have to continue to endure them at both the state and county levels.

The material pouring forth at the behest of the State Department of Social Welfare is twofold in purpose. The first function is that of interpretation of statutory policy and requirements. This is the supervisory aspect. The second function is that of assisting individual county caseworkers to fulfill the state staff's concept of their duties. This is the indoctrination and training aspect. Although we agree with the supervisory nature of these materials, we reject the idea that you can or that you should indoctrinate and train social workers in some sort of subliminal fashion through regulations. This rejection of the “training material” aspect of the department's regulations is particularly warranted because of the increased ability of the department to carry forth training in a direct way under the provisions of W. & I.C. Sections 119, 120.6, and 120.65 relating to training courses and staff serv-

⁹⁵ Pages 615-616.

⁹⁶ *Transcript*, Vol. I, May 26, 1964, p. 252.

ices and Section 300 relating to leaves of absence for educational purposes. The department itself is asking for nearly \$1,000,000 in the 1965-66 budget for these activities and the counties are likewise spending large amounts of money.

County welfare departments are the third source of complex and constantly shifting regulatory material. What the county welfare director fears most is the constant threat of having a recipient of aid appeal to the state department from a county action and having the state sustain the recipient. These appeal cases involve large amounts of money, staff time, and effort. Losing them jeopardizes the trust of the state department, the faith of the county board of supervisors, and morale within the county department, and perhaps even the self-confidence of the county director. County welfare directors, then, are caught between their desire for simplicity and conciseness in regulations and their desire for explicit, all-encompassing regulations as a protection from adverse appeal decisions. To resolve this very real problem, the fact finding committee sponsored legislation in 1963 *requiring* the state department to digest appeal decisions.⁹⁷ Such an explicit guide of welfare "case law" could help not only the counties, but also the departmental appeals' staff itself. This staff is often ignorant of the precedent-setting decisions rendered in the past. Other than hiring another attorney, however, the state department has done nothing to publish this legally required appeals digest.

Four criteria exist by which to measure the effectiveness of the department's regulations.

(a) The role of the State Department of Social Welfare in public assistance in California is not that of an administering agency. The state department supervises the *county* administration of these programs. The regulatory materials the state department issues, therefore, have the function of implementing, interpreting, and making specific for *county* administrators the state's laws governing public welfare.

One criterion, then, for measuring the effectiveness of state regulatory materials is the reaction to them by these county administrators. Every county which testified or submitted statements on this subject complained about the initial vast amounts, the subsequent wholesale amending, and the overall hairsplitting details of the state department's regulations.

(b) The caseworkers' job in public assistance is twofold, making sure each eligible case receives the correct amount of money aid and then evaluating, diagnosing, and treating each case so that the recipient can be assisted in assuming the most self-sufficient productive life possible. This latter function is one which requires resourcefulness, self-reliance, and much time in personal consultation with the recipient.

The second criterion of the regulations' success, then, is the assistance they provide caseworkers in these duties. The current form and function of the department's regulatory material, however, cause the social workers' dependence on rules rather than resourcefulness; cause inconsistent administration rather than remedying it; cause unreasonable amounts of paperwork rather than promoting maximum recipient contacts.

⁹⁷ Welfare and Institutions Code Section 445.14.

(c) The regulatory materials of any governmental agency must be adopted and enforced in a manner which gives the affected parties and the general public a maximum degree of protection from illegal actions or abuses of discretion on the agency's part.

This is the third criterion by which to judge the department's regulations. The Administrative Procedure Act has this protection as its prime objective. The Department of Social Welfare comes under the provisions of this Act with the exception, of course, of the publication of its regulations, standards, and orders in the Administrative Code. This exception in itself lessens the protection afforded recipients of aid, county welfare department personnel, and the general public. The department's regulatory material currently is not a part of the official document which is universally consulted for administrative rulings.

Further, the department has not adhered to this principle of protection. A Legislative Counsel's opinion, which the committee requested, holds that two of the department's circular letters submitted, and by inference most of the 188 circular letters issued in the last 18 months, are invalid because they were adopted illegally.⁹⁸ Moreover, in the past the department has argued that the counties had no right to appeal to the courts from decisions it rendered in appeal cases.

(d) At issue here is state government's most expensive program. It is also a program dealing with hundreds of thousands of people. Over one billion dollars of governmental funds are now being expended on a yearly basis for public assistance in California. In excess of one million recipients of aid a year are involved. Furthermore, a force of nearly 14,000 persons has been marshalled in county welfare departments, and in excess of 900 people in the state department to administer and supervise the public assistance programs. The cost of doing this job is humanely, as efficiently, and as equitably as possible are costs which are not only *well* expended, but which *must* be spent.

In summary, requiring the publication of the department's regulatory material in the Administrative Code would:

1. Reduce the initial amount of regulatory materials adopted by the State Department of Social Welfare;
2. Reduce the amount of unnecessary revisions of such materials;
3. Provide needed assistance to the department by experts in the Division of Administrative Procedure as to form and format used for regulations;
4. Improve rehabilitative services to welfare recipients by permitting and encouraging resourceful caseworkers and by decreasing the paper blizzard;
5. Give greater protection to recipients, counties, and the general public from illegal or unreasonable agency rulings; and
6. Make our great investment of money and staff in public welfare that much more capable of bearing high returns.

⁹⁸ See Appendix D for Legislative Counsel's Opinion No. 19938, April 29, 1965, and departmental materials submitted.

This requirement would be of immense benefit not only to the internal administration of public assistance in California, but also to the overall efficiency and equity of state government.

We therefore recommend that the regulations, orders, and standards adopted or issued by the State Department of Social Welfare be published in the California Administrative Code (see SB 802, page 106).

FEDERAL CASELOAD AND SUPERVISORY STANDARDS

Perhaps the greatest complaint of county boards of supervisors and county welfare directors during the past two years, other than that registered about the "paperwork blizzard," has been over the standards adopted by the U.S. Secretary of Health, Education, and Welfare governing caseload sizes and caseworker-supervisor ratios.

The preponderance of evidence collected by the committee definitely established that, although in many instances it is necessary to reduce the number of cases carried by county caseworkers, the new federal staffing standards are not only too rigid, but also fail completely to evaluate the results achieved through public assistance.

If these caseload and supervisory standards were relaxed, greater administrative flexibility—which is essential to an effective service program—would be possible. Additionally, the federal agency (and the State Department of Social Welfare as well) must place emphasis on results achieved through the granting of public assistance rather than on adherence to rigid procedural requirements.

It is recommended that U.S. Department of Health, Education, and Welfare be memorialized to amend federal regulations to minimize rigid caseload and supervisory standards and emphasize, instead, the results achieved through public assistance programs (see SJR 38, page 107).

JUDICIAL REVIEW OF DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE'S DECISIONS

Under existing federal law, the U.S. Department of Health, Education, and Welfare is the final judge of the validity of its own regulations, requirements, and decisions. There is currently no entitlement of a state, a county administering categorical aids, or a recipient of aid to seek and obtain a court hearing and decision on the legality or reasonableness of the federal department's administrative actions relating to public assistance.

This inequity has been previously recognized by this committee and the California Legislature. In 1963, Senate Joint Resolution No. 13, which embodied a request that the Congress expressly entitle states, their political subdivisions, and public assistance recipients to judicial review of HEW's rulings, passed both houses without dissent.

We therefore again recommend that the Congress be memorialized to amend federal law to entitle the states, their political subdivisions, and welfare recipients to secure judicial review of administrative decisions affecting public assistance which have been made

by the U.S. Department of Health, Education, and Welfare (see SJR 39, page 109).

SYSTEMS ANALYSIS OF PUBLIC ASSISTANCE ADMINISTRATION

It has become increasingly clear that to get and keep welfare recipients off aid, assistance must comprise more than the mere giving of money. Because the administration of public assistance has been growing increasingly complex and cumbersome, today it stands as a major deterrent to the effectiveness of our rehabilitation efforts.

On one hand, legislative studies can be only of a highly selective scope. On the other hand, it is often difficult for persons within a particular field to develop fresh thinking and new methods when making a study of their own administrative practices. What is needed, and needed desperately, is a wide-sweeping, yet in-depth analysis of the job to be done in public assistance and how best to do it; a systems analysis conducted in a thorough, evaluative, and yet disinterested manner.

The Governor has proposed contracting for such an analysis conducted by a private, outside agency which can bring the vast array of computerized skills to bear on these problems. Recently he submitted a \$100,000 budget augmentation request to the Legislature to finance such a study.

The one-billion-dollar-a-year mark in public assistance expenditures in California has been exceeded. In excess of one million persons a year are now receiving funds and services through these programs. We can well afford to take a long, hard look at what is to be done and how best to do it. In fact, we cannot afford not to do so.

It is recommended that a systems analysis of public assistance administration by the state and counties should be undertaken immediately under contract with California's business and technological industries (see SCR 48, page 111).

PUBLIC ASSISTANCE COSTS, COST SHARING RATIOS, AND STATE ADMINISTRATION

During the committee's 1963-65 study of California's public assistance programs, the existence of serious long-lived problems relating to costs, cost sharing ratios, and the feasibility of state administration was reconfirmed.

Figures 5 and 6 show increased public assistance costs in California from 1959-60 to 1965-66. In 1959-60 total aid and administrative costs were just over \$500,000,000 and an average of nearly 613,000 recipients drew aid each month. It is anticipated that during 1965-66, just six years later, \$1,166,000,000 will be expended for public assistance aid and administration, and will be given to a monthly average of 1,018,000 recipients. This is an astronomical increase in both expenditures and numbers of persons affected and is unparalleled in any other field of governmental activity in the state.

Figure 7 shows a comparison of increased expenditures of state funds only between education and public assistance from 1960-61 to 1965-66.

While education still captures the largest single amount of state funds, its rate of growth has been about half that of public assistance. What was approximately a \$5 to education *v.* \$1 to welfare ratio in 1960-61 has changed to a \$4 *v.* \$1 proportion in 1965-66—a five-year span. During this five years California has had a relatively vibrant economy coupled with a tremendous increase in the number of school aged children. Every indication would logically point to a higher relative increase in educational costs than in those associated with poverty. But the facts of what has happened fly in the face of logic.

Regarding the sharing of welfare costs, particularly between the state and county levels of government, many individual counties and the County Supervisors Association of California have increasingly pressed for what they call "cost sharing" but which in reality is cost shifting.

"At our Annual Meeting in Palm Springs on November 20, 1964, the County Supervisors Association of California adopted the following resolution on cost sharing:

"Whereas, California's great unfinished business in the social welfare field is the adoption of a state-county cost-sharing formula which will bring relief to hard-hit counties; and

"Whereas, a new County Supervisors Association of California cost-sharing study, completed as recently as October 1964, has again dramatically documented the plight of the counties by spotlighting a "Revenue Gap" and "Burden Gap" in the state's favor; and

"Whereas, cost-sharing is, and must be the number one goal of County Supervisors Association of California at the 1965 Legislature insofar as welfare legislation is concerned;

"Now, therefore, be it resolved that the State Administration and the Legislature are urged to take immediate steps toward the adoption in early 1965 of a state-county welfare cost-sharing formula which

"(1) Alters present ratios to adjust for the more rapid growth in the state tax base;

"(2) Creates a uniform ratio for all categorical aid programs and administrative costs;

"(3) Places no county in a less favorable cost position than that which it presently faces;

"(4) Has a graduated cost-sharing scale to mitigate the burden for high-cost counties.' " 99

Using state and county data shown in Figure 5, the state's cost for aid and administration have increased between 1959-60 and 1965-66 about 119 percent and 128 percent, respectively, while the counties' costs have risen 187 percent for aid and 108 percent for administration. Because of their relatively higher increase in aid costs—and aid costs comprise 88.6 percent of total welfare expenditures—the counties seem justified in their request for some adjustments, even though much of the pressure to expand welfare benefits over this period has come from these same counties.

⁹⁹ *Transcript*, December 9, 1964, William R. MacDougall, General Counsel and Manager, County Supervisors Association of California, pp. 10 and 11.

FIGURE 5

Fiscal year	Total costs	Aid				Administration			
		Total	Federal	State	County	Total	Federal	State	County
1959-60-----	\$501,313,470	\$449,295,204	\$199,918,616	\$198,363,608	\$51,012,980	\$52,018,266	\$23,252,082	\$6,437,433	\$22,278,751
1964-65-----	\$1,008,720,870	\$893,480,375	\$402,320,300	\$367,429,563	\$123,730,512	\$115,240,495	\$62,110,733	\$13,178,862	\$39,950,900
1965-66-----	\$1,165,759,104	\$1,032,642,666	\$450,417,000	\$435,784,127	\$146,441,539	\$133,116,438	\$71,810,759	\$14,824,979	\$46,480,700

Source of Information—1961-62 *State Budget*, pages 982-3.
1965-66 *State Budget*, pages 952-3.

FIGURE 6

Program	Average No. of Recipients monthly during fiscal year			Average Aid per month (Incl. Med. Care)		
	1959-60	1964-65	1965-66	1959-60	1964-65	1965-66
Aid to the Blind-----	13,515	12,370	12,610	\$106.00	134.11	136.33
Aid to Part. Self-Supporting Blind-----	300	67	60	\$113.14	162.75	163.96
Aid to Families with Dependent Children—FC-----	254,020	531,090	587,995	\$46.21	44.80	47.35
Aid to Families with Dependent Children—BHI-----	12,178	18,670	19,140	\$71.64	93.97	97.29
Aid to the Disabled-----	7,832	62,500	91,430	\$87.10	118.62	121.25
Old Age Security-----	255,803	270,175	276,155	\$88.11	112.10	114.74
General Home Relief†-----	69,298	‡38,557	*	\$23.85	‡32.63	*
Medical Assistance for the Aged-----	†	25,748	31,000	†	368.50	380.00
Total Recipients (Average)-----	612,946	959,177	1,018,390	--	--	--

* Not available.

† MAA began on January 1, 1962; does not include PAMC payments.

‡ General Home Relief not included in State Budget figures; Source—PA-3 for December 1964; covers period from July 1—December 31, 1964.

Sources of Data—1961-62 State Budget, pages 984-989;

1965-66 State Budget, pages 939-943;

AR-1-2, Annual Summary 1959-60, SDSW.

FIGURE 7

**COMPARISON OF STATE EXPENDITURES FOR
EDUCATION AND PUBLIC ASSISTANCE
1960-61 and 1965-66**

	1960-61 ¹	1965-66 ²	% Change
Total—Education-----	\$1,054,000,000	\$1,615,700,000	53%
State Support ³ -----	215,800,000	344,000,000	59%
Local Assistance ⁴ -----	756,000,000	1,164,000,000	54%
Capital Outlay ⁵ -----	81,900,000	107,700,000	32%
Total—Social Welfare-----	\$220,750,000	\$450,600,000	104%
State Operations-----	3,750,000	5,800,000	55%
Local Support-----	217,000,000	444,800,000	105%

¹ Actual state expenditures, from *State Budget*, 1962-63, Table 14, p. A-28, and Table 16, p. A-30.² Proposed state expenditures, from *State Budget*, 1965-66, Table 13, p. A-26, Schedule I, p. ix, Capital Outlay, and Table 14, p. A-28.³ Includes: Department of Education, Division of Libraries, Special Schools, Vocational Education, Higher Education, Maritime Academy, Scholarship Commission, and Teachers' Retirement.⁴ Includes: School Support, Child Care Centers, Teachers' Retirement, Debt Service, Free Text Books, Vocational Education, other.⁵ Includes: Net of General and Special Funds and Bond Funds.

The academic question of whether the state should assume full responsibility for welfare administration from the counties in California—and the practical question of whether this is not actually occurring—overlap both issues of welfare costs and cost shifting.

“Mr. Bowhay: . . . (T)he problem here I am trying to get at is the tax base has determined the attitude and determined the

policy and also often becomes . . . the overriding question as to what the policy is

"Senator Bradley: . . . Would you clarify that? Are you saying that you prefer to have the state take over the welfare administration and financing completely, take it completely out of the county's hands?

"Mr. Bowhay: . . . I suggest this is an area for serious consideration in interim study by this committee because there is no responsibility, and if a taxpayer has difficulty in assigning responsibility . . . how do you go about getting something corrected . . . ? This has happened in AB 59 where a number of supervisors still are concerned that they are blamed for the passage of 59, although they endorsed it, and yet when the public goes to get an answer, the local tax association or the ordinary man in the street, the tendency is to pass the buck because nobody is really responsible. Everybody's got a piece of the financing; everybody's got a piece of the control; but today and in the last three or four years the state control down to the very details of paper work, to the details of staffing, is such that there is virtually no local control except with the county welfare director who has the technical knowledge to exercise it. The boards of supervisors do not specifically have control over welfare because it is simply complex enough a matter that they can't exercise it.

"Senator Bradley: Well, would you say that because the federal government contributes about 12½ billion dollars a year that, then, to avoid the conflict that might exist between the federal government and various states, the federal government ought to take over, eventually, the whole thing?

"Mr. Bowhay: No; but the federal government doesn't exercise anywhere near the detailed control that the state has over the past three or four years exercised over the counties. And the question, of course, is if the state is going to exercise detailed control, they might pay detailed expenses or leave it up to the counties, and this is an issue that I think gradually AB 59 is moving into. In the area of subsidies, and the counties have been tending this way because of pressures on the property tax base, they are in effect giving away home rule and the issue ought to be faced squarely and studied, and studied directly, rather than backed into because of fiscal pressures and ad hoc and expedient measures and the pressures of a legislative session.

"Senator Bradley: Why wouldn't it be better to reduce the power of the state and return it to the county? The county one time had practically full control over welfare programs and why wouldn't that be a better approach?

"Mr. Bowhay: Well, it may and this is what I suggest in the end of this testimony, that the matter be studied seriously . . . but this bears on who pays for it and whether you have cost-sharing or cost shifting."

¹⁰⁰ *Transcript*, December 9, 1964, James Bowhay, Assistant Legislative Counselor, California Taxpayers Association, pp. 67-68.

Thus all three subjects of public assistance's spiraling costs, unsatisfactory cost-sharing arrangements, and who shall administer and control California's public assistance programs are so interrelated that any change made in one area will have immediate repercussions in the other two. The data submitted to and collected by the committee on each of the three subjects insufficiently takes into account this inherent relationship. Further, proposals for specific changes were made only in general terms and all lacked a recognition of, or sufficient correlation to the inexorable changes that would result in the overall scope of administrative and fiscal problems.

Therefore, this committee recommends that a comprehensive study should be undertaken by the Legislature during 1965-67 of public assistance costs, cost-sharing ratios, and state administration. No action should be taken on these interrelated subjects until such a study is completed (see SR 108, page 112).

OTHER UNANSWERED PROBLEMS

Several other critical problems were brought to the committee's attention during the course of our inquiry. These problems include the dire need for child care facilities (to enable more mothers receiving public assistance to secure adequate care for their children so they could become employed or undergo job training); the need for technical and substantive code revisions (in order to permit simplified welfare administration); the advantages of combining into one category the OAS, AB, ATD, and MAA programs; and the advantages of changing from a "special needs" to a "flat grant" concept in paying financial assistance in public welfare.

The committee lacked the time, staff, and budget to pursue these issues to factual and satisfactory conclusions, however.

It is recommended, therefore, that further study should be undertaken by the Legislature during 1965-67 of child care centers, Welfare and Institutions Code revision and simplification, one unified adult category of aid and flat grants (see SR 109, page 112).

LEGISLATION PROPOSED BY COMMITTEE

SENATE BILL

No. 785

Introduced by Senators Sturgeon, Way, Weingand, Rodda,
Bradley, and Cobey

(On behalf of the Senate Fact Finding Committee on
Labor and Welfare)

March 22, 1965

REFERRED TO COMMITTEE ON SOCIAL WELFARE

An act to amend Sections 1500, 1500.2, and 1522 of the Welfare and Institutions Code, relating to aid to families with dependent children.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 1500 of the Welfare and Institutions
- 2 Code is amended to read:
- 3 1500. Aid, services, or both, shall be granted under the pro-
- 4 visions of this chapter, and subject to the regulations of the
- 5 state department, to families with related children under the
- 6 age of 18 21 years, in need thereof because they have been
- 7 deprived of parental support or care due to:
- 8 (a) The death, physical or mental incapacity, or incarceration
- 9 tion of a parent; or
- 10 (b) The divorce, separation or desertion of his parent or
- 11 parents and resultant continued absence of a parent from
- 12 the home for these or other reasons; or
- 13 (c) The unemployment of his parent or parents.

LEGISLATIVE COUNSEL'S DIGEST

SB 785, as introduced, Sturgeon (Soc. Wel.). Aid to needy children.

Amends Secs. 1500, 1500.2, 1522, W. & I.C.

Provides that aid to families with dependent children may be paid to families with children up to 21 years of age, instead of 18 years of age.

Limits payment of aid on behalf of children 16 or 17 years of age to children who are either physically or mentally disabled, who are employed and contributing to the family, or applying earnings to a plan approved by the county for further education or preparation for future employment. Requires that children over such age be regularly attending school or be enrolled in and attending a job training program.

SB 785

— 2 —

1 SEC. 2. Section 1500.2 of said code is amended to read:
2 1500.2. Aid may not be granted under the provisions of
3 this chapter to or in behalf of any child over the age of 16
4 unless *he is regularly attending school or is enrolled in and*
5 *attending a job training program. Aid may also be granted to*
6 *or in behalf of a child over 16, but not more than 17 years of*
7 *age if:*

8 ~~(a) He is regularly attending school, or a training program,~~
9 ~~or~~

10 (a) ~~(b)~~ He is physically or mentally disabled, or
11 (b) ~~(c)~~ He is employed and contributing to the family, or
12 applying his earnings to a plan approved by the county de-
13 partment for his further education or preparation for future
14 employment.

15 SEC. 3. Section 1522 of said code is amended to read:

16 1522. Except as provided in ~~Section~~ *Sections 1500.2 and*
17 *1552.3*, no child over the age of 18 years is a needy child
18 within the meaning of this chapter.

SENATE BILL

No. 786

Introduced by **Senators Sturgeon, Way, Weingand, Rodda,
Bradley, Schrader, and Cobey**
(On behalf of the Senate Fact Finding Committee on
Labor and Welfare)

March 22, 1965

REFERRED TO COMMITTEE ON SOCIAL WELFARE

*An act to add Section 1501.6 to the Welfare and Institutions
Code, relating to aid to families with dependent children.*

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 1501.6 is added to the Welfare and
2 Institutions Code, to read:
3 1501.6. Aid shall not be granted to families on the basis of
4 the unemployment of a parent after July 1, 1967, unless the
5 federal law is amended to permit federal financial participa-
6 tion in the payment of such aid.

LEGISLATIVE COUNSEL'S DIGEST

SB 786, as introduced, Sturgeon (Soc. Wel.). Aid to needy children.

Adds Sec. 1501.6, W. & I.C.

Provides that aid shall not be granted to families on the basis of the unemployment of the parent after July 1, 1967, unless federal law is amended to permit financial participation in the payment of such aid.

SENATE BILL

No. 787

Introduced by **Senators Sturgeon, Way, Weingand, Rodda,
Bradley, Schrade, and Cobey**
(On behalf of the Senate Fact Finding Committee on
Labor and Welfare)

March 22, 1965

REFERRED TO COMMITTEE ON SOCIAL WELFARE

An act to amend Sections 1503 and 1552.3 of, and to add Section 1500.5 to, the Welfare and Institutions Code, relating to aid to families with dependent children.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 1500.5 is added to said code, to read:
2 1500.5. When a child's parent, as defined in subdivision
3 (a) of Section 1500.4 of this code, wishes to make an applica-
4 tion for aid, he shall simultaneously submit with his applica-
5 tion, certificates from the local employment service and farm
6 labor office of the California Department of Employment, is-
7 sued within one week of the date of his application. Each
8 certificate shall certify that the applicant has registered for
9 employment and the office has no order for an opening for
10 part-time, full-time, temporary, or permanent work of any
11 kind to which the applicant could be referred, taking into con-
12 sideration only his physical and mental capacity without refer-
13 ence to his customary occupation or acquired skill.

LEGISLATIVE COUNSEL'S DIGEST

SB 787, as introduced, Sturgeon (Soc. Wel.). Aid to needy children.

Amends Secs. 1503, 1552.3, adds Sec. 1500.5, W. & I.C.

Declares that one of the objects of the aid to families with dependent children program is to aid children of unemployed parents who are unable to meet their parental obligation to support, who cannot procure any employment, and who have no other source of aid.

Requires unemployed parent to submit semimonthly certificates from local employment service and farm labor office showing that he has registered for employment and that no employment is available.

Provides that eligibility period shall be determined on the same basis as period prescribed for payment of aid.

SB 787

— 2 —

1 In order to establish his continuing eligibility for aid under
2 this chapter, an unemployed parent shall continue to show his
3 availability for employment by securing and filing, at least
4 once each semimonthly period, new certificates of the type re-
5 quired above from the local employment service and farm
6 labor office. Eligibility for aid shall be terminated immediately
7 in the absence of such certification every semimonthly period.

8 SEC. 2. Section 1503 of said code is amended to read:

9 1503. It is the object and purpose of this chapter to provide
10 aid for children whose dependency is caused by circumstances
11 defined in Sections 1500 and 1500.1, *including children of*
12 *those unemployed parents who are unable to meet their paren-*
13 *tal obligation to support, who cannot procure any employment,*
14 *and who have no other source of aid;* and to keep children in
15 their own homes wherever possible and to provide the best
16 substitute for their own homes for those children who must
17 be given foster care.

18 Those engaged in the administration of aid under this chap-
19 ter are responsible to the community for its effective, humane,
20 and economical administration.

21 It is the intent of the Legislature that the employment and
22 self-maintenance of parents of needy children be encouraged
23 to the maximum extent and that this chapter shall be admin-
24 istered in such a way that needy children and their parents
25 will be encouraged and inspired to assist in their own main-
26 tenance. The State Department of Social Welfare shall take
27 all steps necessary to implement this section.

28 For the purposes of this chapter the value of supplies,
29 equipment, tools of the trade, motor vehicles within reasonable
30 values established by the department when used for work or
31 to seek work, and other personal property directly connected
32 with efforts to become self-supporting, which are a part of a
33 program to assist in maintenance and self-support shall not
34 be considered as personal property as established by Section
35 1521.

36 SEC. 3. Section 1552.3 of said code is amended to read:

37 1552.3. If on the first day of the ~~month~~ *eligibility period*
38 a child is eligible for aid, aid for the entire ~~month~~ *eligibility*
39 *period* shall be paid. *The eligibility period shall be determined*
40 *on the same basis as payments are made under Section 1552.4.*

SENATE BILL

No. 788

Introduced by **Senators Sturgeon, Way, Weingand, Rodda,
Bradley, Schrade, and Cobey**

(On behalf of the Senate Fact Finding Committee on
Labor and Welfare)

March 22, 1965

REFERRED TO COMMITTEE ON SOCIAL WELFARE

An act to amend Section 1500.4 of the Welfare and Institutions Code, relating to aid to families with dependent children.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 1500.4 of the Welfare and Institutions
2 Code is amended to read:
3 1500.4. For the purposes of this chapter, "unemployed
4 parent" means a natural parent, adoptive parent, or step-
5 parent with whom the child is living, and who:
6 (a) Is not working but is available for and seeking employ-
7 ment or, as a result of unemployment, has been accepted for
8 or is participating in a training project essential to future
9 self-support, or
10 (b) Is employed only part time as determined in accordance
11 with such standards as may be developed by the State Depart-
12 ment of Social Welfare in its rules and regulations, which
13 standards shall be consistent with federal law and regulations
14 governing the payment of federal funds to this state under
15 the Social Security Act and consistent with other provisions
16 of this chapter.

LEGISLATIVE COUNSEL'S DIGEST

SB 788, as introduced, Sturgeon (Soc. Wel.). Aid to needy children.

Amends Sec. 1500.4, W. & I.C.

Disqualifies for aid to families with dependent children parent unemployed because of bona fide labor dispute.

Provides parent who voluntarily terminates employment shall not be eligible for aid for 3 months following termination of employment.

SB 788

— 2 —

1 *However, if the parent voluntarily terminated his last em-*
2 *ployment, then his eligibility as an "unemployed parent"*
3 *shall not commence until three months after the last day of*
4 *such employment. A parent who is unemployed because of a*
5 *bona fide labor dispute, the existence of which has been estab-*
6 *lished by the State Department of Employment, shall not be*
7 *considered as an "unemployed parent" for the purposes of*
8 *this chapter.*

SENATE BILL

No. 789

Introduced by Senators Sturgeon, Schrade, Way, Rodda, Weingand,
Bradley, and Cobey
(On behalf of the Senate Fact Finding Committee on
Labor and Welfare)

March 22, 1965

REFERRED TO COMMITTEE ON SOCIAL WELFARE

An act to add Section 1523.75 to the Welfare and Institutions Code, relating to aid to families with dependent children.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 1523.75 is added to the Welfare and
- 2 Institutions Code, to read:
- 3 1523.75. For the purposes of this chapter, an unemployed
- 4 parent who fails or refuses, without good cause, to accept em-
- 5 ployment shall be presumed to have failed to provide for the
- 6 support of his children under Section 270 of the Penal Code.

LEGISLATIVE COUNSEL'S DIGEST

SB 789, as introduced, Sturgeon (Soc. Wel.). Aid to needy children.

Adds Sec. 1523.75, W. & I.C.

Provides that unemployed parent, under aid to families with dependent children program, who fails or refuses to accept employment, without good cause, shall be presumed to have failed to provide for the support of his children for purposes of criminal liability.

SENATE BILL

No. 790

Introduced by Senators Sturgeon, Way, Weingand, Rodda,
Bradley, Schrader, and Cobey
(On behalf of the Senate Fact Finding Committee on
Labor and Welfare)

March 22, 1965

REFERRED TO COMMITTEE ON SOCIAL WELFARE

An act to amend Sections 1503.1 and 1511 of, and to add Section 1523.10 to, the Welfare and Institutions Code, relating to aid to families with dependent children.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 1503.1 of the Welfare and Institutions
2 Code is amended to read:
3 1503.1. The provision of useful work experience and con-
4 structive vocational training for unemployed recipients is a
5 matter of statewide concern.
6 Insofar as practical each county department shall establish
7 a community work experience and vocational training program
8 for unemployed persons and others for whom such experience
9 and training is deemed desirable as part of a plan to help them
10 become self-supporting.
11 Such programs shall be conducted in accordance with stand-
12 ards and regulations established by the Department of Social
13 Welfare as desirable and necessary to qualify for such federal
14 funds as are available.

LEGISLATIVE COUNSEL'S DIGEST

SB 790, as introduced, Sturgeon (Soc. Wel.). Aid to needy children.

Amends Secs. 1503.1, 1511, adds Sec. 1523.10, W. & I.C.

Provides that county welfare department, in connection with community work experience and vocational training program, may pay for supervisors with county funds and available federal funds.

Provides that state shall pay 50 percent of expenses incurred by recipient in meeting special needs arising as result of participation in job training or work experience project, but not to exceed \$12.50.

Provides that if member of family is absent without authorization from a job training or work experience project, aid grant shall be reduced in amount equal to money value of work missed.

SB 790

— 2 —

The cost of materials, equipment and supervision provided by agencies cooperating with the county department in community work experience and training programs shall not be charged as an administrative expense under this chapter or with respect to other public assistance programs. *The county departments may pay for supervisors for work experience and training programs with county funds and any available federal funds.*

Work projects developed under this section shall be confined to projects which serve a useful public purpose, do not result either in displacement of regular workers or in the performance of work that would otherwise be performed by employees of public or private agencies, institutions, or organizations, and (except in cases of projects which involve emergencies or which are generally of a nonrecurring nature) are of a type which has not normally been undertaken in the past by the state or community, as the case may be.

All public entities, including state agencies, are authorized to cooperate and participate with the county department in the establishment of community work experience and training projects.

SEC. 2. Section 1511 of said code is amended to read :

1511. (a) For each needy family which includes one or more needy children qualified for aid under this chapter, except as provided in Section 1557, there shall be paid the sums specified in the following table, or so much thereof as is necessary for the adequate care of the needy family:

Number of needy children in the same home	Maximum aid
1 child -----	\$145
2 children -----	168
3 children -----	215
4 children -----	256
5 children -----	291
6 children -----	320
7 children -----	343
8 children -----	360
9 children -----	371

Plus five dollars (\$5) per child for each additional child.

If, when and during such times as the U.S. government increases or decreases its contributions in assistance of needy children in this state above or below the amount paid on January 1, 1961, the amounts specified in the above table shall be increased or decreased by an amount equal to such increase or decrease by the U.S. government.

(b) *If a recipient of aid under this chapter incurs additional expenses in meeting special needs caused by his participation in job training or work experience projects, the state shall pay 50 percent of such additional expenses not covered*

— 3 —

SB 790

1 *by the grant payable under (a), up to twelve dollars and fifty*
2 *cents (\$12.50) per recipient per month.*

3 ~~(b)~~

4 *(c)* For children receiving foster care who are qualified for
5 aid under the provisions of this chapter, except as provided
6 in Section 1557, there shall be paid the sum necessary for the
7 adequate care of each child, but not to exceed in any month the
8 product of eighty dollars (\$80) multiplied by the number of
9 children in each county receiving foster care. The state shall
10 pay 67.5 percent and the county shall pay 32.5 percent of the
11 aid furnished for the adequate care of such children.

12 ~~(e)~~

13 *(d)* As used in this chapter, "foster care" means care in a
14 boarding home or institution.

15 SEC. 3. Section 1523.10 is added to said code, to read:

16 1523.10. Whenever a member of a family that is receiving
17 aid under this chapter is absent from a job training or work
18 experience project without authorization, the aid grant to such
19 a family shall be reduced in an amount equal to the money
20 value of the work missed.

Senate Joint Resolution

No. 33

Introduced by **Senators Sturgeon, Way, Bradley, Cobey, Rodda,
Schrade, and Weingand**
(On behalf of the Senate Factfinding Committee
on Labor and Welfare)

March 22, 1965

REFERRED TO COMMITTEE ON SOCIAL WELFARE

*Senate Joint Resolution No. 33—Relating to the establishment
of job training and work experience projects for AFDC
recipients by private employers.*

1 WHEREAS, Federal and California state statutes authorize
2 the establishment of job training and work experience projects
3 to provide vocational rehabilitation to unemployed parents
4 whose families are receiving aid to families with dependent
5 children; and

6 WHEREAS, The relevant provisions of the federal Social Se-
7 curity Act (Sec. 409 (a) (1), Title IV) have been interpreted
8 by the United States Department of Health, Education, and
9 Welfare as requiring that such job training and work expe-
10 rience projects be performed for public agencies and that pri-
11 vate employers are forbidden from establishing such projects;
12 and

13 WHEREAS, This limitation seriously hinders the potential of
14 training recipients for employment in private business because
15 there are many occupations found in private industry for
16 which there are no equivalent positions in governmental agen-
17 cies; and

18 WHEREAS, This limitation is not found in other job training
19 and work experience programs authorized by the federal gov-
20 ernment, such as the Manpower Development and Training
21 Act (42 USC 2571), and Area Redevelopment Act (42 USC
22 2501), and the Trade Expansion Act (19 USC 1301); now,
23 therefore, be it

LEGISLATIVE COUNSEL'S DIGEST

SJR 33, as introduced, Sturgeon (Soc. Wel.). Social Security Act.

Memorializes Congress to amend the Social Security Act to permit private em-
ployers to establish and maintain job training and work experience projects for
unemployed parents whose families are receiving aid under the AFDC program.

SJR 33

— 2 —

1 *Resolved by the Senate and the Assembly of the State of*
2 *California, jointly,* That the United States Congress is re-
3 spectfully memorialized to amend the Social Security Act to
4 permit private employers, including but not limited to, private
5 agencies, trade associations, labor organizations, and other in-
6 dustrial groups to establish and maintain job training and
7 work experience projects for unemployed parents whose fam-
8 ilies are receiving aid to families with dependent children;
9 and be it further

10 *Resolved,* That the Secretary of the Senate is hereby directed
11 to transmit copies of this resolution to the President and Vice
12 President of the United States, the Speaker of the House of
13 Representatives, and to each senator and representative of this
14 state's delegation to the Congress and to the Secretary of the
15 United States Department of Health, Education, and Wel-
16 fare.

SENATE BILL

No. 791

Introduced by **Senators Sturgeon, Way, Weingand, Rodda,
Bradley, Schrade, and Cobey**
(On behalf of the Senate Fact Finding Committee on
Labor and Welfare)

March 22, 1965

REFERRED TO COMMITTEE ON SOCIAL WELFARE

*An act to amend Sections 1523.6 and 1523.7 of the Welfare
and Institutions Code, relating to aid to families with de-
pendent children.*

The people of the State of California do enact as follows:

1 SECTION 1. Section 1523.6 of the Welfare and Institutions
2 Code is amended to read:

3 1523.6. Any child ~~may~~ shall be disqualified to receive aid
4 for so long as the parent of the child refuses, *without good*
5 *cause*, to accept ~~reasonable~~ employment or fails to cooperate
6 to the best of his ability with plans designed to render him
7 more fully capable of supporting himself and his dependents.

8 Each county shall, in administering aid under this chapter,
9 make a determination as to the competence; *and* physical
10 ability ~~and availability~~ of each parent to engage in remunera-
11 tive work and shall require those parents, where it is deemed
12 feasible, to register for employment at the nearest office of the
13 State Department of Employment.

14 The State Department of Social Welfare and the State
15 Department of Employment shall jointly develop plans for
16 the orderly processing and placement of such cases. ~~Priority~~
17 ~~shall be given to those cases with the maximum availability~~
18 ~~and ability to work.~~

LEGISLATIVE COUNSEL'S DIGEST

SB 791, as introduced, Sturgeon (Soc. Wel.). Aid to needy children.

Amends Secs. 1523.6, 1523.7, W. & I.C.

Requires, rather than permits, disqualification of child for aid so long as his parent refuses to accept employment, if such refusal is without good cause.

Eliminates authority of Departments of Social Welfare and Employment to jointly set forth the types of cases and conditions for which employment is not reasonable and for which referral to the Department of Employment is unnecessary. Also eliminates provision requiring that priority be given to cases with maximum availability and ability to work.

SB 791

— 2 —

1 Nothing in this section shall be construed to prevent the
2 State Department of Social Welfare and the State Department
3 of Employment from jointly setting forth the types of cases
4 and conditions for which employment is not reasonable and for
5 which referral to the Department of Employment is unneces-
6 sary.

7 SEC. 2. Section 1523.7 of said code is amended to read:

8 1523.7. Aid shall be denied to an unemployed parent and
9 his family if it is determined by the county welfare depart-
10 ment, in accordance with *Section 1500.5 and the regulations*
11 *of the State Department of Social Welfare*, that:

12 (a) He fails to seek and to keep himself currently available
13 for employment as required by standards set by the depart-
14 ment, or

15 (b) He refuses without good cause to accept part-time, full-
16 time, temporary or permanent employment without reference
17 to his customary occupation or skill. Good cause for refusal of
18 employment shall be deemed to exist *for the purposes of this*
19 *section and Section 1523.6*, when:

20 (1) The offer of employment is not for a specific job at a
21 stated wage comparable to the prevailing wage for that type
22 of employment in the community, or

23 (2) The job is available because of a bona fide labor dispute,
24 the existence of which has been established by the State De-
25 partment of Employment, or

26 (3) The job is not within the physical or mental capacity
27 of the person, as established, when necessary, by competent
28 professional authority, or

29 (4) Acceptance would be an unreasonable act because of
30 hardships imposed upon the person or his family due to illness
31 or remoteness; interruption of a program in process for per-
32 manent rehabilitation or self-support; or conflicting with an
33 imminent likelihood of reemployment at his regular work.

Senate Concurrent Resolution

No. 47

Introduced by **Senators Weingand, Way, Bradley, and Cobey**
(On behalf of the Senate Factfinding Committee
on Labor and Welfare)

March 22, 1965

REFERRED TO COMMITTEE ON SOCIAL WELFARE

*Senate Concurrent Resolution No. 47—
Relating to family planning.*

- 1 WHEREAS, Recent studies show that many citizens are
2 "trapped" in a condition of poverty because of a number of
3 conditions frequently including poor education, poor housing,
4 poor health and poor family planning; and
5 WHEREAS, Great efforts are being made by government at
6 all levels to break the cycle of poverty by improving oppor-
7 tunities for good education, good housing and good health; and
8 WHEREAS, The California Medical Association by resolution
9 has voiced the opinion that family planning services should be
10 properly included in every adequate medical care program;
11 and
12 WHEREAS, Family planning services are not only not avail-
13 able, in most cases, to the persons needing them most, but even
14 where the services are available, medical and social service
15 workers counseling such persons are not free to refer them to
16 agencies where appropriate professional advice on family
17 planning is provided on a voluntary basis; now, therefore,
18 be it
19 *Resolved by the Senate of the State of California, the As-*
20 *sembly thereof concurring,* That the Legislature hereby finds
21 that provision should be made to include family planning serv-
22 ices, and the drugs and materials required therefor, in health
23 care programs wherever possible; that such services should be

LEGISLATIVE COUNSEL'S DIGEST

SCR 47, as introduced, Weingand (Soc. Wel.). Family planning.

States as legislative finding that provision should be made to include family planning services and drugs and materials required therefor in health care programs wherever possible, such services should be available to all who voluntarily seek them, and that persons engaged in medical and social work counseling should be free to provide information regarding agencies where family planning services may be obtained.

SCR 47

— 2 —

- 1 readily available to all who voluntarily wish to seek them ; and
- 2 that all persons engaged in the fields of medical and social
- 3 work counseling, whether privately or publicly employed,
- 4 should be free to provide, in the course of their official duties,
- 5 information regarding agencies where family planning serv-
- 6 ices may be obtained.

Senate Joint Resolution

No. 34

Introduced by **Senators Sturgeon, Way, Bradley, Cobey,
Rodda, Schrade, and Weingand**
(On behalf of the Senate Factfinding Committee
on Labor and Welfare)

March 22, 1965

REFERRED TO COMMITTEE ON SOCIAL WELFARE

*Senate Joint Resolution No. 34—Relating to the income earned
by youths of families receiving assistance under the aid to
families with dependent children program.*

1 WHEREAS, The basic purpose of the aid to families with de-
2 pendent children program is to assist children deprived of
3 parental support and to enable these children to grow into
4 self-supporting, independent, and responsible members of the
5 community; and

6 WHEREAS, This purpose is now frustrated by the federal
7 Social Security Act which requires that the earnings of em-
8 ployed youths receiving aid to families with dependent chil-
9 dren either be deducted in computing their aid grants or be
10 retained for future educational needs, thus discouraging them
11 from seeking suitable part-time and summer employment; and

12 WHEREAS, Modification of this requirement would enable the
13 youths to justly derive some immediate personal benefit from
14 their employment in addition to learning the values of em-
15 ployment, self-support, and independence; and

16 WHEREAS, Such a modification would also, by assisting needy
17 families to achieve self-support, ease the burden on the tax-
18 payers, who are now compelled to support families who are
19 potentially capable of supporting themselves; now, therefore,
20 be it

21 *Resolved by the Senate and Assembly of the State of Cali-*
22 *fornia, jointly,* That the Congress of the United States is re-
23 spectfully memorialized to amend the Social Security Act to

LEGISLATIVE COUNSEL'S DIGEST

SJR 34, as introduced, Sturgeon (Soc. Wel.). Family welfare program.

Memorializes the United States Congress to amend the Social Security Act so as to exempt 50 percent of the earnings of youths of families receiving assistance under the aid to families with dependent children program from deductions from aid grants so as to permit them to keep such income for their personal use.

SJR 34

— 2 —

1 exempt 50 percent of the earnings of youths receiving aid to
2 families with dependent children from deductions from aid
3 grants, and to permit them to keep for their own immediate
4 use such exempted income; and be it further
5 *Resolved*, That the Secretary of the Senate is directed to
6 transmit copies of this resolution to the President and Vice
7 President of the United States, the Speaker of the House of
8 Representatives, to each Senator and Representative in this
9 state's delegation to the Congress, and to the Secretary of the
10 United States Department of Health, Education, and Welfare.

SENATE BILL

No. 792

Introduced by **Senators Way, Bradley, Schrade, and Cobey**
(On behalf of the Senate Fact Finding Committee on
Labor and Welfare)

March 22, 1965

REFERRED TO COMMITTEE ON SOCIAL WELFARE

*An act to repeal Section 441 of, and to add Section 441 to, the
Welfare and Institutions Code, relating to public assistance.*

The people of the State of California do enact as follows:

1 SECTION 1. Section 441 of the Welfare and Institutions
2 Code is repealed.

3 441. Aid granted to a recipient shall not constitute a lien
4 upon any property of the recipient.

5 The cost of hospitalization furnished by a county to the
6 recipient shall not constitute a lien against the personal prop-
7 erty or personal effects of the recipient, or against an inter-
8 ment plot as defined in Section 7022 of the Health and Safety
9 Code.

10 SEC. 2. Section 441 is added to said code, to read:

11 441. If a recipient or his spouse, either individually or
12 jointly, owns real property, the county shall take a claim on
13 the property as a condition of granting aid. The claim shall
14 be taken as hereinafter provided.

15 The recipient and the spouse of the recipient shall execute
16 and deliver to the county an instrument in writing, acknowl-
17 edged in the same manner as deeds for real property, creating
18 a claim upon the real property for the purpose of reimbursing
19 the county for all moneys paid or to be paid as assistance to
20 the recipient. No interest shall be charged in connection with
21 the claim. The claim shall contain a description of the real
22 property and a provision for reimbursement of continuous
23 future assistance and shall be recorded and indexed in the

LEGISLATIVE COUNSEL'S DIGEST

SB 792, as introduced, Way (Soc. Wel.). Public assistance.

Repeals and adds Sec. 441, W. & I.C.

Requires county to take claim on real property of public assistance recipient as condition of granting aid, and provides for enforcement of claim after death of recipient, his surviving spouse, and after the minority of his surviving children.

SB 792

— 2 —

1 book of deeds in the county recorder's office of the county in
2 which the real property is located.

3 Upon the recording of the claim, the county shall have a
4 claim upon the real property for the amount of the assistance
5 paid or to be paid, which claim shall be prior to any other
6 claim recorded, and shall be notice to a subsequent purchaser,
7 assignee, or encumbrancer of the existence and nature of the
8 claim.

9 Should the recipient or his heirs, next of kin, or personal
10 representatives reimburse the county for the amount due by
11 the terms of the claim, the county shall execute and deliver a
12 satisfaction thereof, upon filing which, the record shall be
13 marked by the county recorder "satisfied and discharged"
14 with the date thereof.

15 Upon the death of a person who was a recipient, the county,
16 on the basis of its claim, shall have a claim against the entire
17 estate of the recipient for all such public assistance granted
18 to the recipient and shall file such claim against the estate of
19 the recipient. Such claim shall have the same priority as a
20 judgment against the estate of the recipient.

21 Notwithstanding any statute of limitations to the contrary,
22 no such claim shall be enforced against the property of a
23 recipient during the life of his surviving spouse or during the
24 minority of his surviving minor children, if any.

25 Any funds recovered from an estate of a recipient pursuant
26 to this section shall be shared by the county, state, and federal
27 government in proportion to the amounts that each contributed
28 toward aid grants to the recipient.

SENATE BILL

No. 793

Introduced by Senators Sturgeon, Way, Weingand, Bradley,
Schrade, and Cobey
(On behalf of the Senate Fact Finding Committee on
Labor and Welfare)

March 22, 1965

REFERRED TO COMMITTEE ON SOCIAL WELFARE

*An act to amend Section 449.6 of the Welfare and Institutions
Code, relating to public assistance.*

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 449.6 of the Welfare and Institutions
- 2 Code is amended to read:
- 3 449.6. If the applicant is determined to be eligible, aid
- 4 shall be granted from the first day of the month following the
- 5 date of application, or from the first day of the month follow-
- 6 ing the date on which he becomes eligible if found to be later
- 7 than the date of application, or upon an earlier date if deter-
- 8 mined by and in connection with a petition for a fair hearing;
- 9 provided, however, that nothing contained herein shall be con-
- 10 strued to prevent a county welfare department from making
- 11 aid effective under Chapter 1 (commencing with Section 1500)
- 12 of Part 2 of Division 2 as soon as eligibility is determined, if
- 13 such date is earlier than that specified herein.
- 14 The county at the time of receiving an application for public
- 15 assistance shall determine whether the applicant needs imme-
- 16 diate assistance. If it appears that the applicant is eligible for
- 17 public assistance and a signed affirmation is on file to this effect
- 18 aid ~~shall~~ *may* be granted immediately. If subsequent investiga-
- 19 tion establishes ineligibility then the cost of such assistance
- 20 shall be shared by the state and county in accordance with the
- 21 applicable sharing ratio after federal contributions are de-
- 22 ducted.

LEGISLATIVE COUNSEL'S DIGEST

SB 793, as introduced, Sturgeon (Soc. Wel.). Public assistance.

Amends Sec. 449.6, W. & I.C.

Permits, rather than requires, county to pay aid on the basis of presumptive eligibility.

SENATE BILL

No. 794

Introduced by Senators Sturgeon, Way, Weingand, Rodda,
Bradley, Schrade, and Cobey

(On behalf of the Senate Fact Finding Committee on
Labor and Welfare)

March 22, 1965

REFERRED TO COMMITTEE ON SOCIAL WELFARE

*An act to amend Section 443 of, and to add Sections 1509.6
and 1521.1 to, the Welfare and Institutions Code, relating
to public assistance.*

The people of the State of California do enact as follows:

1 SECTION 1. Section 443 of the Welfare and Institutions
2 Code is amended to read:

3 443. In order that recipients of public assistance may be
4 become self-supporting and productive members of their com-
5 munities, it is essential that they be permitted to earn money
6 without a proportionate deduction in their aid grants. It is
7 the intention of the Legislature to promote this objective to the
8 extent possible within the limitations imposed by federal law,
9 and the *director State Social Welfare Board*, in implementing
10 public assistance laws, is directed to do so in the light of this
11 objective.

12 In determining the income of a recipient, the following re-
13 quirements shall be observed:

14 (a) To the extent permitted by federal law, earned income
15 of a recipient of aid under any public assistance program for
16 which federal funds are available shall not be considered in-
17 come or resources of the recipient, and shall not be deducted
18 from the amount of aid to which the recipient would otherwise
19 be entitled.

LEGISLATIVE COUNSEL'S DIGEST

SB 794, as introduced, Sturgeon (Soc. Wel.). Public assistance.

Amends Sec. 443, adds Secs. 1509.6, 1521.1, W. & I.C.

Exempts 50 percent of earnings of needy child under 18 years of age for purpose of computing aid to families with dependent children grant or personal property holdings, and also exempts from consideration in computing personal property holdings earned income of child which is being saved for future education or preparation for future employment.

Expressly sets forth income exemptions permitted by federal law for aged and blind aid recipients, instead of granting such exemptions by reference to federal law.

SB 794

— 2 —

1 (a) ~~(b)~~ In computing the amount of income determined to
2 be available to support a recipient, the value of currently used
3 resources shall be included but the value of casual income and
4 inconsequential resources shall be excluded.

5 (b) *If the recipient is a recipient of old age assistance under*
6 *the provisions of Chapter 1 (commencing with Section 2000)*
7 *of Division 3, of the first fifty dollars (\$50) of his earned in-*
8 *come, the first ten dollars (\$10), plus one-half of the remainder,*
9 *shall be disregarded, and shall not be deducted from the*
10 *amount of aid to which the recipient would otherwise be en-*
11 *titled.*

12 (c) *If the recipient is a recipient of aid to the blind under*
13 *the provisions of Chapter 1 (commencing with Section 3000)*
14 *of Part 1 of Division 5, the first eighty-five dollars (\$85) per*
15 *month of his earned income, plus one-half of his earned income*
16 *in excess of eighty-five dollars (\$85) per month, shall be dis-*
17 *regarded, and shall not be deducted from the amount of aid to*
18 *which the recipient would otherwise be entitled. For such*
19 *period as is permitted by federal law, there shall also be dis-*
20 *regarded such additional amounts of other income and other*
21 *resources, in the case of an individual who has an approved*
22 *plan for achieving self-support, as may be necessary for the*
23 *fulfillment of such plan.*

24 (d) *Earned and other income made available to recipients*
25 *of public assistance through the various titles of the federal*
26 *Economic Opportunity Act of 1964, to the extent provided by*
27 *federal law and regulations, shall not be deducted from the*
28 *amount of aid to which the recipient would otherwise be en-*
29 *titled.*

30 SEC. 2. Section 1509.6 is added to said code, to read:

31 1509.6. For the purposes of this chapter, 50 percent of the
32 earnings of a needy child under the age of 18 years shall not
33 be considered as income to the family unit in determining the
34 amount of assistance to be granted to the family unit.

35 SEC. 3. Section 1521.1 is added to said code, to read:

36 1521.1. For the purposes of this chapter "personal prop-
37 erty" shall not include any earned income of a child which is
38 exempted under Section 1509.6 or, any earned income of a
39 child which is being saved for future education or preparation
40 for future employment.

SENATE BILL

No. 795

Introduced by Senators Sturgeon, Bradley, Rodda, and Weingand
(On behalf of the Senate Fact Finding Committee on
Labor and Welfare)

March 22, 1965

REFERRED TO COMMITTEE ON SOCIAL WELFARE

An act to add Section 4727 to the Welfare and Institutions Code, relating to medical assistance for the aged.

The people of the State of California do enact as follows:

1 SECTION 1. Section 4727 is added to the Welfare and In-
2 stitutions Code, to read:

3 4727. The State Department of Social Welfare, in fixing
4 allowances for nursing homes under this chapter, shall fix
5 such allowances on a regional basis by averaging costs in-
6 curred, including a reasonable profit, by nursing homes in the
7 respective regions. Such costs shall be determined by means
8 of audits conducted by the department.

9 Each nursing home shall pay a fee of ten cents (\$0.10) per
10 bed monthly to cover the cost of the audits required by this
11 section. Any nursing home which fails to pay such fee shall
12 be ineligible to receive funds under this chapter.

LEGISLATIVE COUNSEL'S DIGEST

SB 795, as introduced, Sturgeon (Soc. Wel). Medical assistance for the aged.

Adds Sec. 4727, W. & I.C.

Requires Department of Social Welfare to establish allowances for nursing home services on a regional basis by averaging costs incurred, including a reasonable profit, by nursing homes in respective regions.

Requires nursing homes to pay monthly fee of ten cents per bed to cover costs of audits conducted to determine such average costs.

SENATE BILL

No. 796

Introduced by Senators Sturgeon, Way, Rodda, Bradley,
Weingand, Cobey, and Schrade
(On behalf of the Senate Factfinding Committee on
Labor and Welfare)

March 22, 1965

REFERRED TO COMMITTEE ON SOCIAL WELFARE

*An act to amend Section 4701 of the Welfare and Institutions
Code, relating to medical assistance for the aged.*

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 4701 of the Welfare and Institutions
2 Code is amended to read:
3 4701. As used in this chapter:
4 (a) "Medical assistance" means medical care as defined by
5 Section 4502 of this code, which is rendered in behalf of aged
6 persons as provided by Section 4722 of this chapter and the
7 regulations of the State Social Welfare Board pursuant
8 thereto.
9 (b) "Aged person" means any person 65 years of age or
10 older who meets the following conditions:
11 1. Who resides in California.
12 2. Whose average monthly income over the next 12 months
13 is not expected to exceed the costs of his medical care plus the
14 cost of his maintenance as determined by the standard of
15 assistance for a recipient of old age security.
16 3. Who does not own personal or real property or both in
17 excess of the amount permitted for recipients of old age
18 security.
19 ~~4. Who is not a recipient of old age security.~~
20 ~~5.~~
21 4. Who is not a patient in an institution for tuberculosis
22 or mental diseases.

LEGISLATIVE COUNSEL'S DIGEST

SB 796, as introduced, Sturgeon (Soc. Wel.). Medical assistance for aged.

Amends Sec. 4701, W. & I.C.

Deletes provision making recipient for old age security ineligible for medical assistance for the aged.

SB 796

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1 ~~6.~~

2 5. Who is not a patient in a medical institution as a result
3 of a diagnosis of tuberculosis or psychosis except to the extent
4 federal reimbursement is provided by Title I of the federal
5 Social Security Act.

6 ~~7.~~

7 6. Who is not an inmate of a public institution except as
8 a patient in a public medical institution.

9 (c) "County hospital" means a medical facility established
10 and maintained by the board of supervisors of a county pur-
11 suant to Section 1441 of the Health and Safety Code.

12 (d) "Contract hospital" means a nonprofit medical facility
13 licensed pursuant to Section 1401 of the Health and Safety
14 Code, with which the board of supervisors of a county which
15 does not maintain a county hospital has executed a contract,
16 currently in effect, to care for medically indigent individuals.

Senate Joint Resolution

No. 35

Introduced by Senators Sturgeon, Way, Bradley, Cobey, Rodda,
Schrade, and Weingand

(On behalf of the Senate Factfinding Committee
on Labor and Welfare)

March 22, 1965

REFERRED TO COMMITTEE ON SOCIAL WELFARE

Senate Joint Resolution No. 35—Relating to the concurrent receipt of old age assistance and medical assistance to the aged.

1 WHEREAS, Section 1 of Title I of the Social Security Act
2 prohibits the concurrent receipt of old age assistance and
3 medical assistance for the aged; and

4 WHEREAS, This prohibition unjustly discriminates between
5 the recipient of old age assistance who, when ill, must wait up
6 to a month in order to become eligible for medical assistance
7 for the aged, and the aged recipient of aid to the blind or aid
8 to the totally disabled who becomes immediately eligible for
9 M.A.A.; and

10 WHEREAS, This prohibition causes great hardships for the ill
11 recipient of old age assistance in that he must deplete his per-
12 sonal resources, if any, to pay for necessary hospitalization
13 and related medical services until he can become eligible for
14 M.A.A.; and

15 WHEREAS, This prohibition causes a substantial economic
16 drain on local governments, medical practitioners, and hos-
17 pitals who must furnish and pay for hospitalization and re-
18 lated medical services for O.A.A. recipients who have no per-
19 sonal resources; now, therefore, be it

20 *Resolved by the Senate and Assembly of the State of Cali-*
21 *fornia, jointly,* That the Congress of the United States is re-
22 spectfully memorialized to eliminate from the Social Security
23 Act the prohibition against the concurrent receipt of old age
24 assistance and medical assistance for the aged; and be it
25 further

LEGISLATIVE COUNSEL'S DIGEST

SJR 35, as introduced, Sturgeon (Soc. Wel.). Social Security Act.

Memorializes Congress to amend the Social Security Act to eliminate the prohibition against the concurrent receipt of old age assistance and medical assistance for the aged.

SJR 35

— 2 —

1 *Resolved*, That the Secretary of the Senate be hereby directed
2 to transmit copies of this resolution to the President and Vice
3 President of the United States, the Speaker of the House of
4 Representatives, to each senator and representative in this
5 state's delegation to the Congress, and to the Secretary of the
6 United States Department of Health, Education, and Welfare.

SENATE BILL

No. 797

Introduced by Senators Way, Bradley, Schrade, and Cobey
 (On behalf of the Senate Factfinding Committee on
 Labor and Welfare)

March 22, 1965

REFERRED TO COMMITTEE ON SOCIAL WELFARE

An act to repeal Section 4735 of, and to add Section 4735 to, the Welfare and Institutions Code, relating to medical assistance to the aged.

The people of the State of California do enact as follows:

1 SECTION 1. Section 4735 of the Welfare and Institutions
 2 Code is repealed.

3 4735. No relative shall be held legally liable to support or
 4 to contribute to the support of any applicant for or recipient
 5 of assistance under this chapter.

6 Notwithstanding the provisions of Section 206 of the Civil
 7 Code, or Section 270e of the Penal Code, or any other provi-
 8 sion of this code no demand shall be made upon any relative to
 9 support or contribute toward the support of any applicant for
 10 or recipient of assistance under this chapter. No county or
 11 officer or employee thereof shall threaten any such relative
 12 with any legal action against him, by or in behalf of the county
 13 or with any penalty whatsoever.

14 SEC. 2. Section 4735 is added to said code, to read:

15 4735. The degree of liability of adult children to contribute
 16 to the support or care of any aged person who receives medical
 17 assistance under this chapter shall be determined in accord-
 18 ance with the provisions of Section 2181 of this code.

LEGISLATIVE COUNSEL'S DIGEST

SB 797, as introduced, Way (Soc. Wel.). Medical assistance to the aged.

Repeals and adds Sec. 4735, W. & I.C.

Requires adult children of recipients of medical assistance to the aged to contribute to the support or care of such recipients, and makes degree of liability the same as is prescribed for adult children of old age assistance recipients.

SENATE BILL

No. 798

**Introduced by Senators Sturgeon, Way, Weingand, Rodda,
Bradley, Schrade, and Cobey**
(On behalf of the Senate Fact Finding Committee on
Labor and Welfare)

March 22, 1965

REFERRED TO COMMITTEE ON SOCIAL WELFARE

*An act to repeal Section 4000 of, and to add Section 4000 to,
the Welfare and Institutions Code, relating to aid to the
disabled.*

The people of the State of California do enact as follows:

1 SECTION 1. Section 4000 of the Welfare and Institutions
2 Code is repealed.

3 4000. When used in this chapter, the following words shall
4 have the meanings ascribed to them in this section:

5 (a) "Needy disabled person" means a person who meets the
6 eligibility requirements set forth in this chapter and who is
7 both permanently impaired and totally disabled.

8 (b) "Permanently impaired" means that the individual has
9 a major physical or a major mental impairment or a combina-
10 tion of both which is verified by medical findings and appears
11 reasonably certain to continue throughout the lifetime of the
12 individual without substantial improvement.

LEGISLATIVE COUNSEL'S DIGEST

SB 798, as introduced, Sturgeon (Soc. Wel.). Aid to disabled.

Repeals and adds Sec. 4000, W. & I.C.

Provides that terms "needy disabled person," "permanently impaired," and "totally disabled" shall have meanings ascribed to them in regulations of the State Department of Social Welfare in effect on February 1, 1965, instead of defining such terms by statute.

SB 798

— 2 —

1 (c) "~~Totally disabled~~" means that the impairment substan-
2 tially precludes the individual from engaging in useful occu-
3 pations within his competence, such as holding a job or home-
4 making. Employment in a sheltered workshop or under an
5 approved vocational rehabilitation plan shall not be considered
6 a "~~useful occupation~~" for purposes of this chapter.

7 SEC. 2. Section 4000 is added to said code, to read:

8 4000. The terms "needy disabled person," "permanently
9 impaired," and "totally disabled" shall have the meanings
10 ascribed to them in the regulations of the State Department
11 of Social Welfare in effect on February 1, 1965.

SENATE BILL

No. 799

Introduced by **Senators Sturgeon, Way, Weingand, Rodda,
Bradley, Schrade, and Cobey**
(On behalf of the Senate Fact Finding Committee on
Labor and Welfare)

March 22, 1965

REFERRED TO COMMITTEE ON SOCIAL WELFARE

An act to amend Sections 4135 and 4181.5 of the Welfare and Institutions Code, relating to aid to the disabled.

The people of the State of California do enact as follows:

1 SECTION 1. Section 4135 of the Welfare and Institutions
2 Code is amended to read:

3 4135. The State Department of Social Welfare shall *either*
4 make the final determination as to permanent impairment and
5 total disability *or, if it deems it feasible, shall delegate such*
6 *function to the counties.*

7 SEC. 2. Section 4181.5 of said code is amended to read:

8 4181.5. *Unless the department has delegated to the county*
9 *the duty to make the final determination of permanent impair-*
10 *ment and total disability, the* The county shall upon applica-
11 tion and periodically as required submit a complete report,
12 with a recommendation as to eligibility, of the medical informa-
13 tion and other essential facts relative to the determination of
14 permanent impairment and total disability to the State De-
15 partment of Social Welfare for decision.

16 If the State Department of Social Welfare *or the county,*
17 *as the case may be,* finds the person to be disabled in accord-
18 ance with the definitions set forth in Section 4000 the county
19 shall, if the person is otherwise eligible, authorize aid as soon
20 as administratively possible.

LEGISLATIVE COUNSEL'S DIGEST

SB 799, as introduced, Sturgeon (Soc. Wel.). Aid to the disabled.

Amends Secs. 4135, 4181.5, W. & I.C.

Directs the State Department of Social Welfare, if feasible, to delegate to the counties duty to make the final determination as to the permanent impairment and total disability of an applicant for aid.

Senate Joint Resolution

No. 36

Introduced by Senators Sturgeon, Way, Bradley, Cobey, Rodda,
Schrade, and Weingand

(On behalf of the Senate Factfinding Committee on
Labor and Welfare)

March 22, 1965

REFERRED TO COMMITTEE ON SOCIAL WELFARE

*Senate Joint Resolution No. 36—Relating to the determination
of medical eligibility for the aid to the blind and the aid to
the totally disabled programs.*

1 WHEREAS, Regulations of the United States Department of
2 Health, Education, and Welfare and the provisions of the
3 Social Security Act permit local governmental welfare agencies
4 under the supervision of a state welfare agency to administer
5 public welfare programs and make determinations as to the
6 eligibility of applicants for aid; and

7 WHEREAS, Other regulations of the Department of Health,
8 Education, and Welfare prohibit local welfare agencies from
9 making the final medical eligibility determinations of the
10 blindness and disability of applicants for the aid to the blind
11 and the aid to the totally disabled programs and require the
12 state welfare agency to make these medical findings; and

13 WHEREAS, There is nothing which innately makes at least
14 some local governmental welfare agencies incapable or unquali-
15 fied to make such medical eligibility determinations; and

16 WHEREAS, The prohibition of local agencies making such
17 medical eligibility determinations results in waste and un-
18 necessary administrative complexity and often causes appli-
19 cants for aid unwarranted delays in the processing of their
20 applications; now, therefore, be it

21 *Resolved by the Senate and the Assembly of the State of*
22 *California, jointly, That the United States Department of*

LEGISLATIVE COUNSEL'S DIGEST

SJR 36, as introduced, Sturgeon (Soc. Wel.). Welfare applicant's medical eli-
gibility.

Memorializes the United States Department of Health, Education and Welfare
to amend its regulations so as to permit local governmental welfare agencies to
determine the medical eligibility of applicants for aid to the blind and aid to the
totally disabled.

SJR 36

— 2 —

1 Health, Education, and Welfare is memorialized to amend its
2 regulations so as to permit local governmental welfare agencies
3 to determine the medical eligibility of applicants for aid to the
4 blind and aid to the totally disabled; and be it further
5 *Resolved*, That the Secretary of the Senate be hereby directed
6 to transmit copies of this resolution to the President of the
7 United States and to the Secretary of the United States De-
8 partment of Health, Education and Welfare.

Senate Joint Resolution

No. 37

Introduced by Senators Sturgeon, Way, Bradley, Cobey, Rodda,
Schrade, and Weingand

(On behalf of the Senate Factfinding Committee on
Labor and Welfare)

March 22, 1965

REFERRED TO COMMITTEE ON SOCIAL WELFARE

Senate Joint Resolution No. 37—Relative to protective payments of aid in behalf of recipients of aid to the permanently and totally disabled.

- 1 WHEREAS, The federal Social Security Act requires that aid
2 granted recipients of aid to the permanently and totally dis-
3 abled program be in the form of direct money payments; and
4 WHEREAS, Often recipients of this program, because of their
5 addiction to alcohol and drugs or because of their mental con-
6 dition, are unable to manage direct money payments to their
7 own benefit and best self-interest; and
8 WHEREAS, Similar money management problems in the aid
9 to families with dependent children program have been suc-
10 cessfully overcome by amendments to the Social Security Act
11 permitting, under carefully controlled situations, protective
12 payments made in behalf of the recipient to another interested
13 or concerned individual; now, therefore, be it
14 *Resolved by the Senate and the Assembly of the State of*
15 *California, jointly,* That the Congress of the United States is
16 respectfully memorialized to amend the Social Security Act
17 to permit protective payments of aid in behalf of recipients of
18 aid to the permanently and totally disabled when such recipi-
19 ents are unable to use direct money payments to their own
20 benefit and best self-interest; and be it further
21 *Resolved,* That the Secretary of the Senate be hereby di-
22 rected to transmit copies of this resolution to the President

LEGISLATIVE COUNSEL'S DIGEST

SJR 37, as introduced, Sturgeon (Soc. Wel.). Aid: permanently and totally disabled.

Memorializes Congress to amend the Social Security Act to permit protective payments of aid in behalf of recipients of aid to the permanently and totally disabled when such recipients are unable to use direct money payments to their own benefit and best self-interest.

SJR 37

— 2 —

- 1 and Vice President of the United States, the Speaker of the
- 2 House of Representatives, to each senator and representative
- 3 in this state's delegation to the Congress, and to the Secretary
- 4 of the United States Department of Health, Education and
- 5 Welfare.

SENATE BILL

No. 800

Introduced by **Senators Sturgeon, Way, Weingand, Rodda,
Bradley, Schrade, and Cobey**
(On behalf of the Senate Fact Finding Committee on
Labor and Welfare)

March 22, 1965

REFERRED TO COMMITTEE ON SOCIAL WELFARE

An act to amend Sections 3040 and 4160 of, and to add Section 3041 to, the Welfare and Institutions Code, relating to public assistance.

The people of the State of California do enact as follows:

1 SECTION 1. Section 3040 of the Welfare and Institutions
2 Code is amended to read:

3 3040. No person *who became blind while a resident of the*
4 *state* is entitled to aid under the provisions of this chapter or
5 Chapter 3 (commencing with Section 3400) of this part, un-
6 less he is at least 16 years of age and is a resident of the state.
7 No period of residence in this state is required.

8 SEC. 2. Section 3041 is added to said code, to read:

9 3041. No person who became blind while a nonresident of
10 this state is entitled to aid under the provisions of this chap-
11 ter or Chapter 3 (commencing with Section 3400) of this part,
12 unless he is at least 16 years of age, and unless he resides in
13 this state and has so resided continuously for at least one
14 year immediately preceding the date of application and for
15 at least five years within the nine years immediately preceding
16 the date of such application.

LEGISLATIVE COUNSEL'S DIGEST

SB 800, as introduced, Sturgeon (Soc. Wel.). Public assistance.

Amends Secs. 3040, 4160, adds Sec. 3041, W. & I.C.

Provides that person who became blind while nonresident of state is not eligible for aid to the blind unless he has resided in state for 5 of 9 years preceding application for aid and for one year continuously preceding application.

Provides that person who became disabled while nonresident of state is not eligible for aid to the disabled unless he has resided in state for 5 of 9 years preceding application for aid.

SB 800

— 2 —

1 SEC. 3. Section 4160 of said code is amended to read:

2 4160. Aid shall be granted under this chapter to any needy
3 disabled person who comes within all of the following de-
4 scriptions:

5 (a) Who has attained the age of 18 years.

6 (b) Who resides in the state and has so resided for at least
7 one year immediately preceding the date of application and
8 for at least ~~three~~ *five* years within the nine years immediately
9 preceding the date of application, *or who* has become disabled
10 while a resident of this state, ~~or is eligible under the terms of~~
11 ~~a reciprocal agreement entered into by the department with~~
12 ~~another state.~~

13 (c) Who has not made any voluntary assignment or trans-
14 fer of property for the purpose of qualifying for such aid.

15 (d) Who is not at the time of receiving such aid a patient
16 in an institution for tuberculosis or mental disease, a patient
17 in a medical institution as the result of a diagnosis of tuber-
18 culosis or psychosis, an inmate of a public institution of a cus-
19 todial (nonmedical), penal, or correctional character, or an
20 inmate of a federal medical institution. Any such inmate or
21 patient, however, may make an application for aid under this
22 chapter and have his application investigated and acted upon
23 without delay, in the same manner as applications of other
24 persons are acted upon, while he is such an inmate or patient,
25 and, if he is otherwise qualified under the terms of this chap-
26 ter, such application shall be approved. The aid shall be
27 granted to him from the first day of the month in which the
28 determination is made that he is eligible, but in no event shall
29 the aid commence prior to the date of the application. The
30 applicant may remain an inmate or patient until he receives
31 his first monthly payment, whereupon he shall cease to be
32 such inmate or patient.

33 (e) Who is not receiving adequate support from a husband
34 or wife, or parent, or child.

SENATE BILL

No. 801

Introduced by **Senators Sturgeon, Way, Weingand, Rodda,
Bradley, Schrade, and Cobey**
(On behalf of the Senate Fact Finding Committee on
Labor and Welfare)

March 22, 1965

REFERRED TO COMMITTEE ON SOCIAL WELFARE

*An act to amend Section 403 of the Welfare and Institutions
Code, relating to welfare projects.*

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 403 of the Welfare and Institutions
2 Code is amended to read:
3 403. Among the projects approved by the State Depart-
4 ment of Social Welfare priority shall be given to those which
5 involve:
6 (a) Efforts to minimize as much as possible within the limits
7 of state and federal laws the administrative differences be-
8 tween the several categories of assistance;
9 (b) Demonstrations in providing family service programs;
10 (c) Employment counseling, training, and placement pro-
11 grams for public welfare recipients;
12 (d) Extension of rehabilitation and self-care services for
13 handicapped and incapacitated persons not accepted for serv-
14 ices offered by the *Department Bureau of Vocational Reha-*
15 *bilitation of the State Department of Education* ;
16 (e) Efforts designed to give particular attention to the fam-
17 ily where dependency is associated with illegitimacy, parental
18 behavior, delinquency and other family relationship problems;
19 (f) Coordinated use of medical, psychiatric, and casework
20 services with public welfare recipients;
21 (g) Development of caseload management and case classifi-
22 cation programs;
23 (h) Homemaker services for families and adults;

LEGISLATIVE COUNSEL'S DIGEST

SB 801, as introduced, Sturgeon (Soc. Wel.). Welfare projects.

Includes among county welfare projects for which state assistance is available those which involve the safeguarding of public funds by the detection of fraud and improving the accuracy of eligibility determinations.

SB 801

— 2 —

- 1 (i) Protective services for both children and adults;
2 (j) Projects demonstrating use of preventive services re-
3 lated to dependency, family breakdown, or personal maladjust-
4 ment; and
5 (k) Participation of county welfare departments in com-
6 munity service programs particularly in approaches to prob-
7 lems of underprivileged presented by recipients from minority
8 groups.
9 (l) *The safeguarding of public funds by the detection of*
10 *fraud and improving the accuracy of eligibility determinations.*

SENATE BILL

No. 802

Introduced by **Senators Sturgeon, Way, Weingand, Rodda,
Bradley, Schrade, and Cobey**
(On behalf of the Senate Fact Finding Committee on
Labor and Welfare)

March 22, 1965

REFERRED TO COMMITTEE ON SOCIAL WELFARE

*An act to amend Section 104.1 of the Welfare and Institutions
Code, relating to public assistance.*

The people of the State of California do enact as follows:

1 SECTION 1. Section 104.1 of the Welfare and Institutions
2 Code is amended to read:

3 104.1. Notwithstanding any other provisions of this code,
4 the director is the only person authorized to adopt regulations,
5 orders, or standards of general application which are adopted
6 to implement, interpret, or make specific the law enforced by
7 the department, and such regulations, orders, and standards
8 shall be adopted, amended, or repealed by the director only
9 in accordance with the provisions of Chapter 4.5, Part 1, Di-
10 vision 3, Title 2 of the Government Code; ~~except that such~~
11 ~~regulations need not~~. *Such regulations, orders, and standards*
12 *shall be printed in the California Administrative Code or*
13 *California Administrative Register if they are included in the*
14 *publications of the Department of Social Welfare.*

15 In adopting regulations the director shall strive for clarity
16 of language which may be readily understood by those ad-
17 ministering public social services, or subject to such regula-
18 tions.

19 The rules of the department need not specify or include the
20 detail of forms, reports or records but shall include the es-
21 sential authority by which any person, agency, organization, as-
22 sociation or institution subject to the supervision or investiga-
23 tion of the department is required to use, submit or maintain
24 such forms, reports or records.

LEGISLATIVE COUNSEL'S DIGEST

SB 802, as introduced, Sturgeon (Soc. Wel.). Public assistance.

Amends Sec. 104.1, W. & I.C.

Requires that regulations, orders, and standards of the State Department of Social Welfare be printed in the California Administrative Code.

Senate Joint Resolution

No. 38

**Introduced by Senators Sturgeon, Way, Bradley, Cobey, Rodda,
Schrade, and Weingand**

(On behalf of the Senate Factfinding Committee on
Labor and Welfare)

March 22, 1965

REFERRED TO COMMITTEE ON SOCIAL WELFARE

*Senate Joint Resolution No. 38—Relative to the standards for
public assistance caseloads adopted by the United States De-
partment of Health, Education, and Welfare.*

1 WHEREAS, In 1962 the United States Congress adopted
2 amendments to the Social Security Act to stimulate the pro-
3 vision of services by public welfare departments to aid re-
4 cipients which would maintain and strengthen family life and
5 assist recipients in attaining or retaining their capabilities for
6 self-support or self-care; and

7 WHEREAS, The necessity of providing such services to attain
8 these goals has been recognized, accepted, and implemented in
9 California by the State Legislature, county boards of super-
10 visors, and the state and county public welfare departments;
11 and

12 WHEREAS, In implementing the services program authorized
13 by the Congress the United States Department of Health,
14 Education, and Welfare has prescribed rigid standards of
15 maximum ratios of 1 supervisor to 5 caseworkers and 1 case-
16 worker to 60 cases for all adult and family cases needing serv-
17 ices; and

18 WHEREAS, These inflexible standards have little direct rele-
19 vance to the ability of public welfare departments to provide
20 those services necessary for the diagnosis and treatment of
21 the causes of dependency; and

22 WHEREAS, These strict standards have often actually im-
23 peded attempts to provide such services; now, therefore, be it

LEGISLATIVE COUNSEL'S DIGEST

SJR 38, as introduced, Sturgeon (Soc. Wel.). Public assistance.

Memorializes the U.S. Department of Health, Education, and Welfare to relax its caseload and supervisory standards in order to permit states and counties that flexibility which is essential to success in public welfare service programs.

SJR 38

— 2 —

- 1 *Resolved by the Senate and the Assembly of the State of*
2 *California, jointly,* That the United States Department of
3 Health, Education, and Welfare is memorialized to relax its
4 caseload and supervisory standards in order to permit the
5 states and the counties that flexibility which is essential to
6 success in the services program; and be it further
7 *Resolved,* That the Department of Health, Education, and
8 Welfare place emphasis on the results achieved through the
9 services program rather than on the adherence to rigid pro-
10 cedural requirements; and be it further
11 *Resolved,* That the Secretary of the Senate be hereby di-
12 rected to transmit copies of this resolution to the President
13 of the United States and to the Secretary of the United States
14 Department of Health, Education, and Welfare.

Senate Joint Resolution

No. 39

**Introduced by Senators Sturgeon, Way, Bradley, Cobey, Rodda,
Schrade, and Weingand**
(On behalf of the Senate Fact Finding Committee on
Labor and Welfare)

March 22, 1965

REFERRED TO COMMITTEE ON SOCIAL WELFARE

*Senate Joint Resolution No. 39—Relating to judicial review in
public assistance cases.*

1 WHEREAS, It is in the public interest that the administrative
2 interpretation of statutory provisions be subject to judicial re-
3 view, so that those subject to regulation may have a forum
4 wherein they may obtain an impartial determination as to the
5 meaning of the statutes under which they operate; and

6 WHEREAS, The Social Security Act does not provide a state,
7 its political subdivisions, or a recipient of public assistance
8 such a judicial review of decisions made by the United States
9 Department of Health, Education, and Welfare relating to the
10 public assistance titles of the act; and

11 WHEREAS, The result is that the United States Department
12 of Health, Education, and Welfare is the final judge as to
13 whether a state is in conformity with the intent of the Social
14 Security Act; and

15 WHEREAS, The apparent unlimited authority conferred on
16 the department prevents the legislatures in the various states,
17 in many instances, from enacting desirable legislation in the
18 field of public assistance due to statements, often unfounded,
19 that the legislation will be declared by the department to be
20 out of conformity with federal requirements; and

LEGISLATIVE COUNSEL'S DIGEST

SJR 39, as introduced, Sturgeon (Soc. Wel.). Public assistance.

Memorializes Congress to amend Social Security Act to entitle states, their political subdivisions, and public assistance recipients to maintain appropriate actions in the United States Court of Appeal to obtain prompt and adequate judicial review of administrative determinations made under public assistance titles of the Social Security Act.

SJR 39

— 2 —

1 WHEREAS, If provision were expressly made for an adequate
2 judicial review of decisions of the department in the federal
3 courts, the problems discussed above would be equitably elim-
4 inated and there would grow a body of judicial precedents
5 that would enable the states to determine the extent of their
6 discretion under the Social Security Act; and

7 WHEREAS, The Advisory Commission on Intergovernmental
8 Relations has recently recommended that the states be given
9 the expressed right to appeal to the United States Court of
10 Appeals from administrative decisions of the department re-
11 garding conformity of their plans under the public assistance
12 titles of the Social Security Act; now, therefore, be it

13 *Resolved by the Senate and Assembly of the State of Cali-*
14 *fornia, jointly,* That the Congress of the United States is re-
15 spectfully memorialized to amend the Social Security Act to
16 entitle the states, their political subdivisions, and public assist-
17 ance recipients to maintain appropriate actions in the United
18 States Court of Appeals to obtain prompt and adequate judi-
19 cial review of administrative determinations made under the
20 public assistance titles of the Social Security Act; and be it
21 further

22 *Resolved,* That the Secretary of the Senate be hereby di-
23 rected to transmit copies of this resolution to the President
24 and Vice President of the United States, the Speaker of the
25 House of Representatives, to each senator and representative
26 in this state's delegation to the Congress, and to the Secretary
27 of the United States Department of Health, Education, and
28 Welfare.

Senate Concurrent Resolution

No. 48

Introduced by Senators Sturgeon, Way, Bradley, Cobey,
Rodda, and Weingand

(On behalf of the Senate Factfinding Committee
on Labor and Welfare)

March 22, 1965

REFERRED TO COMMITTEE ON SOCIAL WELFARE

Senate Concurrent Resolution No. 48—Relative to a systems analysis to simplify the administration of public assistance programs.

1 WHEREAS, It has become increasingly evident that public
2 assistance programs must enlarge their function from merely
3 being dole-paying programs to including services for the
4 diagnosis and treatment of the causes of dependency; and

5 WHEREAS, The success of such an emphasis on services is
6 wholly dependent upon the amount of time and skill which
7 caseworkers can devote to working with aid recipients to assist
8 them; and

9 WHEREAS, A blizzard of paperwork, complicated administra-
10 tive practices, and minutely detailed regulatory material have
11 increasingly engulfed public assistance caseworkers, precluding
12 them from working with aid recipients, and seriously jeopard-
13 izing the services approach; and

14 WHEREAS, New approaches, fresh thinking, and original
15 methods must be devised to bring a semblance of order and
16 simplicity to the administration of public welfare; and

17 WHEREAS, The Governor has recognized the gravity of the
18 existing situation and has proposed bringing the skills of Cali-
19 fornia's business, sciences, public administration, and techno-
20 logical industries to bear on these problems; now, therefore,
21 be it

22 *Resolved by the Senate of the State of California, the As-*
23 *sembly thereof concurring,* That the Governor be urged to im-
24 mediately order such a systems analysis of the administration
25 of public assistance programs in California.

LEGISLATIVE COUNSEL'S DIGEST

SCR 48, as introduced, Sturgeon (Soc. Wel.). Welfare.

Urges Governor to immediately order a systems analysis of the administration of public assistance programs in California.

SENATE RESOLUTION NO. 108

By Senators Sturgeon, Way, Bradley, Cobey, Rodda, Schrade, and Weingand: (On behalf of the Senate Fact Finding Committee on Labor and Welfare).

*Relative to a study of public welfare costs, financing,
cost sharing ratios, and administration*

WHEREAS, During the course of its 1963-65 study of California's public assistance programs the Senate Fact Finding Committee on Labor and Welfare reconfirmed the existence of serious problems relating to public welfare costs, financing, cost sharing ratios, and administration; and

WHEREAS, Eloquent arguments were presented to demonstrate the need for controlling more carefully total welfare expenditures in California, for providing relief from excessive welfare costs to county property-owning taxpayers, for simplifying and equalizing welfare cost sharing ratios, and for studying the desirability of state administration of public welfare programs; and

WHEREAS, Information, data, and specific proposals on these inter-related subjects sufficient and concrete enough to permit immediate action were lacking; and

WHEREAS, The Senate Fact Finding Committee on Labor and Welfare has recommended that no action be taken by the 1965 General Session of the Legislature pending further and more complete study of these problems; now, therefore, be it

Resolved by the Senate of the State of California, That the Senate Fact Finding Committee on Labor and Welfare is hereby authorized to undertake a study of public welfare costs, financing, cost sharing ratios, and state administration and report its findings and recommendations to the Senate no later than the 30th calendar day of the 1967 General Session of the Legislature.

SENATE RESOLUTION NO. 109

By Senators Sturgeon, Way, Bradley, Cobey, Rodda, Schrade, and Weingand: (On behalf of the Senate Fact Finding Committee on Labor and Welfare).

Relative to a study of child care centers, Welfare and Institutions Code revision and simplification, one unified adult category of aid, and flat grants

WHEREAS, The 1963-65 study of the Senate Fact Finding Committee on Labor and Welfare disclosed serious problems relating to the provision of child care facilities, the need for revision and simplification of the Welfare and Institutions Code, a study of one unified adult category of aid, and the payment of flat grants; and

WHEREAS, Limitations imposed by the committee's time and budget precluded its making a complete study and recommendations on these subjects prior to the 1965 General Session of the Legislature; now, therefore, be it

Resolved by the Senate of the State of California, That the Senate Fact Finding Committee on Labor and Welfare is hereby authorized to conduct a study of child care centers, revision and simplification of the Welfare and Institutions Code, one unified adult category of aid, and flat grants and report its findings and recommendations to the Senate no later than the 30th calendar day of the 1967 General Session of the Legislature.



APPENDICES

APPENDIX A

SENATE JOINT RESOLUTION NO. 13—1963

CHAPTER 163

Senate Joint Resolution No. 13 — Relative to judicial review in public assistance cases.

[Filed with Secretary of State June 24, 1963.]

WHEREAS, It is in the public interest that the administrative interpretation of statutory provisions be subject to judicial review, so that those subject to regulation may have a forum wherein they may obtain an impartial determination as to the meaning of the statutes under which they operate; and

WHEREAS, The law is not clear whether a state or its subdivisions, or a recipient of public assistance, may obtain a speedy and adequate judicial review of decisions made by the United States Department of Health, Education, and Welfare concerning the public assistance sections of the Social Security Act; and

WHEREAS, The result is that the United States Department of Health, Education, and Welfare, for practical purposes, is the final judge as to whether or not a state is in conformity with federal requirements; and

WHEREAS, The apparent unlimited authority conferred on the department prevents the legislatures in the various states, in many instances, from enacting sound legislation in the field of public assistance, due to statements, often unfounded, that the legislation will be declared by the department to be out of conformity with federal requirements; and

WHEREAS, If provision were expressly made for an adequate judicial review of decisions of the department in the federal courts, the problems discussed above would be eliminated, and there would grow a body of judicial precedents that would enable the states to determine the extent of their discretion under the Social Security Act; now, therefore, be it

Resolved by the Senate and Assembly of the State of California, jointly, That the Legislature of the State of California hereby memorializes the President of the United States, the Congress of the United States, and the Secretary of Health, Education, and Welfare to take such action as may be necessary to clearly enable a state and its political subdivisions, and public assistance recipients, to maintain appropriate actions in the federal courts to obtain a quick and adequate judicial review of administrative determinations made under the Social Security Act; and be it further

Resolved, That the Secretary of the Senate is directed to transmit copies of this resolution to the President of the United States, the Vice President of the United States, the Speaker of the House of Representatives, the Secretary of the United States Department of Health, Education and Welfare, and to each Senator and Representative from California in the Congress of the United States.

APPENDIX B

QUESTIONS FOR COUNTY SUPERVISORS' TESTIMONY SENATE FACT FINDING COMMITTEE ON LABOR AND WELFARE

San Luis Obispo, California
May 26, 27, and 28, 1964

1. Describe your county's first three months' experience (February, March, and April 1964) with the new features of California's child aid program which provides assistance to families with unemployed and underemployed parents (AFDC—UP).

- a) Include number of cases and recipients as of May 1, 1964.
- b) Include cost figures for these three months, broken down by gross and net county costs for grants and for administration.
- c) Compare these figures (b) with estimates made prior to February 1964, by such agencies as the county welfare department, the county administrative office, or the press, and indicate the source of each estimate given.
- d) Give the amount of the actual county budget for this fiscal year for AFDC—UP.

2. Comment on the staffing problems, if any, which you are facing due to both the new AFDC—UP program and S.D.S.W. Bulletin No. 629.

- a) How many additional staff members have you hired?
- b) Are you having difficulty in obtaining an adequate qualified staff? If so, do you believe such difficulties will continue?

3. Comment on the "work relief" feature of the AFDC—UP program in your county.

- a) Are you operating work experience and work training programs? Name them, and give the number of recipients involved.
- b) Name the work experience and work training programs which were operative prior to February 1, 1964.
- c) What difficulties, if any, have you encountered in setting up such programs?
- d) What suggestions do you have for improvements or changes in the present requirements regarding work experience and work training programs?

4. Describe your county's efforts to locate and obtain support from absent fathers whose families receive AFDC. Has AB 59 affected the number of such cases or the county's location and support-obtaining procedure?

5. What has been the effect of the changes made in all categorical aid programs through AB 59 on your General Relief program? (Specifically, compare your General Relief costs for February, March, and April 1963 with your costs for February, March, and April 1964.)

6. How many Medical Aid for the Aged cases did you have in county facilities during April 1964 who were there during the first 30 days of their confinement and for whom federal funds were available under the new legislation? (If available, also include any other figures for the period from July 1, 1963, to date.)

7. Are there any specific state M.A.A. regulations or statutes which merit reconsideration or modification?

8. What specific features of any aid programs covered by AB 59 and state regulations deserve further investigation by the Legislature? (Comment specifically in light of the actual experience of your county.)

APPENDIX C

SUMMARY OF RECOMMENDATIONS ON AB 59 AND BULLETIN 629

Public Hearings—May 26–28 and December 9–11, 1964

* State Statutory Change.

† State Administrative Change.

‡ Federal Statutory or Administrative Change.

MEDICAL ASSISTANCE FOR THE AGED

1. *1st 30 Days' Eligibility.*

*(a) State should share in costs.

Alameda p. 59, San Joaquin p. 192, Tehama p. 210, Kern p. 340, Merced p. 437, Sacramento p. 452. (Prepared statements—Amador p. 1, Calaveras p. 2, El Dorado p. 6, Mendocino p. 3, Siskiyou p. 5.) Cal. Tax. p. 75.

*‡(b) MAA and OAS should be payable during same month.

Lassen p. 80, Santa Clara p. 122, San Mateo p. 134, San Joaquin p. 192, Tehama p. 210, Riverside p. 243, Yolo p. 260, Sonoma p. 303, Humboldt p. 349, Marin p. 357, Sacramento p. 449, Kings p. 478, Mariposa p. 515. (Prepared statements—Alpine p. 2, Plumas p. 4, Trinity p. 2, Tuolumne p. 5.) Social Workers Union p. 147.

*(c) Private hospital patients should also be eligible for care during 1st 30 days.

Humboldt p. 349. (Prepared statements—Contra Costa p. 6, El Dorado p. 6, Santa Cruz p. 4, Trinity p. 2). Social Workers Union p. 146.

*(d) Reduce private hospital eligibility to or 15th day or after \$1,000 of costs.

(Prepared statement—Lake p. 2.)

*(e) Eliminate payment to nursing homes during 1st 30 days when patients are transferred in from county hospitals.

Ventura p. 171, Merced p. 437.

2. *Review of Cases Every 90 Days.*

†(a) Only some cases, not all.

Alameda p. 12 ps, Madera p. 283, Kern p. 339, Humboldt p. 351. (Prepared statements—Contra Costa p. 7, Monterey p. 5, Placer p. 8.)

†(b) Eliminate required visits to 10% of cases every 90 days.

Kern p. 339.

†(c) Need better supervision of patients in nursing homes.

Sonoma p. 304. (Prepared statement—Santa Cruz p. 4.)

*3. *Eliminate Outpatients from MAA.*

San Bernardino p. 106, Ventura p. 171.

†4. *Nursing Home Fee Schedule Reduced From 2 to 1 Level of Payment.*

Santa Clara p. 121, Kern p. 340. (Prepared statements—Placer p. 8, Santa Cruz p. 4, Yuba p. 6.)

†5. *Better Classification of Nursing Homes and Patients.*

Social Workers Union p. 147.

†6. *All Mental Hygiene Licensed Homes Should Be Eligible for MAA.*

Santa Clara p. 122.

- †7. *Restrict Overutilization of Physical Therapy.*
Kern p. 340.
- *8. *One State Agency to License Boarding and Nursing Homes Instead of Three.*
Sacramento p. 449.
- *9. *Increase Amount of OAS Aid Payable to Boarding Homes so MAA Patients Could Be Moved Out of Nursing Homes and Hospitals.*
Sacramento p. 449.
- *10. *Prohibit Advertising of MAA and PAMC.*
Cal. Tax. p. 75.
- *11. *MAA Certificate Not Valid for a Full Year.*
(Prepared statement—Contra Costa p. 6.)
- *12. *State Should Share in Administrative Costs of MAA.*
(Prepared statement—Mendocino p. 3.)
- *13. *PAMC Should Pay Outpatient Costs Re: Diagnosis Before Hospitalization.*
(Prepared statement—Amador p. 1.)

PUBLIC ASSISTANCE MEDICAL CARE

- *1. *Amount of Money, and Therefore Care, Inadequate—Especially AFDC.*
Yolo p. 261. SDSW p. 175.

AID TO FAMILIES WITH DEPENDENT CHILDREN

1. *Levels of Assistance*

- *(a) Too high in FG and UP in some instances.
Alameda p. 60, Ventura p. 167, Solano p. 13 ps, Riverside p. 245, Butte p. 273, Madera p. 293, Kern p. 320, Los Angeles p. 7 ps, Merced p. 425, Kings p. 478, Stanislaus p. 490, Nevada p. 512. (Prepared statement—Shasta p. 33.)
- *(b) Too low in some instances.
Humboldt p. 349, Los Angeles p. 7 ps. (Prepared statement—Tuolumne p. 6.) CSWO p. 108, Social Workers Union p. 138.
- *(c) Too high; should be based on average community income;
Lassen p. 78, Madera p. 293, Kern p. 320.
Previous average earnings of parent;
(Prepared statements—Monterey p. 5, Yuba p. 4.)
No special needs;
Keller.
Never should exceed minimum wage.
Tulare p. 203.
- *(d) Too low; should be based on: Not more than minimum wage plus exempted earned income equal to level of grant.
San Bernardino p. 96.
Increases in cost of living.
Sonoma p. 301.
- *(e) Repeal "subsidy" where one parent fully employed, other unemployed and eligible for UP.
Solano p. 13 ps, Kern p. 341, Los Angeles p. 7 ps. Keller, Cal. Tax. p. 76.

2. *Work Projects and Job Training.*

- *†(a) State or federal sharing in supervisorial costs.
San Bernardino p. 104, Tehama p. 208, Sonoma p. 301, Imperial p. 371, Los Angeles p. 7 ps, Sacramento p. 446. Cal. Tax. p. 76, CSWO p. 121.
- *(b) State sharing in recipients' needs caused by work projects.
(Prepared statements—El Dorado p. 4, Mendocino p. 2, Placer p. 9, San Diego p. 3.) Dietrich p. 26, Cal. Tax. p. 76.

- †‡(c) Should not specify membership of local citizen committees.
San Joaquin p. 188, Yolo p. 251. (Prepared statement—San Diego p. 2, Exhibit I.)
- ‡(d) Private employers should be able to cooperate in projects and training.
Kern p. 312, Humboldt p. 346.
- ‡(e) No need for Workmen's Compensation, at least that providing income if disabled.
Tulare p. 407, Stanislaus p. 499. (Prepared statements—San Diego p. 1, Exhibit I, Tuolumne p. 3.)
- *(f) Require women, stepfathers, fathers who have been deserted to participate too.
Kern p. 341, Merced p. 433.
- (g) Difficulty in getting child care arrangements so women can train and work.
Santa Clara p. 118 and p. 123. CSWO p. 121, SDSW p. 169.
- *(h) "Effect market demand" re: job trained for should also be determined by reliable sources other than Employment Department.
Alameda p. 8 ps.
- *(i) "Pay" credit determined on recipient's productivity.
(Prepared statement—San Diego p. 2, Exhibit I.)
Codify intent re: encouraging low productive worker's learning skills.
Cal. Tax. p. 77.

3. "*Good Causes*" for Refusing Employment (or Training).

- ‡(a) Not so specific in code, more local discretion.
Santa Barbara p. 148, Ventura p. 168, Yolo p. 257.
- *(b) Be more specific in code.
Cal. Tax. p. 77.
- *(c) Should be penalty for refusal to accept employment; 6 months' denial of aid.
Solano p. 13 ps.
Prosecution for failure to provide (270 P.C.).
Imperial p. 371.
Waiting period after loss of job.
Cal. Tax. p. 76.
Unspecified penalty.
Kern, p. 315.
- *(d) Burden of proof re: good or not good cause rests with county welfare department and should not.
Stanislaus p. 499.
Submit monthly verification employment is being sought.
Keller.
Codify specific requirements re: seeking employment.
Cal. Tax. p. 76.
- *(e) Deduct from grant for unauthorized absence from training or work project.
Kern p. 322.

4. "*Voluntary Quits*" and "*Strike Benefits*."

- *(a) Law and regulations should not permit.
Alameda p. 72, Ventura p. 168, San Joaquin p. 192, Solano p. 13 ps, Imperial p. 383.
- *(b) Prohibits aid to strikers, and three-month waiting period for voluntary quits.
Cal. Tax. p. 76.
- ‡(c) Unemployed should not be able to refuse offer for job because job is vacant because of strike.
Santa Barbara p. 148.
- ‡(d) Deduct anticipated income to lessen voluntary quits.
(Prepared statement—Mendocino p. 3.)

5. *Expansion of AFDC and AFDC-U.*

*‡(a) Should supplement low income families who are working full time.
NASW p. 97, CSWO p. 107, Social Workers Union p. 136.

(b) Should not supplement fully employed families.
Alameda p. 301.

*(c) Extend aid to children 18–21 years who are in school or in training.
CSWO p. 132, Social Workers Union p. 136.

*6. *Law Requiring Welfare to Locate Absent Fathers.*

No good, old way (with District Attorney) better.

Nevada p. 511. (Prepared statements—El Dorado p. 4, Santa Cruz p. 3.)

*7. *State Share in District Attorney's Costs re: Locating Fathers.*
Keller.

*8. *Applicant Must Have Legal Custody of Child Before Aid Can Be Granted.*
Keller.

9. *Unemployment Insurance vs. Unemployed Parents. (AFDC-U.)*

‡(a) Unemployed parent duplication of what Employment Department and Unemployment Insurance does. Change.

Ventura, p. 162, Tehama p. 204, Solano p. 13 ps, Yolo p. 267, Imperial p. 370.

†(b) Unemployed parent should be handled as economic aid by welfare departments and cut out social studies, etc.

Tulare p. 408, Merced p. 434.

*(c) Unemployment Insurance recipients should not be qualified for UP.
Kern p. 333.

*(d) Should extend coverage of Unemployment Insurance and minimum wage to farm workers (and repeal unemployed parent provision).

Sacramento p. 453 (UP is subsidy to farm employer p. 493). Prepared statements—Fresno p. 7.

CSWO p. 118, Schmidt p. 261, Barr p. 294.

*(e) No UI for farm workers.
Livingston p. 336.

10. *Semimonthly Payment of Aid.*

*(a) Good idea; eligibility should also be established semimonthly.
Kern p. 320. Cal. Tax. p. 77.

*(b) Delete requirement because it causes hardship on county, landlords, and recipients.

Butte p. 272, Solano p. 13 ps. (Prepared statement—Lake p. 3.)

‡(c) Pay aid retroactive rather than in advance.
Tulare p. 202.

‡11. *Applications for Aid Not Taken if Work Generally Available (or Aid Discontinued).*

Tulare p. 203, Kern p. 314, San Joaquin p. 326.

*12. *Proposed Requirement that Unemployed go to Department of Employment First, then Welfare.*

Yolo—Against p. 267.

Tulare—For p. 207.

*13. *Should Require in Agricultural Referrals \$1.50 Minimum Wage, 40-Hour Guarantee for Six Weeks, etc.*

Emergency Committee for Farm Workers p. 344.

*‡14. *Separate Statistics for Employables (UP)*

Chairman p. 28, Kern p. 308, Merced p. 433.

*15. *AFDC-U in California Should be Tied to Expiration Date of Federal Program.*
Kern p. 328.

- *16. *Working Youth Should be Allowed to Keep More Income.*
Los Angeles p. 7 ps. CSWO p. 108, Social Workers Union p. 140,
NASW p. 366.
- *17. *Birth Control Information Should be Supplied.*
CSWO p. 132, Social Workers Union p. 161.

AID TO FAMILIES WITH DEPENDENT CHILDREN—BOARDING HOMES AND INSTITUTIONS

- *1. *Increase Subvention to Counties for Licensing.*
(From \$65 to \$100 State share in administrative expense.)
San Bernardino p. 106.

COST SHIFTING ("COST SHARING")

- *1. *Wants State to Pay More and Counties Less.*
SDSW p. 12, San Luis Obispo p. 35, Alameda p. 58, San Bernardino
p. 106, Butte p. 272, Kern p. 322, Humboldt p. 351, Tulare p. 409,
Sacramento p. 454, Kings p. 478, Stanislaus p. 490. (Prepared state-
ments—Modoc p. 2, Plumas p. 4, Shasta p. 33, Tuolumne p. 6.)
County Supervisors Association p. 8.
- *2. *Wants Cost Sharing for Simplification Rather than Increased Revenue.*
Riverside p. 244, Dietrich p. 25, CSWO p. 131.
- *3. *Wants No Change in Existing Sharing.*
Orange p. 396. Cal. Tax. p. 66.
- *4. *Shift Costs to Counties Who Have Wanted Liberalizations.*
Tulare p. 206.

CASELOAD STANDARDS

- ‡1. *Revise Standards for Adult Cases.*
Alameda p. 58, Lassen p. 80, San Bernardino p. 107, Madera p. 292.
(Prepared statements—San Diego p. 2, Santa Cruz p. 4.)
- ‡2. *Delete Standards for All Caseloads.*
Santa Clara p. 112, Solano p. 18 ps, Riverside p. 244, Yolo p. 260,
Inyo p. 462, Stanislaus p. 491. (Prepared statements—Placer p. 9,
Tuolumne p. 6.)
- ‡3. *AFDC Ratio Not Low Enough, Adult OK.*
Imperial p. 374, Social Workers Union p. 148.
- ‡4. *AFDC Should be on County-wide Average.*
San Bernardino p. 107, Sacramento p. 450.
- ‡5. *AFDC Fully Implemented Before Doing Adult Program; Supervisor Ratio
1:6 Instead of 1:5.*
Los Angeles p. 6 ps.
- *6. *Require Course on "Welfare Fraud" in Welfare Stipend Program.*
Keller.
- *7. *Summer Employment for S. W. Undergraduates.*
†Intensive training for AB's, staffing by districts," two distinct career lines
(MA's and AB's).
Witte p. 56.

SIMPLIFICATION

(All counties complained; only clear recommendations are noted.)

- *1. *One Adult Category.*
Santa Clara p. 110, Ventura p. 175. (Prepared statements—Santa
Cruz p. 4.) Dietrich p. 24, McLain p. 38, CSWO p. 125, SDSW p. 191.
- ‡2. *Delete or Revise Case Abstract.*
San Bernardino p. 107, et al.

- *3. *Board of Supervisors Should be Responsible, Not County Welfare Director.*
Butte p. 272.
- †4. *Dictionary of Terms Should be Compiled by SDSW.*
Butte p. 272.
- ‡5. *Free Social Workers from Eligibility Details.*
Social Workers Union p. 137, Tulare p. 202.
- 6. *State Sharing in Administrative Costs Would Reduce Complexity.*
Tulare p. 206.
- *7. *Budget for More Administrative Analysts in SDSW.*
SDSW p. 191.
- *8. *All SDSW Regulations Check by Senate and Assembly Committees. Misdemeanor if SDSW does not Publish Digest of Appeal Decisions.*
Keller.
- *9. *State Should Get Court Order Before Holding County's Funds or Taking over County Welfare Operations.*
Keller.

DURATIONAL RESIDENCE REQUIREMENTS

- *1. *Opposed to Lowering in All Programs.*
Alameda p. 58, San Joaquin p. 203, Riverside p. 244, Yolo p. 260, Kern p. 325, Stanislaus p. 491. Cal. Tax. p. 73.
- *2. *Opposed to Lowering in ATD or AB Only.*
Ventura p. 172, Tehama p. 210, Solano p. 17 ps, Madera p. 293.
(Prepared Statement—Glenn p. 1.)
- ‡3. *Wants Requirement in MAA.*
Tehama p. 210, Solano p. 18 ps.
- *4. *Declare as Ineligible Persons Who Move to California for Purpose of Obtaining MAA.*
Cal. Tax. p. 75.
- *5. *Remove in All Programs.*
CSWO p. 172, NASW p. 367.
- *6. *Remove Only When Staff Adequate and Policies in Other States are Comparable.*
Social Workers Union p. 143.
- *7. *Permit Aid to be Received for Only One Month When Recipient is Out of State.*
Keller.

RECOVERY PROVISIONS

- *1. *Restore Real Property Liens AB 59 Abolished.*
Lassen p. 80, Solano p. 227, Riverside p. 244, Butte p. 272, Madera p. 292, Sonoma p. 296, Tulare p. 408, Merced p. 438, Stanislaus p. 490. (Prepared statement—San Diego p. 4.) Cal. Tax. p. 74, Tulare p. 205.

RELATIVES' RESPONSIBILITY

- *1. *Restore in MAA or Make More Stringent Generally.*
Alameda p. 58, Yolo p. 261, Sonoma p. 296, Imperial p. 373, Tulare p. 408, Sacramento p. 449, Stanislaus p. 490, Solano p. 229, Riverside p. 244. (Prepared statements—Glenn p. 2, San Diego p. 4.) Tulare p. 205.

PRESUMPTIVE ELIGIBILITY

- *1. *Eliminate.*
Tehama p. 210, Yolo p. 260, Imperial p. 370, Tulare p. 409, Stanislaus p. 491. (Prepared statements—El Dorado p. 6, Placer p. 10, Trinity p. 2.) Tulare p. 204.

2. *Costly* (but no recommendation to eliminate.)

San Bernardino p. 108, Ventura p. 173, Solano p. 225, Riverside p. 245, Butte p. 271, Sacramento p. 450.

3. *Desirable.*

Blind p. 88, Social Workers Union p. 143.

*4. *Repeal—Make Caseworkers Liable for Aid Paid to Noneligible Applicants.*
Keller.

*5. *Requires Yearly Check with CII re: Eligibility.*
Keller.

30-DAY APPLICATION INVESTIGATION DEADLINE

*1. *Extend.*

San Mateo p. 143, Imperial p. 370, Sacramento (in ATD only) p. 450. (Prepared statement—Monterey p. 5 (1st of month following SDSW medical approval in AB and ATD).) (Prepared statement—Placer p. 9 (Remove in ATD).)

*2. *Telephone Applications and Those Made by Others—Repeal.*

(Prepared statements—Placer p. 9, Trinity p. 2 (Signed not from recipient).)

NEW DEFINITION OF "DISABILITY"

*1. *Too Liberal.*

Ventura p. 172, Tehama p. 210, Imperial p. 372. (Prepared statement—Monterey p. 5.) Tulare p. 204.

2. *Favors.*

Solano p. 17 ps, Los Angeles p. 9 ps. Social Workers Union p. 143.

*3. *Restrict Present Law to Prevent Administrative Enlargement of Program.*
Cal. Tax. p. 75.

*4. *ATD Should be Received in Mental Hygiene Licensed Homes.*
Imperial p. 379.

*‡5. *Costs of ATD Work Projects Should be Shared in by State.*
Merced p. 438.

6. *ATD Should Have Special Need Equal to OAS.*
Mariposa p. 515.

ATD MEDICAL ELIGIBILITY

*‡1. *Should be Delegated to Counties.*

Santa Clara p. 123, Kern p. 341. SDSW p. 183.

2. *Too Slow* (no remedy suggested).

Riverside p. 245, Sacramento p. 450.

MISMANAGEMENT PROVISIONS

‡1. *Favors in All Programs.*

Solano p. 17 ps. (Prepared statement—Santa Cruz p. 4.) Keller (AFDC), Social Workers Union p. 144.

EXEMPTED INCOME

*1. *California has Surrendered its Control to Federal Government.*
Imperial p. 369. Cal. Tax. p. 78.

GRANTS IN ADULT PROGRAMS

*1. *Should be Flat Grants with no Recognition of Special Needs.*
Madera p. 284. Social Workers Union p. 146.

*2. *OAS—Increase Minimum \$5 and Maximum \$10.*

McLain p. 40. (Also higher housing allowance for single persons.)

- *3. *AB—Increase Grants.*
Blind p. 88.

OTHER CHANGES IN OAS PROGRAM

- *1. *Eliminate Value of Occupancy of Home.*
McLain p. 41.
- *2. *Tax Relief to Aged, Low Income Property Holders.*
Behr p. 353. McLain p. 42.

OTHER CHANGES IN ALL PROGRAMS

- *1. *Appeals and Overpayments.* Only pay debts incurred when recipient wins appeal; change time limits for correcting overpayment from two months to one year.
Keller.
- *†2. *Records and I.D. Cards.* Welfare records should be made public; photo and fingerprints on I.D. cards.
Keller.
- *3. *AB 1670 Local Projects to Include Those to Improve Safeguards re: Fraud.*
Keller.

STATE ADMINISTRATION OF PUBLIC WELFARE

1. *In Favor of.*
McLain p. 37, Social Workers Union p. 142.
2. *Should be Studied.*
(Prepared statement—Mendocino p. 3.) Dietrich p. 33, Cal. Tax.
p. 67.

APPENDIX D

SACRAMENTO, CALIFORNIA, April 29, 1965

HONORABLE VERNON L. STURGEON
Senate Chamber

ADMINISTRATIVE REGULATIONS—#19938

Dear Senator Sturgeon:

You have submitted to us three publications of the State Department of Social Welfare, and you ask whether the material in the publications constitutes "regulations," so as to require the department to comply with the Administrative Procedure Act in promulgating the publications. You also ask us to indicate the effect of the publications, if we conclude that they constitute "regulations," and if they were not adopted in accordance with the Administrative Procedure Act.

Before we consider the publications in question, we will outline briefly the responsibility of the department to comply with the Administrative Procedure Act, and what constitutes a "regulation" for the purposes of that act.

Section 104.1 of the Welfare and Institutions Code declares that the Director of Social Welfare may adopt regulations, orders, and standards of general application to implement, interpret, or make specific the law enforced by the department. It further declares that such regulations, orders, and standards shall be adopted, amended, or repealed by the director only in accordance with the provisions of the Administrative Procedure Act, except that such regulations need not be printed in the California Administrative Code or the California Administrative Register if they are included in the publications of the Department of Social Welfare.

The term "regulation" is defined in the Administrative Procedure Act (Gov.C. Sec. 11371), as follows:

" 'Regulation' means every rule, regulation, order, or standard of general application or the amendment, supplement or revision of any such rule, regulation, order or standard adopted by any state agency to implement, interpret, or make specific the law enforced or administered by it, or to govern its procedure, except one which relates only to the internal management of the state agencies. 'Regulation' does not mean or include any form prescribed by a state agency or any instructions relating to the use of the form, but this provision is not a limitation upon any requirement that a regulation be adopted pursuant to this part when one is needed to implement the law under which the form is issued."

Viewed in the light of this definition, the question of whether the Administrative Procedure Act should have been followed in the promul-

gation of the publications of the department depends on whether those publications contain rules, regulations, orders, or standards of general application to implement, interpret, or make specific the law enforced or administered by the department. If the material contained in the publication relates only to the internal management of the department, or if its only contents are instructions as to the use of forms, the publication would not be covered by the Administrative Procedure Act.

The first publication, which is entitled "Special Reporting Instructions," accompanies a new section of the department's Research and Statistics Manual. In general, it explains a pending federal study respecting the earnings of certain recipients of aid to families with dependent children. The principal purpose of the publication is to instruct the counties in the use of federal forms pertaining to the study. We think that the publication would fall under the type of material exempted from the Administrative Procedure Act, as instructions as to the use of forms.

The second publication, which is designated as a circular letter (Circular Letter No. 1384A), contains considerable explanatory material respecting the medical assistance for the aged program, and sets forth examples of applications of the program in specific instances. There is no doubt that the publication is designed to interpret the law governing medical assistance for the aged, and to prescribe standards for the guidance of the counties. We think that the publication does contain "regulations," and that its promulgation would be subject to the Administrative Procedure Act.

We are of the same opinion regarding the third publication, which is designated as "Circular Letter No. 1546." The publication interprets several aspects of the law governing aid to families with dependent children, covering such matters as the right to apply for aid, discontinuance of aid when employment is obtained, and determining a person's ability to do a given job.

If a regulation required to be adopted in accordance with the Administrative Procedure Act is not adopted in accordance with that act, it can be invalidated in an appropriate court action (Gov.C. Sec. 11440).

Very truly yours,

GEORGE H. MURPHY
Legislative Counsel
By EDWARD K. PURCELL
Deputy Legislative Counsel

STATE OF CALIFORNIA—HEALTH AND WELFARE AGENCY

DEPARTMENT OF SOCIAL WELFARE

December 1, 1964

RESEARCH AND STATISTICS MANUAL LETTER NO. 61

The attached additions are to be entered in your copy of the Manual of Policies and Procedures, Research and Statistics.

This manual letter transmits a new manual section, S-297, on Special Nonrecurrent Studies and Special Reporting Instructions No. 18, concerning the Study of the Earnings Records of Certain AFDC Cases, advance notice of which was given in Circular Letter No. 1413 (Stat), dated July 29, 1964.

Special Reporting Instructions No. 18 supplement federal instructions for this study. A supply of the federal instructions, together with a supply of the study schedules, will be shipped to each county welfare department.

Filing Instructions

Issue 744 is to be filed following Issue 743 in the manual.

Issues 745 and 746 are to be filed following Issue 578 in the Special Reporting Instructions.

Handbook

REPORTS—PUBLIC ASSISTANCE

S-297.01

S-297 Special Nonrecurrent Studies

This section is used to identify and briefly describe the "one-time" studies occasionally carried on in response to federal or departmental needs, and to identify the Special Reporting Instructions applicable to such nonrecurrent studies.

S-297.01 Study of the Earnings Records of Certain AFDC Cases

The full federal title of this study is "Study of Public Assistance and Social Security Administration Records of Earnings for Specified Persons in AFDC Cases for Which a Redetermination of Eligibility was Completed in a Sample Month of 1964."

The "sample month" is September 1964. Counties will complete a Case Schedule form (FS-2064.1) on a small sample of AFDC cases for which a redetermination was completed during that month and an Assistance Group Member Schedule form (FS-2064.2) for each person in the sample FBU who was aged 14 or over at the end of 1963 and who was a member of the FBU at any time during 1963, if such person had any earnings recorded in 1963 or currently has a social security account number.

Detailed federal reporting instructions, supplemented by state interpretive instructions are contained in *Special Reporting Instructions No. 18*.

STUDY OF THE EARNINGS RECORDS OF CERTAIN AFDC CASES

Federal Title

The federal title of this study is "Study of Public Assistance and Social Security Administration Records of Earnings for Specified Persons in AFDC Cases for Which a Redetermination of Eligibility was Completed in a Sample Month of 1964." Two schedules are involved, a case schedule (Form FS-2064.1) and an assistance group member schedule (Form FS-2064.2), hereinafter referred to as Member Schedule.

Purpose of Study

The purpose of the study is to explore the potential usefulness of SSA earnings records as an additional source of information on earnings of AFDC families.

Method

California's part of the study will involve the completion by the county welfare departments of case schedules on a preselected sample of approximately 500 AFDC cases for which a reinvestigation of eligibility was completed in September 1964, and the completion of an assistance group member schedule on specified members of the sample cases. The scope and content of the schedules are clear from the forms and from the federal instructions, which will be sent to each county.

Supplementary State Instructions

Detailed instructions for preparing the two study schedules, Form FS-2064.1 and Form FS-2064.2, are contained in the accompanying federal instructions, identified as Inst. FS-2064.4. The following state instructions are intended to augment the basic instructions as to specific procedures for sample selection and transmission of schedules, as to differences between federal and California terminology, and as to clarification of possible ambiguities in the federal forms.

- A. Sample selection—The sample is drawn from *all* AFDC cases for which a reinvestigation of eligibility was completed in September 1964, both those for which the reinvestigation resulted in a renewal, or continuation of aid, and those for which the reinvestigation resulted in discontinuance of the case. The study sample is based on the quality control lists and schedules submitted by the counties. A list of sample cases will be submitted to each county for which the sampling procedure yielded one or more cases for the study. In some instances, because of incomplete information in SDSW, a sample case will *not* constitute one for which a reinvestigation was completed in September 1964. This arises from the fact that quality control lists from some counties do not distinguish between renewals (pursuant to reinvestigation) and approvals or between those discontinuances resulting from information disclosed by reinvestigation and those resulting from information obtained otherwise.
- B. Case identification—The member schedule form (FS-2064.2), as received from the Department of Health, Education and Welfare, has been overprinted by the SDSW to provide for the entry of the state *case number* on that form. The federal procedure provided for tying each member schedule to its associated case schedule by a "schedule number," to be assigned by the state, but it was concluded that use of the state case number would be a simpler procedure.
Two copies of each member schedule should be stapled to the associated case schedule before return of the completed schedules to the SDSW.
- C. Return of schedules; due date—All sample schedules should be completed, the member schedules attached to the corresponding case schedules, and the entire set returned to the Statistical Reports Bureau, SDSW, P.O. Box 8074, Sacramento, on or before December 14, 1964.
- D. Clarification of federal terminology and format.

1. The federal "redetermination of eligibility" is equivalent to our "reinvestigation."

2. Form FS-2064.1, Item 5—"Unemployment of parent" was not a basis for eligibility in California at the end of 1963. If the case was *not eligible* at the end of 1963, mark Item 5, "N.A.," if the case *was eligible* check the space, "Other."
3. Form FS-2064.1, Item 7—The schedule number will be inserted after the completed schedules have been returned to the Statistical Reports Bureau.
4. Form FS-2064.1, Section C—The federal "assistance group" is equivalent to our "family budget unit."
5. Form FS-2064.1, Section D—Line Item 1—The entry here is the name of the case head or, if he or she is not included in Item C3a, the *oldest* member of the FBU.
6. Form FS-2064.2, Section A—Insert the case number shown on the corresponding Form FS-2064.1.
7. Form FS-2064.2, Item 5. Leave blank.

STATE OF CALIFORNIA—HEALTH AND WELFARE AGENCY

DEPARTMENT OF SOCIAL WELFARE

October 6, 1964

CIRCULAR LETTER NO. 1384 A (FISCAL)

TO: COUNTY WELFARE DEPARTMENTS
COUNTY AUDITORS

Subject: Payment, Governmental
Participation and Claiming-MAA

I. Purpose of Circular Letter

This letter is to revise Circular Letter No. 1384 (Fiscal) dated August 7, 1963.

Although Sections II (Beginning Dates) and IV (Governmental Participation) are longer than previously, the context remains virtually the same. Clarification on several points was needed and this we have attempted to do. One item expounded upon is the retroactive claiming allowed by AB 59 and SB 497.

In the last paragraph of Section III A, the definition of a contract hospital is being interpreted as contradictory to the information contained in Section IV of Department Bulletin No. 620-H (MC) (Revised). This we have rewritten for clarity.

In the opening paragraph, Section III B, interpretation is being made that liens constitute a matching rather than a conformity issue. Interpretations exist of whether to pay MAA and not take a lien or take a lien and not pay MAA. This is not the case. There is no choice. Any ordinance, policy or practice must provide that the lien will not be taken. If the lien provisions are not met, not only would Federal matching funds for the MAA program be precluded in a particular county, but it would endanger Federal matching funds on a statewide basis. Therefore, as sufficient coverage of the lien provisions are provided in Department Bulletin No. 620-H (MC) (Revised) it has been deleted from this circular letter.

Section V, Claiming Procedures, as originally written is deleted in its entirety. The claiming procedures are now covered under Circular Letter No. 1465 (Fiscal) and this noted in the revised section of this circular letter.

II. Beginning Date of Eligibility for MAA

A. Inpatient Basis

Determination of the date upon which an applicant becomes eligible for MAA payments made in his behalf are (in no instance may the beginning date be earlier than three months prior to the month of application—see paragraph B, Retroactive Payments):

1. *In a county hospital or contract hospital* eligibility commences with the date of admission.
2. *In a hospital (other than county or contract hospital)* eligibility commences on the day following the first 30 days of care, or the day following the date his cost of care therein exceeds \$2,000*, whichever occurs first.
3. *In a nursing home* eligibility commences with either of the following:
 - a. If transferring from a county or contract hospital, the date of admission.
 - b. If entering from his own home or from a hospital (other than a county or contract hospital) the first day of the month following the date of admission, or the day following the completion of 30 days of care, or the day following the date his cost of care exceeds \$2,000*, whichever occurs first.

In determining the exclusions of the 30-day period or the \$2,000 (\$3,000) cost of care, only continuous confinement is considered. If a patient is discharged and readmitted within 10 days, this is not considered a break in continuous confinement. The law provides that a transfer from one qualified facility to another does not constitute an interruption of continuity of service.

If either exclusion requirement has been completed in the facility transferred from, there is no exclusion requirement in the facility to which transferred. If the

* The cost of care exclusion is \$3,000 for the period May 21, 1963 to July 25, 1963. (W & I Code Section 4722.1.) The \$2,000 is effective from July 25, 1963. No dollar exclusions prior to May 21, 1963, only the first 30 days of care.

exclusions are partially completed upon the date of transfer, the days of care and the cost of care accumulated to date are used in computing the total exclusion requirement.

The following are examples:

Persons A, B and C enter a *private hospital* on July 20.

A transfers to nursing home July 31. He is eligible to MAA in the nursing home on August 1.

B transfers to nursing home August 1. He has normal care and his cost of care does not exceed \$2,000. He completes 30 days of continuous care on August 18 and is eligible for MAA on August 19.

C transfers to nursing home August 5. His expenses were high in private hospital—these expenses plus nursing home charges exceed \$2,000 on August 12. He is eligible to MAA on August 13.

B. Retroactive Payments

In any hospital or nursing home, payment may be made for three months prior to the month of application, providing the person is eligible for MAA in accordance with Section A above. The retroactive payment cannot antedate February 1, 1963, for any beneficiary in a county hospital or contract hospital, nor can it antedate April 1, 1963, for any other hospital or nursing home.

Example 1: Entered *county hospital* June 1. Application signed September 5. Eligible for MAA June 1 since this does not exceed three months prior to month of application, and eligibility begins day of admittance to county hospital.

Example 2: Entered *private hospital* May 16. Application signed August 12. Eligible for MAA June 15, at the completion of the 30-day exclusion period. (It is assumed cost of care did not exceed the excluded amounts prior to June 15.)

Example 3: Entered *nursing home* from own home February 10, 1963. Application signed June 9, 1963. Eligible for MAA April 1, 1963. The retroactive payment cannot antedate April 1, 1963, or three months prior to month of application, whichever is later.

C. Outpatient Basis

If beneficiary has established eligibility for inpatient care, he becomes eligible for outpatient care upon release from any hospital or nursing home, if otherwise eligible.

III. Payment of MAA

A. Medical Facilities to Which Cost of Care is Payable

No cost of care shall be paid to a medical facility unless:

1. It is licensed by the State Department of Public Health; or
2. It is licensed by a comparable agency in another state; or
3. It is exempt from licensure pursuant to subdivision (c) of Section 1415 of the Health and Safety Code; or
4. It is operated by the Regents of the University of California.

Types of facilities to which MAA is payable are county hospitals, contract hospitals, private hospitals, nursing homes.

A *contract hospital* is a nonprofit medical facility licensed pursuant to Section 1400 of the Health and Safety Code, with which the board of supervisors of a county which does not maintain a county hospital or which maintains a county hospital that does not provide substantially all of the services customarily rendered in a general hospital, has executed a contract, currently in effect, to provide the care unavailable through the county hospital for medically indigent individuals.

If a county maintains a general county hospital which provides substantially all of the services customarily rendered in a general hospital, and also contracts with other hospitals for care of the medically indigent, such hospitals are *not* considered as contract hospitals in regard to provisions governing beginning date of assistance for MAA patients.

B. Excluded Facilities

The Veterans Administration, and Military and United States Public Health Services Hospitals are not authorized for MAA payments.

1. *Subsequent acute hospital services.* Payment for the use of *other* acute hospital facilities when the MAA patient's medical condition so warrants will not be

authorized if the MAA beneficiary is eligible for admission to Veterans, Military, or U.S.P.H.S. Hospitals, unless it is documented and established by the county welfare department in an individual situation that such a prohibition constitutes an undue hardship.

2. Time spent in one of the above excluded facilities is counted toward the 30-day exclusion period.

IV. Governmental Participation

A. Inpatient Care

1. Payments to a *county hospital* or *contract hospital* and to *nursing homes* if the patient is transferred from a county or contract hospital, participation is 50% federal and 50% county for the first 30 days of care or until the cost of care exceeds \$2,000*, whichever occurs first. Thereafter, it is 50% federal, 25% state and 25% county.
2. Payments to a *nursing home* if the patient enters from his own home or a hospital, (other than a contract or county hospital) participation is 50% federal, 25% state and 25% county from the first day of the month following the date of admission, or after the 30th day of care or after the cost of care exceeds \$2,000*, whichever occurs first.
3. Payments to a *hospital* (other than a county or contract hospital), participation is 50% federal, 25% state and 25% county after the 30th day of care or after the cost of care exceeds \$2,000*.
4. Retroactive Payments-Retroactive MAA payments are available for the three months prior to the month of application for eligible persons. In payments for retroactive claiming for care rendered, the periods claimable are as follows:

a. From February 1, 1963

Care must have been rendered in a county or contract hospital.

The participation basis shall be 50% federal and 50% county from the date of admittance until the date of application provided that other eligibility factors are met.

After the date of application the participation basis shall be 50% federal, 25% state and 25% county if the first 30 days of care or \$2,000* cost of care was rendered prior to the application date. If these exclusions were not met prior to application date the participation shall be 50% federal and 50% state until the exclusion factors are met.

b. From April 1, 1963

(1) Services rendered as in a. above or in a nursing home to which transferred from a county or contract hospital.

(2) Services rendered in hospitals or nursing homes *other than when transferring* from a county or contract hospital.

The participation basis shall be as follows:

For services rendered as in (1), the participation basis shall be as in a. above.

For services rendered as in (2), the participation basis shall be 50% federal and 50% county from the retroactive date of eligibility *until* the date of application. The *retroactive date of eligibility* is the first day after the appropriate hospital or nursing home exclusions are met.

For those cases meeting the exclusions prior to the date of application, the participation basis shall be 50% federal, 25% state and 25% county *from* the date of application.

For those cases not meeting the exclusion factors on the date of application, *no* participation is available *until* the exclusions are met. Thereafter, participation basis shall be 50% federal, 25% state and 25% county.

B. Noninstitutional Care (Outpatient)

1. Participation in payments for eligible MAA Noninstitutional Care (Outpatient) is 50% federal and 50% state in all instances.

There is *no* participation for outpatient care rendered during the retroactive period prior to the application date.

* The cost of care exclusion is \$3,000 for the period May 21, 1963 to July 25, 1963. (W & I Code Section 4722.1.) The \$2,000 is effective from July 25, 1963. No dollar exclusions prior to May 21, 1963, only the first 30 days of care.

C. Governmental Participation Chart for Inpatient Care

Institution	Circumstances	Eligible to MAA	Participation		
			Federal	State	County
1. All MAA Eligible Institutions	Prior to 3 months before month of application.	No			
2. County or Contract Hospitals	First 30 days of care or *\$2,000, of care, whichever occurs first.	Yes	½	--	½
	From 31st day of care or whenever cost of care exceeds *\$2,000, whichever occurs first, but not prior to date of application.	Yes	½	¼	¼
3. Other Hospitals	Retroactive feature.....	Yes			
	First 30 days of care or *\$2,000, of care, whichever occurs first (includes time and costs accumulated when transferring in).	No			
	From 31st day of care or whenever cost of care exceeds *\$2,000, whichever occurs first, but not prior to date of application.	Yes	½	¼	¼
4. Nursing Homes	Retroactive feature.....	Yes			
	<i>Entry from Own Home</i>				
	From entry date to last day in month of admittance, or first 30 days of care or, *\$2,000, of care, whichever occurs first.	No			
	From the first day of month following the date of admission, or 31st day of care, or whenever cost of care exceeds *\$2,000, whichever occurs first.	Yes	½	¼	¼
	Retroactive feature.....	Yes			
	<i>Entry from Hospital Other Than County or Contract Hospital</i>				
	From date of transfer from private hospital to last day in month of admittance, or first 30 days (accumulated days) or *\$2,000 of care (accumulated cost),	No			
	From first day of month following the date of transfer, or 31st day of care (accumulated days) or *\$2,000 of care (accumulated cost), whichever occurs first.	Yes	½	¼	¼
	Retroactive feature.....	Yes			
	<i>Entry From County Hospital or Contract Hospital</i>				
	From date of transfer from county hospital or contract hospital to the completion of 30 days care or *\$2,000 of care (county or contract hospital plus nursing home), whichever occurs first.	Yes	¼	--	½

C. Governmental Participation Chart for Inpatient Care—Continued

Institution	Circumstances	Eligible to MAA	Participation		
			Federal	State	County
4. Nursing Homes—Continued	From 31st day of care or *\$2,000 of care (county or contract hospital plus nursing home), whichever occurs first, but not prior to date of application.	Yes	½	¼	¼
	Retroactive feature-----	Yes			

* The cost of care exclusion is: \$3,000 for the period May 21, 1963 to July 25, 1963; \$2,000 effective from July 25, 1963; and no dollar exclusion prior to May 21, 1963, only the first 30 days of care.

NOTE: "Retroactive feature" is the period for the three months immediately prior to the month in which the application was made. However, participation is not available for any services rendered prior to February 1, 1963 or April 1, 1963, whichever is applicable. (See Section II, Par. B and Section IV, Par. A, 4.)

Time and Cost Accumulated. Time must be time which would ordinarily be eligible for payment except that it is being accumulated in the exclusion period. Cost accumulated must be at cost of care rates approved by SDSW, allowable by negotiation or allowable by "frozen" rates, for the institution(s) in which the services were rendered.

Time and costs may be accumulated in one institution and added to time and costs accumulated in another institution(s) for establishing exclusions. (Care is considered continuous when readmitted as an inpatient within 10 days.)

CLAIMING PARTICIPATION CHART FOR INPATIENT CARE IN THE ELIGIBLE RETROACTIVE PERIOD

Institution	Circumstances	Eligible to MAA	Participation		
			Federal	State	County
(Period commencing Feb. 1, 1963 and continuing after April 1, 1963)					
For County or Contract Hospitals	For the 3 calendar months <i>prior to application date</i> . From date of admittance within this period.	Yes	½	--	¼
	<i>After Application Date</i> . If exclusions were met prior to application date.	Yes	½	¼	¼
	Until the date exclusions are met.....	Yes	½	--	½
	After the date exclusions are met.....	Yes	½	¼	¼
Period Commencing April 1, 1963					
For Nursing Homes	IF TRANSFERRED FROM A COUNTY OR CONTRACT HOSPITAL.				
	For the three calendar months <i>prior to application date</i> . From date of admittance within this period.	Yes	½	--	½
For Hospitals Other than County or Contract Hospitals	IF TRANSFERRED FROM A COUNTY OR CONTRACT HOSPITAL.				
	For the three calendar months <i>prior to application date</i> . From date of admittance <i>if exclusions were met</i> in county or contract hospital.	Yes	½	--	½
	<i>Until</i> date exclusions met (in county and contract hospital plus other hospital).	No	--	--	--
	<i>From</i> date exclusions met (in county and contract hospital plus other hospital).	Yes	½	¼	¼
For Hospitals Other than County or Contract Hospitals and Nursing Homes	IF TRANSFERRED FROM A COUNTY OR CONTRACT HOSPITAL.				
	<i>After Application Date</i>				
	If exclusions required were met prior to application date.	Yes	½	¼	¼
	Until the date exclusions required are met...	Yes	½	--	½
	After the date exclusions required are met...	Yes	½	¼	¼
	FOR SERVICES <i>OTHER</i> THAN WHEN TRANSFERRING FROM A COUNTY OR CONTRACT HOSPITAL.				
	For the 3 calendar months <i>Prior to Application Date</i> .				
	Until the date exclusions required are met...	No	--	--	--

CLAIMING PARTICIPATION CHART FOR INPATIENT CARE IN THE ELIGIBLE RETROACTIVE PERIOD—Continued

Institution	Circumstances	Eligible to MAA	Participation		
			Federal	State	County
For Hospitals Other than County or Contract Hospitals and Nursing Homes —Continued	After the date exclusions required are met... <i>After Application Date</i>	Yes	½	¼	¼
	If exclusions required were met prior to application date.	Yes	½	¼	¼
	Until the date exclusions required are met...	No	--	--	--
	After the date exclusions required are met...	Yes	½	¼	¼

V. Claiming Procedures

Claiming procedures are outlined in Circular Letter No. 1465 (Fiscal), dated February 21, 1964.

In addition to those procedures, the date of application for retroactive cases shall be shown on the MAA Form 802 when claiming the retroactive payment. This date should be reported in the case name column.

VI. Fiscal Methods of Apportioning MAA Recipient's Beneficiary Liability

Beneficiary liability is that income remaining which exceeds his needs outside the facility and the \$15 for incidental needs inside the facility.

Methods for Apportioning Beneficiary Liability

1. When beneficiary is on MAA inpatient status for full month.
 - a. If the full month is spent in one institution, apply the liability against the cost total to arrive at net amount for participation basis. Should the participation basis be part 50-50 and part 50-25-25, apply the total liability against the first costs (participation basis) with any remaining liability balance to be applied against second costs.
 - b. If the full month is spent in more than one institution, apply the liability against the cost total for the first institution with any remaining liability balance to be applied against the second institution's cost total, etc.
2. When beneficiary is admitted to MAA inpatient status during the month.
 - a. The beneficiary's liability is that income remaining which exceeds his needs outside the facility prior to admittance.
This may result in different liability amounts applying to the first month and to continuing months. The Form(s) MAA 202 should record these amounts and effective dates.
3. When beneficiary dies or is discharged from MAA inpatient status during the month.
 - a. Apply the total liability against the cost of care for the period until death or discharge. In some instances, this will mean that there will be no charge to the county under these circumstances.

NOTE: Facility should be instructed to collect the patient liability in accordance with practice used for private patients.

STATE OF CALIFORNIA—HEALTH AND WELFARE AGENCY

DEPARTMENT OF SOCIAL WELFARE

November 12, 1964

CIRCULAR LETTER NO. 1546 (AFDC)

TO: COUNTY WELFARE DEPARTMENTS
COUNTY ADMINISTRATORS OFFICES
COUNTY BOARDS OF SUPERVISORS

SUBJECT: CONDITION OF EMPLOYMENT AND AFDC

Some questions have arisen regarding interpretation and practice related to the acceptance of employment by AFDC recipients. In order to give effect to the law and regulations some specific procedures are necessary, both to protect the welfare and rights of the individual and to insure that the intent of the law and regulation is carried out with respect to *all* applicants for Aid to Families with Dependent Children. The following interpretations will be helpful pending preparation and release of appropriate handbook sections. These interpretations illustrate the department's expectations as to how this program is to be carried out. Evaluations of operations will be made against these expectations.

1. *The Right to Apply*

All persons must be permitted to apply for AFDC (C-011.05). General availability of work and refusal to seek or accept work are not valid bases for denying the person the right to apply for aid (C-172, Item 3), although refusal to seek or accept employment may be grounds for discontinuance of aid at a later time.

- a) The county must immediately initiate *all* of the actions necessary to complete the investigations of eligibility as promptly as possible (C-012.20).
- b) As a part of initiating actions to complete the investigation, the county must make an early determination as to whether or not each parent in the home is ready for the labor market (see Section C-171.1) and that the requirements for seeking and accepting employment apply.
- c) The parent must register with the CSES as soon as the determination is made that he is "ready for the labor market." If his usual occupation is farm labor, he must also register with the Farm Labor Office and will be referred by the local office, Department of Employment. See Department Bulletin No. 629, Supplement 318, Release No. 5, for referral procedures. If the parent's usual occupation is other than farm labor, CSES will determine whether farm labor is suitable employment for him, and if so, refer him to the Farm Labor Office. A person should not be expected to report to CSES more frequently than CSES requires in order to keep his registration current. (See Department Bulletin No. 636, C, 2 (c).)
- d) The person is entitled to an individual determination whether employment is available to him specifically, whether or not he is capable of performing such work, and whether or not the conditions of this specific job are reasonable for him. Referrals on a mass basis may not be considered as individual referrals and such referrals do not affect eligibility. All job referrals should be for an individual and based upon (1) the individual's capacity, and (2) a screening to disclose any likely difficulties that would preclude his taking the offered employment.
- e) When a person reports that the working conditions, including availability of sanitary facilities, drinking water, etc., do not comply with the conditions laid down by the State Department of Industrial Relations the following actions should be taken:
 1. Refer the person to another job if possible, and
 2. Refer the matter to the Department of Industrial Relations.

- f) When a person is working part time, a referral to a full-time job should be made only if he can be expected to earn more on the full-time job than he is earning on a part-time job.

2. *Discontinuance of Aid When Employment is Obtained*

Aid will be continued when employment is obtained and may not be terminated until all of the following have occurred:

- a) There has been a specific offer of a specified job at a stated wage.
- b) The offered job has been accepted.
- c) The pay for the first full week's employment has been received.
- d) The job is not less than 40 hours per week.

Services to assist the individual succeed on the job should be continued until it appears that his adjustment has been satisfactory.

3. *Determining a Person's Ability to do a Given Job*

Such decisions are, at times, difficult and always involve consideration of the individual in relation to a particular job. Much will depend upon the worker's judgment.

The easiest decisions are those where there is an obvious verifiable mental or physical disability. The most difficult decisions are with regard to healthy individuals and their ability to perform hard labor.

Farm labor, for instance, generally requires great physical exertion in unaccustomed postures, tolerance for heat and sun, and in many cases, manual dexterity. Persons who have been in sedentary occupations, or accustomed to little physical exertion, will be unable to work full time without being conditioned to the work.

When persons who are not accustomed to farm labor are referred to farm labor jobs, they should be considered as being referred to part-time employment until they are conditioned to the job. The required conditioning can be achieved by a time-limited assignment to a community work training project. Whenever possible, arrangements should be made for notification of the person when openings in his usual occupation are available.

When the person usually obtains his employment through his union, specific arrangements should be made with the union for the way in which immediate notification that work is available can be gotten to the person. If telephone communication is not available at the person's present work location, other means will need to be developed. When other arrangements are not possible, some social workers have arranged for such notices to be given to them and they, in turn, relay the information to the person.

4. *The Effect of Distance and Availability of Transportation on the Reasonableness of Employment*

Employment is "reasonable" when the cost and the effort to get to and from work is commensurate with what can be earned on the job.

The nature of some work—such as farm labor—may require long work days. To expect someone to spend a great deal of time, and a large proportion of what can be earned on traveling to and from the job is not reasonable.

The "rule of thumb" factors that should be taken into account are those that make travel to one's own work reasonable:

- a) Most people live within an hour's travel time from their work.
- b) Having a car in operating condition allows a person to go farther and to get to work easier than if he is dependent upon public transportation.
- c) If a person is dependent upon public transportation, it must be available at the hours when he goes to and returns from work.
- d) No transportation is needed if the job or the point from which transportation to the job will be provided is located within a mile of where he lives.

5. *Report of Earnings*

The person's report of his earnings is considered correct unless reasonable doubt exists to the contrary. (C-012.40, Item 1.) When there is reason to doubt the amount of earnings reported by the client, or when there are differences between information given the welfare department by the employer and the employee about earnings and deductions, the employer should be asked to report in writing, a) the gross amount earned, b) an itemized statement of

all deductions, and c) the net pay. The employer's statement should be shown the recipient and any differences noted by him should be cleared up by further discussion with the employer. Situations in which deductions or rate of pay appear to be contrary to the regulations of the Department of Industrial Welfare should be referred to that department for clarification, as should cases in which the employer and employee do not agree as to the pay and the deductions.

We are planning the preparation of written handbook materials that will describe SERVICES expected to be made available with respect to self-support.

It may be useful to see an outline that illustrates one way in which these program materials might be assembled:

SELF-SUPPORT PLANNING AND SERVICES

- I. *Purpose and Expectations*
- II. *Initiating Services*
 - Acceptance of application
 - Determination of Services needed, readiness for employment, and eligibility for AFDC
 - Short-term services
- III. *Services for Persons Not Ready for Employment*
 - Assessment of training needs
 - Development of a plan
 - Services during training period
 - Evaluation of readiness for employment
- IV. *Services for Persons Ready for Employment*
 - Development of a plan
 - Referrals for employment
 - Continuing services
 - Termination of services
- V. *Case Examples*

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REPORT TO THE
SENATE FACT FINDING COMMITTEE ON
LOCAL GOVERNMENT

on

**HOMESITE DEVELOPMENT IN MOUNTAINOUS
AND RURAL AREAS**

Compiled by
United States Department of Agriculture
Soil Conservation Service



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GLENN M. ANDERSON
President of the Senate

HUGH M. BURNS
President pro Tempore

JOSEPH A. BEEK
Secretary

LETTER OF TRANSMITTAL

California Legislature
Senate Fact Finding Committee on Local Government
June 15, 1965

HON. GLENN M. ANDERSON, *President*
and Members of the Senate

Gentlemen :

The within report suggests guidelines and standards for application by local governmental agencies in dealing with proposed residential development in rural areas. The report was originally prepared by the directors and staff of the Black Mountain Soil Conservation District, which is located in Santa Clara County.

In consequence of the disastrous wildfires and floods experienced in California in 1964 and preceding recent years, this committee became interested in the adequacy of local development, building and public safety facilities standards in rural areas. It became self-evident that the lack of adequate standards in some local areas actually contributed to some of the physical and economic results of the recent natural disasters. This committee became interested by reason of its general jurisdiction in the field of local government.

Our study was necessarily brief. Accordingly, it produced no new state legislation, and we are not yet prepared to state that such legislation is necessary. During our study, however, the within "Black Mountain Report" came to our attention. It appears to be the only, or one of very few, such reports prepared in the state.

This committee reviewed the report and heard testimony on its background and contents. We concluded that it is a thorough and accurate study of the problem in question, and that it would be informative to the Legislature and to various local governmental agencies.

We transmit the "Black Mountain Report" herewith as a report of this committee, for the information of the Legislature and, through limited circulation, of certain local governmental agencies.

Respectfully submitted,

JOSEPH A. RATTIGAN, *Chairman*



UNITED STATES DEPARTMENT OF AGRICULTURE
SOIL CONSERVATION SERVICE
Morgan Hill, California

January 22, 1965

MR. RICHARD GARROD, *Chairman*
Black Mountain Soil Conservation District
Committee on Hillside Development
22600 Mt. Eden Road
Saratoga, California

Dear Mr. Garrod:

This is a draft of the Black Mountain Soil Conservation District's "Hillside Development Guide." The illustrations planned for this publication have not been completed, but will appear in the final draft.

This guide was prepared with the cooperation of the Santa Clara County Agricultural Extension Service, Fire Marshal, Health Department, Planning Department, Department of Public Works; California Division of Forestry; Central Fire District, Santa Clara County Flood Control and Water Conservation District; the Board of Directors of the Black Mountain Soil Conservation District; and was coordinated and compiled by the United States Department of Agriculture, Soil Conservation Service.

Sincerely,

DARWYN H. BRIGGS
Work Unit Conservationist

BLACK MOUNTAIN SOIL CONSERVATION DISTRICT

June 15, 1965

REPORT TO THE SENATE LOCAL GOVERNMENT COMMITTEE ON HOMESITE DEVELOPMENT IN MOUNTAINOUS AND RURAL AREAS

Gentlemen :

As district directors of the Black Mountain Soil Conservation District, we are interested in the orderly development of the district from a soil and water conservation standpoint. Our interest in land development is further accentuated by the fact that our once rural Santa Cruz Mountains are rapidly changing into an area of fine hillside homes and estates.

Based on our experience, we have found that careful planning in advance of development is mandatory in order to meet the needs of modern living and to avoid many costly errors common to such development.

Through much of this planning may be done on a do-it-yourself basis, on-site assistance from an appropriate private or public agency is frequently required.

It is, therefore, in the interest of orderly development of the rural areas that the following guidelines are submitted.

This report does not pretend to provide solutions to all of the problems associated with such developments; rather, it suggests guidelines, which if used, should aid landowners and developers to avoid many of the costly errors common to such hillside development.

Respectfully submitted,

RICHARD R. GARROD
Director, Black Mountain
Soil Conservation District

EVALUATING THE DEVELOPMENT SITE

Evaluation of a building site depends on the individual plans and preferences. For example, view and orientation to wind and sun are important personal considerations. Plans should also be adjusted within the limitations of water supply, sewage disposal, stability of the soils, erosion hazards and the accessibility of the site.

Household water supplies should be uncontaminated, nonturbid, contain no harmful salts, and have no objectionable tastes or odors. Each person requires 100–300 gallons per day when using automatic washers, dishwashers and other modern conveniences. One week's supply for a family of five persons using 280 gallons each per day, would be 10,000 gallons. In many outlying areas, wells may not produce enough water to meet family requirements.

Springs are sometimes a suitable source of domestic water. When gravity is planned to develop pressure from spring and tank sources, bear in mind the following. Usually municipal water pressures are 50–60 pounds per square inch. To create 50 pounds pressure, excluding friction loss in the system, 115 feet of elevation are required. Systems with inadequate pressures may require a booster pump.

Livestock water quality should be comparable to domestic water. Established quantity requirements are: horses and cattle, 10–15 gallons each per day, sheep and goats 2–4 gallons each per day, chickens, 2 gallons per 100 per day.

Irrigation water for lawns and ground cover plantings requires approximately 26,000 gallons per 1,000 square feet per year. This is equal to covering the area with nearly 42 inches of water, including rainfall. However, some native trees and shrubs require only irrigation during the first two or three summers.

Water for fire protection needs should not be overlooked when planning a development not served with municipal water. Both the supply and availability of water are very important to effective fire protection. Developments furnished with adequate fire protection water and facilities are often eligible for fire insurance rate reductions. The development of a water supply for firefighting is discussed in a later section.

Sewage disposal is a problem most rural homeowners must plan for during the preliminary stages of development. A septic tank with leach lines is the most common method for developments not served with sanitary sewers. **PLAN AHEAD!** This is one of the most important considerations in developing a sewage disposal system. Many good homesites have been made less desirable by destroying the only suitable site for the leach lines during excavation for the building site. In addition, such factors as soil depth, soil texture depth to water table, soil percolation rate and proximity to domestic water sources should each be considered before locating the system. The appendix contains a guide for evaluating the physical soil factors.

Site factors to consider when evaluating a development site are steep slopes . . . shallow unstable soils . . . and land slip areas. The appendix contains the criteria used in rating soils for this purpose.

Runoff and erosion control considerations are important when evaluating the development site. They are: Consider natural drainage . . . Avoid areas subject to flooding . . . Are excessive cut and fills necessary? . . . How can the site be developed without excessive earth moving? . . . Vegetative cover reduces water runoff and soil erosion . . . Remove the vegetation necessary to build on and provide adequate fire protection . . . Don't strip the site of all protective cover.

Access roads are not only matters of convenience but are necessities for protection from emergencies such as fire and flood. Factors relative to suitable access roads are found in the appendix.

DEVELOPING THE SITE

Water Supply

The development of domestic water supplies require careful planning. Depending on the situation, all uses may be planned in a single system or as separate systems. Realizing that each site requires specific plans, our discussion will take each use separately and will be confined to general guidelines.

Domestic Water. In areas serviced by municipal water companies, the purity, quantity, pressure and supply are regulated by appropriate local regulations and need not be discussed here. Compliance with local building codes should be the only considerations in these cases.

Individual water sources such as wells, springs, or stored runoff are the more common types.

Wells are generally considered the most reliable and safest source of water if properly developed. Information as to the location of wells from the sanitary viewpoint may be obtained from the local County Health Department. Information on water-bearing strata to guide in the location of wells is scarce. The occurrence of wells in the vicinity, coupled with the records of local experienced and responsible well drillers and the results of test wells will give further guidance.

Springs are of several types, and their development depends on their type. The local county health department and, where applicable, the Soil Conservation Service have standard plans for their development. The reliability of a spring to produce adequate water should be checked during the late summer months or when the flow can be expected to be at its lowest.

Sanitary considerations in developing a private source of water are important. Surface waters diverted from streams or collected in ponds or cisterns are considered by the county health department to be contaminated, and require treatment before use for domestic purposes. Where only surface waters are available, the danger of contamination increases as use is based upon cisterns, with uncontaminated catchment areas; ponds, from which livestock have not been excluded; surface stream flow, particularly in the more populated areas.

Wells and springs must be protected from surface flow or from shallow ground water. Surface flow should be diverted away from a spring. Wells should have a watertight seal (such as concrete) surrounding the well casing and extending at least 10 feet below the ground surface. The ground surface should slope away from the well. A pump platform of concrete sloping away from the pump and extending at least two feet from the pump in all directions is recommended. Before a new well, or any recently worked on is put into use, contact the county health department for instructions on disinfecting the well.

Storage for private water sources should be for at least two days. It is preferable that a week's supply is maintained to provide water during emergencies. Storage tanks should be covered and protected



A potential health hazard—should anyone attempt to use these waters for domestic use.

from sources of contamination. Suitable building materials for such storage tanks include concrete, steel and redwood. Water distribution systems should have pipes of adequate size to prevent excessive friction losses. Local building regulations and water system contractors should be consulted for your specific needs.

Irrigation Water. Irrigation, as used here is that which is normally thought of as “watering” around the yard. Here we are considering irrigation of landscape, erosion control and fire retardant plantings. If a more extensive irrigation system is planned for agriculture, assistance should be sought from professional engineers. Local irrigation pipe dealers and the Soil Conservation Service may aid you in the design of such systems. The water needs of landscaping and erosion control plantings has been discussed in the previous chapter. Sources of suitable irrigation water includes ponds, streamflow, in addition to wells. Sprinkling is generally the easiest, most economic method of irrigating, in addition to conserving water. Sprinkling is especially well suited for irrigating sloping land. Sprinkler pressures are generally 30-40 pounds per square inch. Steel, plastic, cement asbestos, and aluminum are all suitable materials for use in the system. Generally permanent underground systems with fixed risers are the easiest to operate, but the initial investment is high. For areas irrigated only a few times a year, surface aluminum pipe or plastic pipe or hose may prove most economical. As plants vary in their moisture needs, the frequency of irrigation should also vary. Deep rooted plants such as

shrubs and trees generally require less frequent deep irrigations, while grass and shallower-rooted shrubs require frequent shallow irrigations. To further complicate the issue, soils of different textures, (sands or clays) retain different amounts of water that is available for the plant's use.

Water for Fire Protection. All sources of water should be made available for fire protection. Aside from the domestic and irrigation supply, swimming pools and ponds can provide an additional source of water if appropriately plumbed. A rule of thumb used by fire departments for the minimum amount of water that should be available for firefighting is 10 gallons for each square foot of roof area. Thus, a home with 1,000 square feet of roof area would require 10,000 gallons of water. This amount could be stored in a tank approximately 13 feet 3 inches in diameter and 10 feet tall or, 12 feet square and 10 feet deep. The fire protection system should have the capability of supplying at least 10 gallons per minute for a minimum of two hours at 40 pounds of pressure. Capacity of a fire protection system is not enough, the water must also be available. It should be located so that fire equipment and personnel will not be prevented access due to burning buildings or vegetation. Fire pumpers must be able to drive to within 20 feet of the source. The pipe from the water source must have a standard 2½-inch male fitting with National Standard threads. This standard fitting is very important, as all fire pumpers in California are adapted to fit this size and type fitting. Any other size or type may make your water source useless when needed.

Where swimming pools are provided with a circulation pump, a hose fitting should be provided on the discharge of the pump. The pump could then supply a high pressure source of water through a hose, or through a pipe to a standard fire fitting. For immediate fire protection hoses connected to the faucets should be available at all times during the fire season. Swimming pools that are fenced and locked when not in use should be provided with the standard hydrant located outside the fence where it might be reached by a fire pumper. Due to the possibility of electric power being cut off during any fire, an auxiliary gasoline motor and pump may be needed.

Other fire protection measures that may be taken are: Use fire retardant roofing material . . . Use rooftop sprinklers . . . Use firebreaks as required by Public Resources Code, Section 4105 . . . Use fire retardant vegetation for erosion control and general landscaping (see the appendix for adapted fire retardant species). Consult the California Division of Forestry or the county fire marshal for assistance in developing your fire protection plans.

Sewage Disposal

Soil features must be considered when planning a development in an area not serviced by sanitary sewers. If before a site is developed, the soil slope, depth and percolation rate are considered, many problems can be prevented. The sewage disposal criteria table in the appendix shows the effect of these features on the minimum net* lot size. In addition to the effect on lot sizes, a poorly designed sewage disposal

* Net usable lot area is considered to exclude ravines, waterways, ridges, roads, etc.



Slippage of a filled area—fill areas require special construction methods.



An intended building site—on steep slopes deep cuts can be minimized by use of pile or pillar-type foundations.

system can pollute domestic water sources such as wells, springs and streams. The safe distance to streams and wells varies with the soil slope and percolation rate, but should never be closer than 50 feet. The sewage disposal system should be located on the lot plans before excavation or grading begins. Many good lots have been damaged or destroyed because the building pad was built before the sanitary needs were considered, and the only good site for the disposal system was stripped of topsoil or compacted. Compacted soils or soils without topsoil are poor areas on which to build a disposal system, as percolation rates are greatly reduced.

Many counties by ordinance require a percolation test be made on each site. Further information regarding sewage disposal systems may be obtained from the county health department.

Soil Stability and Foundations

Too many times, persons who build in the hills consider only the view or other aesthetic values when choosing a homesite. This often results in a development not being placed in a suitable area so far as foundations are concerned. The failure of foundations or slippage of a filled area results in calls for assistance from the county or city public works department or the Soil Conservation Service. Often little can be done without incurring large costs for remedial action.

Prevention through good planning is the best solution. When laying out your homesite on your property, consider if the home will have to be built on fill material. If so, is the soil material the type that will provide a well-compacted, safe foundation? Or is it likely to slip down the hill with your home or road when it becomes saturated with winter rains?

If the soil is of the latter type, plan to use special construction methods or practices to prevent this.

Another problem often resulting in foundation failure and resulting in court action is that of expansive soils. These soils when wet expand, and crack and shrink when dry. This is caused by the type and amount of a certain clay. If these soils cannot be avoided for use as foundations, soil engineers can recommend changes in soil foundation preparation procedures or in a change design of the building foundation. If slab floors are necessary on these soils, the expansive clay soils can be mixed with a nonexpansive soil to achieve soil stability.

In general, problems develop from improper and extensive earth-moving. Deep cuts are subject to soil erosion from rainfall and runoff waters. Extensive fills, if not compacted properly, often settle or slip in addition to being especially susceptible to erosion. Proper selection of development sites may require only a minimum of excavation. On sloping sites, earth moving can be minimized by use of different types of building construction, for example, pile or pillar-type foundations. When excessive cut or fills are necessary, follow these guidelines: Remove only the vegetation necessary; don't strip the entire site and pave the way for erosion . . . Scarify and mix surface soil on areas subject to fill . . . Compact the fill by having soil moisture at an optimum for compaction and compact with a sheepsfoot roller or similar tool . . . Maintain slopes on cut and fill at no steeper than one-foot vertical drop for each two feet of horizontal distance, where space

permits . . . Install subsurface drains in seep areas . . . Cover cut and filled areas with six inches of topsoil to aid in revegetation where practical.

Runoff Water and Erosion Control

A serious problem often overlooked during the planning and construction stages of development is making allowances for the disposal of runoff water and the precautions necessary to prevent soil loss through erosion. This holds true, not only for the development area itself, but also for the access roads and other areas which contribute water to the development. The lack of adequate runoff water control facilities often results in classic soil erosion problems. Filled areas not properly protected from runoff water are good examples. The best method of preventing the above problems from occurring is to divert the waters away from the site, especially the recently cut and filled slopes. Diversion ditches are generally the best to protect the above areas, while gutters with proper disposal facilities along access roads serve similar purposes. Proper disposal facilities as used above means culverts leading into natural watercourses through pipe drops, paved ditches or extensions to the culverts. Erosion can pose serious problems in both the cut and filled areas. Protection from sheet erosion is most generally accomplished by use of vegetation. Dense plant cover, well established, can withstand large runoff flows and still provide adequate soil protection at reasonable costs. (See the appendix for a list of temperate zone plantings for erosion control or contact the University of California Agricultural Extension Service, Davis, California.) The species in the appendix are listed according to their moisture needs, fire retardance, deer resistance, and use in plantings. If vegetation other than grass is to be used within 30 feet of a building, the planting should be fire retardant in nature and low in growth habit. In cut or filled areas where only subsoil is on the surface, the establishment of vegetation may present problems. Newly developed commercial products aid in the establishment of new seedlings by allowing seed, fertilizer, and insecticides to be applied in one operation through "hydroseeding." Jute, paper and hemp nettings have been developed to aid in solving the above. (See the appendix for a listing of representative commercial conservation products discussed above.) Prior to planting, an irrigation system should be installed for plantings which are going to require supplemental water. Sprinkler systems generally are best suited for this purpose. Although contour or basin irrigation may be used on the more level areas, or where the plantings are widely spaced.

To summarize, consider the following when planning for a hillside development: Remove vegetation only from areas required for buildings and fire protection . . . Slope cuts and fills as outlined under soil stability and foundations section, and replace topsoil to aid in establishment period . . . Protect new plantings with organic material such as straw, or use one of the new commercial mulches . . . In areas where deer are a problem, plant deer-resistant plants (consult the University of California Agricultural Extension Service publication, *Deer Resistant Plants for Ornamental Use*) . . . Where vegetation alone will not provide adequate erosion control, use diversion ditches, paved gutters, culverts and other mechanical practices.



Access road undermined by an adjacent stream—conditions such as this may prevent a fire tanker from answering a call or residents from escaping a fire.

Planning Access Roads

Access roads should be constructed to provide ready entry and exit at all times. (See the appendix for the access roads criteria table.) Access roads to hillside developments are often not properly designed or constructed and may cause severe problems. Erosion, stream siltation, loss of road and fire safety hazards are some of these problems. The California Division of Forestry recommends that two-way roads be constructed on grades not more than 10-to-15 percent. Those portions of roads with grades steeper than 10-to-15 percent should be kept to less than 500 feet in length. If the above conditions are not met, it may prevent two-wheel-drive fire tankers from pulling the grade while answering a fire call.

Useful information and guidelines regarding access roads may be obtained from local county public works department. Many private engineering firms are engaged in designing and supervising the construction of such roads. To summarize, consider the following when planning an access road in the mountains: Comply with the county ordinance code pertaining to excavating and grading in hillside areas . . . Use benches and retaining walls to lessen the right-of-way requirements . . . Use pullouts where two-way road construction is not economically feasible . . . Protect cut and fill areas from excessive runoff . . . Keep road grades under the 15 percent maximum . . . In laying out the road route, consider the type of material through which it will be constructed, such as rocks, seep areas, and adequate soil depth.



APPENDIX

Definitions

The terms used to describe the "degrees of limitations" for each of the different land uses on the following pages are defined as:

None to Slight—A condition which requires no more than normal precautions in the design and construction of a development.

Moderate—This condition requires more than normal precautions be taken during the planning and design stages of the development.

Severe—This condition requires considerable additional precautions be taken during the planning, design and construction phases of the development. Professional assistance should be obtained to aid in the planning, design and construction of the development.

Very Severe—This condition suggests that very extensive precautions in planning and design are essential. Professional assistance must be obtained in all phases of these developments. Often these additional precautions increase the cost of a development to uneconomic levels.

CRITERIA TABLE FOR ACCESS ROADS

Limiting soil features which should be considered during the design and layout of access roads (including driveways) include the percent of slope, soil depth, soil texture and drainage.

Soil features	Degree of limitation			
	None to slight	Moderate	Severe	Very severe
Percent slope	0%-10%	10%-20%	20%-40%	40%+
Soil depth to bed-rock or clay	60"+	36"-60"	20"-36"	Less than 20"
Soil texture	Sandy loam, fine sandy loam, very fine sandy loam and loam	Silty loam, sandy clay loam	Clay loam	Clay, silty clay, sandy clay and very fine sand
Soil drainage	Good internal drainage, no seeps present	Seepage requiring simple drains in the fills	Seeps and or springs requiring pipe drains	Seeps and/or springs requiring extensive and complex drains

In addition to the soil features listed above, the degree of limitation ratings have taken into consideration the soil's natural angle of repose, the shrink-swell ratio and compactability.

The above ratings for access road construction are based on a Santa Clara area soils survey released in 1958 by the Soil Conservation Service of the U.S. Department of Agriculture, and the California Agricultural Experiment Station. They are offered to serve as a guide but are not to be considered as applicable statewide. For local information and additional data on physical soil characteristics, contact the U.S. Soil Conservation Service, 2020 Milvia Street, Berkeley, California.

CRITERIA TABLE FOR SEWAGE DISPOSAL

Limiting soil features affecting sewage disposal which should be considered during design and construction of a sewage disposal system include soil texture, which is reflected in terms of percolation rate, soil depth, and the slope of the land.

Soil features	Degree of limitation			
	None to slight	Moderate	Severe	Very severe
Percent slope	0%-5%	5%-10%	10%-20%	20%+
Soil depth	10 feet +	6-10 feet	4-6 feet	Less than 4 feet
Percolation rate	0-20 min./in.	20-40 min./in.	40-60 min./in.	Over 60 min. per in.

Minimum net lot size for above conditions*				
Minimum net lot size in square feet	10,000	12,500 to 17,500	From ½ to 1 acre	1 acre or more

* Minimum net usable lot area is considered to exclude ravines, waterways, ridges, roads, and other areas not suitable for filter field construction.

The example percolation rate and minimum net lot sizes indicated above were based on a Santa Clara County ordinance and should not be considered as applicable statewide. Instead, the above ratings should be used only as a guide. Final determination must be based on the results of on-site tests for percolation. For complete requirements in developing a sewage disposal system consult the local county health department.

Care should be taken in homesite preparation, so that an undisturbed area of sufficient size is reserved for the sewage disposal system. Areas stripped of topsoil, or compacted, are usually not suitable for drain fields due to the reduced percolation rate. So, locate your sewage disposal system on your development site *before* you start to excavate for foundations etc.

PUBLIC AGENCIES TO CONSULT WHEN PLANNING A HILLSIDE DEVELOPMENT

Agency	Area of responsibility
State and Federal	
U.S. Department of Agriculture, Soil Conservation Service	Basic soils information, erosion control planting recommendations, irrigation system design
California State Division of Forestry.....	Fire prevention and control in mountainous areas
California State Soil Conservation Commission.....	Advice and counsel on coordination and formation of Soil Conservation Districts
County Offices	
Agricultural Extension Service.....	Vegetative planting information
Fire marshal.....	Fire prevention
Health department.....	Basic planning data relating to sewage disposal systems and domestic water supply development
Planning department.....	Basic planning, zoning and ordinances
Department of public works.....	Permits for buildings, access roads, foundations, and etc.
Local Special Districts, Where Applicable	
Fire prevention district.....	Fire prevention and control
County flood control and/or water conservation district	Flood prevention and stream channel maintenance
Soil conservation district.....	Soil and water conservation planning, watershed protection

REPRESENTATIVE CONSERVATION PRODUCTS

The products listed below are but a few of the erosion prevention and control products available. Each has its place in an erosion prevention planting program as discussed in this publication.

These products, when used in combination with retaining walls, diversion ditches and other mechanical practices, should provide a complete erosion prevention program with which to protect a hillside development.

Further assistance from local landscape architects, contractors and nurserymen will aid in the selection of appropriate products best suited to solving a specific problem.

Prices shown were taken from the manufacturer's literature, and as such, may be subject to local variations.

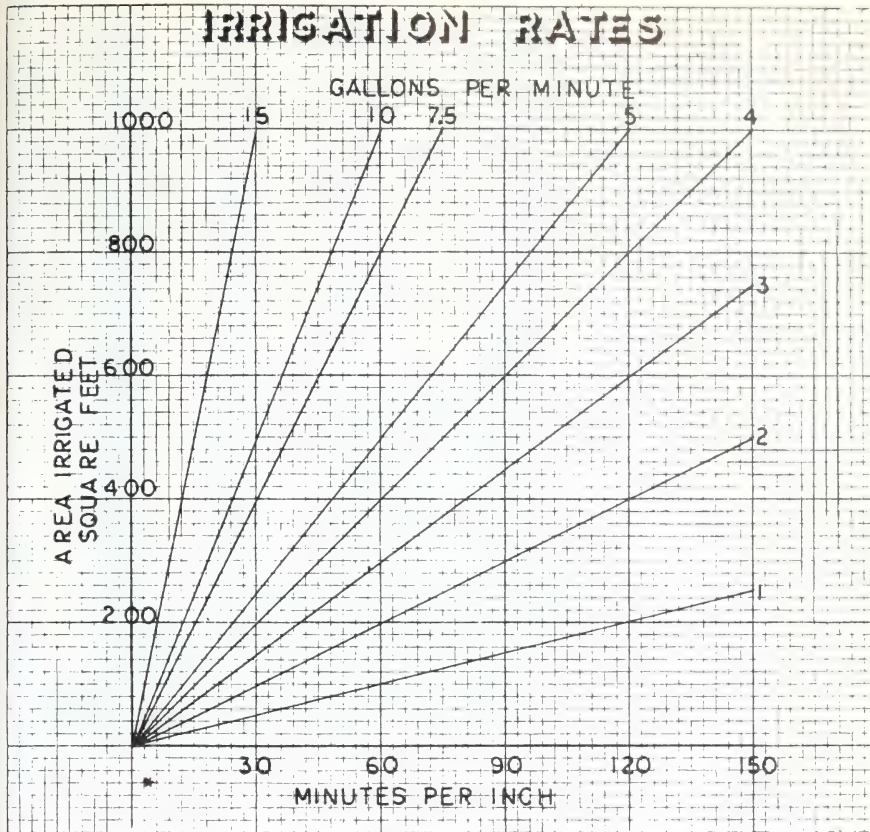
Brand name*	Description	Approximate cost per square foot
Solution products		
Aquatain.....	Chemical gelatinous film.....	2 cents applied
Catalin Resin 251.....	Permeable chemical film.....	2 cents applied
Catalin Resin 239.....	Impermeable chemical film.....	3 cents applied
Elanol.....	Polyvinyl alcohol spray.....	2 cents applied
Erosion Stop.....	Aqueous solution.....	4 cents applied
Soil Set.....	Elasticomeric polymer emulsion.....	3 cents applied
Mulch products		
Sta-Soil.....	Natural organic compost.....	4 cents applied
Turfiber.....	Paper fiber mulch.....	1½ cents applied
Fiber mat products		
Soil Saver.....	Woven jute mesh.....	6 cents applied
Troy Turf.....	Jute mat roll.....	10 cents applied
Mulchnet.....	Twisted paper net.....	½ cent product cost only
Erosionet.....	Twisted paper fabric.....	1 cent product cost only
Ultrack.....	Glass fiber blanket.....	Costs not available

* Brand names are used for ease in the description of the materials only. The use of these names does not constitute an endorsement. Likewise, the absence of a brand name is not intended as a criticism of that product.

LOCALLY ADAPTED PLANTS—THEIR USES AND CHARACTERISTICS FOR A TEMPERATE ZONE *

Name	Height	Landscape use	Comments
SHRUBS			
<i>Arctostaphylos hookeri</i>			
Hooker manzanita	1-3 feet	Ground cover on slopes	Sun or light shade, drought tolerant
<i>Arctostaphylos uva-ursi</i>			
Kinnikinnick Bearberry	2-6 inches	Ground cover on banks and slopes	Slow growth, sun or light shade, tolerant of poor soil
<i>Carissa grandiflora</i> Natal Plum	5-7 feet	"Nana compacta" and "Prostrata" are ground cover varieties	Slow growing, do not overwater
<i>Ceanothus griseus horizontalis</i> Carmel creeper	18-30 inch	Ground cover on banks and slopes	Likes any soil, sun or shade, fast grower
<i>Cistus ladaniferus</i> Gum rockrose	4-6 feet of growth	Ground cover on very steep dry slopes	Drought tolerant, deer and pest, tolerant
<i>Lantana montevidensis</i>	6-8 inches high, trailing to 3 feet	Ground cover on slopes	Needs full sun, do not overwater
<i>Rosmarinus officinalis</i> "Prostratus" variety	Low growth spreading 4-8 feet	Ground cover on slopes	Drought resistant
Dwarf rosemary			
TREES			
<i>Eucalyptus ficifolia</i> Red flowering gum	30-50 feet	For showy scarlet flowers	Drought tolerant, slow growing, plant in clumps
<i>Eucalyptus sideroxylon</i> Red ironbark	To 40 feet	For pink blooms	Drought resistant, fast grower, needs excellent drainage
<i>Prunus lyonii</i> Catalina cherry	15-35 feet	For creamy white flowers and deep green glossy foliage	Best in hot dry areas, requires irrigation and good drainage
<i>Umbellularia californica</i> California laurel bay tree	20-75 feet	For aromatic dark green foliage	A native found in canyons and along streams
GRASSES & LEGUMES			
Barley	24-36 inches	For erosion prevention on cut banks and filled areas	Grows during winter months without irrigation, an annual grown from seed
<i>Lolium rigidum</i> Wimmera ryegrass	18-36 inches	Use as a stabilizer on road cuts, and earth fill areas	Drought tolerant, low fertility requirement, short-lived winter annual
Blando brome-Lana vetch	To 24 inches	For stabilizing cut and filled areas, along roadsides and dam fills	Planted together this mix will grow and reseed well with 500 pounds of ammonium phosphate fertilizer per acre
GROUND COVERS AND VINES			
<i>Ajuga reptans</i> Carpet bugle	2-6 inches	For dense mat cover on slopes	Started from divisions requires irrigation often, hardy to 3°
<i>Hedera helix</i> English ivy	A vine	For dense cover on slopes	It roots at the joints or in the air, requires moderate irrigation
<i>Vinca major</i> Common periwinkle	6-12 inches	For dense mat in sun or shade	Requires frequent irrigation in hot dry locations
<i>Hypericum calycinum</i> Aaron's beard	To 12 inches	Excellent soil binder on steep cut or fill areas	If left unpruned often becomes a weed

* For further information contact the local agricultural commissioner or, where available, the local University of California agricultural extension service.



Example:

With 600 sq. feet (an area 20 x 30 feet) to irrigate, and 4 gpm., how many minutes will be required to apply 1 inch of water?

Start with 600 on left edge of graph, move horizontally across graph to intersection of 4 gpm., then straight down to bottom of graph. Read answer . . . 90 Minutes/Inch.

* This chart is based on 100% efficiency, adjust the time in minutes per inch to your own efficiency by multiplying the following factors for

90%—1.1

80%—1.25

70%—1.4

60%—1.7

50%—2.0

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3. *Manual of Septic-Tank Practice*. Public Health Service Publication No. 526. Washington, D.C. 1958.
4. *Soils Suitable for Septic Tank Filter Fields*. United States Department of Agriculture Information Bulletin No. 243. Washington, D.C.
5. *Soil Conservation At Home*. United States Department of Agriculture Information Bulletin No. 244. Washington, D.C.
6. *Sanitary Methods for Rural Water Supplies and Systems*. United States Department of Agriculture, Soil Conservation Service. Washington, D.C.

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1. *Evaluation of Soils & Use of Soils Surveys for Engineering Purposes in Urban Developments*. Federal Housing Administration Publication No. 723. October 1963. Washington, D.C.
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2. *Clear Away Brush, Cut Your Fire Hazard*. University of California Publication AXT-69. Berkeley.
3. *Landscape to Prevent Fire*. University of California Publication AXT 64. Berkeley.
4. "Lessons from the Bel Air Burn", *Sunset Magazine*, May 1962, pages 107-111. Lane Publishing Co., Menlo Park.
5. "Have Fire Fighting Equipment", *Sunset Magazine*, May 1962, page 128. Lane Publishing Co., Menlo Park.

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1. The results of state and federal tests of the products mentioned in this appendix are available at the Soil Conservation Service, 2020 Milvia Street, Berkeley.
2. *Soil Conservation*. Bennett, H. H. McGraw-Hill Book Company, New York, 1939.

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REPORT OF THE
SENATE FACTFINDING COMMITTEE
ON
PUBLIC HEALTH AND SAFETY

MEMBERS OF THE COMMITTEE

Senator Walter W. Stiern, *Chairman*

Senator Jack Schrade, *Vice Chairman*

Senator Aaron W. Quick

Senator Frank S. Petersen

Senator Alvin C. Weingand

COMMITTEE COUNSEL

WILLIS L. CULVER

FEBRUARY 1965

Published by the
SENATE
OF THE STATE OF CALIFORNIA

GLENN M. ANDERSON
President of the Senate

HUGH M. BURNS
President pro Tempore

JOSEPH A. BEEK
Secretary of the Senate



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LETTER OF TRANSMITTAL

February 3, 1965

HON. GLENN ANDERSON, *President*
and Members of the Senate

Gentlemen :

The Senate Factfinding Committee on Public Health and Safety herewith submits a report on subjects studied by the committee during the 1963-65 interim period.

Chapter I of the report summarizes the five subjects studied and states the committee's conclusions and recommendations. Chapters II through VI deal separately with each subject.

Respectfully submitted by

WALTER W. STIERN, *Chairman*
JACK SCHRADER, *Vice Chairman*
FRANK S. PETERSEN
AARON W. QUICK
ALVIN C. WEINGAND

Chapter I

SUMMARY OF CONCLUSIONS AND RECOMMENDATIONS

1. *Should legislation be enacted to increase the authority of the Board of Medical Examiners to control unprofessional medical conduct?*

The committee has concluded that the Medical Practice Act needs revision in order to give the Board of Medical Examiners authority to protect the public from the negligent, immoral, and incompetent physicians who constitute a very small percentage of the total number of physicians. The Medical Practice Act does not permit the board to obtain jurisdiction over such physicians, and, if it did, the board might not have legal authority to restrict the offender's right to practice and to supervise his behavior on probation.

If the Legislature does expand the jurisdiction of the board, the Legislature should at the same time establish five district review committees to facilitate the working of the board's disciplinary responsibilities.

The Medical Practice Act is deficient in certain respects and should be revised. The section on mental illness is poorly worded, out of date, and too restrictive in some respects. Physicians who knowingly falsify insurance claims and government documents should come within the jurisdiction of the board. The board should have jurisdiction to discipline physicians who habitually practice in hospitals without procedures for the periodic review of surgery and medical treatment. Finally, the Legislature should provide the board with adequate investigatory authority to carry out its functions.

2. *Should legislation be enacted to reduce the county property tax on property within cities maintaining a health department?*

The proponents of this proposal are asking the state to reverse a state policy of 14 years standing. There is no merit in the contention that this proposal will apply to only five cities, for the Legislature will be asked to grant equal treatment to all cities and the request will be difficult to deny.

Legislation passed in 1947 gave cities a clear alternative: to consolidate health services with the county or to maintain a city health department and contribute to the support of the county health department. The committee finds no reason why that decision should be reversed at this late date.

The committee recommends:

1. The Legislature should take no action on any bill which reduces county taxes on property in a city maintaining a health department.
2. The Legislature should give favorable consideration to any legislation necessary to permit cities and counties to contract with each other regarding health services.

3. *Should legislation be enacted to abolish the power of local government agencies and to grant exclusive power to the state government to regulate fire safety in hospitals?*

Abolition of the power of local government agencies to regulate fire safety in hospitals will eliminate a part of the traditional responsibility of local government for the protection of the public against the danger of fire. The Legislature should not take this step without clear evidence of need and assurance that state regulation will be adequate for public safety. The evidence submitted to this committee was not persuasive to establish these facts.

The committee recommends:

1. The Legislature should take no action toward state preemption of the field of fire safety in hospitals without a comprehensive study to show the need, if any, for such legislation.

2. Any study of this subject should be but one part of a complete study of the proper division of responsibilities between the state and local government agencies for the health and safety of the public.

4. *Should legislation be enacted to require retailers to label meat, fish, and poultry which has been frozen and thawed as a "thawed product"?*

This is a consumer interest proposal aimed at giving the buyer more information about the quality of certain food. The bill does not attempt to protect the public against unwholesome or injurious food.

The evidence submitted to the committee shows that labeling meat, fish, and poultry as a "thawed product" does not provide the consumer with specific information about the quality or keeping quality of the food purchased.

Enactment of the bill may create unwarranted sales resistance leading to harmful disturbances in the production and marketing of food.

The committee recommends:

1. The Legislature should take no action on any bill which would require retailers to label thawed meat, fish, and poultry as a "thawed product."

5. *Should legislation be enacted to establish requirements of education and training for persons who use X-ray machines on human beings for medical purposes?*

Government regulation of radiation sources has been inaugurated in the realization the regulation is necessary to protect the living population and future generations from the hazard of unnecessary radiation. Because medical X-ray machines comprise the major source of public exposure, elimination of unnecessary medical radiation will greatly reduce the total amount of radiation and will enhance the public welfare. Regulation of equipment is not by itself sufficient; by using poor procedure an untrained X-ray machine operator can negate the value of the best equipment; there is much evidence that improperly trained people can and do operate medical X-ray machines. The state can

establish standards of education and training for medical X-ray machine operators without interfering with the right of medical practitioners to make judgments as to the need for using the equipment and without interfering with the responsibility of the practitioner for the safety of the patient.

The committee recommends:

1. Legislation should be enacted to provide that no one, except licentiates of the healing arts, shall use X-rays or X-ray producing equipment on human beings for diagnostic or therapeutic purposes without having been certified by the State Department of Public Health after meeting educational requirements and passing an examination.

2. Legislation should be enacted to provide that licentiates of the healing arts must supervise all X-ray exposure of human beings for diagnostic and therapeutic purposes.

3. Legislation should be enacted to amend the Medical Practice Act to require applicants for a physician's and surgeon's certificate and applicants for a podiatrist's certificate to show evidence of having attended a medical school whose curriculum provided for adequate instruction in radiology, including roentgenologic technique and radiation safety.

4. Legislation should be enacted to amend the Medical Practice Act to require applicants for a physician's and surgeon's certificate and applicants for a podiatrist's certificate to pass an examination in roentgenologic technique and radiation safety.

Chapter II

CONTROL OF UNPROFESSIONAL MEDICAL CONDUCT

Senate Resolution 204 of the 1963 Regular Session directed the Senate Factfinding Committee on Public Health and Safety to study the laws of the state relating to the control of unprofessional and unethical medical conduct. The committee held two hearings on this subject, one in San Francisco, September 22, 1964, and one in Los Angeles, October 13, 1964, and received testimony from professional medical associations, the State Board of Medical Examiners, and other interested persons.

This report describes the existing system of public and professional control of medical conduct, points out areas where the system is deficient, lists the recommendations made to the committee for improving the system, and states the committee's conclusion that the recommendations should be accepted by the Legislature.

Nothing in this report is intended to minimize the sincere and costly efforts of the physicians of California to eliminate from practice those very few doctors who reflect badly upon the whole profession.

This report primarily concerns the control of physicians who habitually engage in unethical and immoral conduct, who are professionally incompetent, or who have psychiatric disabilities which interfere with the proper treatment of patients. This report will often use the term professional incompetent to describe this wide range of medically antisocial behavior. The report of the Governor's Committee on Medical Aid and Health, December 1960, listed some of the actions of professional incompetents: failing to call in a consultant when such a procedure is needed, performing operations for which the physician's training is inadequate when qualified physicians are available, performing unnecessary operations, failing to carry out adequate diagnostic procedures prior to treatment or surgery, prescribing unnecessary or incorrect medication, failing to keep abreast of advances in medicine, feesplitting, overcharging, and ordering excessive hospitalization. Legal definitions of such conduct use such phrases as the following: gross or repeated negligence, gross immorality, and gross incompetence. Arizona law defines unprofessional conduct to include gross malpractice, repeated malpractice, or any malpractice resulting in the death of a patient.

The number of professional incompetents is very small relative to the number of practicing physicians, but there are no precise estimates of the total. The estimates range from one-tenth of 1 percent of all physicians (the percent complained about to the Board of Medical Examiners) to 5 percent. Harold C. Freedman, M.D., past president of the Kern County Medical Society, states that on the basis of 30 years of associating with physicians he believes that two to three percent do not meet professional standards of honesty, character, and morality. There are about 30,000 physicians practicing in California.

Roger O. Egeberg, M.D., dean of the School of Medicine of the University of Southern California, expressed an opinion as to why professional incompetents constitute a greater problem today than in the past. The reason, he said, lies in the

revolutionary changes that have occurred in medicine and in society's expectations of medicine. Medicine has advanced more since 1933 than in all the history of mankind up to 1933. . . . This has happened at terrific cost and with an amazing complex of equipment and tests making judgment more difficult and giving greater opportunity for doing wrong or for not doing right.

The State Board of Medical Examiners, pursuant to the Medical Practice Act, issues physician's and surgeon's certificates and exercises disciplinary authority over certificate holders. The board is made up of 12 members appointed by the Governor, one of whom, the public member, is not a licensee of the board. From 1953 to 1962 the board issued an average of 2,198 physician's certificates each year. At the present time the board issues about 2,400 certificates each year.

To obtain a California physician's and surgeon's certificate one must submit testimonials of good moral character, meet specific educational requirements, and pass an examination. The Medical Practice Act requires applicants for the certificate to have the equivalent of a high school education, three years of college, a degree from a four-year medical school approved by the board, and one year of internship at a hospital approved by the board. Certain subjects must be in the curriculum of an approved medical school. The examination covers nine subjects and at least a portion of the examination in each subject must be written. A score of 75 percent is necessary to pass.

Under certain conditions, the holder of a physician's certificate from another state can obtain a reciprocity certificate in California without examination. The educational and examination standards of the issuing state must be equivalent to California standards.

Section 2137 of the Medical Practice Act provides:

The physician's and surgeon's certificate authorizes the holder to use drugs or what are known as medical preparations in or upon human beings and to sever or penetrate the tissues of human beings and to use any and all other methods in the treatment of diseases, injuries, deformities, or other physical or mental conditions.

The exercise of disciplinary power by the board takes place in three distinct steps. The first step is to obtain jurisdiction over the physician on one of the grounds specified in the Medical Practice Act. The second step is to find, pursuant to the requirements of the Administrative Procedures Act, that the physician is guilty of wrongful conduct or that he falls within the provisions of the act on mental incompetence. The third step is the act of discipline itself, suspending or revoking the physician's license, or taking some other action regarding his right to practice.

Twenty-three sections of the Medical Practice Act define unprofessional conduct; these constitute the grounds on which the board can

obtain jurisdiction to discipline people for wrongful conduct. Eleven of these sections cover the following acts: procuring a certificate by fraud; purchasing a medical degree; impersonating a certificate holder; impersonating an applicant for a certificate; employing a person to treat the sick whose certificate has been suspended; employing a person to bring in medical business; using the initials, M.D., falsely; violating any provisions of the act; performing a criminal abortion; violating the law relating to cancer treatment; and betraying a professional secret. Five sections concern the use of narcotics and dangerous drugs. Five sections concern improper advertising. Section 2411 defines unprofessional conduct as knowingly making or signing any certificate or other document required by law which falsely represents the existence or nonexistence of a state of facts. Section 2383 defines unprofessional conduct as (1) the conviction of a felony or (2) the conviction of any offense, felony or misdemeanor, involving moral turpitude.

Neither the Board of Medical Examiners nor any other agency of government has authority to restrict the right to practice medicine of physicians who engage in unethical medical practices or whose medical conduct amounts to gross negligence or gross incompetence, no matter how harmful to patients the physician's conduct may be. Patients can bring malpractice actions against such physicians but that does not affect the physician's right to practice medicine. Even when a physician has been convicted of a crime, the board has no authority to suspend or restrict his license until the conviction is affirmed on appeal or otherwise disposed of. The subject of the board's lack of authority to deal with professionally incompetent physicians receives further comment in the section of this report containing recommendations for legislative action.

Professional medical societies and the medical staff of some hospitals attempt to control the conduct of professional incompetents.

The California Medical Association has adopted a set of principles to guide physician-hospital relationships. These principles may be taken as a description of how the best hospitals in the state perform the functions of supervising, reviewing, and controlling the medical care of patients. The following four paragraphs summarize these principles.

The governing body of the hospital appoints physicians to the medical staff on the basis of the medical staff's recommendation, which depends on the individual skill and training of the physician and not on licensure.

The medical staff works through a committee system to supervise treatment and care. The executive committee coordinates policies and activities and acts upon the recommendations of other committees. The credentials committee investigates applicants for staff privileges, investigates breaches of ethics, reviews the activities and competence of staff members, and makes recommendations regarding them to the executive committee. Before recommending that a physician be granted staff privileges, the committee investigates his skill and character, including information from the county where he previously worked and the hospitals where he previously practiced. The joint conference committee coordinates the activities of the medical staff, the governing body of the hospital, and the hospital administrator. The medical records committee assures the maintenance of medical records at the required

standard. The surgical procedures committee reports on the agreement or disagreement of diagnoses before and after surgery on the basis of pathological analyses of tissue. The medical procedures committee makes a qualitative analysis of medical and surgical procedures undertaken in the hospital. The hospital utilization committee attempts to make sure that the hospital is used as efficiently as possible. Committee records are confidential and are the property of the medical staff and are not a part of the patient's record or of general hospital records.

Committees of the medical staff make periodic reports and recommend discipline of staff members. When severe disciplinary action is necessary, the facts are reduced to writing and reviewed by the executive committee. The governing board of the hospital reviews the executive committee's recommendation and may conduct further investigation before accepting, rejecting, or modifying the recommendation.

Disciplinary action may include any of the following:

reprimand or probation; limitation, suspension and revocation of privilege. When considered necessary, the appropriate committee may recommend and the executive committee may impose, prior to a hearing, immediate suspension or limitation of privileges subject to final action after the hearing is completed.

Staff physicians must agree to accept voluntarily the decisions of the medical staff and the hospital governing board.

If the hospital terminates a physician's staff privileges, the executive committee requests the physician to submit the names of other hospitals where he has staff appointments and to consent to the executive committee advising the other hospitals of the termination of his privileges and of the reasons therefor.

There are three factors which reduce the effectiveness of hospitals as a source of control of professionally incompetent physicians. First, not all hospitals meet the high standard called for in the California Medical Association's guiding principles for physician-hospital relationships. Neither law nor regulation sets standards for hospital medical staff organization and the supervision and review of medical and surgical treatment in hospitals. The hospital licensing act, administered by the Department of Public Health, contains sanitation and building standards to assure that hospitals are safe places for the accommodation of infirm persons. The Joint Commission on Accreditation of Hospitals, a private organization sponsored by national medical and hospital associations, accredits about one-half of the hospitals in the state; law does not require that hospitals seek accreditation. Second, professionally incompetent physicians may work in an office instead of a hospital. Third, if a physician loses his privileges at one hospital, he can continue to work in other hospitals. The guiding principles of the California Medical Association require a disciplined physician to consent to having other hospitals notified of the action taken against him, but if he does not do so, the disciplining hospital may choose not to risk a lawsuit by notifying other hospitals of its action.

Professional medical societies are another source of control of professionally incompetent physicians. Local societies receive their charters

from the California Medical Association which has delegated disciplinary functions to local societies. The constitution and bylaws of the state association provide procedures for the performance of disciplinary functions.

Carl E. Anderson, M.D., representing the California Medical Association, told the Senate Factfinding Committee on Public Health and Safety,

At the present time, a great deal of screening, review, supervision, regulation and disciplinary action takes place in county and state medical societies. . . . For instance, in addition to the requirements of education and licensure, an investigation is conducted by county medical societies concerning applicants for membership. The public is invited to submit to county medical societies, complaints concerning physician's unethical conduct, overcharges, and other matters pertaining to the profession's integrity. These complaints are carefully investigated and erring members are appropriately admonished and disciplined.

A fundamental weakness of the professional medical society as a source of control of professional incompetents is the absence of legal sanctions. Expulsion, the most severe penalty which the society can invoke, need not affect the physician's practice. Moreover, social and economic pressures, fear of lawsuits, and the difficulty of obtaining evidence may inhibit a society from taking action except under extreme circumstances.

Testifying before the Senate Factfinding Committee on Public Health and Safety, Harold C. Freedman, M.D., of Shafter, California, president of the Kern County Medical Society in 1962, gave the committee a cogent summary of the factors working against the best efforts of professional societies and hospital staffs to discipline physicians. The following is a summary of a portion of Dr. Freedman's remarks:

Pressures from county medical societies and hospital medical staffs have done much to improve medical standards. Despite progress and despite hours of work, despite reprimands and curtailed privileges, the incorrigibles remain incorrigible. The public must be protected against this tiny group of men.

In 1961 and in 1964 the Kern County Medical Society invoked a Judicial Council to hear complaints against physicians; on each occasion two members were complained against. Attorneys represented both the society and the physicians complained against. The 1961 proceeding resulted in the expulsion of one member from the society and the placing of the other physician on probation. The Kern County Medical Society was the only society in the United States to expel a member that year.

These cases illustrate some of the reasons why professional self-discipline is insufficient. First, the expense of such proceedings is too great for small societies to bear. The 1961 proceeding cost over \$1,300 and the 1964 proceeding cost \$4,700. Second, such proceedings frequently result in a lawsuit against the society by the disciplined physician, causing more lost time and expense. Third, the

procedure is ineffective. The doctor expelled from the society in 1961 practiced in a rural area and had his own hospital. The action taken against him did not hurt him in any way; he continued his medical way of life totally unchanged. The ultimate that a medical society can inflict on a member, expulsion from the society, may not curtail his activities at all. Fourth, many doctors are not members of professional medical societies and are therefore not within the control of organized medicine.

Hospital committees may not be able to act because the doctor performs a questionable practice in his office or at several different hospitals. Hospital committees are loathe to act on a single case. Even if one hospital committee disciplines a physician, the physician may continue to practice at another hospital.

A county medical society cannot get transcripts of records from hospitals and offices in the face of determined legal opposition. County societies lack adequately trained staff to do investigative work.

When I was president of the Kern County society in 1962 I tried to get hospitals to notify other hospitals when a member of the staff received discipline or had restrictions placed upon his practice. For legal reasons this idea met with no success.

* Recently a hospital in Kern County restricted the right to practice of a doctor and had to defend itself in a time-consuming and expensive lawsuit which it eventually won. But other hospitals would be loathe to face similar lawsuits just on the basis of information supplied by the hospital which first restricted the doctor's privileges.

RECOMMENDATIONS MADE TO THE COMMITTEE

1. *Legislation should be enacted to give the Board of Medical Examiners authority to discipline physicians who habitually engage in unethical and immoral conduct injurious to patients and physicians whose professional incompetence endangers patients.*

Source of recommendation: California Medical Association; State Board of Medical Examiners.

Comment: Enactment of this proposal will strengthen public protection against harmful medical treatment. At the present time neither the Board of Medical Examiners nor any other agency of government has authority to restrict the right to practice medicine of physicians who engage in such conduct. Control of such conduct by hospital medical staffs and professional medical societies is ineffective because physicians can practice without being members of a professional society and if they lose staff privileges at one hospital they may obtain such privileges at another, or they may build their own hospital. Malpractice actions may be brought against such physicians but that does not affect the physician's right to practice medicine.

Suggested statutory language for the enactment of this recommendation is as follows:

Unprofessional conduct includes, but is not limited to, the following:

(a) Violating or attempting to violate, directly or indirectly, or assisting in or abetting the violation of, or conspiring to violate, any provision or term of this chapter or of any regulation relating to medical conduct validly adopted by the board pursuant to the Administrative Procedure Act.

(b) Gross negligence.

(c) Gross incompetence.

(d) Gross immorality.

(e) The commission of any act involving moral turpitude, dishonesty, or corruption, whether the act is committed in the course of the individual's activities as a certificate holder, or otherwise, or whether the act is a felony or a misdemeanor.

(f) Any action or conduct which would have warranted the denial of the certificate.

Carl E. Anderson, M.D., representing the California Medical Association, made the following comment to the Senate Factfinding Committee on Public Health and Safety regarding statutory language similar to that quoted above.

Some of the terms suggested are broad. However, similar language is found in many of the licensing acts applicable to various professional and technical groups. I believe we can reasonably assume that the board and the Attorney General's office will not proceed against a person under such a statute in doubtful cases.

The idea has been expressed that such legal sanctions as this recommendation proposes may stifle medical experimentation. That is not the case. Unorthodox or experimental surgery and medical treatment should take place with the patient's consent in medical research centers where consultation is available, where conditions can be controlled, and where results can be recorded. Under those conditions, experimental surgery and experimental medical treatment will not fall within the proposed definition of unprofessional conduct.

2. *Legislation should be enacted to expand the probationary authority of the Board of Medical Examiners to permit it to place terms and conditions on the behavior and medical practice of an offender and to prescribe actions and procedures to encourage his rehabilitation.*

Source of recommendation: California Medical Association; State Board of Medical Examiners.

Comment: If legislation is enacted to increase the board's jurisdiction as proposed in recommendation number 1, the board will need to have authority to fashion remedies aimed at rehabilitating rather than punishing such physicians. If the board can only suspend the license of such a physician or revoke the license entirely, the courts may be so restrictive in their interpretation of the new jurisdiction that the purpose of changing the law will be defeated. If, on the other hand, the board can fashion remedies aimed at rehabilitating the doctor, the courts will be more likely to accept the board's judgment. Rehabilitation rather than punishment, moreover, is sound both morally and socially. The goal of the board should be to protect the public against

incompetent and unethical physicians. This goal can be achieved in individual cases by restricting the practice of the doctor instead of prohibiting him from working altogether.

The California Medical Association specified some of the measures the board might take to rehabilitate a licensee:

(a) require additional medical training and an examination, either written, oral, practical, or clinical upon completion of the training;

(b) require a complete diagnostic examination by one or more physicians appointed by the board;

(c) restrict the extent or kind of practice and enforce such restrictions in all hospitals and in the office.

The Medical Practice Act presently authorizes the board to take such action as it deems proper against a physician who has come within its jurisdiction and has been found guilty of misconduct. Two reasons lead the board to question whether the courts will sustain, pursuant to this broad grant of disciplinary authority, the kinds of orders suggested in the previous paragraph. First, when the statute was drafted in 1937, concepts of rehabilitation were not as widespread as they are today, and a court might refuse to interpret the statute to include such powers. Second, the statute is open to the charge of being vague, general, and ambiguous.

Section 2376.5 of the act allows the board to place terms and conditions on the right to practice when a physician petitions the board to reinstate his license after a year's suspension or revocation. This authority will be inadequate as a tool for rehabilitation because after a year's suspension rehabilitation will be much more difficult if not impossible.

3. *Legislation should be enacted to authorize the State Board of Medical Examiners to establish five district review committees composed of persons holding a valid physician's and surgeon's certificate whose duty it will be to hear disciplinary matters which the board assigns to the committee.*

Source of recommendation: California Medical Association; State Board of Medical Examiners; Los Angeles County Medical Association.

Comment: Witnesses recommending the establishment of district review committees suggested the following details concerning the appointment, organization, and authority of the committees:

There will be a district review committee in each of the five appellate districts designated for district courts of appeal in Government Code Section 69012.

Each committee will consist of five physicians appointed by the Governor. The Governor will appoint the committees from nominees submitted to him by the Board of Medical Examiners, the deans of approved medical schools in California, and professional medical societies. Assuming that legislation creates committees with five members each, the appointments will be on the following basis: one member nominated by the Board of Medical Examiners, one member from the faculty of a clinical department of an approved medical school nominated by the deans of such schools, and three members nominated by professional medical societies. Should legislation be enacted to create committees with more than five members, at least 60 percent of the membership

should be nominated by professional medical societies. There must be at least two nominations for every position to be filled. Each committee member, except the member from the faculty of a clinical department of a medical school, will reside in the district where he serves. The term of office will be four years, and the terms will be staggered so that there will always be experienced men on the committee. Members of the district review committees will receive per diem and expenses as provided for the Board of Medical Examiners.

The Board of Medical Examiners will assign cases to the district review committees. All proceedings of the committees will be in accordance with the Administrative Procedure Act. The committees will have the same authority that a hearing officer has under present board proceedings. That is to say, the committee will prepare a decision, but decision-making power will reside in the board itself. The board will be able to adopt, modify, or reject the proposed decision or take such other action as its discretion dictates.

As provided in the Administrative Procedure Act, a hearing officer will sit with the district review committee and he will have the same authority that a hearing officer has at the present time when the Board of Medical Examiners hears a contested case. He will preside at the hearing, rule on the admission and exclusion of evidence, and advise the committee on matters of law.

The cost of the committees will be an expense of the Board of Medical Examiners which is supported by renewal fees of certificate holders.

The following comments are on the need for establishing district review committees at the same time as the Medical Practice Act is amended to give the Board of Medical Examiners additional jurisdiction and probatory authority.

The board is presently heavily burdened with its duties of examination and discipline and will need additional manpower to cope with new disciplinary duties. The board states that it presently turns over to a hearing officer some cases that it would like to hear. The board is presently in session 29 days each year and has decided to increase the June, August, and October meetings by an additional day. An additional 30 days are required for grading examination papers. The board also transacts much business by mail, telephone, committee action, and special meetings.

District review committees will strengthen the disciplinary authority of professional societies and hospital medical staffs. The knowledge that complaints will be heard quickly by a committee of physicians having authority to restrict or suspend the right to practice will encourage voluntary compliance with medical ethics. The district review committees may function as an appeal mechanism when physicians refuse to comply with the disciplinary decisions of medical societies and hospital medical staffs.

The actions of the district review committees will not be subject to some of the influences working against action by professional societies and hospital staffs. The committees, having jurisdiction over a large number of physicians, will not be so subject to economic and social ties. The committee will not work under the threat of a lawsuit. The com-

mittee will have adequate funds, investigating powers, and trained staff to do the investigation.

The district review committees will be responsible to the public. The committee members will be appointed by the governor and will be a State agency.

4. *Legislation should be enacted to bring up to date the provision in the Medical Practice Act on mental illness.*

Sources of recommendation: California Medical Association; State Board of Medical Examiners.

Comment: Section 2385 of the Medical Practice Act provides that the board must suspend the certificate of anyone who is admitted to a state hospital for mental illness or who is adjudicated mentally ill or insane. The board may restore the right to practice when it receives evidence of restoration of competence and satisfies itself that, with due regard for the public interest, the right to practice may be safely reinstated. The board may require an oral examination to determine fitness to resume practice.

The California Medical Association pointed out several deficiencies in this section. First, persons who are mentally ill should come within the board's jurisdiction whether they are admitted to a state hospital for the mentally ill or some other place of care. Second, some mentally ill persons should come within the board's jurisdiction even though they have neither been adjudicated mentally ill nor admitted to a state hospital for the mentally ill. Third, the suspension of a license ought not to be automatic, as Section 2385 requires, with some kinds of mental illnesses. A pattern of behavior in medical practice contrary to good medical standards caused, for example, by exhaustion or by physical abnormality ought to be grounds for the board to investigate. The board might decide to restrict the physician's practice for a period of time. If a physician knows his right to practice will be suspended automatically, he will be reluctant to seek treatment.

Specific recommendations:

(a) Section 2385 of the Medical Practice Act, which relates to mental illness, should be placed in a separate category apart from the provisions of the Medical Practice Act which relate to unprofessional conduct. This can be accomplished by adding to Chapter 5 of Division 2 of the Business and Professions Code a new article relating solely to mental illness and by placing the language of Section 2385 in the new article.

(b) The board should be given authority to require a written as well as an oral examination before reinstating the license of a physician whose right to practice has been suspended pursuant to Section 2385.

(c) A new section relating to mental illness should be enacted giving the board authority to proceed against a certificate holder who becomes mentally ill to the extent that he requires supervision or restraint or to the extent that he is dangerous to himself or to the person or property of others and is in need of supervision or restraint.

(d) If the proposed new section suggested in paragraph (c) is enacted, the statute should state that the board may proceed against a certificate holder under either Section 2385 or the new section. The purpose of such a provision is to make clear that Section 2385 will

govern and will result in immediate suspension where the evidence establishes a case falling within Section 2385. In cases which do not come within Section 2385, the board will proceed under the authority of the new provision and the proceedings will be governed by the Administrative Procedure Act.

5. *Legislation should be enacted to authorize the Board of Medical Examiners to take summary action against a certificate holder where the board finds after investigation clear evidence of an immediate and continuing threat to the public health and safety.*

Source of recommendation: California Medical Association.

Comment: Under present law the board cannot act against a licensee convicted of a felony until the judgment of conviction has been affirmed on appeal or otherwise disposed of. The board's authority to take action against mentally ill licensees is limited to persons who are adjudicated insane or mentally ill or who are admitted to a state hospital for the mentally ill.

This recommendation raises, however, a serious legal problem. All proceedings of the board must meet the constitutional requirement of due process of law, and the Administrative Procedure Act, which governs board proceedings, is specifically designed to meet such requirements. Legislation authorizing the board to proceed summarily would by-pass the requirements of the Administrative Procedure Act. It is therefore possible that such legislation would be unconstitutional.

The purpose of this recommendation will nevertheless be substantially achieved if legislation is enacted to increase the board's jurisdiction as proposed in recommendation number 1 and if legislation is enacted to increase the board's authority to deal with cases of mental illness as proposed in recommendation number 4. The behavior of a physician convicted of a felony, for example, might bring him within the new jurisdiction of the board. The board could therefore begin proceedings without awaiting a final appellate court decision in the criminal action.

6. *Legislation should be enacted to define unprofessional conduct in the Medical Practice Act to include regularly attending or treating patients in a hospital which does not have an established mechanism for periodic review and evaluation of the medical care rendered therein.*

Source of recommendation: California Medical Association.

Comment: At the San Francisco hearing of the Senate Factfinding Committee on Public Health and Safety, Carl E. Anderson, M.D., the representative of the California Medical Association, suggested that legislation should be enacted to authorize the Board of Medical Examiners to adopt regulations setting forth standards and procedures for periodic review of medical care rendered in hospitals. He pointed out that a basic distinction exists between the function of a hospital to provide a safe place for the care of infirm persons and the function of a hospital as a place for the surgical and medical care of patients. The State Department of Public Health regulates hospital sanitation and building safety standards to assure that hospitals are safe for the accommodation of infirm persons. The medical staff, according to Dr.

Anderson, has always been and should continue to be responsible for the medical care of patients.

Dr. Anderson suggested that an advisory committee consisting of representatives of the California Medical Association, the California Hospital Association, and other organizations should be appointed to assist the board in drawing up the regulations on hospital review procedures.

At the Los Angeles hearing Dr. Anderson made the following statement:

The final area in which it appears that our previous statement was not entirely clear, relates to the area of self-regulation of hospital medical staffs. We are strongly of the opinion that those hospitals which do have organized medical staffs, are doing, or with guidance already available from voluntary organizations, are capable of doing a just and commendable job of quality control and professional self-discipline. There could be no beneficial result from the involvement of any governmental agency in this area of professional discipline.

It is only in the area of those hospitals which do not have an organized medical staff or other review mechanisms that we believe some action is needed. Our recommendation is that the Board of Medical Examiners be given the authority to take action on the grounds of unprofessional conduct against any licentiate who regularly attends or treats patients in a hospital, which does not have an established mechanism for periodic review and evaluation of the medical care rendered therein. Both the California Medical Association and the California Hospital Association offer their assistance to the Board in implementing this recommendation, if it is adopted.

7. *Legislation should be enacted to define unprofessional conduct in the Medical Practice Act to include signing, with knowledge of its falsity, any document directly or indirectly related to the practice of medicine which falsely represents the existence or nonexistence of a state of facts.*

Source of recommendation: California Medical Association; State Board of Medical Examiners.

Comment: Section 2411 of the Medical Practice Act is worded in such a way as to prohibit the board from taking action against unethical physicians who falsify certain insurance claims, government documents, and other documents. The board can take action only if the physician falsifies a document required by law. Some documents are required by law, others are not. Under the section, therefore, a physician may intentionally falsify an insurance claim or a government document and not come within the disciplinary powers of the board.

8. *Legislation should be enacted to bring up to date the provision in the Medical Practice Act making the use of certain narcotics unprofessional conduct.*

Source of recommendation: State Board of Medical Examiners.

Comment: The Medical Practice Act lists specific drugs whose use is defined as unprofessional conduct. The board suggests amending the

act so that it incorporates by reference narcotics specified in Sections 11001 and 11002 of the Health and Safety Code and dangerous drugs specified in Business and Professions Code Section 4211. These sections contain precise definitions of many narcotics and dangerous drugs and are often amended to cover new compounds.

9. *Legislation should be enacted to authorize the Board of Medical Examiners to adopt rules of professional conduct appropriate to the establishment and maintenance of a high standard of integrity and dignity in the profession.*

Source of recommendation: State Board of Medical Examiners.

10. *Legislation should be enacted to authorize the Board of Medical Examiners to require a written examination when a person whose certificate has been suspended or revoked for a period of one year petitions the board to reinstate the certificate.*

Source of recommendation: State Board of Medical Examiners.

Comment: Present law authorizes the board to give an oral examination in this situation.

11. *Legislation should be enacted to provide the Board of Medical Examiners with adequate investigatory and procedural authority to carry out these recommendations.*

Source of recommendation: State Board of Medical Examiners.

Comment: The board suggested the following specific amendments to the law:

(a) Section 1881(4) of the Code of Civil Procedure provides that a physician cannot, without the consent of his patient, be examined in a civil action as to any information acquired in attending the patient. The section should be amended to provide that it does not apply to any investigations or proceedings under the State Medical Practice Act.

(b) The Administrative Procedure Act should be made specifically applicable to the district review committees.

(c) Section 2379 of the Medical Practice Act, which makes the willful betrayal of a professional secret unprofessional conduct, should be inapplicable to investigations or proceedings under the Medical Practice Act.

(d) The propriety of board action suspending, revoking, or restricting the right to practice should be subject to judicial review upon questions of law only.

Limiting court review to matters of law only will prohibit a complete new trial of the case and will, at the same time, fully protect the rights of the accused physician. A complete new trial is neither necessary nor desirable.

Qualified persons will hear the evidence and decide the facts of the case. In those cases which are assigned to a district review committee, a total of 17 persons will review the evidence: 5 physicians on the district review committee, 11 physicians on the board, and 1 nonphysician on the board. These persons should be well qualified to weigh the evidence and to understand the issues, for almost all cases will involve questions of medical practice.

The rights of the accused physician will be fully protected by a court review of matters of law. The court will see that the provisions of the Administrative Procedure Act were followed at each stage of the proceedings. The court will see that all requirements of substantive law were met. The court will decide, for example, if the facts as found constitute gross negligence, gross incompetence, or gross immorality. Finally, the court will decide whether the evidence submitted at the hearing supported the findings of fact.

Allowing a complete new trial of a case might defeat the purpose of enlarging the jurisdiction of the board. Given the responsibility of conducting a complete new trial, the court will be inclined to stay the execution of the board's decision until the trial has been completed. Such delay runs counter to the purpose of expanding the jurisdiction of the board, namely, to prevent professionally incompetent physicians from practicing medicine. A court review of matters of law will not take as long as a new trial and the court will be less inclined to stay the execution of the board's decision.

12. *Legislation should be enacted to authorize the Board of Medical Examiners to raise the certificate renewal fee from \$20 to \$40 to pay for the increased cost of board activities which will result from the enactment of other recommendations in this report.*

Source of recommendation: California Medical Association; State Board of Medical Examiners.

13. *No legislation should be enacted which will create a board with authority independent from the Board of Medical Examiners to discipline licensees of the board.*

Source of recommendation: California Medical Association; State Board of Medical Examiners; Los Angeles County Medical Association.

COMMITTEE CONCLUSION AND RECOMMENDATIONS

The committee has concluded that the Medical Practice Act needs revision in order to give the Board of Medical Examiners authority to protect the public from the negligent, immoral, and incompetent physicians who constitute a very small percentage of the total number of physicians. The Medical Practice Act does not permit the board to obtain jurisdiction over such physicians, and, if it did, the board might not have legal authority to restrict the offender's right to practice and to supervise his behavior on probation.

If the Legislature expands the jurisdiction of the board as suggested herein, the Legislature should at the same time establish five district review committees to facilitate the working of the board's disciplinary responsibilities.

The Medical Practice Act is deficient in certain respects and should be revised. The section on mental illness is poorly worded, out of date, and too restrictive in some respects. Physicians who knowingly falsify insurance claims and government documents should come within the jurisdiction of the board. The board should have jurisdiction to discipline physicians who habitually practice in hospitals without procedures for the periodic review of surgery and medical treatment. Finally, the Legislature should provide the board with adequate investigatory authority to carry out its functions.

Chapter III

REDUCTION OF COUNTY PROPERTY TAX ON PROPERTY WITHIN CITIES MAINTAINING A HEALTH DEPARTMENT

Assembly Bill 1485 of the 1963 Regular Session would reduce the property tax in the six cities of the state maintaining a health department on July 1, 1963—Long Beach, Vernon, Los Angeles, Pasadena, San Jose, and Berkeley. The Senate Committee on Local Government referred the bill to interim study.

This report analyzes Assembly Bill 1485; summarizes the testimony presented to the committee at a hearing on the bill in Los Angeles, January 21, 1964; states the arguments for and against the proposal; and sets forth the committee's recommendation that the Legislature take no action on any bill such as Assembly Bill 1485.

In 1947 the Legislature enacted a statewide system of health services. Counties provide health services in all unincorporated areas and in all cities which turn over health functions to the county. Cities may maintain a health department but do not receive a reduction in county taxes for doing so. The state pays about 20 percent of the total cost of local health services.

Following the 1947 legislation about 400 cities turned over city health functions to the county. On July 1, 1964, the City of Los Angeles transferred its health department to Los Angeles County. There are now five cities in the state which maintain a health department—Long Beach, Vernon, Pasadena, San Jose, and Berkeley.

Assembly Bill 1485 would change this system by giving property owners in these five cities a reduction in county taxes. The amount of the reduction is a certain portion of the cost to the county property taxpayer of supporting the county health department. The portion is measured by the relationship of the assessed value of all taxable property within the city to the assessed value of all taxable property within the county. The ratio of the assessed value of city property to the assessed value of county property multiplied by the cost to the county taxpayer of supporting the county health department equals the amount of the reduction.

Assembly Bill 1485 requires that revenue lost to the county under the bill's provisions be made up by increasing county property taxes in the areas of the county outside the cities which receive the tax reduction.

To understand the effects of enacting a measure such as Assembly Bill 1485, characteristics of the present system should be noted in the following examples.

Example 1. A county health department serves all areas of the county and all cities in the county except City A which maintains its

own health department. In this situation, City A property taxpayers fully support the city health department and, by paying county property taxes, contribute to the support of the county health department.

Example 2. A county health department serves all areas of the county and all cities in the county except City A which maintains its own health department. City A turns over its health functions to the county. In this situation, City A property taxpayers are relieved from paying city taxes to support the City A health department. County property taxes must now bear the cost of supporting health services in City A.

Example 3. A county health department serves all areas of the county and all cities in the county except Cities A and B. City A turns over its health functions to the county. City B does not. County taxes must now pay for health services in City A. Since taxpayers in City B pay county property taxes, their taxes may increase because City A turned over its health functions to the county.

The effect of enacting a bill such as Assembly Bill 1485 can be illustrated with two examples.

Example 1. A county health department serves all areas of the county and all cities in the county except City A which maintains its own health department. Assembly Bill 1485 becomes law and applies to City A. City A property taxpayers receive a reduction in their county taxes. The amount of the reduction is a portion of the cost to the county property taxpayer of supporting the county health department. The portion is measured by the relationship of the assessed value of taxable property in City A to the assessed value of all taxable property in the county. County property taxpayers outside of City A pay increased county taxes to make up for the tax reduction in City A.

Example 2. A county health department serves all areas of the county and all cities in the county except City A which maintains its own health department. Assembly Bill 1485 becomes law and applies to City A but does not apply to City B located in the same county. City B finds that because it has a relatively high assessed valuation, it can support health services within its boundaries for less than the proportionate share it contributes to the support of the county health department when proportionate share is defined as Assembly Bill 1485 defines it. Cities in other counties may find themselves in the same position as City B.

CITY STATEMENTS

Four of the five cities with health departments made a presentation to the committee. The following is a summary of their statements.

Long Beach

Long Beach, a city of 360,000 people, is large enough to provide a full range of health services. The city health department, in existence for 60 years, is larger than many county health departments and provides services not required by state law. Examples: an alcoholic rehabilitation clinic, an occupational health program, assistance to other city departments in the inspection of substandard buildings.

All groups studying whether Long Beach should consolidate its health services with the County of Los Angeles have concluded that no true savings will result from consolidation. Taxpayer organizations support a Long Beach health department.

Abandonment of the Long Beach health department will seriously impair the work of civic health and welfare organizations. The Community Welfare Council of Long Beach, composed of 86 health, welfare, and civic organizations, fears that a loss of leadership will result if the city abandons its health department. People will drive to local meetings but they will not drive to meetings held 25 or 30 miles away.

The financial burden on Long Beach from maintaining a city health department has increased now that Los Angeles has consolidated its health services with the county. During 1963-64 Long Beach will pay about \$390,000 in county taxes for the support of the county health department. This sum will increase to about \$700,000 a year when the county tax rate goes up to pay for health services in the City of Los Angeles.

Pasadena

Pasadena provides 16 health services not provided by the county. Three of them are as follows: a planned parenthood program, a housing inspection program, and a preschool health program. If Pasadena consolidates its health service with the county, the city will have to establish a separate bureau to continue the services now provided in the city.

San Jose

The people of San Jose want a higher level of health service than provided by the county; that is why San Jose wants to keep its own health department. Some of the programs of the San Jose health department not provided by the county are: home accident prevention; food handlers training; an ongoing glaucoma screening clinic; an ongoing diabetes screening program; a study of seasonal farm workers, supported by the United States Public Health Service; and a health and sanitation program for slum areas. San Jose might lose its coordinated public health and school health program if San Jose gives up its health department. To make up for the loss of the coordinated program, the schools will have to increase taxes by 2 cents per \$100 of assessed valuation.

San Jose fears the loss of cooperation between the health department and other city departments if consolidation takes place.

There are, perhaps, services which should be turned over to the county; mental health is one example. But maintenance of control of some health programs, such as sanitation, is vital.

Berkeley

The City of Berkeley does not wish to give up its health department because many special features of the Berkeley Unified Health Program might be lost. Some of these special features are:

1. An integrated system of public health and school health. The Berkeley Unified School District receives health services from the City of Berkeley.

2. The visiting nurse program. Visiting nurses provide care for publicly supported patients in the patient's home, rather than in an institution. This enhances the well-being of the patient and lowers the cost of medical care.

3. Special employment arrangements with the University of California. Berkeley hires members of the School of Public Health to work part time in the Berkeley Health Department. The city fears the loss of such arrangements if it consolidates its health department with the county.

Only the pressure of financial loss will force Berkeley to give up its health department. Five different makeups of the city council have considered the question and have decided against consolidation. The Berkeley Taxpayers Association, Berkeley Citizens United, and the Berkeley League of Women Voters have studied this problem and have concluded that "local services are preferable and recommend retention [of the city health department]. . . ." These organizations make this recommendation in spite of the fact that Berkeley residents can save money by consolidating its health department with the county. Berkeley costs for health are about \$5 per capita; Alameda County spends \$2.76 per capita for health services.

COUNTY STATEMENTS

Santa Clara and Alameda Counties each made a presentation to the committee. The following are summaries of their statements.

Santa Clara County

The Santa Clara County Board of Supervisors neither supports nor opposes the consolidation of San Jose's health department with the county, although the board believes that consolidation will improve government organization in the county.

There are 16 cities in Santa Clara County; 15 of them use county health services. If a city wishes to have a higher level of service than the county provides, the city can contract with the county to pay for the special services desired. Palo Alto is an example of a city in Santa Clara County which does this.

The irregularity of San Jose's boundaries provide a sharp example of the weakness of using city boundaries as the demarcation of a public health jurisdiction. Santa Clara, for example, is undertaking a rat extermination program in an area completely surrounded by San Jose. The program will be more difficult as a result.

Experience shows that neither the city nor the county enforce residence requirements for persons who use public health services. Santa Clara's main health office and outpatient clinic are located in the City of San Jose.

Alameda County

Two large cities, Oakland and Alameda, have consolidated their health departments with Alameda County. Each has contracted with the county for additional services above the county standard.

Enactment of Assembly Bill 1485 will mean a loss of revenue to Alameda County of about \$205,000 annually.

ARGUMENTS IN FAVOR OF REDUCING COUNTY PROPERTY TAXES IN CITIES MAINTAINING A HEALTH DEPARTMENT

1. *A city health department can do a better job serving the public than a county health department can.*

A county health department must respond to both urban and rural needs while a city health department deals solely with urban problems. This difference puts the city health department in a better position to care for urban needs than a county health department.

To be effective a health department must respond swiftly to changing conditions. A county health department, because it is a big organization and covers a lot of territory, cannot respond as quickly as a city health department.

A city health department is more responsive to community needs than a county health department. City health department officials, because they are closer to the people, have more incentive to do a good job than county health officials.

Health services are highly personal. The closer health services are to the people the better.

2. *Community needs and the desires of the people should govern the decision whether to have a city health department; the present system forces cities to give up their separate health departments for financial reasons.*

Needs and desires of people vary from city to city. Each city with a health department has special reasons for wanting to keep the department. Yet the present system of financing county health departments places the property taxpayers in these cities at a disadvantage relative to other county property taxpayers. The State should not force cities to give up their health department for financial reasons alone.

Assembly Bill 1485 will remove the financial pressure for consolidation of city health departments with the county. The five cities having health departments will be free to use community interest as the criterion for deciding whether to keep the city health department.

3. *Assembly Bill 1485 is an appropriate way to permit five cities with special needs to keep their health departments.*

Contrary to what the opponents of Assembly Bill 1485 say, the bill poses no administrative problems. Government budgets are built up agency by agency; finding the cost to the county taxpayer of operating the county health department will not be difficult.

Cities which do not maintain a health department will not want to come under the provisions of Assembly Bill 1485 because once a city has consolidated its health department with the county, the city will not want to reverse the process. The responsibilities and the cost of operating a health department are so great that no city will wish to reverse a previous consolidation.

ARGUMENTS AGAINST REDUCING COUNTY PROPERTY TAXES IN CITIES MAINTAINING A HEALTH DEPARTMENT

1. *The present system of financing health services fully serves the public interest.*

California has a superior statewide public health service with counties serving as the chief administrative unit. Health services have in no way suffered in the more than 400 cities which have consolidated their health departments with the county. Some of these cities, such as San Diego, Sacramento, and Oakland, are the largest cities in the state. By contracting for additional services from the county, cities can, if they wish, have a higher level of service than the county provides. No city must give up special programs. Many cities contract with a county for special services.

2. *The proposition that a city health department can serve the public better than a county health department is false.*

Counties are just as responsive to community needs as cities are. To speak of the superior ability of cities to deal with urban problems ignores the metropolitan character of counties today in California. Counties are as close to the people and have as much incentive to do a good job as cities.

City boundary lines do not make sense for purposes of marking the jurisdiction of public health agencies. City boundaries often cut through the urban areas and sometimes surround unincorporated urban areas. Public health problems do not observe such jurisdictional lines. Like welfare services, public health services must be countywide for sound administration.

When a city health department exists in an urbanized county, there are inevitable duplications in service. Some instances are: crippled childrens' services, laboratory services, clinic services, and milk inspection.

3. *The financial scheme in Assembly Bill 1485 caters to narrow self-interest and is not consistent with the general good.*

The financial scheme in Assembly Bill 1485 will allow a few cities to have above average health services while contributing nothing to the support of health services in the county. The responsibility for supporting health services cannot be separated between city and county in modern metropolitan areas. For example, a slum may be next door to a high wealth city. To exempt the city property taxpayers in such a situation from contributing to county health support is highly unfair to other county taxpayers.

This argument does not imply that a city should be held to a county-wide standard of health services if the city desires better services. As pointed out previously, many cities contract with the county for special services.

4. *Enacting a bill such as Assembly Bill 1485 will undo the work of the last 14 years, for other cities besides the five now maintaining health departments will ask for equal treatment.*

Since 1947, when the Legislature enacted the present system of support for health services, State policy has been to encourage countywide health jurisdictions. Enactment of a bill such as Assembly Bill 1485 will reverse that policy.

If the Legislature enacts Assembly Bill 1485, thereby granting a tax reduction to five cities, other cities will inevitably ask the Legislature to give them equal treatment.

Such a possibility recalls what happened when the Legislature enacted a system for financing local libraries similar to the scheme in Assembly Bill 1485. Cities all over the state began to withdraw from the county library system. The Legislature had to pass a law to reverse this trend.

COMMITTEE CONCLUSION

The proponents of Assembly Bill 1485 are asking the state to reverse a state policy of 14 years' standing. There is no merit in the contention that this bill will apply to only five cities, for the Legislature will be asked to grant equal treatment to all cities and the request will be difficult to deny.

The 1947 legislation gave cities a clear alternative: to consolidate health services with the county or to maintain a city health department and contribute to the support of the county health department. The committee finds no reason why that decision should be reversed at this late date.

COMMITTEE RECOMMENDATIONS

1. The Legislature should take no action on any bill which reduces county taxes on property in a city maintaining a health department.
2. The Legislature should give favorable consideration to any legislation necessary to permit cities and counties to contract with each other regarding health services.

Chapter IV

STATE PREEMPTION OF THE FIELD OF REGULATING FIRE SAFETY IN HOSPITALS

Senate Resolution No. 240 of the 1963 Regular Session directs the Senate Factfinding Committee on Public Health and Safety to study the conflicts between requirements established by state agencies and by local government agencies for hospital construction and to study the causes and effects of such conflicts.

The chief sponsor of Senate Resolution 240, the California Hospital Association, as well as the State Fire Marshal and the Executive Secretary of the State Building Standards Commission recommended enactment of legislation to require uniform statewide regulation of fire safety in hospitals. If enacted, the proposal will end the authority of cities, counties, and districts to regulate this subject.

This report summarizes the testimony presented to the committee at a hearing on Senate Resolution 240 in Los Angeles, January 22, 1964; states the arguments for and against the proposal; and sets forth the committee's recommendation that the proposal not be enacted.

Section 13143 of the Health and Safety Code gives the State Fire Marshal jurisdiction over fire safety in any building used as an asylum, jail, mental hospital, hospital, sanitarium, home for the aged, children's nursery, children's home or institution, or school and directs him to adopt regulations establishing minimum standards for the prevention of fire and for the protection of life and property against fire and panic. Section 13108 of the code gives the State Fire Marshal jurisdiction over state-owned buildings. The State Fire Marshal estimates that there are about 39 thousand buildings in the state within his jurisdiction.

Extensive review precedes adoption of the State Fire Marshal's regulations. Local fire and building officials meet with the State Fire Marshal to help draft proposed regulations. Next, the State Fire Advisory Board, composed of 11 fire department members appointed to the board by the Governor, reviews all proposed regulations. The State Fire Marshal holds hearings on the proposed regulations in northern and southern California. Before the regulations are finally adopted, the State Building Standards Commission holds further hearings.

To enforce his regulations the State Fire Marshal reviews the building plans of proposed new construction. He states what changes, if any, need to be made and reports his findings to the builder and to local fire and building safety officials. The State Fire Marshal directly enforces his regulations in areas outside of corporate cities and county fire protection districts and in local agencies upon request of the chief fire official.

The State Fire Marshal's regulations cover all aspects of fire safety but do not cover zoning matters. The regulations provide for safety

against the hazard of earthquake; they contain requirements about the fire-resistiveness of walls when a building is located close to other buildings; they require hospital staff to be trained in fire safety including the use of firefighting equipment. The regulations do not cover such matters as the location of a building or the placement of the building with relation to streets.

The State Fire Marshal has exclusive jurisdiction to adopt fire safety regulations for schools and state-owned buildings. A uniform, state-wide system of regulation exists with respect to these two classes of buildings.

The State Department of Public Health also adopts regulations covering hospital construction. Conflicts between the regulations of the two state agencies do not arise, however, because the State Building Standards Commission coordinates and supervises the adoption of all regulations by state agencies on the subject of building construction. Title 24 of the Administrative Code contains a codification of all such regulations.

Cities, counties, and fire districts have concurrent jurisdiction to regulate fire safety in all the buildings the State Fire Marshal regulates, except schools and state-owned buildings. This dual authority is one of the two causes of conflict between state and local requirements about fire safety in hospitals.

The other cause of conflict is the fact that the state requirements and local requirements differ from each other. This factor has increased in significance since 1961 when the State Fire Marshal adopted regulations substantially different from the Uniform Building Code.

The Uniform Building Code is a proprietary code written by the International Conference of Building Officials, a nongovernmental, voluntary organization. People from many states take part in writing the code, but, according to Mr. Del Dick, a building official from Whittier, 80 percent of the membership of the International Conference of Building Officials is from California. The California State Fire Marshal is a voting member of the group. The code has been in existence for 30 years; it is revised every three years. A research committee has responsibility for keeping the code adapted to new products.

Many cities and counties in California use the Uniform Building Code as the basis for writing their building code, but there is nothing uniform about the code after cities and counties adopt it. Almost all of them make some changes in the code. At the same time, many cities, especially small cities, adopt sections of the code verbatim without testing or questioning the validity of the provisions. This procedure can have bad consequences when the code-makers have done their job poorly or have overlooked some point. The State Fire Marshal cites the following example: The Uniform Building Code does not distinguish between old-fashioned mental institutions where patients are locked up and modern mental therapy centers where patients have great freedom of movement. Cities which adopt without change the sections of the Uniform Building Code on mental institutions will require jail-like construction of buildings that could be built more cheaply.

The last major revision of the State Fire Marshal's regulations, which took place in 1961, contains many provisions less restrictive than the

Uniform Building Code. The State Fire Marshal adopted his regulations on basis of what he believes are proper contemporary fire prevention practices.

Dual authority over fire safety in hospitals and different requirements at the state and local level give rise to frequent conflicts between builders and local building officials. Sometimes local regulations require more expensive construction than the state requires. In such cases the builder wishes to go by the state regulations. In other cases a local building official may interpret a requirement differently from the State Fire Marshal even though the language of the state regulation and the local ordinance is identical. The resulting dispute may require time-consuming negotiations to settle.

According to witnesses appearing before the committee representing hospital builders and architects, these conflicts cause the cost of hospital construction to be higher than it needs to be. They testified that conflicts between state and local regulations bring about delays in construction schedules and expensive change-orders in construction already completed. They charged local regulation with adding to the expense of hospital construction by calling for unnecessary equipment and construction features. The following were instances submitted to the committee:

1. A local building code required the use of specially constructed doors with latches. Solid wood doors, approved by the state, were just as good for patient safety as the special doors required by the local building code. Local officials granted a waiver in favor of the state standards and saved the builder about \$120,000.

2. A hospital undertook a modernization program. Plans called for a plate glass door to the pharmacy so that the night switchboard operator could see if anyone was in the pharmacy. The local building code called for a solid wood core door. After three months of delay, the local officials granted a waiver in favor of the plate glass door.

3. A hospital was able to convince local building officials that a fire well would not enhance patient safety as much as a sprinkling system, because bedridden patients can be transported downstairs only with great difficulty. Savings to the hospital were estimated at \$600,000; 12 private patient rooms which would have been used for the firewell were saved.

4. A city required an extremely costly storage vault for flammable liquids. State regulations allowed cheaper storage facilities and would have served as adequately.

5. The State Fire Marshal allows 5,000 square feet of floor area without separations in hospitals. The City of Los Angeles allows 2,500 square feet. The State Fire Marshal testified that state regulations of 25 years ago were similar to the Los Angeles regulation but that experience and research have shown that 5,000 square feet without separation provides adequate fire protection.

ARGUMENTS IN FAVOR OF STATE PREEMPTION OF THE FIELD OF REGULATING FIRE SAFETY IN HOSPITALS

1. *Enactment of the proposal will eliminate unnecessary costs in hospital construction.*

Hospitals are highly complicated buildings and are therefore costly to build. Moreover, the development of new medical techniques constantly adds to hospital complexity and the rate change is accelerating.

The existing system of dual authority over hospital fire safety and the resulting conflicts increase the costs of hospitals unnecessarily. Local regulations often require more expensive equipment and construction features than needed. Disputes over the interpretation of regulations lead to delays in construction. Local officials sometimes require changes in parts of a building already completed. Whenever an architect begins to plan a building he must spend valuable time finding out exactly what the local regulation is, for he cannot rely on the fact that the Uniform Building Code is in force in the jurisdiction. Statewide uniformity of regulation will eliminate these unnecessary expenses.

2. State regulation adequately protects the public against the hazard of fire in hospitals.

Both the State Fire Marshal and the executive secretary of the State Building Standards Commission testified that the State Fire Marshal's regulations are adequate to protect the public in hospitals and that there is no need for local agencies to have more restrictive regulations.

An analogy can be drawn to the way California regulates fire safety in schools. In 1933 the state preempted the field of school construction regulation. California has not had a single loss of life in a school fire that can be traced to the construction of a school during the last 25 years. Statewide uniformity has been both economic and effective.

State fire safety regulations deal with the hazard of earthquakes and the fire resistiveness of walls when buildings are close together. No additional local regulation of these matters is necessary.

State regulations require the staff of hospitals to be trained in fire fighting and fire safety. Local fire officials help train hospital staff in fire safety and use actual demonstrations to teach use of the equipment. Hospitals have frequent fire drills.

Highly restrictive local codes may in practice decrease the safety of the public in older hospitals. Most local codes do not require existing buildings to come up to new standards as the new standards are enacted. Consequently, the more restrictive the local code is, the less incentive there is for the owner of a building voluntarily to bring his old structure up to the new standards.

3. Enactment of this proposal will not interfere with local land use zoning and related matters.

First, the State Fire Marshal's regulations cover fire prevention and protection of life and property against fire and panic. His regulations do not cover land use zoning and related matters.

Second, if the Legislature enacts a statute providing for statewide uniformity in the regulation of fire safety in hospitals, the statute can specifically provide that local jurisdiction will retain authority to regulate land use, building setback requirements, property line requirements, side and rear yard requirements, and fire zone requirements.

4. *Statewide regulation of fire safety in hospitals, administered by the State Fire Marshal, will provide a simple, flexible, and fast procedure for builders to get their plans approved.*

This argument replies to the charge that state preemption of the field will result in complicated, inflexible bureaucratic control.

First, the proponents of state preemption are builders and architects. They have the most to lose from a complicated, inflexible procedure, yet they have no such fears of the State Fire Marshal's office. Builders and architects presently submit plans to the State Fire Marshal for approval and are familiar with his procedure. They apparently find it satisfactory; otherwise they would not favor state preemption of the field.

Second, experience indicates that builders and architects find the State Fire Marshal's regulations, as well as his administration of the regulations, reasonable. The State Fire Marshal states that in 1961-62 his office checked over three quarters of a billion dollars in construction plans "without a single request for an actual official hearing to have relief from a regulation."

Third, the State Fire Marshal's procedures are simple and flexible. If an architect wishes to make a substitution which provides equivalent safety, all he has to do is to state as much in a letter to the owner. If the State Fire Marshal agrees, after consulting with local fire and building officials, the matter is settled.

ARGUMENTS AGAINST STATE PREEMPTION OF THE FIELD OF REGULATING FIRE SAFETY IN HOSPITALS

1. *The State Fire Marshal can, without legislation, reduce the conflicts caused by dual jurisdiction by making his regulations conform to the Uniform Building Code.*

The proposal for state preemption of the field arises chiefly because the State Fire Marshal's regulations are less restrictive than the Uniform Building Code. Almost all cities and counties use the Uniform Building Code as their fire safety code. The State Fire Marshal is a voting member of the organization which writes the code. He should abide by the rule of the majority and make his regulations conform to the Uniform Building Code. That would greatly diminish the desire for state preemption of the field of hospital fire safety regulation.

2. *Cities, counties, and fire protection districts should have the right to legislate as they see fit to protect the public from the hazard of fire in hospitals.*

Local government has traditionally had responsibility for safety of residents from the hazard of fire. Enactment of this proposal would strip them of their power to regulate fire safety in hospitals. Local government is just as concerned about fire safety in hospitals as in any other kind of building.

The judgment of state officials about fire safety in hospitals may be good, but their judgment should not be final. People look to their cities, counties, and fire districts for protection from fire and will hold local officials responsible for misfortunes. The Legislature should not deprive local officials of power to exercise this responsibility.

3. *If local regulation makes the cost of hospital construction greater, that is the price of a high standard of safety.*

There is nothing wrong with higher cost when it purchases greater safety.

4. *Enactment of this proposal will make builders and architects subject to an inflexible and distant bureaucracy.*

Regulations never cover all the cases which arise and must always be interpreted to cover new situations. The larger a government agency is, the more inflexible its regulations, and the more difficult it is to obtain an interpretation. At the local level, on the other hand, a builder can quickly reach the top administrator of a government agency to get a decision.

5. *The Legislature does not have sufficient evidence on which to base a major shift in policy of the kind called for by this proposal.*

The Legislature should not make major changes in state and local relationships unless there is a statewide pattern of need calling for state action. The Legislature does not know the extent to which cities and counties are adopting unnecessary fire safety ordinances, if any. The Legislature should assume that cities and counties are acting reasonably until the contrary is shown. The evidence in support of the present proposal consists of some broadly stated general charges and some inconclusive examples.

The state should not preempt any field of regulation unless there are sound reasons for doing so and until the consequences of doing so are clearly foreseen. The Legislature does not have sufficient evidence that uniform statewide regulation will provide adequate safety in all the thousands of hospitals in the state. Until there is reasonable assurance of that fact, local government should retain power to act in this field.

COMMITTEE CONCLUSION

Abolition of the power of local government agencies to regulate fire safety in hospitals will eliminate a part of the traditional responsibility of local government for the protection of the public against the danger of fire. The Legislature should not take this step without clear evidence of need and assurance that state regulation will be adequate for public safety. The evidence submitted to this committee was not persuasive to establish these facts.

COMMITTEE RECOMMENDATIONS

1. The committee recommends that the Legislature take no action toward state preemption of the field of fire safety in hospitals without a comprehensive study to show the need, if any, for such legislation.

2. The committee recommends that any study of this subject should be but one part of a complete study of the proper division of responsibilities between the state and local government agencies for the health and safety of the public.

Chapter V

REQUIRING RETAILERS TO LABEL MEAT, FISH, AND POULTRY WHICH HAS BEEN FROZEN AND THAWED AS A "THAWED PRODUCT"

Senate Bill 1272 of the 1963 Regular Session provides that retailers of meat, fish, and poultry must label the food as a "thawed product" if it has been frozen and thawed. The bill applies to food sold for home consumption and does not apply to food sold in restaurants.

The Senate Standing Committee on Public Health and Safety referred the bill to interim study.

This report summarizes the testimony presented to the Senate Fact-finding Committee on Public Health and Safety on Senate Bill 1272 in Los Angeles, January 22, 1964, states the arguments for and against the proposal; and sets forth the committee's recommendation against enacting a bill such as Senate Bill 1272.

Freezing preserves food by slowing down and, at very low temperatures, halting the growth of bacteria which cause food poisoning and food decay. Food-poisoning bacteria do not grow at temperatures below 38 degrees Fahrenheit and they grow very slowly at temperatures between 38 and 45 degrees Fahrenheit. Food-spoiling bacteria grow at temperatures down to minus 10 degrees Fahrenheit. The lower the temperature at which frozen food is stored, the longer it will be preserved and the better the quality it will have when it is thawed. Authorities recommend holding frozen food at zero degrees Fahrenheit or less.

People can eat food which has been frozen, thawed, and refrozen any number of times without endangering their health. The process of freezing and thawing in itself does not cause food to be injurious or unwholesome. The possibility that refrozen food may be unwholesome arises from bacteria growth when the food is in a thawed state. Thawed food, like any other food, may spoil. But if food is safe to eat, it can be frozen and eaten later.

The effect of freezing, thawing, and refreezing on the flavor, texture, and appearance of food has not been precisely determined. There is little doubt that repeated freezing will lower the quality of some foods: fish, hamburger, ham, and pork, for example. On the other hand, there is little evidence that repeated freezing lowers the quality of poultry until the process has been repeated many times.

Many factors affect the quality of frozen food. The basic factor is the quality of the food before it is frozen. Other factors include the speed and temperature at which the food is frozen, the age of the food at the time of freezing, the suitability of packaging, the temperature at which the food is stored, and the length of storage. The storage life of different cuts and kinds of frozen meat, fish, and poultry varies greatly. Frozen ham held at zero degrees Fahrenheit, for example, has a good quality

storage life of two months; regular cuts of beef held at the same temperature have a good quality storage life of 12 months, according to the Refrigeration Research Foundation.

The California Pure Foods Act (Health and Safety Code, Sections 26450-624) prohibits the sale of food which is unwholesome or injurious to health.

California law regulates some aspects of frozen food processing, storage, and sale. Frozen food locker plants must meet sanitary standards and must have facilities for frozen food preparation. Wholesale cuts of meat must be frozen at minus 10 degrees Fahrenheit in still air or at zero degrees Fahrenheit in blast air. Each package of food wrapped and frozen for storage must have a label designating the product and identifying the processor. Certain hermetically sealed frozen foods must not be cooked before freezing and must be in a container which states that perishable food is inside and warns the purchaser to keep the food frozen until ready for use.

California law does not require frozen food to be stored at zero degrees Fahrenheit or less. Nor does California law require any food to be marked "Do Not Refreeze" or "Thawed Product."

ARGUMENTS IN FAVOR OF REQUIRING RETAILERS TO PLACE THE LABEL "THAWED PRODUCT" ON MEAT, FISH, AND POULTRY WHICH HAS BEEN FROZEN AND THAWED

1. *Because refreezing thawed meat, fish, and poultry diminishes the food's quality, consumers want to know whether such food has been frozen.*

Consumers receive much information warning them against refreezing food. Twelve cookbooks in widespread use tell readers to avoid refreezing meat, fish, and poultry. The same information goes to consumers from the American Meat Institute, the United States Department of Agriculture, the University of California Extension Service, and manufacturers of home freezing equipment. These sources of information state that refreezing food, and especially meat, fish and poultry, will diminish the quality of flavor, texture, and appearance.

To make intelligent decisions on the basis of this information, consumers need to know whether the food they buy has been frozen and thawed. If a housewife, for example, purchases food to be cooked that same day or within a few days, she can prudently buy thawed food, for she does not intend to refreeze the food. On the other hand, if she purchases food to put into her home freezer, she will purchase food that has not been thawed.

In other situations, whether food has been frozen and thawed may determine the housewife's decision as to how much food to buy. For example, if she finds a bargain in meat that has not been frozen and thawed, she can buy a large quantity for storage in her freezer. If the meat has been thawed, however, she will buy a small quantity for immediate use.

The housewife can make none of these decisions unless she knows whether the food has been thawed. And the only way she can obtain such information with certainty is for the law to require meat sold at retail to have a label giving her the information.

2. *The law ought to require informative labeling of thawed meat, fish, and poultry because the consumer can obtain the information in no other way.*

A law requiring retailers to disclose whether meat, fish, and poultry have been frozen and thawed will be analogous to laws requiring informative labeling of food and drugs and prohibiting the misbranding of food and drugs. Law requires a label on packaged food and drugs stating the name of the manufacturer, packer, or distributor and the quality of the contents. Food and drug advertising cannot be false or misleading in any particular. If a food contains artificial coloring, for example, the label must disclose that fact. By the same token, if a food has been frozen and thawed, that fact should be told to the purchaser. The aim of Senate Bill 1272 is to get the facts about food quality to the consumer.

Such disclosure requirements are based on the principle that there should be fair dealing between buyer and seller. This principle is sometimes difficult to put into practice under modern conditions of production and distribution where the bargaining power of buyer and seller is frequently unequal. Buyers have practically no opportunity to investigate into conditions of manufacture and often have little opportunity prior to purchase to determine the quality of a product. Informative labeling helps to redress this situation to some extent by placing the buyer in a better position to decide how to spend his money.

The need for informative labeling of thawed meat, fish, and poultry has increased with the growth of home freezing. Many consumers buy food in quantity for storage in a home freezer. Since meat, fish, and poultry usually constitute the largest portion of food purchases, the need to make intelligent decisions about the purchase of these products is especially important. Informative labeling of thawed meat, fish, and poultry will give consumers information they need.

3. *Enforcement of Senate Bill 1272 will be possible if the law requires wholesalers to certify to retailers that meat, fish, and poultry purchased by the retailer has not been frozen and thawed.*

Opponents of Senate Bill 1272 have objected that the bill will be difficult to enforce. They say that retailers, to avoid the requirements of the bill, may ask wholesalers to deliver all meat, fish, and poultry in a thawed state.

This objection to the bill can be met by requiring wholesalers to certify to retailers that meat, fish, and poultry purchased by the retailer has not been frozen and thawed. The retailer can then sell the food without labeling it. If the food has been frozen and thawed, the retailer can apply the label.

ARGUMENTS AGAINST REQUIRING RETAILERS TO PLACE THE LABEL "THAWED PRODUCT" ON MEAT, FISH, AND POULTRY WHICH HAS BEEN FROZEN AND THAWED

1. *Requiring thawed meat, fish, and poultry to be labeled "Thawed Product" will not give the consumer specific information about the quality or the keeping quality of such food.*

Many factors determine the quality of frozen food, and freezing effects different foods in different ways. The quality of meat, for instance, depends on the treatment and care of the animal before slaughter, the age of the animal, slaughtering conditions, the cut of the meat, the age of the meat before freezing, the method of freezing, the kind of packaging, the temperature at which the meat is held in the frozen state, and the length of time the meat is held in a frozen state. The shelf life of frozen meat, fish, and poultry varies greatly. Regular cuts of frozen beef, for example, can be held in the frozen state much longer than pork, hamburger, or variety meats such as liver, heart, and kidney. The Refrigeration Research Foundation reports that the length of the storage life of frozen poultry is greatly influenced by prestorage handling.

The label "Thawed Product" will blur over all distinctions in the quality of frozen meat, fish, and poultry and as a result may be more misleading than informative. Many people will interpret the label to mean that the food is of inferior quality. In a given situation food with the label might be better in quality than food without the label.

The basic fallacy of the bill is its underlying, unproved assumption that refreezing harms the quality of all meat, fish, and poultry. Some foods are harmed by refreezing, some are not noticeably harmed. The bill is too blunt an instrument to achieve the goal of informing the consumer about food quality.

2. *Requiring thawed meat, fish, and poultry to be labeled "Thawed Product" will disrupt the industries which get these foods to the consumer and the cost of disrupting such industries will be passed on to the consumer.*

Customers will think there is something wrong with food labeled "Thawed Product" and will hesitate or refuse to buy such food. Not everyone is as rational and well-informed as the housewife hypothesized by the proponents of this bill. This supposed housewife knows that thawed food is not injurious to health; she just wants to know that the food has been frozen so that she can avoid refreezing it. There are many people, however, who will not read the label with such objectivity; they will think that thawed meat, fish, and poultry is dangerous or poor in quality. Such a conclusion would be reasonable because people know that government regulation of food is usually for the purpose of protecting public health.

Sales resistance or a shift in buying patterns will cause great disturbances in the production and marketing of meat, fish, and poultry. For example, many food products such as sausage, bologna, wieners, and luncheon meats, contain some thawed meat, fish, or poultry and will have to be labeled as a "thawed product." Suppose a substantial number of consumers refused to buy or preferred not to buy such products with the required label. Manufacturers, producers, and processors would have to take such a shift in buying habits into account. The kinds of food sold as well as processing operations would change. The consequences to industry cannot be precisely forecast, but to predict a major disturbance is not unwarranted. The cost of such a disturbance, not to mention the cost of labeling, will be passed on to the consumer.

Even supposing that some consumers will be better informed if thawed meat, fish, and poultry is labeled, there is no evidence that consumers in general will be better off.

3. *Enactment of a bill such as Senate Bill 1272 will be especially harmful to the California seafood industry.*

Modern commercial fishing vessels have freezing devices for large quantities of fish. Industry practice is to freeze the catch while the fishing vessel is at sea. Fish is delivered in a frozen state to the retailer who thaws the fish, cuts steaks or fillets, and places the fish on display. This procedure allows large quantities of nutritious and delicious food to reach the market.

If a bill such as Senate Bill 1272 were enacted, consumers might wish to buy only fresh-caught fish. This would have an immediate and disastrous effect on the fishing industry. Sales of salmon, halibut, swordfish, abalone, and crab would promptly decline.

Labeling fish as a "thawed product" will not give consumers useful information about the food. People seldom buy fish in quantity for home freezing. Ordinarily people buy fish with the intention of consuming it the same day. On those occasions when dinner plans must be changed and fish is refrozen, the fish will nevertheless be an acceptable and nutritious food when prepared.

4. *A bill such as Senate Bill 1272 will be difficult to enforce.*

Example 1. A wholesaler delivers, in a thawed state, meat which has been frozen but says nothing to the retailer about the meat's history. The bill requires the retailer to label this meat. How does the retailer find out that the meat has been frozen?

Example 2. A retailer knows that meat has been frozen and thawed. He intentionally does not label the meat for fear of offending customers or of having to reduce his price. How does an inspector find out that the law was disobeyed?

5. *Enactment of a bill such as Senate Bill 1272 may cause poor food handling practices.*

At the present time when seafood becomes unfrozen for any reason, industry practice is to put the food on the market immediately. If the law requires thawed seafood to be labeled, the owners of thawed seafood might prefer to refreeze it and to sell it in a frozen state rather than to label it.

Suppose a retailer, to evade the law, requests his wholesaler to deliver all meat in a thawed state and not to tell him whether the meat has been previously frozen. Under such an arrangement, the meat will be held at a higher temperature for a longer time before it reaches the buyer.

6. *Competition between sellers is the best guarantee to the consumer of the quality of frozen food.*

The retailer of frozen food does business in a competitive field. He wants customers to like his product and to come back to buy more. The

best way he can get and keep customers is by selling a good product at a competitive price. This is the consumer's best guarantee of quality.

A good example of the system at work is in the marketing of seafood. To market a superior product, the industry takes pains to keep all seafood at zero degrees or below until ready for sale. Apprentice butchers receive instruction in how to keep seafood at such temperatures. Retailers can tell by color, appearance, and holding qualities if the food has been carefully processed.

Business competition is the best guarantee to the consumer of getting high quality meat, fish, and poultry.

COMMITTEE CONCLUSION

This is a consumer interest bill aimed at giving the buyer more information about the quality of certain food. The bill does not attempt to protect the public against unwholesome or injurious food.

The evidence submitted to the committee shows that labeling meat, fish, and poultry as a "thawed product" does not provide the consumer with specific information about the quality or keeping quality of the food purchased.

Enactment of the bill may create unwarranted sales resistance leading to harmful disturbances in the production and marketing of food.

COMMITTEE RECOMMENDATION

The committee recommends that the Legislature take no action on any bill such as Senate Bill 1272 of the 1963 Regular Session.

Chapter VI

CERTIFICATION OF X-RAY TECHNICIANS

The question—should the state establish requirements of education and training for persons who use X-ray machines on human beings for medical purposes—came to the committee through the assignment for interim study of Senate Bill 1480 of the 1963 Regular Session. Using information presented to the committee at a hearing in Los Angeles, January 21, 1964, and information acquired from staff research, this report analyzes the question, sets forth an argument and a rebuttal argument, and concludes that state regulation is necessary to protect the public from the hazards of radiation. The committee recommends that a certification program be enacted.

Beginning with the introduction of Assembly Bill 2768 at the 1959 Regular Session, this question has been before the Legislature at each general session. An interim study of Assembly Bill 2768 by the Assembly Interim Committee on Governmental Efficiency and Economy resulted in a recommendation that the bill be reviewed in the light of the committee's hearings in Los Angeles, September 17 and 18, 1959, and reintroduced at the 1961 session.¹ As introduced, Assembly Bill 1317 of the 1961 session was identical to Assembly Bill 2768; the bill died in the Assembly Committee on Governmental Efficiency and Economy after being amended twice. This study of Senate Bill 1480 of the 1963 Regular Session results from the recommendation of the Senate Committee on Business and Professions.

The Assembly Public Health Committee has published four reports on radiation problems; none of them deals with the question of educational standards for X-ray machine operators.²

The question of state certification of X-ray technicians arises because ionizing radiation has harmful effects when it strikes human beings. Ionizing radiation, whether it consists of X-rays, alpha rays, beta rays, gamma rays, a beam of neutrons, or cosmic rays, and whether it is emitted from an X-ray machine, a fluoroscope, a cyclotron, or a radioactive isotope,³ disrupts the biochemical components of human cells.⁴

¹ California, Legislature, *Report of the Assembly Interim Committee on Governmental Efficiency and Economy to the 1961 General Session of the California Legislature* ("Assembly Interim Committee Reports 1959-1961," Vol. 8, No. 6; Sacramento: California State Printing Office, 1960), p. 38.

² California, Legislature, Assembly Interim Committee on Public Health, Subcommittee on Air Pollution and Radiation Protection, *Atomic Energy Development and Radiation Protection in California* ("Reports of Assembly Interim Committees 1957-59," Vol. 9, No. 14; Sacramento: California State Printing Office, 1959); Subcommittee on Development and Control of Nuclear Industry in California ("Assembly Interim Committee Reports 1957-59," Vol. 9, No. 15; Sacramento: California State Printing Office, 1959); Subcommittee on Radiation Protection, *Radiation Protection in California* ("Assembly Interim Committee Reports 1959-61," Vol. 9, No. 23; Sacramento: California State Printing Office, 1961); Subcommittee on Air Pollution and Radiation Protection, "Licensing Fees for Radioactive Materials," *Report of the Assembly Interim Committee on Public Health* ("Assembly Interim Committee Reports 1961-63," Vol. 9, No. 25; Sacramento: California State Printing Office, 1963), pp. 58-65.

³ Jack Schubert and Ralph E. Lapp, *Radiation: What It Is and How It Affects You* (New York: The Viking Press, 1957), p. 66.

⁴ United Nations, General Assembly, *Report of the United Nations Scientific Committee on the Effects of Atomic Radiation* (Official Records: Seventeenth Session Supplement No. 16 (A/5216)) (New York, 1962), p. 7.

As the radiation passes through the cells of the body, it splits molecules into fragments, which, deprived of chemical stability, interact with each other and with unaltered molecules, upsetting the chemical balance of cells, and giving rise to new chemical compounds.⁵

Two kinds of damage—somatic and genetic—result from ionizing radiation passing through the human body. Somatic damage is confined to the person radiated; genetic damage is passed on to the descendants of the radiated person in the form of altered heredity. Radiation striking the body causes somatic damage; radiation striking the sex cells prior to reproduction causes genetic damage.⁶

The movement for state certification of X-ray technicians arises not from the somatic but from the genetic effects of radiation. There are two reasons why the somatic effects of medical radiation are not a public health concern. First, somatic damage is unlikely to occur unless a person receives great or repeated doses of radiation, or unless the exposure is to large or to sensitive portions of the body.⁷ Second, the person radiated receives the medical benefits of the radiation; his welfare and no else's is at stake. The genetic effect of radiation is a completely different matter; to explain the difference will require a description of the process by which genetic damage is caused.

Although the operator of an X-ray machine can confine the primary beam to a small area, he cannot totally control the direction of the radiation emitted from the X-ray tube. Some of the X-rays will scatter about the room, bouncing and changing direction, until their energy dissipates. As a result, when someone makes an X-ray study of a medical or dental patient, whether the study consists of taking a picture or of using a fluoroscope, some of the X-rays will pass through the patient's gonads—the testes of the male, the ovaries of the female.⁸ Within the sperm-producing cells in the testes, and within the eggs in the ovaries, are the genes, the units of heredity, which control characteristics of offspring. An X-ray, striking the genes, may alter the structure, causing a mutation. Once a gene mutates, the change is irreparable.⁹ The mutation will be carried in the cells of each succeeding generation until the line of descent dies out.¹⁰

Scientists cannot say exactly how many mutations will result from a given amount of radiation,¹¹ but they do know that any amount of radiation, however small, can induce some mutations.¹² A scientific report states the matter in this precise way: "There is no minimum amount of radiation dose . . . which must be exceeded before any

⁵ United Nations Scientific Committee, p. 7.

⁶ United Nations Scientific Committee, pp. 9–19.

⁷ *A Practical Manual on the Medical and Dental Use of X-Rays with Control of Radiation Hazards; Prepared by: The American College of Radiology for Users of X-Rays in the Healing Arts* ([Chicago]: The American College of Radiology, 1958), p. 9.

⁸ Andrew A. Villanyi, "Film Sensitivity and Kilovoltage in Dental Radiography," *Journal, Southern California State Dental Association*, Vol. 32, No. 4 (April 1964), 150; *A Practical Manual* . . . , p. 25.

⁹ Federal Radiation Council, *Report No. 1: Background Material for the Development of Radiation Protection Standards*, May 13, 1960. (Washington: U.S. Government Printing Office, 1960), pp. 8–9; Schubert, p. 185.

¹⁰ National Academy of Sciences, *The Biological Effects of Atomic Radiation, Summary Reports* (Washington: National Academy of Sciences—National Research Council, 1956), p. 11.

¹¹ National Academy of Sciences, *The Biological Effects of Radiation, Summary Reports* (Washington: National Academy of Sciences—National Research Council, 1960), p. 4; Federal Radiation Council, p. 18; United Nations Scientific Committee, p. 376.

¹² *A Practical Manual* . . . , p. 9.

harmful mutations occur."¹³ Moreover, the more radiation received, the more mutations will occur, and this is true even though a person receives small doses of radiation over a long period of time.¹⁴ The total amount of radiation received from conception until reproduction is what is important.¹⁵

Nor can scientists measure the amount of human harm that mutations cause.¹⁶ One difficulty in making such a measurement is that a specific defect caused by a mutation might be tragic to one person but only mildly deleterious to another. An example is the death of an embryo, the death having been induced by a mutation. Another difficulty is that a mildly deleterious mutation may persist in the line of descent for many generations, bringing unhappiness to many people, while a grossly harmful mutation may die out in a single generation.¹⁷ These difficulties notwithstanding, scientists agree that the vast majority of mutations are harmful and that practically all mutations whose effects can be detected are harmful.¹⁸ Examples of genetic defects of the most serious kind include mental deficiency, epilepsy, congenital malformations, neuromuscular defects, hematological and endocrine defects, defects in vision and hearing, cutaneous and skeletal defects, defects of gastrointestinal or genitourinary tracts, and shortened life.¹⁹

The effect of a mutation seldom shows in the first generation; several generations may carry the mutated characteristic before it appears.²⁰

To summarize, from the genetic point of view, there is no such thing as a safe dose of radiation; any dose is harmful,²¹ and damage will inevitably result from radiating people who later bear children.²² To reduce the radiation exposure of potentially childbearing people, the people who carry the genes which will govern the physical and mental character of future generations, is the aim of public regulation of radiation sources.²³

The sources of radiation are natural and manmade. Natural radiation comes from radioactive materials on earth and cosmic rays from space. Manmade sources of radiation include fallout from nuclear explosions, nuclear reactors, X-ray machines, electronic microscopes, and so on. Authorities are agreed that medical radiation contributes considerably to the sum of manmade radiation,²⁴ and that medical radiation is about equal to total natural radiation.²⁵ The American College of Radiology states that "Medical and dental use of radiation produces a major part of the radiation exposure of human beings."²⁶ Comparisons between

¹³ National Academy of Sciences, 1956, p. 15.

¹⁴ Federal Radiation Council, pp. 8-9; National Academy of Sciences, 1956, p. 16.

¹⁵ National Academy of Sciences, 1956, pp. 16-17.

¹⁶ National Academy of Sciences, 1960, p. 5.

¹⁷ National Academy of Sciences, 1956, p. 13.

¹⁸ National Academy of Sciences, 1956, pp. 12, 15; Schubert, p. 183; Federal Radiation Council, pp. 8-9.

¹⁹ National Academy of Sciences, 1956, pp. 13, 25.

²⁰ National Academy of Sciences, 1956, pp. 12-13.

²¹ Federal Radiation Council, pp. 8-9.

²² Russell H. Morgan, "Radiation Protection Standards," *Selected Materials on Radiation Protection Criteria and Standards: Their Basis and Use*, Printed for the use of the Joint Committee on Atomic Energy, 86th Cong., 2d Sess., 1960 (Washington: U.S. Government Printing Office, 1960), p. 65; *A Practical Manual . . .*, p. 9.

²³ California, The Coordinator of Atomic Energy Development and Radiation Protection, *First Biennial Report to the Governor and the Legislature, State of California* (Sacramento, January 13, 1961) (processed), p. 24.

²⁴ Federal Radiation Council, pp. 20-21.

²⁵ Francis J. Weber, "General Concepts and Procedures in Establishment of Health Standards," *Selected Materials on Radiation Protection Criteria . . .*, p. 32.

²⁶ *A Practical Manual . . .*, p. 2.

medical radiation and radiation from fallout lack certainty because weapons testing is not subject to world-wide control and varies greatly from year to year.²⁷ The former State Coordinator of Atomic Energy Development and Radiation Protection estimates that medical exposure is 40 times greater than fallout exposure.²⁸

The X-ray machine, used to take photographs of internal organs, and the fluoroscope, consisting of a fluorescent screen mounted in front of an X-ray tube, used to examine internal organs directly, are the chief sources of medical radiation. Table 1 shows that all but a small number of the X-ray machines in California are used for human medical purposes.

Table 1

REGISTERED RADIATION MACHINES IN CALIFORNIA, AS OF APRIL 15, 1964

Nature of business	Number of offices	Number of machines				
		Total	Medical	Dental	Veterinary	Others *
<i>Total</i>	13,226	20,060	9,907	8,279	579	1,295
Private practice of:						
Dentist -----	6,273	7,956	--	7,956	--	--
Physician and Surgeon--	3,951	5,403	5,403	--	--	--
Chiropractor -----	873	905	905	--	--	--
Podiatrist -----	350	351	351	--	--	--
Hospital -----	453	2,549	2,447	102	--	--
Veterinarian -----	487	579	--	--	579	--
Clinic -----	151	265	205	60	--	--
X-ray laboratory						
"LAY" laboratory -----	36	57	30	27	--	--
MD or DDS operated						
laboratory -----	71	146	135	11	--	--
Portable X-ray service-----	15	23	23	--	--	--
School or college-----	74	435	135	42	--	258
Health agency -----	77	131	109	22	--	--
Miscellaneous (industrial plant, governmental, etc.)	415	1,260	164	59	--	1,037

* Includes industrial radiographic and fluoroscopic machines, accelerators, electron microscopes, X-ray diffraction units, and other nonmedical radiation machines.

SOURCE: Bureau of Radiological Health.

The purpose of state regulation of medical sources of radiation is to eliminate unproductive radiation; the purpose is not to reduce its diagnostic and therapeutic benefits. To obtain the full medical benefits of radiation, exposure possibly should be even greater than it is at present, and, as medical science finds new uses for radiation, total exposure almost surely will increase.²⁹ To reduce the inevitable genetic consequences, each medical exposure should be both necessary and productive of concrete benefits.³⁰ Medical organizations recognize this as a goal and actively pursue educational programs to achieve it.³¹

There are three ways to eliminate unproductive medical radiation. The first is for medical practitioners to eliminate all unnecessary X-ray

²⁷ Federal Radiation Council, p. 21.

²⁸ California, Legislature, Senate Factfinding Committee on Public Health and Safety, *Hearing on Senate Bill 1480, X-Ray Technicians* (Los Angeles, January 21, 1964), p. 82.

²⁹ U.S. Congress, Subcommittee on Research, Development, and Radiation of the Joint Committee on Atomic Energy, *Hearings, Radiation Standards, Including Fallout* (Part 1), 87th Cong., 2nd Sess., 1962, pp. 287, 293, 304.

³⁰ *A Practical Manual* . . . , p. 25.

³¹ Joint Committee on Atomic Energy, *Hearings, Radiation Standards, Including Fallout* (Part 1), 1962, pp. 290-92, 298.

exposures—a matter of judgment.³² No specific study can be condemned if it will benefit the patient, “but no single examination should be done without a good and sufficient reason for it.”³³ In many situations the benefit of the study to the patient cannot be certain, just as the precise genetic damage to humanity cannot be measured. As a practical matter, however, doctors can make each study as limited as possible and proceed only after evaluating the need for further investigation.³⁴

The second way to eliminate unproductive medical radiation is to make sure that X-ray installations are as safe as possible. As of January 31, 1962, about four years after the enactment of a New York City law requiring radiation installations to meet safety standards, 12,483 installations had been inspected. Seventy percent of them were found to be deficient upon first inspection.³⁵ In 1962 the director of the Office of Radiation Control of the City of New York estimated that, by improving the safety of radiation equipment used on human beings, his office had reduced unnecessary radiation by 25 percent.³⁶

The third way to eliminate unproductive medical radiation is to use good technique. “Even with the best equipment the dose to the patient depends primarily on the competence of the operator and his sincere interest in radiation safety. Careless beam orientation and the use of fields larger than necessary may increase the gonad dose by a factor of more than a hundred.”³⁷ The skilled and dedicated X-ray machine operator will position the patient correctly, use proper filters on the beam, focus the beam as narrowly as possible, measure the patient’s body, make each exposure as brief as possible, use shielding devices, take as few pictures as possible, and use exact timing in developing the film. Failure to use these and other techniques will result in unnecessary radiation of the patient.³⁸

A good case can be made that a well-qualified dentist can train an assistant to take dental X-rays properly in a short period of time. Dental X-rays require low voltages and can be confined to the head. If the primary beam is properly filtered and confined to a narrow area, the amount of scatter radiation to the gonads will be very small. The most important single factor in reducing dosage from dental X-ray is the use of fast film. Two scientific studies, and a publication of the Bureau of Radiological Health, State Department of Public Health, support the conclusion that proper equipment, rather than the technique of the X-ray machine operator, is the essential factor in reducing the genetic hazard from dental X-rays.³⁹

Turning from a statement of the possible ways to eliminate unproductive medical radiation to the actual situation in California, we find

³² Federal Radiation Council, p. 24.

³³ *A Practical Manual* . . . , p. 17.

³⁴ *A Practical Manual* . . . , p. 25.

³⁵ Joint Committee on Atomic Energy, *Hearings, Radiation Standards, Including Fallout* (Part 2: Appendix), 1962, p. 612.

³⁶ Joint Committee on Atomic Energy, *Hearings, Radiation Standards, Including Fallout* (Part 1), 1962, p. 295.

³⁷ Carl B. Braestrup, “Radiation Exposures Associated with the Medical Use of X-rays and Gamma Beams,” *Selected Materials on Radiation Protection Criteria* . . . , p. 169.

³⁸ *A Practical Manual* . . . , p. 25.

³⁹ California, Department of Public Health, Bureau of Radiological Health, *Radiation Protection in Dental Practice* (Sacramento: California State Printing Office, 1963), pp. 1-17; Joint Committee on Atomic Energy, *Hearings, Radiation Standards, Including Fallout* (Part 2: Appendix), 1962, pp. 602-11; Villanyi, pp. 147-50.

that in 1961 the Legislature enacted the Radiation Control Law⁴⁰ to provide "an integrated effective system of regulation within the state" for sources of ionizing radiation⁴¹ Sections 30305 to 30314 of the regulations under this law, which refer to such matters as shielding, tube housing, switches, filters, and the like, set forth requirements for safety of X-ray equipment used in the healing arts.⁴²

California law does not require operators of medical X-ray machines to meet any requirements of skill, ability, education, or training. Legally, anyone may use an X-ray machine on human beings in California.⁴³ The Department of Public Health interprets the Radiation Control Law to authorize regulations concerning X-ray machine safety but not to authorize any requirements for X-ray machine operators.⁴⁴ And, because the Legislature has failed to pass three bills introduced to enact requirements for X-ray machine operators, the department no doubt would be severely criticized if it issued regulations in that field. The regulations issued under the Radiation Control Law contain a section which states that a user of X-ray equipment in the healing arts "shall assure that all X-ray equipment under his jurisdiction is operated only by persons adequately instructed in safe operating procedures and competent in safe use of the equipment,"⁴⁵ but it is evident that this regulation contains no enforceable standards. Nor does California law require practitioners of the healing arts to supervise the operation of medical X-ray machines, although in some circumstances using an X-ray machine on a human being without supervision by a licentiate of the healing arts might subject a layman to the prohibition against practicing medicine without a license.⁴⁶ These qualifications having been noted, the general statement remains true: Legally anyone may use an X-ray machine on human beings in California.

It is important at this point to draw a distinction between radiologists and other kinds of medical practitioners. A radiologist is a specialist in the use of radiation to diagnose and treat disease; he is a medical doctor or a doctor of osteopathy, and, if he is a medical doctor, he is probably certified by the American Board of Radiology, a private association of radiologists. He has had three or four years of special training beyond his internship in the medical use of radiation.⁴⁷ Radiologists as a group are the best qualified of all medical practitioners to operate and to supervise the operation of X-ray machinery.⁴⁸ Table 2 shows, however, that radiologists have registered only 792 of the 5,403 X-ray machines used in private medical offices in California.

⁴⁰ California, *Health and Safety Code*, Sections 25800-876.

⁴¹ California, *Health and Safety Code*, Section 25801.

⁴² California, *Administrative Code*, Title 17, Sections 30305-14.

⁴³ Opinion of Legislative Counsel, August 11, 1964, Appendix, p. 55; California Legislature, Senate Factfinding Committee on Public Health and Safety, *Hearing on Senate Bill 1480, X-ray Technicians* (Los Angeles, January 21, 1964), pp. 77-8.

⁴⁴ Letter from Dr. Malcolm H. Merrill, Director of Public Health, State of California, to Senator Walter W. Stern, Chairman, Senate Factfinding Committee on Public Health and Safety, August 31, 1964.

⁴⁵ California, *Administrative Code*, Title 17, Section 30305(b).

⁴⁶ Opinion of Legislative Counsel, August 11, 1964, Appendix, pp. 54-5.

⁴⁷ California, Legislature, Senate Factfinding Committee on Public Health and Safety, *Hearing on Senate Bill 1480, X-ray Technicians* (Los Angeles, January 21, 1964), pp. 34-5.

⁴⁸ Assembly Interim Committee on Governmental Efficiency and Economy, *1961 Report*, supra, note 1, p. 37.

Table 2

REGISTERED RADIATION MACHINES, PRIVATE PRACTICES OF PHYSICIANS AND SURGEONS, BY MEDICAL SPECIALTY, CALIFORNIA, AS OF APRIL 15, 1964 *

<i>Specialty</i>	<i>Number of offices</i>	<i>Number of X-ray machines</i>
Total -----	3,951	5,403
General medical practice -----	772	929
Internal medicine -----	440	520
Radiology -----	277	792
Dermatology -----	227	389
Orthopedics -----	198	246
Urology -----	134	158
Ear, nose, throat -----	33	33
Pediatrics -----	46	51
Surgery -----	30	31
Cardiology -----	28	30
Group practice (including various specialties) -----	160	281
Other specialty -----	82	107
No specialty stated -----	1,524	1,836

* Does not include machines registered by hospitals, clinics, etc., which may be used by or under the supervision of a physician or surgeon.

SOURCE: Bureau of Radiological Health.

Two private, nationwide organizations certify the competence of X-ray technicians. The American Registry of Radiologic Technologists, the older, was organized in 1922 and incorporated in 1936 by radiologists and X-ray technicians and is today governed by a board composed of four radiologists and four X-ray technicians. Applicants for certification must have completed two years of training and experience under the supervision of a radiologist (supervision is defined as three visits per week for a total of 10 hours by the radiologist to the place where the technician is working, usually the X-ray department of a hospital) or he must have completed a two-year course of training and experience at a school approved by the American Medical Association. After July 1, 1966, supervision by a radiologist will not be sufficient; applicants will have to complete a two-year course at an approved school. To be certified, the applicant must pass a written examination.⁴⁹

The American Radiography Technologists, the other organization which certifies X-ray technicians, requires applicants to have two years of training and experience under the supervision of a physician or a radiologist, or to have completed a course of training of approximately two years in a school approved by the American Radiography Technologists, and to pass a written examination.⁵⁰

The California membership of these two organizations is as follows:⁵¹

American Registry of Radiologic Technologists ---	3,885
American Radiography Technologists -----	900
Total -----	4,785

⁴⁹ [Informational Pamphlet], The American Registry of Radiologic Technologists, 2600 Wayzata Boulevard, Minneapolis, Minnesota.

⁵⁰ Application for Registration, American Radiography Technologists, P.O. Box 284, Enid, Oklahoma.

⁵¹ Letters to the Senate Factfinding Committee on Public Health and Safety from: (1) Alfred B. Greene, Executive Director, The American Registry of Radiologic Technologists, August 24, 1964; (2) Margaret E. Harris, 10921 Marian Drive, Garden Grove, California, August 26, 1964.

Partly because so many certified X-ray technicians work for radiologists, the best qualified X-ray operators do only about one-half of the total diagnostic X-ray work performed in California.⁵²

At this committee's 1964 hearing and the 1959 hearings of the Assembly Interim Committee on Governmental Efficiency and Economy, substantial testimony indicated that inadequately trained and even incompetent personnel operate X-ray machines in medical offices. Commonly an office nurse, a receptionist, or some other assistant to the doctor will do the X-ray work.⁵³ She may have received the most cursory instruction and be told to follow the printed directions of the equipment manufacturer, directions relating solely to the mechanics of operating the equipment.⁵⁴ A witness at the 1959 hearings described several cases of gross incompetence in the use of X-ray in medical offices.⁵⁵ At the 1964 hearing of the Senate Factfinding Committee on Public Health and Safety, an X-ray technician, an employee of a radiologist who is a Fellow of the American College of Radiology, said, "Even some of our own radiologists will hire anybody that walks in."⁵⁶

Whether many nonradiologist medical practitioners can do all kinds of medical X-ray work and give the patient only necessary, productive radiation, is doubtful. A medical student may get some experience in the actual operation of X-ray equipment at the intern or resident level,⁵⁷ but he does not receive the technical training that an X-ray technician receives.⁵⁸ Surveys of medical offices have shown that X-ray equipment is frequently operated unsafely. For example, a 1960 account of conditions in New York City reported that most nonradiologist physicians and dentists were either unaware of or lacked an understanding of radiation safety standards.⁵⁹ The same account says that in many offices X-ray studies of the chest exposed the gonads to the primary radiation beam.⁶⁰ In California, the First Report of the California Coordinator of Atomic Energy asserts that "many medical users employ deficient equipment, are insufficiently informed as to the doses delivered to the patient, and are unfamiliar with the best procedures and precautionary measures. . . ."⁶¹

Medical schools are, however, increasing instruction in radiation safety. A 1962 survey conducted by the American College of Radiology, asking 87 medical schools how much instruction they gave in radiation safety, found that 74 of the 78 schools which replied to the questionnaire gave some instruction. Of the four schools that gave no instruction, two were planning to do so. The total number of hours of

⁵² Merrill letter, August 31, 1964.

⁵³ California, Legislature, Assembly Interim Committee on Governmental Efficiency and Economy, Subcommittee on X-ray Technicians, *Hearing on X-ray Technicians* (Los Angeles, September 17 and 18, 1959), p. 171; Senate, *Hearing on Senate Bill 1480*, pp. 7, 95, 137.

⁵⁴ Senate, *Hearing on Senate Bill 1480*, p. 7.

⁵⁵ Assembly, *Hearing on X-Ray Technicians*, pp. 36-42.

⁵⁶ Senate, *Hearing on Senate Bill 1480*, p. 112.

⁵⁷ Joint Committee on Atomic Energy, *Hearings, Radiation Standards, Including Fall-out* (Part 1), 1962, p. 293.

⁵⁸ Assembly, *Hearing on X-ray Technicians*, p. 166.

⁵⁹ Hanson Blatz, "A Comprehensive Radiation Control Program in New York City," *Radiology*, Vol. 74 (March 1960), 475.

⁶⁰ Blatz, p. 476.

⁶¹ Coordinator of Atomic Energy, pp. 24-5.

instruction (actual hours, not "units") at the 78 schools was 346, or an average of 4.4 hours for each school. Forty-five of the schools said they had increased instruction in radiation safety by 50 percent within five years preceding the survey.⁶² The University of California medical schools in Los Angeles and San Francisco require students to take 16 hours of radiology during the first two years, and the schools provide further instruction in radiology during the third and fourth years.⁶³ In a letter to this committee, the UCLA School of Medicine reports that "throughout all the courses . . . , an attempt is made to incorporate the importance of recognizing the hazards of the indiscriminate use and the advantages of the proper uses of radiation in the diagnosis and treatment of disease."⁶⁴

In addition to the question whether many medical practitioners are themselves qualified to do all kinds of medical X-ray work, there is a serious question about how closely practitioners supervise the people in their offices who take X-rays. One witness at this committee's hearing, a radiologist, testified that a medical practitioner is in the best position to evaluate an X-ray technician's competence because the practitioner must see each X-ray picture and must rely on it almost completely to make a diagnosis.⁶⁵ An X-ray picture, however, does not tell the practitioner how many exposures were made nor whether the technician took all necessary safety precautions. Some X-ray machine operators have no supervision whatever from a medical practitioner. There are, for example, 15 medical and 21 dental X-ray laboratories registered in California with no medical practitioner as an operator or director. In addition, there are 15 portable X-ray services, operated by nonmedical practitioners, used for taking X-rays of bedridden patients.⁶⁶

AN ARGUMENT AGAINST STATE REQUIREMENTS FOR X-RAY TECHNICIANS

Allowing the medical profession to perfect a voluntary system of control is better than establishing state requirements for X-ray machine operators. This voluntary system should consist of all X-rays being made under the supervision of a physician and all physicians limiting their use of X-rays to the degree they are competent in making X-ray studies.

Under a voluntary system, the welfare of the patient will remain, as at present, the exclusive responsibility of the physician. If the state sets up requirements for X-ray machine operators, the physician's responsibility will be diluted.

The medical profession is moving toward adequate control voluntarily. Patients are becoming more educated about the dangers of

⁶² Joint Committee on Atomic Energy, *Hearings, Radiation Standards, Including Fallout* (Part 1), 1962, pp. 290-1, 294, 302.

⁶³ Letters to the Senate Factfinding Committee on Public Health and Safety from: (1) Robert H. Crede, Associate Dean, University of California, San Francisco Medical Center, September 14, 1964; (2) Edward A. Langdon, Coordinator, Student Affairs, University of California, Los Angeles, School of Medicine, September 8, 1964.

⁶⁴ Langdon letter, September 8, 1964.

⁶⁵ Senate, *Hearing on Senate Bill 1480*, p. 36.

⁶⁶ Letter from John M. Heslep, Chief, Bureau of Radiological Health, California Department of Public Health, to Senator Walter W. Stiern, Chairman, Senate Factfinding Committee on Public Health and Safety, September 1, 1964.

radiation, and, since patients have a free choice of physician, they will go to doctors who operate X-ray equipment properly. As a partly self-disciplining profession, medicine itself can and will control doctors who use X-ray incompetently. Finally, the fear of malpractice suits and moral pressure require doctors to operate X-ray equipment safely.

AN ARGUMENT IN FAVOR OF STATE REQUIREMENTS FOR X-RAY TECHNICIANS

Voluntary action by the medical profession, leading to an adequate system of control, is an unattainable ideal. Although partly self-disciplining, the medical profession does not have the power to require all medical practitioners to limit their use of X-ray to the degree of their competence.

The present voluntary system permits an absence of responsibility at the crucial time and place: when the patient is X-rayed. The doctor is not present in many cases, and by looking at the film later cannot tell whether the procedure used to take the picture was the best one possible. The evidence is great that many medical practitioners are not qualified to do all kinds of medical X-ray work with maximum safety. Enactment of state requirements for X-ray machine operators would increase, not detract from the doctor's responsibility. He would be forced to make a responsible choice between the following alternatives: (1) take the X-rays himself, (2) hire a certified technician, or (3) send the patient to a certified technician.

COMMITTEE CONCLUSION

Government regulation of radiation sources has been inaugurated in the realization that regulation is necessary to protect the living population and future generations from the hazard of unnecessary radiation. Because medical X-ray machines comprise the major source of public exposure, elimination of unnecessary medical radiation will greatly reduce the total amount of radiation and will enhance the public welfare. Regulation of equipment is not by itself sufficient; by using poor procedure an untrained X-ray machine operator can negate the value of the best equipment; there is much evidence that improperly trained people can and do operate medical X-ray machines. The state can establish standards of education and training for medical X-ray machine operators without interfering with the right of medical practitioners to make judgments as to the need for using the equipment and without interfering with the responsibility of the practitioner for the safety of the patient.

COMMITTEE RECOMMENDATIONS

1. Legislation should be enacted to provide that no one, except licentiates of the healing arts, shall use X-rays or X-ray producing equipment on human beings for diagnostic or therapeutic purposes without having been certified by the State Department of Public Health after meeting educational requirements and passing an examination.

2. Legislation should be enacted to provide that licentiates of the healing arts must supervise all X-ray exposure of human beings for diagnostic and therapeutic purposes.

3. Legislation should be enacted to amend the Medical Practice Act to require applicants for a physician's and surgeon's certificate and applicants for a podiatrist's certificate to show evidence of having attended a medical school whose curriculum provided for adequate instruction in radiology, including roentgenologic technique and radiation safety.

4. Legislation should be enacted to amend the Medical Practice Act to require applicants for a physician's and surgeon's certificate and applicants for a podiatrist's certificate to pass an examination in roentgenologic technique and radiation safety.

APPENDIX TO CHAPTER VI

STATE OF CALIFORNIA OFFICE OF LEGISLATIVE COUNSEL

3021 STATE CAPITOL, SACRAMENTO 95814
110 STATE BUILDING, LOS ANGELES 90012

Sacramento, August 11, 1964

HON. WALTER W. STIERN
2901 Skyline Boulevard
Bakersfield, California

X-RAY MACHINES - NO. 6632

Dear Senator Stiern:

You have asked the following questions, which we will answer in series, regarding X-ray machines and the use thereof.

QUESTION NO. 1

Does the California law state the circumstances under which the operation of an X-ray machine must be under the supervision of a licentiate of the healing arts?

OPINION AND ANALYSIS NO. 1

The only specific provision of law which we have found on this subject is Section 638 of the Penal Code which provides as follows:

"638. No person shall operate or maintain any X-ray fluoroscope, or other equipment or apparatus employing roentgen rays, in the fitting of shoes or other footwear or in the viewing of bones in the feet. This section shall not apply to any licensed physician, surgeon, podiatrist, chiropractor, or any person practicing a licensed healing art, or any technician working under the direct and immediate supervision of such persons. Any person violating the provisions of this section shall be guilty of a misdemeanor."

However, the use of such machines would be subject to the general limitations against the practice of medicine by licensed persons. Thus, Section 2141 of the Business and Professions Code, a part of the Medical Practice Act, provides as follows:

"2141. Any person, who practices or attempts to practice, or who advertises or holds himself out as practicing, any system or mode of treating the sick or afflicted in this State, or who diagnoses, treats, operates for, or prescribes for any ailment, blemish, deformity, disease, disfigurement, disorder, injury, or other mental

or physical condition of any person, without having at the time of so doing a valid, unrevoked certificate as provided in this chapter, is guilty of a misdemeanor."

QUESTION NO. 2

When an X-ray machine is operated for medical purposes does the California law spell out how close the supervision of the person operating the machine must be?

OPINION AND ANALYSIS NO. 2

Again, there are no specific provisions on the subject in the statutes of this state.

QUESTION NO. 3

Are there any requirements in the California law for persons who operate X-ray machines?

OPINION AND ANALYSIS NO. 3

This state has no licensing or certification provisions for operators of such machines. However, we note that attempts have been made to license such persons (see A.B. 2768, 1959; A.B. 1317, 1961).

QUESTION NO. 4

Are chiropractors licensed to use X-ray machines in California?

OPINION AND ANALYSIS NO. 4

Neither the Chiropractic Act (Ch. 2, commencing with Sec. 1000, Div. 2, West's B. & P.C.) nor the regulations adopted by the State Board of Chiropractic Examiners (16 Cal. Adm. C. 300) specifically regulate the use of X-ray machines by chiropractors.

In this connection we note that a chiropractic certificate only authorizes "the holder thereof to practice chiropractic in the State of California as taught in chiropractic schools or colleges; and, also to use all necessary mechanical, and hygienic and sanitary measures incident to the care of the body, but shall not authorize the practice of medicine, surgery, osteopathy, dentistry or optometry, nor the use of any drug or medicine now or hereafter included in materia medica" (Sec. 1000-7, West's B. & P.C.). In the latest court decision interpreting this language, the appellate court of California upheld a lower court decision defining the scope of chiropractic practice as follows:

"A duly licensed chiropractor may only practice or attempt to practice or hold himself out as practicing a system of treatment by manipulation of the joints of the human body by manipulation of anatomical displacements, articulation of the spinal column, including its vertebrae and cord, and he may use all necessary, mechanical, hygienic and sanitary measures incident to the care of the body in connection with said system of treatment, but not for the purpose of treatment, and not including measures as would constitute the practice of medicine, surgery, osteopathy, dentistry, or optometry, and without the use of any drug or medicine included in materia medica.

"A duly licensed chiropractor may make use of light, air, water, rest, heat, diet, exercise, massage and physical culture, but only in connection with and incident to the practice of chiropractic as hereinabove set forth." (*Crees v. California State Board of Medical Examiners* (1963), 1213 Cal. App. 2d 195, 202.)

Any use of X-ray equipment by a chiropractor would have to be within the scope of the above limitation.

QUESTION NO. 5

Are chiropractors licensed to use X-ray machines in New York?

OPINION AND ANALYSIS NO. 5

On July 1, 1963, a new law concerning such use took effect in New York (Sec. 1, Ch. 780, Law 1963). That law provides as follows:

" . . .

"3. A license to practice chiropractic shall not permit the holder thereof:

" . . .

"f. To use radio-therapy, fluoroscopy, or any form of ionizing radiation except X-ray which may be used only as provided in this subdivision; (i) X-ray shall only be used for the purposes of chiropractic analysis; (ii) such use of X-ray shall be confined to persons over the age of 18; and (iii) the area of such X-ray exposure shall not extend below the level of the top of the first lumbar vertebra. The requirements and limitations with respect to the use of X-ray by chiropractors shall be enforced by state commission of health and he is authorized to promulgate rules and regulations to carry out the purposes of this subdivision. Chiropractors shall retain for a period of three years all X-ray films taken in the course of their practice, together with the records pertaining thereto, and shall make such films and records available to the state commission of health or his representative on demand."

Very truly yours,

A. C. MORRISON
Legislative Counsel

By
(MRS.) ANN MACKEY
Deputy Legislative Counsel

O

CALIFORNIA LEGISLATURE



THIRTEENTH REPORT OF THE SENATE FACTFINDING SUBCOMMITTEE ON UN-AMERICAN ACTIVITIES

1965

MEMBERS OF THE SUBCOMMITTEE

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Secretary

FOREWORD

No inference of subversive affiliation or activity should be made solely because the name of a person, organization, or publication, is mentioned in this report.

Previous reports are now out of print, but may be found in the reference rooms of public libraries in California.

LETTER OF TRANSMITTAL

SENATE CHAMBER, STATE CAPITOL
SACRAMENTO, June 18, 1965

HONORABLE GLENN M. ANDERSON
PRESIDENT OF THE SENATE, AND
GENTLEMEN OF THE SENATE

Senate Chamber, Sacramento, California

MR. PRESIDENT AND GENTLEMEN OF THE SENATE: Pursuant to Senate Rules Resolution No. 1, adopted July 11, 1963, under authority of Paragraph 12.5 (13) of the Standing Rules of the Senate, the Senate Factfinding Subcommittee on Un-American Activities of the General Research Committee was created and the following Members of the Senate were appointed to said subcommittee by the Senate Committee on Rules: Senators Hugh M. Burns, Chairman, Aaron W. Quick and Stephen P. Teale.

The committee herewith submits a report of its investigation and findings.

Respectfully submitted,

HUGH M. BURNS, *Chairman*
AARON W. QUICK

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UNIVERSITY OF CALIFORNIA

Introduction

On September 21, 1964, a student demonstration occurred on the campus of the University of California at Berkeley. Thereafter other and more serious demonstrations followed until it finally became necessary for the governor to summon officers to clear the administration building on the campus of more than 800 defiant students who had entered and staged a sit-in demonstration. Many arrests were made, the student rebellion received international publicity, and the image of a great cultural institution received irreparable damage.

It is the responsibility of this subcommittee to ascertain the causes of these disturbances and to report the extent to which they were inspired or influenced by subversive elements. We do this realizing that there is an unfortunate trend at present for the extreme right to see Communists everywhere, and for the extreme left to pretend that they no longer exist.

We have conducted investigations of subversive infiltration at the University of California and at other educational institutions throughout the state since 1941. From the inception of the most recent troubles at Berkeley we have had both overt and covert agents in the area who have provided us with a flow of information on a day-to-day basis. In addition we have obtained statements from university administrators, faculty members, Regents, and students; we have obtained all documents we believe material to the subject, we have studied the newspaper accounts, magazine articles, TV and radio programs that seemed important, and we have also obtained the publications issued by the Free Speech Movement.

For the purpose of placing the subject in its proper perspective, it will be helpful to the reader if he is provided with a chronology of events, commencing with the situation as it existed in Berkeley at the opening of the spring semester in 1964, and continuing until the time this portion of our report is being dictated, in March of 1965.

Chronology

Spring Semester, 1964—Intense pre-primary election activity by student groups creates congestion at Sather gate.

July 22 and 29—Chancellor's office, Dean of Students, campus police and the public affairs officer conferred and decided upon a stricter interpretation of the Kerr Rules.

September 14—Katherine Towle, Dean of Students, established a new policy. Sent letter to "Presidents or Chairmen and Advisors of all Student Organizations," officially barring all tables at Sather gate.

September 17—Dean Towle met with students representing 18 off-campus organizations to discuss her September 14 directive.

September 18—Dean Towle was presented with a petition from the 18 organizations protesting the September 14 directive.

September 21—The September 14 directive was reconsidered and a new directive issued allowing a limited number of tables at Sather gate.

September 21—Student leaders of the 18 groups walked out saying that they were not satisfied and that the modification was not sufficient.

September 21—First demonstration occurred.

September 23—Chancellor Strong issued statement through the *Daily Californian* to the effect that "its (university's) facilities were not to be

used for the mounting of the social and political actions directed to the surrounding community," citing President Kerr's Davis Charter Day Address, May 5, 1964.

September 23—A free speech vigil was held on Sproul Hall steps, 75 persons still being there on the morning of September 24.

September 24 and 25—Chancellor Strong conferred with President Clark Kerr.

September 28—Chancellor Strong presented his modified position at the university meeting, held at the Student Union Plaza. He interpreted section III of the Kerr Rules as eliminating any distinction between spoken and written expression, thus allowing free distribution of printed materials, buttons and stickers favoring political candidates in certain designated areas on the campus. The rationale of this change appeared to be that since controversial speakers were permitted on the campus, controversial literature should also be admitted.

September 28—Dean Towle's modified position allowing tables at Sather gate was officially announced.

September 29—Members of the Dean's staff took the names of 8 students who were at tables placed at Sather gate and in front of Sproul Hall, all in direct violation of university rules: that is, although the tables were placed in designated areas, no permits were obtained, which violated the university rules that were still in effect. The 8 students whose names were thus taken were Mark Bravo, Mark Fuchs, David Goines, Arthur Goldberg, Donald Hatch, Mario Savio, Elizabeth Stapleton, and Brian Turner.

September 29—From 300 to 400 students moved into Sproul Hall and remained there until 2:40 a.m. of the following day.

October 1—The eight students whose names are mentioned above were officially suspended from the university.

October 1—At 11:45 on the morning of October 1, Jack Weinberg, (non-student) was arrested in front of Sproul Hall. Thereafter 150 to 200 students entered Sproul Hall to take Dean Towle a hostage. Women employees left through the windows and over the roof, and the crowd which eventually grew to approximately 500 in number, imprisoned the police car by sitting down around it and refusing to move, thereby preventing it from taking Weinberg away. The car and its occupant were held captive through the night and the car suffered considerable damage.

October 2—10:30 a.m., the police car was still held captive by the crowd, Chancellor Strong and President Kerr conferred concerning methods to restore law and order to the university. Mario Savio addressed the crowd numerous times during the remainder of the day. At 5:00 p.m. an *ad hoc* negotiating committee requested a conference with university officials. At 6:00 p.m. Chancellor Strong read a statement to the crowd requesting them to disperse, and they refused. The total number of law enforcement officers summoned by the University Administration to handle the situation had reached 579 by 6 o'clock on the evening of October 7. At 7 p.m. spokesmen for the Oakland and Berkeley police departments informed Chancellor Strong that if their men were not used by 8 o'clock they would be recalled. At 7:15 a negotiating committee met with President Kerr and reached an agreement which was read by Mario Savio to the crowd, which then dispersed.

October 4 and 5—Free Speech Movement was created from a pre-existing united front of students and non-students who were defying the university administration.

October 5—Chancellor Strong turned the adjudication of the case of the eight suspended students over to a faculty committee on student conduct which was commonly known as the Ira Heyman Committee.

October 5—Chancellor Strong appointed a twelve-man study committee on campus political activities, better known as the Robley Williams Committee.

October 6—FSM Steering Committee met with Chancellor Strong to protest the personnel appointed to the Robley Williams Committee. On this day a petition bearing six hundred names supporting the Free Speech Movement and including faculty members as well as students, was delivered to Chancellor Strong.

October 12—A petition bearing eighty-eight names and signed only by the members of the faculty was delivered to Chancellor Strong recommending reinstatement of the eight suspended students.

October 13—Robley Williams Committee held an open meeting at which seventy of the seventy-one speakers demanded that the committee disband itself. There had been an FSM handbill circulating all day instructing students planning to speak before the committee to demand its dissolution because of dissatisfaction with its personnel.

October 15—The leaders of the Free Speech Movement threatened mass demonstrations.

October 16—Chancellor Strong agreed to expand the Robley Williams Committee to a total of eighteen members, six from the administration, six from the faculty and six from the dissident students. Two of the student representatives were selected by Chancellor Strong and the other four were selected by the FSM.

October 18—The FSM selected Mario Savio, Bettina Aptheker, Suzanne M. Goldberg and Sydney R. Stapleton as its representatives on the Robley Williams Committee.

October 21—November 10—Robley Williams Committee met a total of eight times during this period; on October 21, 24, 28, 29, and on November 4, 5, 7, and 10, when it finally dissolved itself.

November 12—The faculty representatives on the Robley Williams Committee, Professors Cheit, Garbarino, Kadish, Rosovsky, Verneulen and Williams, issued a report on the status of their deliberations and offered specific recommendations for a solution of the campus crisis.

November 13—President Kerr published his appeal to the university community for proposals. The *Daily Californian*, student paper, published the faculty report with his letter.

November 20—The next scheduled meeting of the Board of Regents of the University of California was set for this date, as stated by President Kerr in his letter which appeared in the *Daily Californian* on November 13, 1964, and which announced that he would submit his final recommendations to the Regents at that time.

November 20—The Regents modified existing rules to (1) permit advocacy, raising funds and recruiting members by students in designated areas on the Berkeley campus, but, (2) permission pertained only to the mounting of *lawful action*. The university retained the right to suspend any student who participated in unlawful on-campus or off-campus activity.

With the announcement of these rules by the Regents, between four and five thousand students demonstrated outside University Hall. Mario Savio declared to them that the students were completely dissatisfied with these rulings and would take further action.

November 24—Between two hundred fifty and three hundred fifty FSM supporters staged a sit-in for three hours near Dean Towle's office in Sproul Hall, following a noon rally, and a *San Francisco Chronicle* columnist wrote that the FSM movement was becoming more left-wing day by day.

November 25—The administration denied a request by SLATE to show a homosexual film on the university campus.

November 26—Dean Towle sent sixty mimeographed letters reprimanding students for violating the promulgated rules of the university.

November 30–December 1—Chancellor Strong announced that disciplinary action would be commenced against Mario Savio, Arthur Goldberg, Jacqueline Goldberg, and Brian Turner. Goldberg at a noon rally on the steps at Sproul Hall demanded that all charges be dropped, and Mario Savio, who was speaking at the Santa Barbara campus of the university, held a news conference and threatened a strike of teaching assistants, and massive demonstrations unless the charges were dropped.

December 2—Savio issued an ultimatum giving Chancellor Strong twenty-four hours to comply with FSM demands or face a massive sit-in demonstration. A noon rally at Sproul Plaza was held and Savio told the two thousand students who were assembled to hear him that the FSM would "bring the university to a grinding halt" unless the FSM demands were met. At 12:30 p.m. Mario Savio and Joan Baez, Carmel folk singer, led an invasion of Sproul Hall, which was occupied with military precision by more than 800 FSM supporters. Alameda County Deputy Sheriffs started arriving at 7:00 p.m. when Sproul Hall was closed, and the demonstrators remained inside. Chancellor Strong and some hastily-summoned Regents met at a San Francisco airport motel and formulated strategy to meet the situation, but before their plans could be placed in operation Governor Brown sent officers to the university campus, and the sit-in demonstrators were arrested, booked, and hauled away to Alameda County Santa Rita Prison Farm.

December 7—President Kerr was both booed and applauded when he appeared in the Greek Theater to address assembled students and faculty members. He was introduced by Robert Scalapino, Chairman of the Department of Political Science. Kerr agreed that he would take no action against any of the FSM demonstrators for violations of university rules committed prior to the massive December 2 sit-in, and made it plain that no more violations of regulations would be tolerated, and that peace must be maintained on the campus. But before the meeting adjourned Savio, flanked by several of his supporters, shouldered his way to the microphone, shoved the speaker aside, and was dragged away by police.

December 8—The Academic Senate on the Berkeley campus met and voted 824 to 115 to back the fundamental principles of the FSM, urged the administration to turn all control of student discipline over to the faculty, and suggested a five-point program to bring peace to the campus. This faculty decision was followed by a jubilant celebration on the part of FSM leaders, and on the following day Savio withdrew from the University at Berkeley for the purpose of making a national tour to spread the gospel of the FSM, stating that he would return to the campus the following semester.

December 19—The Regents directed the administration to preserve law and order; rejected the proposal of the Academic Senate to delegate Regents' authority over student discipline; agreed to review university policies regarding free speech; refused to restrict freedom of speech be-

yond the provisions of the First and Fourteenth Amendments to the Federal Constitution; and announced that existing rules were to be enforced pending further study by the Regents of the entire Berkeley situation. Savio vowed to continue the FSM fight, and expressed complete dissatisfaction with the Regents' decision.

December 20—An item in the *San Francisco Chronicle* predicted that Chancellor Strong would be replaced temporarily for reasons of ill health.

December 23—The Regents announced that they had appointed two committees, one to study rules on political activities at Berkeley, one to study the causes of the demonstrations.

December 27—President Kerr was quoted as saying that there was a hard core of demonstrators comprising as much as 40% of off-campus elements, including Communist sympathizers.

December 30—Savio spoke at the convention of The California Federation of Teachers, attacking Kerr and Jesse Unruh, Speaker of the California State Assembly, and demanding an investigation of the university Regents.

December 31—The Academic Senate Committee on Academic Freedom at Berkeley released its plan for settling troubles, the release having been made while its own executive committee was conferring with the Regents.

January 3—Chancellor Strong was temporarily relieved of his duties "because of health," and Martin Meyerson, suggested by Kerr, was appointed Acting Chancellor in his place.

January 3—Acting Chancellor Meyerson selected Neil J. Smelser, 34, Rhodes Scholar and Sociologist, as his assistant in charge of student political activities.

January 4—Acting Chancellor Meyerson was quoted as saying that "civil disobedience is only warranted when there is no recourse to reasonable deliberation." Savio declared that the rules promulgated by the Academic Senate's committee on academic freedom were totally unacceptable to the FSM.

January 5—Acting Chancellor Meyerson issued rules creating more campus areas that would be available to the students for free speech.

January 6—Arthur M. Ross, Chairman of the Academic Senate's Emergency Executive Committee, said that matters were improving, and that there was no sense in any more demonstrations. He added that student freedom of advocacy had been secured, disciplinary procedures established, and that any who wished to advocate should "get out and advocate."

History of Communism at Berkeley

A few years after the Communist Party was organized in the United States it divided the country into twenty districts, California, Arizona and Nevada originally being included in district number 13, with headquarters in San Francisco. The main office was moved from Grove Street to Haight Street and thence to 942 Market Street, and a few years ago Nevada was dropped out of the district and Hawaii substituted in its place because it occupied a greater strategic significance for Communist purposes. The important thing to bear in mind is that the headquarters for the whole of California and adjacent territory has always been situated in San Francisco. The main propaganda outlet for the Communist Party is now at 1408 Market Street, and the major Communist educational institutions have always been operated from that city.

District 13 is no longer a formal organizational component of the party, but the top decisions are nonetheless made in San Francisco—not in Los Angeles, and the party high command has always operated from the Bay Area.

As the Communist schools will play a prominent part in our description of infiltration at the Berkeley campus of the University of California, we should briefly set forth their history here by way of background. The first school was located at 675 Minna Street, and functioned under the name of Workers School. It continued operating at various places under this title, until for security reasons it changed its name to the Tom Mooney Labor School, and finally to the California Labor School, with branches in Oakland and Los Angeles. In the latter city the institution was eventually known as the People's Educational Center.

Changing the names of the Communist front organizations, youth organizations and Communist propaganda publications is an old Communist custom, and these changes of names and addresses for the Communist schools in San Francisco managed to fool some people of prominence who were persuaded to act as "education sponsors" under the mistaken assumption that the schools were being operated to provide an education for members of trade unions. It soon became evident, even to these credulous supporters, that the trade unions were limited to those under Communist domination such as the International Longshoremen's and Warehousemen's Union; the Marine Cooks and Stewards Union (which has since emancipated itself from Communist control), the United Office and Professional Workers of America, the State, County, and Municipal Workers of America, the United Federal Workers of America, and a host of others.

It should, of course, be obvious that a Communist school would hardly waste its time and money preaching anything other than Communism, and that even its classes in metal-working, or art, or folk dancing, or manual training, or ceramics, or virtually any other kind of a course can easily be utilized as a medium for the effective indoctrination of the students. It is equally true that no anti-Communist, or even a neutralist, would ever be allowed to teach or lecture at such a tightly-controlled institution unless he was sympathetic to the purposes for which it was created. In short, let there be no mistake about these schools being not only integral parts of the Communist apparatus, but vital and indispensable parts that were closely-watched, carefully-operated, and highly successful. For a short time even the Federal Veterans Administration was fooled by these changes in name and location and changes in the statement of purposes, and lent its support to the San Francisco Communist institution when it was operating as the California Labor School. It withdrew its assistance after this committee investigated the institution and found that it was a part of the California Communist organization. Shortly thereafter the AF of L Central Labor Council advised its members to withdraw support, having conducted its own investigation and arrived at the same conclusion. Indeed, the support by non-Communist unions was of very short duration; but from the inception of the first Communist school in San Francisco in 1932, it was consistently supported by all of the Communist-dominated unions and Communist front organizations.

In 1946 California Labor School persuaded the University of California at Berkeley to join with it and jointly sponsor an institution on the Berkeley campus known as the Institute on Labor, Education and World Peace. This was a two-day program, widely heralded and advertised through all of the Communist propaganda media in the Bay Area, and

by the Communist book store then being operated within a block of the Sather Gate. Here was an astounding spectacle of a great university lending its physical facilities, its dignity and its prestige to a Communist indoctrination center which was dedicated to the subversion of our country. This was one of the occurrences that led former President Sproul to establish a security officer at Berkeley whose duty it was to protect the university and its students against precisely this sort of unfortunate event, and to keep the state-wide administration currently informed about the problem of subversive infiltration in general, and also to protect innocent liberals and others against irresponsible red-baiting.

We must observe here that during the time this officer was functioning actively there were no recurrences of such incidents; the name of the university was protected; there were no massive demonstrations; there was no opening of the gates of the institution to Communist officials who will gladly utilize the campus as their forum for the spreading of their subversive propaganda. This security officer noted the changes of the Communist party line, predicted impending demonstrations; subscribed to Communist literature, developed his sources of information, was aware of the various front organizations that flourished around the perimeter of the Berkeley campus, and although he was only one man with his time thinly spread over the teeming Berkeley campus and the other eight campuses of the university as well, managed to keep the various administrations currently and accurately advised concerning local subversive problems.

While the California Labor School was being operated at 321 Divisadero Street in San Francisco it was subjected to a searching scrutiny by the Subversive Activities Control Board, which eventually cited it as a Communist organization, and the Attorney General of the United States officially listed it as subversive. Our own committee had conducted an investigation a few years previously and arrived at the same conclusion, which was published in its reports. The school then quietly ceased operating and, as we shall hereafter note, utilized other facilities for the purpose of indoctrination and recruiting—at considerably less expense to the Communist Party.

We believe it would be helpful if we include the names of the more important faculty members at these various Communist educational institutions in San Francisco, for the purpose of indicating that some of the most important party functionaries and veteran members were assigned to devote their indoctrination and recruiting skills to this type of work. It also serves to underline the fact that the party considered the schools of sufficient importance to assign some of their most able members to work in them, and it will indicate a certain interlocking system of co-operation with Communist-dominated organizations and front groups that was highly co-ordinated and skillfully administered.

Thus we find that Dorothy Ray was teaching at the school in San Francisco and was also handling the duty of Associate Director of its Social Sciences Department in 1936. We first made her acquaintance at a San Francisco hearing in 1941 when she was not only a member of the Communist apparatus but also a Deputy California Labor Commissioner, hearing cases in the field. She now heads the Southern Division of the Communist Party of California, with headquarters in Los Angeles, under the name of Dorothy Healey.

Vincente Lombardo Toledano lectured at the school in 1948. Toledano has also been mentioned in some of our previous reports as the organizer

and dominant figure in the Mexican Working Men's Federation, a Communist-controlled organization of enormous strength, which spread its activities throughout Latin America with the active collaboration of Constantin Oumansky, Soviet Ambassador to Mexico in the late 30's and early 40's. Toledano is still extremely active in Mexico as a Communist leader and occasionally comes into Southern California for the purpose of delivering lectures to various front organizations.

Herbert Aptheker, the father of Bettina Aptheker, who figures prominently in the Berkeley rebellion, spoke at the California Labor School in February 1951. We shall have a great deal more to say about Mr. Aptheker at a more appropriate place in this report, but it will be sufficient to point out here that for several years he was the editor-in-chief of a publication about the size of *Reader's Digest*, called *Political Affairs*. This is the monthly ideological publication of the Communist Party of the United States. Mr. Aptheker has lectured at many universities throughout the country, and in Communist circles has earned himself a reputation as a Marxian ideologist, a party theoretician, and an expert on the Negro minority in America. In 1949 he taught a course on "The American Negro Today," during the spring term of the California Labor School, which commenced on February 2, 1949. In April 1959 Mr. Aptheker broadcast regularly over station KPFA-FM in Berkeley. He spends a great deal of his time these days in Berkeley, but just before the first student demonstration, which occurred in September 1964, Mr. Aptheker was in the Soviet Union with some other Communists whose names will be given later.

George Lohr (whose true name is Ohlwerther), also lectured at the school when he was foreign news editor of the *People's World*, the Communist newspaper published in San Francisco. Lohr has traveled abroad many times on various assignments for the world Communist movement, was sent to San Diego several years ago to restore discipline in the party organization there, and has lately been spending much of his time in Communist East Germany.

Paul Heide, well-known East Bay Communist, also taught at the school, having lectured there in 1947. Mr. Heide, who has spent most of his life in trade union work, was connected with the War Manpower Commission of Northern California during World War II, and has been identified with a wide variety of Communist activities.

Oleta O'Connor Yates once acted as chairman of the Communist Party in San Francisco and was a lecturer at the school on several occasions. Mrs. Yates, now deceased, was once a candidate for the office of supervisor for the county of San Francisco on the Communist Party ticket, and during most of her adult life was prominent in some official Communist capacity in Northern California.

One of the most significant lecturers at the school was Irwin Elber, who was a consultant on labor matters to the War Manpower Commission in Northern California during World War II, under the direction of Sam Kagel, who himself lectured at the school on more than one occasion. Elber was also national organizer for a Communist-dominated union whose members worked in sensitive government positions. It was known as the United Federal Workers of America, and had chapters in every large city throughout the country. Elber's triple role as a trade union director for the Communist school, organizer for a nation-wide Communist-controlled union of Government employees, and consultant on labor matters to the War Manpower Commission in Northern California,

rendered him a formidable figure indeed. His office was located in room 302 of the Balboa Building at 593 Market Street, and his neighbors on the same floor were the International Union Council, Labor's Non-Partisan League, International Longshoremen's and Warehousemen's Union, separate offices occupied by Harry Bridges and Louis Goldblatt, the King-Ramsay-Connor Defense Committee, and the State, County and Municipal Workers of America. All of these organizations were oriented toward the Communist Party, and most of them were completely controlled by it.

Richard Gladstein and Herbert Resner also lectured at the school, and so did Aubrey Grossman and his wife. Mr. Grossman joined the Young Communist League while a student on the Berkeley campus, and was largely responsible for the success of the Communist schools in the Bay Area. He also was educational director for the Communist Party of San Francisco, and he wrote a letter on its official stationery urging all Communists to attend the school and give it all possible support. Messrs. Gladstein and Resner were Communist attorneys in San Francisco and active in representing the party itself as well as its galaxy of front organizations. Others whose activities make them worthy of special note, and who lectured at the school, were Jules Carson, educational director of the Communist Party of Alameda County in 1939, and Adam Lapin, associate editor of the Communist newspaper *People's World*, and well known in a succession of Communist organizations and activities.

Louis Goldblatt has heretofore been mentioned as the secretary-treasurer of the International Longshoremen's and Warehousemen's Union with his offices located on the same floor of the Balboa Building as those of Irwin Elber. Mr. Goldblatt has been identified as a member of the Communist Party as have Adam Lapin, Verne Smith, Jules Carson, and Wilhelmina Loughrey, who ran the Communist Book Store near Sather Gate. Mr. Goldblatt's two daughters are now attending the University of California at Berkeley and played prominent roles in the student demonstrations that started in September of last year. Goldblatt was a delegate to the Chicago Emergency Peace Mobilization in 1940 and persuaded the California State Industrial Union Council to assist in the work of that Communist front organization. He was secretary of the CIO State Council, and reliably reported to have been a member of the Communist Party since 1934, most of his activity having been in the Maritime and CIO unions. He was a member of the Trade Union Unity League in 1937 and 1938, played an important part in labor's Non-Partisan League, participated in the Institute on Labor Education and World Peace at the University of California, a program to which we have heretofore referred, and he delivered the main speech at a California Labor School banquet honoring Holland Roberts in 1947.

Another lecturer at the Communist school was John Jeffrey, head of the State, County and Municipal Workers of America. This Communist-controlled union of employees of the state and its political subdivisions, flourished during the late 30's and early 40's and was the dominant factor in the infiltration of the State Relief Administration during that period. Its members worked on a somewhat lower level in government jobs than did Elber's United Federal Workers of America—but the difference ended there. Both organizations were used to insinuate trusted party members in places of strategic importance and from these vantage points they managed to recruit, indoctrinate, and carry on the party program to the best of their ability. As we pointed out in our 1963 report, Dorothy Ray Healey is an

excellent example of this technique, having performed vital work in the interest of the Communist Party from her position of vantage as a Deputy State Labor Commissioner.

Of course, it was nice also to have large numbers of Communists on the public payroll so that the taxpayers would support them, not only when they performed their services for the state, or for the county or municipal governments in which they worked, but also while they were carrying on their Communist activities. The SCMWA reached the height of its activity just before or shortly after the close of World War II, and during that era it was relatively simple to determine which government office was sympathetic to Communism by walking in and taking a look on the bulletin boards and the desks of the employees and noting the propaganda material issued by the United Federal Workers of America, the State, County and Municipal Workers of America, the United Office and Professional Workers of America, (this latter organization functioned in non-governmental positions,) and also by the number of copies of the *People's World* that were scattered about the office.

David Adelson also lectured at the Communist School in San Francisco on occasion. He was president of Chapter 25, International Federation of Architects, Engineers, Chemists and Technicians. This union of technical personnel was actually started in the Soviet Union, and served as an excellent cover for espionage activities, particularly at Berkeley in connection with the development of the atomic bomb. We have covered this subject in some detail in previous reports, but it will do no harm to point out that there was a strong chapter of the organization in Alameda County under Mr. Adelson's supervision, that we had an informant who served as secretary for its executive board, and minutes of the board meetings were replete with pro-Communist declarations, discussions of the best techniques to spread propaganda and secure information, and references to well-known Communists who were active in the Bay Area who served as a liaison between the party and the FAECT Chapter 25. Marcel Scherer was the national organizer for this union, spent a great deal of his time in San Francisco and Berkeley during World War II, and was in frequent conference with members of the War Manpower Commission and officials of the Berkeley campus of the university.

We have frequently discussed John Howard Lawson in connection with our description of the Communist penetration of the motion picture industry, which was largely directed by him in Hollywood and by V. J. Jerome from New York. Mr. Lawson has been a member of the Communist Party for a good many years, is a writer of motion pictures, scenarios and plays, has written several books, and frequently lectures to Communist front organizations and at Communist front groups.

Paul Radin, the noted anthropologist who was once a member of the faculty on the Berkeley campus, also lectured at the California Labor School. Mr. Radin was recruited to Communism through the efforts of an expert in this field, Norman Mini. Mr. Mini has testified before this committee, has explained his long membership in the Communist Party and also in the Socialist Workers Party, and has explained the techniques used by him to indoctrinate and recruit Dr. Radin and other members of the Berkeley faculty. We wish to make it clear at this point that Paul Radin's brother Max was a professor in the Law School at the university in Berkeley, and had no connection with the Communist Party at any time.

There were, of course, many other Communists and Communist sympathizers who taught at the party's San Francisco schools. Space will

not permit a more detailed treatment of these highly important institutions, but in order to have the proper perspective before considering the Berkeley rebellion in detail, one must first realize the true nature of the Communist school, and the character of the propaganda that flows in ever-growing streams from the San Francisco sources of supply. Once we realize that the Party has always operated the entire Pacific Coast and Hawaiian apparatus from San Francisco; that the major propaganda sources are situated in that city, and that the indoctrination and recruiting schools are located there—only then is one adequately equipped to begin understanding why the main force of California Communism is located in the Bay Area instead of Los Angeles.

Red Chinese Propaganda

We have mentioned in the 1963 report that there was a deep split in the American Communist Party that grew from the Sino-Soviet rift; that the Mao group in the party calls itself the Progressive Labor Movement, and follows the concept that peaceful co-existence is a betrayal of Marxist-Leninist principle, and that there must be permanent and violent conflict with the capitalist forces leading to an inevitable large-scale struggle which, they confidently believe, the Communists will win. We also pointed out that both Peking and Moscow are in perfect agreement about the necessity of subverting the class enemy by attacking the United States and rendering it weak and vulnerable, and that there must be a relentless drive for world domination, and that these two major Communist powers only disagree about which techniques can best be used to attain that objective.

Since the publication of our last report Red China has opened an extensive propaganda outlet in San Francisco. It was first located at 292 Gough Street, and then moved to larger quarters at 2929 24th Street on July 1, 1964. It is known as "China Books and Periodicals," is well patronized, and is listed in Washington as an agency for a foreign government. When a united front is needed for a common cause, we see these dissident Communist factions collaborating. Thus when the Berkeley rebellion started we found a united front being formed with Trotskyites, Maoists, Socialists, and Moscow Communists joining forces with a wide variety of other groups.

The United Front

The term "united front" came into usage after the Seventh World Comintern Congress. It simply means, in the Communist sense, that members of the party will attach themselves to some popular cause for which large groups of non-Communists have manifested a willingness to take some positive action. They will then espouse the same cause, weld the groups together, trim down the leadership to the point that it can be dominated by the Communist minority, and from that time they will control the mass movement and bend it to their own objectives. The principal objective is to whittle away opposition and transform the popular cause into a class struggle.

The following excerpt from a book by the originator of the united front, entitled "United Front; The Struggle Against Fascism and War," will put the concept in focus.

Dimitroff is addressing the young delegates to the Seventh World Congress of the Communist International, as follows:

"On the basis of the experience you have already gained, in the decisions of the Seventh Congress of the Communist International, we expect you to find the proper ways and means of accomplishing the most important task of your movement, the task of uniting the forces of the entire non-Fascist youth, and first and foremost, of the working class youth, the task of achieving unity with the Socialist youth.

This, however, cannot be achieved if the Young Communist Leagues keep on trying, as they have done hitherto, to construct their organizations as if they were *Communist Parties* of the youth; nor will this be possible if they are content, as heretofore, to lead the secluded lives of sectarians, isolated from the masses.

The whole anti-Fascist youth is interested in uniting and organizing its forces. Therefore you, comrades, must find such ways, forms and methods of work as will assure the formation, in the capitalist countries, of a *new type* of mass youth organizations, to which no vital interest of the working youth will be alien, organizations which, without copying the party, will fight for *all* the interests of the youth and bring up the youth in the spirit of the class struggle in proletarian internationalism, in the spirit of Marxism-Leninism.

This requires that the Congress should very seriously *check up* and *reappraise* the work of the Young Communist Leagues, for the purpose of *actually* achieving their reorganization and the fearless removal of everything that obstructs the development of mass work and establishment of the united fronts and unity of the youth.

We expect the Young Communist International to build up its activity in such a manner as to weld and unite all trade unions, cultural, and educational and sports organizations of the working youth, all revolutionary, national-revolutionary, national-liberation anti-Fascist youth organizations for the struggle against fascism and war, for the rights of the young generation.

We note with great pleasure that our young comrades and friends in the United States have actually joined the mass movement of the united front of the youth which is so successfully developing, and have already achieved in this sphere successes which hold out great promises. All sections of the Young Communist International should profit by this experience of the French and American comrades."*

Thus each Communist front organization is actually an exemplification of the Dimitroff device; for each is composed of a majority of non-Communists united together because of a common purpose on which they can take common action; for better housing, for relief of poverty, to end racial discrimination, and the like. Occasionally the Communists will move quietly in until the infiltration has managed to capture key positions and gain control. More often they will start a new organization and use it to attract others. Then several fronts will be persuaded to join forces for the common objective, and this is the classic united front of organizations as originated by the secretary of the Third Communist International.

In previous reports we have described a formidable device used by Communists the world over and which is commonly referred to as "the diamond pattern." This operation permits a handful of dedicated Com-

*"The United Front: The Struggle Against Fascism and War," by Georgi Dimitroff, General Secretary of the Communist International. International Publishers, New York, 1938, pages 149-150.

munists to move into and take control of a large non-Communist organization. It was used to capture the Communist-dominated unions several years ago, including those that we have heretofore mentioned in connection with the California Labor School, and it has also been used with deadly effect among the important trade unions of Great Britain. Writing in the *Saturday Evening Post* for February 4, 1961, pages 33 and 68, Ernest O. Hauser described the operation through the observations of William J. Carron, President of Amalgamated Engineering Union of Great Britain, whose membership of over a million members makes it England's second largest union organization.

" 'The Communists do all the homework in our branches,' Carron began his story. 'There'll be a local union meeting somewhere, and half a dozen Communists will be among those present. These six fellows will wait until most of the others have gone for a cup of coffee. Then they get busy and press a resolution that goes out in the name of the entire branch—a thousand members, maybe.' No more than seven per cent of the union's rank and file, by Carron's estimate, was pro-Communist. But as the engineers were scattered through some critical sectors of Britain's industry—including shipyards, steel mills, automobile and aircraft factories, chemical and electronic plants—the Communists had long paid a special attention to this mighty union. By cleverly manipulating local and district elections, they have been able to get a disproportionate number of their men into the union's governing bodies. Thus, when the union's national committee of fifty-two met for its annual policy-making session last Easter, it included no fewer than twelve members of the Communist Party and ten known fellow-travelers. The rest was split, as a result of the Communists' homework, sixteen to fourteen in favor of unilateral disarmament."

About a year ago Reverend James H. Robinson requested permission to testify as a voluntary witness before the House Committee on Un-American Activities in Washington, D.C. He appeared before the Committee on May 5, 1964, a Pastor Emeritus of the Presbyterian Church of the Master, New York City, and director of a private organization known as "Operation Crossroads Africa, Inc.," 150 Fifth Avenue, New York City, which he created and directs. Reverend Robinson, who had been affiliated with several Communist front organizations in past years, stated that he had discovered the Communist hypocrisy, was familiar with their techniques, and appreciated the extremely critical danger of doing business with them. Since his remarks are similar to those of trade union labor leaders, who had comparable experiences, and because the techniques used there and the techniques experienced by Reverend Robinson will be pertinent to our discussion of the organizational activities of the Free Speech Movement at Berkeley, we set forth some of Reverend Robinson's testimony herewith:

"Mr. Ichord: You stated in your testimony that back when you were associated with Mr. Robinson and Ben Davis and others in several causes, that at that time you were of the mind that you would join with a Communist or anyone who was working for the objectives that you had in mind, and then later on you changed your mind. I would like you to elaborate somewhat on that.

Mr. Robinson: Well, I came to the place where you have to recognize first of all that you might do your own cause and yourself more harm if you join with people who are better organized than you are,

and better disciplined in a group than you are, and their greatest asset is tight discipline.

They know where they are going and what they want to do. They can play it easy or soft. They can sit in a meeting that everyone leaves and as long as there is a quorum, and they will get the votes. I saw this happen many times at first without knowing what was happening. I learned, but some people never did learn. I do not think it would be to my advantage, for example, in Operation Crossroads Africa, to let a Black Muslim come into Operation Crossroads Africa—I admit that one got in from the University of California at Berkeley, but we put him on a plane for Africa when we found out about it, and sent him home.

I would say the same thing about Communists. I would not let Communists in either. Now, would I let them co-operate with us in anything? No, I would not take that old position of co-operating any more. I would not get involved with people with ulterior motives who really end up trying to use you to make capital for their ends."

Speaking about why Americans become Communists, Reverend Robinson had this observation:

"I think there are a good many people who do not like anybody or anything; who are unhappy, dislocated personalities. This gives them a feeling of importance and of power when they join a dissident movement. I think this is a very strong thing in the minds of a good many people who take the Communist ideological position.

Now in Russia or some other place there may be different reasons. But I think in this country that is so. I look back on some of these people in those days who were on these committees, who were against everything and everybody. They were the happiest, I feel, when everybody else was tearing their hair out, if I can put it that way. There are some who take it, of course, because they want to be at the top. If they can get in control they will be in the strongest group. That is, a strong group makes all the decisions for everybody else. And I think this plays a pretty important role in the minds of many people who become Communists."*

Use of the diamond pattern technique which enables a small group of highly-trained Communist professionals to secure control of a trade union, a front, a unit of the Parent Teachers Association, or any other organization deemed of strategic importance for Communist objectives, is an illustration of the capture of a single unit or organization. But the same device has proved equally successful throughout the world when employed to form a united front by bringing several organizations together, thus forming a broad mass base for important action. The formula is always the same: First a few Communists will unobtrusively insinuate themselves into several organizations, scrupulously concealing their Communist affiliation, and eventually working their way into positions of authority. Then an agreement will be reached on forming a united front movement behind a popular cause. This new united front movement will operate on democratic principles for awhile, and then because it proves unwieldy and inefficient, the control will be narrowed down to a steering committee or an action committee, or an executive body, so that by narrowing down the organizational structure, a few Communists can work their way into this unit and can thereby control the macrocosm as effectively as they can control a single-unit microcosm.

*Committee transcript, May 5, 1964, pages 1791-1792.

The San Francisco General Strike

It will be well to examine at this point another great united front movement that soon was taken over by a small group of Communists who managed to exercise a dominant position in the San Francisco General Strike of 1934. This was an enormous movement that tied up the entire Bay Area, resulted in the loss of lives, and provoked demonstrations of fiery violence. It was centered on the International Longshoremen's and Warehousemen's Union, and soon mushroomed into radical labor ultimatums that were constantly changing, and that soon produced a deadlock which paralyzed the economic life of the Bay Area.

There has been much discussion about the San Francisco General Strike of 1934, which may seem ancient and irrelevant to include here, but which is another classic example of a united front movement that was operated in the same general manner and by the same general elements as the Free Speech Movement. The Communist Party disclaimed responsibility for actually exercising control over the strike strategy in 1934, just as the Communist Party always disclaims responsibility for a large united front movement that results in violent and revolutionary tactics. But we are fortunate in having a document, issued by the Communist Party itself, which removes any lingering doubt about the part played by Communists in the general strike of 1934. This booklet, an exceedingly rare piece of subversive literature comprising eighty pages and entitled, naturally enough, "The Great San Francisco General Strike," was prepared by William F. Dunn, and issued by Library Publishers, New York, pursuant to a resolution adopted by the Central Committee of the Communist Party of the United States at a meeting held on September 5-6, 1934. It asserted that the Communist Party was subjected to a vigorous attack because its "... program and influence accounted in the main for the solidarity of the mass movement and the fact that the working class was able to resist successfully the efforts of the employers and their government to smash the unions and institute the open shop all along the west coast as they had planned." (pages 3-4)

And on page 9, the booklet proclaimed that: "The strike reached its highest point in San Francisco because the influence of the Communist Party and the waterfront unions was strong enough to defeat the reactionary leadership." The most prominent of these unions was the International Longshoremen's and Warehousemen's Union, and some of its officers in 1934 are still in charge of that union, and at least one of them was consulted by the University of California administration during the student rebellion of 1964-65.

Like the demonstration against the House Committee on UnAmerican Activities in San Francisco in May of 1960, and like the demonstration against the administration of the state university at Berkeley, a united front is first formed with the broad base of non-Communist membership, and then is gradually taken over by the Communist Party, as we have already stated. This is precisely what happened in 1934. There were legitimate complaints against employers then, and in 1960 there were undoubtedly many people who felt that the House Committee was too sensational in its hearings and too careless in its charges; and in 1965 both faculty and students alike at the university in Berkeley were frustrated by years of confusion, bureaucracy, and a detached and aloof attitude on the part of the administration which seemed far removed from the life of the campus and smothered in a mass of red tape. But, let us see what

occurred in both the 1934 General Strike and in the 1960 demonstrations against the House Committee. We shall soon see the same formula used against the Berkeley campus in 1964-1965.

Mr. Dunn, speaking for the Communist Party of the United States, put it rather well when he declared in 1934 that:

"In the San Francisco General Strike (as in other strikes dealt with) we have a classical example of the Communist thesis that, in the present period of capitalist decline, a stubborn struggle for even the smallest immediate demands for the workers inevitably develops into general class battles. Beginning in a typical economic struggle over wages and working conditions of longshoremen, there took place, step by step, a concentration of class forces in support of one and the other side which soon aligned practically the entire population into two hostile camps: Capitalist class against the working class, and all intermediate elements towards support of one or the other. It became the well-defined class struggle, a test of strength between the two basic class forces. The economic struggle was transformed into a political struggle of the first magnitude." (page 67)

And on page 8, Mr. Dunn stated that:

"... In this sense, the strike was truly the greatest revolutionary event in American labor history."

And on page 72 he makes this significant statement:

"The Communists . . . are fully aware of the fact that out of every class struggle the workers can gain experience that will teach them the correctness of its revolutionary policies and tactics and win their confidence and support. This our party also attempted to do in San Francisco."

Twenty-six years later, SLATE, the radical student organization at Berkeley, took a leading position in organizing the demonstrations against the House Committee on Un-American Activities. It attracted a large number of students who were certainly not Marxists, but who, for one reason or another, were persuaded that the very word "Un-American Activities Committee" denoted an extra-legal, fascist, red-baiting organization that exercised no legitimate function except to pry and snoop into the private opinions of citizens and to smear their names publicly. This attitude is the result of years of intense propaganda by the Communist Party and its sympathizers, and they have stubbornly persented this completely distorted image of the House Committee so that the very mention of its name evokes in the mind of the average liberal a reflex action of intense and blind loathing.

But after the groundwork had been done, and the efforts of SLATE and other radical student organizations had enlisted the mass support of hundreds who were not oriented toward Marxism in any way, and after the violence at the San Francisco Civic Center which disrupted the meeting of the Committee and caused police to charge into the crowd in order to disperse it and restore order, the non-Communist elements returned to their daily pursuits, while the hard core of leaders managed to milk this revolutionary incident dry of every drop of propaganda that could be extracted.

Communist techniques rarely change; some of the refinements are tailored to fit changing conditions, but basically the old ways that have been tested and found successful are left alone. It is fundamental to all serious students of practical Communism that the party will always exploit large mass demonstrations such as strikes, rallies, and rebellions and

endeavor to transform them into class struggles. Thereafter they will propagandize, recruit, infiltrate, and consolidate their gains. It is also an old and successful Communist device to make a bold and wholly insupportable demand, and then allow a weak and indecisive opponent to claim victory by retreating ever so slightly. Thus if student rebels boldly lay claim to complete control of a university, and demand to handle the curriculum, select the members of the administration, handle all disciplinary matters, and provide everything but the money with which to operate the institution, their demands will undoubtedly be denied. Then they will settle for only the right to select the administrators and handle discipline—thereby allowing the administration to proclaim that the matter has been arbitrated and successfully settled.

This old Communist trick of launching a propaganda campaign to begin the operation, then organizing a broad popular front, whittling down the leadership and gaining control of the movement, pressing for outlandish demands, and then yielding a little in order to settle the controversy, is a familiar pattern we have seen used in countries throughout the world. They will steal half your property, set up cannons pointing at your residence, arrogantly proclaim their perfect right to do so, and then make a condescending settlement by removing the cannons and leaving machine guns in their place. As we shall see in greater detail later, the entire controversy at the University of California which commenced in the spring of 1964, actually amounted to a simple dispute between the students and the administration concerning the right to maintain tables at the university entrance for the purpose of collecting money and recruiting people for political activities off the campus. Then, with each administration concession, the students made a new series of demands that were always more bold, more arrogant, and made under the threat of another violent demonstration. As matters now stand, the FSM has secured virtually everything it asked for, and is now planning to gain control of the entire educational program at the university.

There have been demonstrations at other universities in this country, of course, but they were handled effectively and quickly by the authorities, and none of them even approached the massive revolutionary and forceful proportions of the Berkeley rebellion that erupted in September 1964, and which is still continuing. Probably one of the most heavily-infiltrated universities was the College of the City of New York during the late 1930's. According to an authority who is probably the best in his field, the situation there was comparable to the situation at the University of California during the same period. This description, which is taken from "The Story of an American Communist," by John Gates, states:

"The student body at CCNY was in ferment. The old world had been found wanting; ideas and shibboleths of the past were examined, assailed, discarded; new, radical notions became popular. The campus was a hive of political clubs: The Liberal Club, led by Lewis Feuer and Joseph P. Lash; a Socialist Club led by Winston Davis and William Gomborg; the pro-Communist Social Problems Club, led by Max Weiss, Max Gordon, Adam Lapin, Joseph Starobin; The Catholic Newman Club; Societies of Young Democrats and Young Republicans, and many others." (page 17)

Gates joined the Social Problems Club but was relatively inactive, only listening and staying and slowly becoming indoctrinated with the Marxian viewpoint. The most prominent Communist Party member at the college during this time was Max Weiss, who was also a member of

the National Committee of the Young Communist League. Weiss persisted in editing an unauthorized publication of the Social Problems Club, and was expelled from school.

The Social Problems Club was by no means restricted to the campus of the College of the City of New York. It was also the first Communist student group at the University of California at Berkeley, having been organized there on January 1, 1931, held its first meeting at Stiles Hall YMCA, and which was completely dominated by the Young Communist League, featuring such speakers as Louis Goldblatt, then secretary of the San Francisco Labor Council, and a notorious Communist; James Branche, a member of the Communist Party of Canada, and Sam Darcy, who was the organizer for District 13.

In the spring of 1934 the Social Problems Club became the Berkeley Chapter of the American Student Union, and was locally headed by Aubrey Grossman. He was an undergraduate at Berkeley at the time and later became an official of the Communist Party in San Francisco. His law firm has represented the party on a number of occasions and has always specialized in handling the legal problems for Communist-dominated unions and an array of front organizations.

From no less an authority than William Schneiderman, who for some fourteen years was the head of all Communist activities in District 13, we know that a campus unit of university faculty members existed at the University of California in Berkeley since the early 1930's.* This Communist organization was known as "Unit Five" and often met in the home of Professor Haakon Chevalier, professor of Romance Languages, and who was to become well known as the man who played a leading role in the Oppenheimer Security Case.†

As the student population of the Berkeley campus grew, so did the Communist organization there, until it managed to establish a propaganda book store within a block of Sather Gate—then, as now, the main entrance to the university, and organized the Mike Quinn Club, the Merriman Club, the Corodonic Club and other party units composed in whole or in part of students. The Merriman Club was named in honor of the late Major Robert Merriman, who came from the Economics Department at the university to become a major in the 15th International Brigade during the Spanish Revolution. He was killed fighting for the Loyalists in Spain, and is mentioned in every reliable account of the Spanish Revolution as a leader of the Communist elements in the Lincoln Battalion.‡

By 1939 it had become evident that the University at Berkeley would soon be conducting research projects under government contracts, and as we will soon see, the Communist high command decided to plant one of its controlled scientific organizations in Alameda County and scatter its politically reliable members throughout strategic departments. This was Chapter 29 of an organization known as International Federation of Architects, Engineers, Chemists, and Technicians under the immediate direction of Marcel Scherer, a graduate of the Lenin School of Political Warfare in Moscow. We have briefly alluded to the FAECT herein, and described this organization at length in our 1951 report. Excerpts from the executive board minutes of this espionage apparatus were published verbatim, and the astounding disclosures of this grim undertaking were largely shrugged aside as "red-baiting," and "witch-hunting." In the

*1943 report, page 114.

†1943 report, page 115.

‡Gates, *op. cit.*, pages 56-58.

light of subsequent developments, we cannot conceive of any sane American being so naive and apathetic today. They can no longer afford such an attitude.

With the beginning of research that led to the development of the atomic bomb, and continuing through 1945, Marcel Scherer met with government officials entrusted with the operation of our war effort in the Bay Area: The War Manpower Commission, The Office of Price Administration, The Office of Wage Stabilization, and the entire War Manpower program on the Berkeley campus under the direction of Berniece May. Here, then, was a Soviet-trained director of a scientific espionage medium, consulting and planning with government officials who occupied positions of enormous importance to our war effort. Some of them were clearly pro-Communists; some were little more than opportunists who would cooperate with anyone to promote themselves; others were quite aware of what was going on but too powerless and frustrated to do much about it.

This was the era of tolerance towards Communism. Many American liberals had been lured into front organizations through sympathy for Spanish Loyalists, and because we were temporarily allied with the Soviet Union against a common enemy. Many of these people moved on through a number of Communist front groups, others joined Communist-dominated unions, and some taught in or sponsored the Communist School in San Francisco.

During the same period the Unit Five members were spreading Marxism on the campus, and the student Communists were recruiting for the Young Communist League. Norman Mini has testified about recruiting professors while he was on the campus, and other students have given testimony about some of their experiences in the Communist clubs heretofore mentioned. Nathan Gregory Silvermaster was regarded by the rank and file members of the student Communists as a comrade of no particular significance, but when one of them was ordered to leave the university and take up a party assignment in Sacramento, he mentioned the fact to Silvermaster who accompanied him to the office of District 13 in San Francisco, remonstrated with William Schneiderman, who was then organizer for the district, and the order was rescinded. Silvermaster moved on from Berkeley to take positions in various agencies of the federal government, and it was in his Washington residence that the documents were photographed that had been taken by Alger Hiss from the State Department and returned after they had been photographed in the Silvermaster cellar.

In the late 30's there was a brutal killing of the engineer on a vessel called the *Point Lobos*, while the vessel was moored to an Oakland pier. The murdered man, George Alberts, had a reputation as a determined anti-Communist, and four members of the Communist Party participated in his liquidation. Three of them were arrested, prosecuted by Earl Warren, who was then District Attorney of Alameda County, and sent to San Quentin penitentiary. The fourth Communist who participated in this crime escaped, and was assisted in doing so by some student Communists at the University of California at Berkeley. He thereafter is reliably reported to have escaped through Mexico and has never been heard of since. Testimony concerning this entire case, together with the role played by the young Communists at the university, was given before the Committee at hearings several years ago.

We cite these preliminary matters only for the purpose of showing that the largest university in the United States has long been a target for Com-

munist infiltration. It was conveniently located near the headquarters for District 13 in San Francisco; the first Communist unit was planted on the campus almost at the same time that the Communist Party of the United States began to solidify its nationwide organization. There is overwhelming evidence to the effect that beginning with the Social Problems Club and continuing through Unit Five of the faculty organization down through the war years and thereafter, the university has been a constant target for Communist infiltration and activity.

Demonstrations by students at Sather Gate are nothing new. What *is* new is the professional technique, the highly sophisticated organization, the long-range strategy, the outrageous demands, the disrespect for the entire university administration—from Regents down. New, also, is the element of viciousness and violence, and the employment of extra-legal actions at a time when legal means were available to the students for settling their differences with the university administration. The mass united front technique is also new, so far as the Berkeley campus is concerned, and whereas previous student demonstrations from the 20's to the 60's had been characterized by large numbers of milling students, speakers, and the distribution of propaganda literature, there was nothing that approached the mob violence, the hatred and bitterness, the utter lack of respect for the administration, and the generation of the class struggle concept that characterized the Berkeley rebellion of 1964-65.

The Role of SLATE

The two student organizations that played the dominant roles in the Berkeley rebellion are SLATE and the DuBois Clubs. We have already devoted considerable attention to the formation and activities of SLATE in previous reports, and we shall briefly recapitulate that material here, and bring the history of the organization up to date. The DuBois Clubs of America is, however, a relatively new organization, having been formed since the publication of our 1963 report, and we are fortunately in possession of a great many of the documents issued by the DuBois Clubs. We consider it utterly impossible for anyone to adequately understand the nature of the Berkeley rebellion without first understanding the nature of these two organizations.

During the first semester of 1957 a student organization called TASC (Toward A Better Student Community), later known as SLATE, was started by three students from Berkeley who were dissatisfied with the operation of the Associated Students organization, and who were concerned with academic freedom and civil liberties. This student political organization was designed to place its own candidates in places of responsibility through student elections, and to campaign actively for its principles. The first campaign was unsuccessful, but during the second semester the organization became stronger and attracted a considerable following. It was in October, 1957, that Rule 17 at the Berkeley campus was modified to allow off-campus organizations of students to utilize campus facilities for their programs if they secured permission a week in advance. They were not, however, to solicit members, funds, or to engage in any religious proselyting.

SLATE's organizing convention was held in the Student Union on the Berkeley campus over the weekend of February 28, 1958. Mike Miller was elected chairman and Patrick Hallinan vice-chairman. Hallinan was thereafter to head the San Francisco Youth Festival Committee for the

eighth meeting of the World Federation of Democratic Youth, Soviet-controlled, at Helsinki, Finland. Other SLATE officers who participated in that meeting were Kenneth Cloke, Michael Tigar, and Michael Meyerson. Patrick Hallinan's brother Terence is an organizer and officer in the DuBois Clubs of America, which will be discussed later.

After SLATE had organized and launched itself on a career of picketing, demonstrations, and pressing for civil liberties, and freedom of speech; had placed its members in student offices on the campus, and expressed its distaste for the Berkeley administration, it elected a new group of officers who were: chairman, Al Madian; vice-chairman, Dave Armour; secretary, Brenda Goodman; treasurer, Brad Cleaveland; representatives, Dick Bowen, Howard Taylor, Pete Graham, and Marvin Sternberg; Administration, Jim Payne; national student association, Marvin Sternberg; education policy, Ted Kompanetz; athletic policy, Bob Gillen; civil liberties, Mike Shutz; student welfare, Bob Orser; A.S.U.C. analysis, Ted Kompanetz; national and international, Jim Gallagher; state and local, Dick Bowen.

By the end of the 1958 school year, a SLATE publication, *Cal Reporter*, owned its own printing press which was formerly the property of Lawrence Steinhart, a graduate student in Social Welfare. Financially the paper had a cash reserve of a hundred dollars remaining from the previous semester, but owed a balance of one hundred and thirty-five dollars on printing equipment. Cash donations were received from Carey McWilliams, Jr., who gave \$250; Al Madian, who donated \$50; David Rynin, Jr. son of Professor David T. Rynin of the Department of Speech, who not only edited the paper but donated \$60; Peter Franck, who gave \$100 and Pete Graham, who contributed \$90.

We are quoting a great deal of this material from a portion of the section concerning SLATE which we published in our 1961 report, and we are selecting those excerpts which in our opinion characterize the defiant attitude of SLATE toward the administration at the Berkeley campus, just as the same type of defiance on a larger scale characterizes the united front activities of the students engaged in the Berkeley rebellion of 1964-65. An example of the attitude of SLATE in this direction may be seen from editorials appearing in the issue of its paper for October 4, 1958. Apparently the students were somewhat disillusioned about the attitude of President Clark Kerr, who was beginning to crack down on the activities of student groups like SLATE, which then were becoming arrogant and actually interfering with the orderly conduct of the student body of the university. The editorial took Kerr to task for decreeing that there could be no more student demonstrations outside the front gate of the university:

"Hooray for President Kerr. His experimental suspension of the rule keeping candidates for state office from speaking on campus is a step toward giving campus life some resemblance of 'real' life. We only wish that the administration would not take two steps backward before they take one forward. What we are referring to is the outlawing of street speakers at Sather Gate.

Vice-Chancellor Sheriffs has graciously given speakers a chance to stand in an ivy patch the university is giving to the city anyway. We think that is mighty big of them, but we wish that the 'new Spirit' didn't mean the end of one of the best 'old traditions.' The *Daily Cal* has come out for retention of Sather Gate as a haven for

free speech. An Ex.Com. has sent a letter to the administration to the same effect.

So far, nothing has come of it. But judging by our own experience, we suggest that they inquire whether the administration ever 'received' it at all."

In the same issue the editorial writer expressed himself concerning the administration's disinclination to take any action permitting the *Cal Reporter* to be distributed among the students on the campus. The editorial writer complained "it's been almost six months since the *Cal Reporter* applied for permission to distribute on campus, and can you guess what's happened? Nothing."

These demonstrations at Sather Gate were usually held during the noon hour when thousands of students were emerging from their classes and were compelled to go through that gate on their way to lunch. Virtually all of these meetings were of an extremely radical nature, the crowd being harangued by the speakers and handed propaganda by student organizations of one kind or another. On many prior occasions Communist Party officials had addressed the students immediately outside the entrance to the university, and about a block away there was a Communist book store which kept supplies available under the administration of Mrs. Wilhelmena Loughrey, who has appeared as a witness before us, and who has been referred to on numerous occasions in earlier reports. This book store no longer has any useful function, because the propaganda that it used to distribute to students outside the university campus is now freely circulated on the campus itself, together with a rash of the most disgusting pornographic literature and a constant deluge of political propaganda ranging all the way from the mildest form of Socialism to the most militant form of material from Red China.

We pointed out in our 1961 report how SLATE was used as a transmission belt and through it reached the student body at large. We did not then imply, nor do we wish to imply now, that all of the members of SLATE were Communists or that the organization could be accurately described as a Communist front at that time. It certainly has become Communist-dominated since our 1961 report was issued, and from the very inception of this organization it is quite obvious that its leaders were strongly oriented toward Communism. Some were enthusiastic fellow-travelers, and others were simply willing to be led by their more articulate, disciplined and energetic colleagues and by the brash and insolent activities of the movement.

The 1964-65 rebellion in Berkeley was set off over denial of permission to set up tables at the entrance to the university. This being so, it is important to understand that exactly four years earlier, SLATE had engaged in a running battle with the university administration over the same identical controversy. President Kerr prohibited demonstrations at this point, but permitted students to assemble at Dwinelle Plaza on the campus, there to distribute such literature as they wished, and to make such utterances as they desired, so long as the proceedings related to campus activities and the legitimate interests of the student body.

On October 13, 1960, a SLATE officer addressed a mass meeting of students at Dwinelle Plaza, attacked President Kerr's policies and declared to the assembled students:

"Kerr's directives reflect his training in Industrial Relations, and reveal what Kerr would do if confronted by union leadership which didn't represent union members. I'd say democratize the union.

Clark Kerr would say castrate (sic) the leadership. Take this philosophy over to the ASUC and dump it and you have the Kerr directive."*

The student, who uttered these earthy and defiant statements was Mike Tigar, SLATE leader and candidate for ASUC Representative-at-large. Tigar was not only an officer of SLATE in 1960, but two years thereafter he was a member of a three-man committee that made the preparations in the United States for the Eighth World Youth Festival in Helsinki, was a delegate to that Soviet front organization of world youth, and reported on the proceedings in an article for the Communist paper in San Francisco, which was reprinted in the national Communist youth publication, *New Horizons for Youth*, in the October 1962 issue, page 13. This was the organ for the Youth Commission of the Communist Party, and its office was located at 799 Broadway, Room 233, New York 3, N.Y. There were eight other members of SLATE who were active participants at this World Communist Youth Festival. They were: Dave Armor, Kenneth Cloke, Michael Hallinan, Terence Hallinan, Clinton Jencks, Monica Klein, Beryl Landau, Michael Meyerson, and Michael Tigar. Three of these, Meyerson, Tigar and Cloke were immediate past presidents of SLATE at Berkeley, and we should not overlook the fact that Carl Bloice, although neither connected with the Berkeley campus nor SLATE, also attended the Helsinki Youth Festival, is presently a staff member for the Communist newspaper in San Francisco, *People's World*, and while at UCLA was the spark plug behind yet another early Marxist organization called the Independent Student Union. We mention Bloice because we will have occasion to refer to him hereafter in connection with the Berkeley rebellion.

Bloice is now director of publicity for the new Communist youth organization, DuBois Clubs of America, and Bettina Aptheker, one of the leading activists in the DuBois Clubs, was a SLATE candidate for Representative-at-Large of the Associated Students at the University.

From its inception this student organization was aware of the fact that during vacation periods there would be a dormancy which might result in serious loss of membership and also render SLATE so apathetic that its political energy would be seriously impaired. To overcome this condition it not only inaugurated an inter-campus exchange of correspondence with universities, colleges, state colleges, and other educational institutions throughout the country, but also inaugurated a system of summer conferences to which lecturers were invited to address delegates from student organizations.

On May 21, 1960, a SLATE "Inter-Campus Newsletter," was distributed, and read, in part, as follows:

"Due to the importance of reaching all of our contacts before the universities and colleges recess for the summer we are unable to send out as detailed and complete a report on student political parties and student political activity in general as would be desired.

However, this newsletter should communicate to you what is our most important thought—namely, that at last we are going up hill in our attempts to realize effective student political action. We in the West have witnessed in the last few months an encouraging upsurge in political awareness and involvement on the part of hitherto 'silent', if not apathetic, students. The need for inter-campus communication and coordinated action is now even greater.

*The Daily Californian, October 13, 1963.

An addenda to this newsletter discusses at some length the most recent student political activity, the picketing of the House Un-American Activities Committee in San Francisco. We hope to make the abolition of this committee a national effort on the part of students. More information will be forthcoming shortly.

The SLATE Inter-Campus Coordinating Committee will continue to function through the summer. It is important that we have summer addresses as we do not want the communications network we have built up to go 'on vacation' along with the schools. Send summer addresses to Irene Theodore, 2532 Regent Street, Berkeley 4, California."

This newsletter also pointed out that the new student organization at San Jose State College managed to elect two out of their five candidates to important posts in the student government at that institution, and that their members had made the trip north to help with the demonstration against the House Un-American Activities Committee hearings in San Francisco in May of 1960. The student organization at UCLA, "Platform," was reported as having won three positions in the student political government, and to have attained a high degree of activity in political influence at the Los Angeles campus. San Francisco State College was reported as having a student organization somewhat similar to SLATE in the organizational stage, and that it was growing rapidly and had "very strong faculty support!" At Sacramento State there was a new student political party, and it was reported that "having met with some of the individuals heading the organization we are sure things are cooking in Sacramento."

This SLATE communication announced a summer political party caucus which would probably be held at Big Sur State Park, and reported on the conditions at the Berkeley campus as of the summer of 1960 as follows:

"Student government at the University of California has been faced with a major crisis. The Executive Committee of the Associated Students recently challenged the Kerr Directives (which prohibit student government action on 'off-campus' issues, i.e. issues of local, national and international import) by passing a resolution protesting the violation of academic freedom by the University of Illinois where they fired Professor Leo Koch for stating his views on pre-marital sex relations.

Ex-Com was told in a secret meeting called by the Chancellor, to rescind its motion. It stood fast and instead, at its next meeting, passed a resolution entitled 'Scope of Student Government' in which it restated the philosophy that students themselves must decide the limits of their government. Subsequently the Chancellor voided Executive Committee resolution.

We cannot, at this time, predict the effects this administrative fiat will have on student government. As part of its summer activities SLATE will explore the means of having these Directives rescinded. If they remain in effect student government at the University of California will be nothing more than an administrative agent."

The 1962 SLATE Summer Session issued a program which proclaimed that the meetings would be held at the Student Union Building on the Berkeley campus of the University of California, commencing on Friday evening, July 27, and ending on Sunday afternoon, July 29. The conference

program stated that it would open on Friday evening, July 27, with a program of movies: "Come Back, Africa" and "Walk In My Shoes."

On July 28, Saturday, from 9 a.m. to 12 noon, there was to be an introductory session exploring the historical routes and presentation of political, economic, social and psychological situations. The speakers were announced as the Reverend Charles Gillenwater, second vice-president of the San Francisco Negro Historical and Cultural Society; Robert Ward, co-chairman, Afro-American Association, and Ella Baker, Student Non-Violent Coordinating Committee.

From 1 to 5 p.m. on Saturday, July 28, workshops were held, as follows: School Integration: Beverly Axelrod, a San Francisco attorney representing San Francisco chapter of the Committee on Racial Equality; Lydia Barros, Executive Secretary of the San Francisco chapter of the National Association for the Advancement of Colored People. On Housing and Urban Renewal the speakers were: Frank Quinn, San Francisco Council on Civic Unity; Mike Miller, managing editor of the *Liberal Democrat*, and Robert Bradley, representing the Congress on Racial Equality. The panel on Employment featured James Herndon, president of the Negro American Labor Council in San Francisco, and Robert Ward, of the Afro-American Association. The workshop on Voting and Politics featured: Henry Ramsay, Americans for Democratic Action, University of California, and Willie Brown, then a candidate for the State Assembly, a position to which he was subsequently elected. The workshop on Federal Government and Civil Rights featured only one speaker, Carl Bloice, journalist for the *People's World*. The workshop on Community Dynamics, featured Orville Luster, Youth for Service, San Francisco; Carl Werthman, Youth for Service and a graduate student at the University of California in Berkeley, and Javier Brocks, Encampment for Citizenship, Berkeley.*

The period from 8 to 10 p.m. on the evening of July 28th was devoted to music, featuring jazz programs and an introductory lecture by Dewey Redman. On Saturday evening, commencing at 10 p.m. and continuing indefinitely, a house party was scheduled, and on the concluding day of the conference, Sunday, July 29, there was a panel discussion which started at 10 a.m. and ended at 1 p.m., which featured the following speakers in a general discussion of the Negro problem: Ella Baker, Student Non-Violent Co-ordinating Committee; Wilford Ussery, chairman of the San Francisco chapter of the Committee on Racial Equality; Don Warden, co-chairman of Afro-American Association; Minister John X, Black Muslim Brotherhood; Carl Bloice, Marxist journalist, and Terry Francois, chairman of San Francisco chapter of the National Association for the Advancement of Colored People. The speakers who concluded the session for the balance of the day included Carl Werthman, Mike Miller, Carl Bloice, Herb Mills, Robert Ward, Henry Ramsay and Lydia Barros. Those wishing to register for the conference were requested to telephone Dorothy Datz, who was then SLATE chairman, at THornwall 3-5084, or to write her at 1579 Scenic, Berkeley 8, California.

The 1963 SLATE Summer Conference was announced on July 8, 1963, with this letter from Berkeley:

"Dear Friends, this letter is to inform you of the coming SLATE Summer Conference. The topic of the conference this year will be Educational Reform. It will be held between Summer Sessions, July 27-28, at Berkeley.

*The Encampment for Citizenship was described in our 1963 report, page 190, et seq.

Our purpose is to examine in depth the present condition of the educational system, alternatives to this system, and means of altering the system. We hope to crystalize our ideas and to stimulate discussion, thought, and action on the subject. Our major concern is to improve conditions at universities, since we believe they are not presently meeting the needs of mass, industrial, democratic society. By the end of the final plenary session of the conference, we hope to have defined our agreements and disagreements well enough to be able to synthesize our ideas into proposals for action.

To implement these prodigious plans, the conference will combine speeches and seminars. The speeches are intended to offer expert opinions on the present situation, alternatives to it, and methods of action. The exact speakers have not yet been established, but in order to indicate the scope and nature of the conference, we can mention several of those invited. They include Robert Hutchins, past chancellor of the University of Chicago and author of several books on education; James Dixon, president of Antioch College; Paul Goodman, author of many books on education including 'Growing Up Absurd'; Clark Kerr, president of the University of California; and Nevitt Sanford, author of the comprehensive text on American higher education 'The American College.' Of course, we cannot expect all of these to attend, but some are expected to come.

The seminars will cover both the present situation and methods of action (see the enclosed conference outline). We intend these to be both creative and informative. To do this we are inviting an expert in the particular subject of each seminar to be a resource person. The seminars will be opened by these people and then discussion by conference participants will attempt to clarify issues in the area of each seminar and to grapple with the problems involved. The report of each seminar will be mimeoed and brought before the conference as a whole.

We would also appreciate any working papers which you might want to submit on any of the topics to be discussed. These would preferably be by (sic) your own writing, but they may be short articles which you feel are particularly pertinent. We would appreciate it also if you could mimeograph them yourself (400 copies), but if this is impossible, send them to us as soon as you can.

The registration fee will be \$3.00, to cover the cost of mailing, working papers, and other arrangements for the conference.

We enclose below a bibliography of suggested readings. This is by no means complete or comprehensive and certainly will not give any solutions for what is 'bugging' us. That is for us to do at the conference. What they can do is give you a survey of the most pertinent and insightful thought in the field.

Caplow, Theodore and Reece J. McGee, 'The Academic Market Place'; Hutchins, Robert Maynard, 'Conflict in Education in a Democratic Society,' and 'The Higher Learning in America'; Goodman, Paul, 'Growing Up Absurd'; Lerner, Max, 'Education and a Place'; Hutchins, Robert Maynard, 'Conflict in Education in a Democratic Society,' and 'The Higher Learning in America'; Lerner, Max, 'Education and a Radical Humanism'; Meiklejohn, Alexander, 'The Experimental College,' and 'Education for Freedoms'; Read, Sir Herbert, 'Education for Peace,' and Taylor, Harold, 'Education and Freedom.'

We are enclosing an outline of the conference which should give you a better idea of what we are talking about. Below is a response form to this letter. We would also appreciate your returning this form, whether you are coming or not. Also note that if you send your registration fee in advance, we can send you the working papers in advance. Finally, we would be grateful for the names of anyone else (sic) who might be interested in the conference, and we have left a space for this on the coupon. Cordially, Mike Schwartz, Conference chairman."

The returned forms giving the name of the participant, his address, telephone number, school, and organization or affiliation, were to be sent to Wanda Mallen, 2635-A Fulton Street, Berkeley 4, California.

The 1963 SLATE Summer Conference was much more ambitious than its predecessor, but far less successful. This may have been due to the bulky and involved nature of the documents distributed prior to the opening of the conference, and also to the somewhat ponderous nature of the program itself. A sheet of paper entitled "Tentative Agenda" was distributed about a week prior to the opening of the conference on July 27, and stated that Dr. Christian Bay, of San Francisco, would make the opening speech from 10 a.m. until noon, and that his subject would be "Criticism of the Multiversity."

For an hour preceding Dr. Bay's address the first plenary session of the conference was to be held, followed by announcements, welcoming speeches, an outline of the conference, and distribution of working papers. From 1 until 2:30 p.m. there would be panel discussions by a student, faculty member, administrator and legislator followed by a general discussion and questions from the audience. The topic would be "Role of the University in Society—What It is and What It Should Be."

From 2:30 until 5:30 p.m. the first day of the conference was to be devoted to seminars, and we think it well to quote this portion of the tentative agenda in full, since it illustrates the SLATE viewpoint on matters that were to become of extraordinary importance during the Berkeley rebellion a year later.

1. "University governance (e.g., *in loco parentis*, character of decision-making process, student involvement in process, structure of power in the university).
2. Curriculum and the undergraduate experience (e.g., examination of the relevance of curriculum to life, "values of the undergrad, the quality of instruction and orientation of 'campus life.'"
3. Graduate education (discussion of graduate student values, academic experience, problems of adjusting professional desires to status in the institution, character of the graduate student population, graduate instruction).
4. Faculty values.
5. Student rights, academic freedom (e.g., student expulsions, policies on student organizations, speaker bans, behavior codes, living restrictions, hiring and firing of professors because of their political views).
6. The university and society (e.g., what purposes the university should fulfill in education for democratic participation, what its orientation in industrial society is and should be, how it should tackle problems of conformity, mass society).

7. The university and the cold war (e.g., examination of the role the university plays in supporting the cold war (*status quo* attitudes)."

At 9:30 p.m. the second plenary session of the conference convened and was to continue until 10 p.m. On Sunday, July 28, from 9 o'clock a.m. until noon, seminars were held on "Channels of Action," and this comprised discussions on "student government and student political parties; independent student action (strikes, boycotts, club and other organizational involvement, etc.; counter-university (plus effectiveness of such notions as counter-orientation programs, counter-course, etc.); faculty relations and the joint student-faculty action (educational campaigns, use of community pressure on legislature, etc.)"

The concluding speech of the conference was to be made by Nevitt Sanford, from 1:30 p.m. until 2:30, and from 2:30 until 4:00 p.m. there was to be a concluding plenary session, and an evaluation of the conference. This tentative agenda was followed by the distribution of an eighty-one page mimeographed document entitled "Education in the Multiversity." On its front cover working papers were described as follows:

- "1. Christian Bay: 'Toward Educated Lives.' 2. Gerald Gray: 'A Summary of Clark Kerr's 'Godkin Lectures'; 3. Gerald Gray and David Rynin: 'A Critique of Clark Kerr's Godkin Lectures,'"

The main topics to be considered at the conference were then listed as follows:

- "I. The University and Society; II. University Governance; III. University and the Cold War; IV. Student Rights and Academic Freedom; V. Undergraduate Experience and Curriculum; VI. Graduate Experience; VII. Reform; Bibliography and Credits."

The material set forth in the eighty-one page document distributed at the SLATE summer conference of 1963 contained the address by Christian Bay; a piece called "The Idea of a Student" by Reginald H. Green;" "The Student and the Campus Climate," by Fred Werner; "The University in a New World," by Harold Taylor; "The Hiatus Between Education and Student Life," by Philip E. Jacob; "The Campus Viewed as Culture," by Martin Trow; "The Latin American Student Movement," by Miguel Rotblat; an article from the *Michigan Daily*, entitled "Ivory Tower Administrators Rule Without Feedback;" an excerpt from an article by Prof. Reece McGee, a sociology professor from the University of Texas who taught social problems at Berkeley during the first summer session of 1963, entitled "The American University as a Disorganized Organization;" a piece entitled "The University and the War Effort," which bore no signature, but which closed with the following exhortation: "Join us in the picketing of the university's charter day ceremonies, protesting the university's involvement in the arms race. Charter day, 1 p.m., Gayley Road, below the Greek Theater."

"Academic Freedom," by Harold Taylor, was an important reference, also recommended. Its first paragraph should be quoted here because it established the theme that ran through the entire conference: namely, that the university exercised a parental attitude toward the students which was highly resented. Indeed, this concept of an authoritarian university, *in loco parentis*, dominated the entire conference, and was repeated and emphasized over and over again. The paragraph read as follows:

"In the absence of a precisely defined relationship between the student and the university, there exists the traditional relationship summarized in the concept *in loco parentis*. The theory establishes

the university as paternal guardian over the moral, intellectual and social activities of the student. From the tradition of *in loco parentis*, come these conceptions: the student need not be directly involved in the formation of the general university policies and the administration may circumscribe the perimeter of a student's interest, speech and thought, personal and group associations, and actions. Apart from the individual student, the university, operating within the framework of *in loco parentis*, may and does establish certain restrictions on the operation of the student government, the student press, and other student organizations."

Other sections of the eighty-one page booklet were: "Student Political Action," by James P. Dixon; "The Wasted Classroom," by Nathan Glazer; "Social Control in the Dorms or *Loco Parent*," by Joan Roos, "The Plight of the College Professor," by William Stanton, who is now a member of the California State Assembly, "That Wonderful Tradition," by E. G. Williamson, "A Note on Graduate Study," by Robin Room, "Freshman Orientation," by Dan Johnston, "The Need for Student Political Parties," by Carey McWilliams, Jr., together with several other articles for which no author was given.

It should be made clear that in most instances these articles were excerpts from longer pieces written for various publications, were included in the eighty-one page mimeographed booklet for study purposes, and were not delivered in person at the conference. We should make it equally clear that certain common denominators ran through the entire flavor of this booklet, urging student demonstrations of defiance against the university administration, citing student radical organizations in Latin American universities as ideal examples to be followed by students at universities in the United States, creating a spirit of dissatisfaction with any attempt on the part of university authorities to regulate the conduct of students, and the engendering of dissatisfaction with the courses being taught.

The 1963 SLATE Summer Conference was, despite elaborate preparations, top-heavy with red tape and unwieldy documents. From several persons who attended we have reliable information to the effect that there were only about sixty people present, and that most of the time was spent in agreeing with each other. None of the illustrious speakers appeared, and one informant stated that the seminars seemed to be based on deep student dissatisfaction because the university did not see fit to turn its affairs over to them. The university *in loco parentis* to the students was depicted as an outrage, and the consensus seemed to be that students should never be responsible for their actions to the university nor should the university have any responsibility to the Regents, the parents, the taxpayers or the State of California. There seemed to be full accord with the idea that an ideal situation would be for the university to supply the machinery for educating the students, but that all matters of social responsibility be left entirely to the liberal element of the student body.

SLATE activities immediately prior to the 1963 summer conference were interesting, and revealing. On May 13 a SLATE propaganda publication called for a "student revolution," and the organization's elder statesman, Brad Cleaveland, 30, announced in an article of snarling defiance that "the charge is simple: the faculty of this university is weak, indolent and irresponsible." He called the university a "circus," and stated that it was bogged down in bureaucracy. Members of the SLATE committee with Cleaveland at the time were Mike Schwartz, Jo Freeman,

Sandor Fuchs, Ken Cloke, and Steve DeCanio. The last three were arrested during the invasion of Sproul Hall on December 3, 1964. Ten thousand copies of this publication were distributed at a student rally held on the Dwinelle Hall Plaza on May 13. Cleaveland, who resided at 2151 Emerson Street, Berkeley, in 1964 earned his master's degree at Berkeley in political science, and was active both in SLATE and the student rebellion in 1964-65.

We have already referred to Ken Cloke as president of SLATE in 1962, and as a leader of the preparations for the Eighth Communist World Youth Festival which was held in Helsinki, Finland. It was in 1963 that Cloke became involved in a sordid matter which wound up with his being charged with the theft of fifteen dollars' worth of books from the California Book Company at 2310 Telegraph Avenue in Berkeley. He was fined \$25.00 and placed on two years' probation by the Berkeley Municipal Court where he entered a plea of guilty. Having been a member on the SLATE ticket for the Student Senate at Berkeley, he resigned from that position shortly after his arrest. It will be noted that Cloke has also been a prominent figure in the student rebellion, and at the time it occurred he was still on two years' probation, which would expire sometime in March or April this year.

SLATE had long been agitating for the new administration under President Clark Kerr to bring pressure on the Board of Regents to modify its rule that had long prevented Communists from being provided with a free rostrum on the campus from which they could address the students. When, indeed, this manipulation succeeded and the rule was modified, and when Albert J. Lina, chairman of the Northern Division of the Communist Party of California spoke at Wheeler Auditorium on the Berkeley campus, July 19, 1963, this first Communist speaker after the rescinding of the rule was sponsored by SLATE and the W.E.B. DuBois Club of Berkeley.

During all of its existence SLATE was constantly endeavoring to infiltrate its members into influential positions throughout the structure of student government at Berkeley, and at the election during the latter part of 1964 was able to elect seven out of its eight candidates.

Communist Youth in America

Since the DuBois Clubs of America are directly descended from the Young Communist League through two organizational changes, let us first examine the nature of the young Communist movement in general and then consider its aims and techniques which have been inflexible since the movement originated in October 1918. It was a year after the revolution in Russia that the Young Communist League was started in that country with an initial membership of 22,100.* Commonly known as the Komsomol it now comprises about nineteen million young people between fourteen and twenty-seven years of age, and is subject to the direct control of the Communist Party.† On page 63 of the *History of the Young Communist League*, this statement appears:

"The Russian Young Communist League, which from the formation of the Young Communist International has been its leading section and an example for the international youth movement, is educating its members in the spirit of international solidarity and

* *A Short History of the Young Communist League of the Soviet Union*, by A. Afonin, Co-operative Publishing Society of Foreign Workers in the USSR, Moscow, 1934, page 5.

† *Encyclopedia of Russia and the Soviet Union*, edited by Michael T. Florinsky, McGraw-Hill Book Co., Inc., N.Y., 1961 page 282, et seq.

proletarian struggle. As its leading section, the Leninist Young Communist League has always carried on an active struggle to bolshevize the Young Communist International and takes the most active part in its work, giving Bolshevik guidance, calling upon the young proletarians of all countries to fight determinedly for Communism and assisting in a Bolshevik manner the fight against all kinds of attempts to separate the struggle of the youth from that of the working class as a whole."*

The most important public document concerning the world Communist youth movement is the official *Programme of the Young Communist International*, approved by the Presidium of the Executive Committee of the Communist International. It was distributed to Young Communist Leagues throughout the world in May 1929. Our copy came from the national headquarters of the Young Communist League of America, 43 East 125th Street, New York City. On page 35 the relation of the youth apparatus to the Communist Party and the Communist International, is proclaimed as follows:

"The Y.C.L. opposes the idea of 'youth syndicalism,' which considers that an independent and isolated struggle of the working youth is possible. The Y.C.L. is a part of the Communist movement as a whole. The C.P. is the leader of the Communist movement and the entire working class; there cannot be . . . dual leadership, or the existence of two Communist Parties. The Y.C.L., while organizationally independent, works under the direction of the C.P. and the C.I., and recognizes the programme and tactics of the C.I. and C.P. The Y.C.L. submits to instructions of the C.P. and of the C.I. as the supreme body of the world Communist movement. The nature of the Y.C.L. as a mass school of Communism for the working youth implies that not every member of the Y.C.L. is automatically a member of the C.P. The Y.C.L., however, bears the name Communist because, although it is not formally a Party organization, it is nevertheless a Communist organization.

"The concrete tasks of the Y.C.L. in the work of the Parties consist in tireless agitation for the fighting aims of the Communist International, in supporting the Communist Party in its daily work and struggles, in participation in all revolutionary activities of the proletariat, in discussion and explanation of current political events and of the immediate tasks of the proletariat, and an active participation in Party discussions." (page 37)

Under the general program of defending the Soviet Union "... against the attacks of the Capitalists," the Communist youth has always been ordered to wage a ceaseless battle against compulsory military training and against military conscription in any form. Every Marxist youth organization has diligently pursued this directive, and they have been successful in eliminating such training from many large American universities. Their drive to eliminate Reserve Officers Training Corps programs on University of California campuses is already a matter of common knowledge—and the ROTC program has been discontinued.

The Programme of the Y.C.L., from which we have quoted, declared:

"The Y.C.L. combats both compulsory and voluntary forms of bourgeois military training of the youth, not in the spirit of pacifism, but from a standpoint of a class struggle." (page 47)

*A. Afonin, op. cit., p. 63.

Most of us who have paid much attention to Communism in general are aware of the fact that during the period of the non-aggression pact between Russia and Germany the American Communists did everything in their power to throttle our defense effort in strict conformity with the general Communist Party line of weakening us in every way possible. In June of 1941 when the Soviet Union was invaded and Russia became involved in the war, the line changed immediately and the American Communists were ordered to assist our military preparations in conformity with the new line. As our massive economic and military aid to the Soviet Union steadily increased until it reached enormous proportions, the Communist line was changed to avoid offending the United States, and hence the name of the Communist Party itself was changed to the Communist Political Association, the name of its monthly ideological magazine was changed from *The Communist* to *Political Affairs*, and the Young Communist League was assembled at a special convention in the Mecca Temple, New York City, on October 17, 1943, and changed its name to American Youth for Democracy. The first California State Convention of this organization, which, of course, was only the Young Communist League with a new title, was held in the North Star Auditorium, 631 West Adams Blvd., Los Angeles, on May 6 and 7, 1944.

The Young Communist Leagues in the various countries were all sections of the Comintern, which had its permanent headquarters in Moscow, and through its Executive Committee issued the orders, directives, changes of party line, and other instructions to its various component sections. With the dissolution of the Comintern and the Cominform, the central organization that performed the same international service, was the World Federation of Democratic Youth, which was founded in London in November of 1945. It is a part of the Communist international solar system which includes such world Communist organizations as the Women's International Democratic Federation, World Federation of Trade Unions, and other groups comprising teachers, lawyers, scientists, and writers. One of the affiliates of the World Federation of Democratic Youth is the International Union of Students, and American Youth for Democracy was affiliated with both organizations.

It is interesting to note changes in the method of handling the administration of the State University, from time to time, and we call attention to an article that appeared in the *Los Angeles Herald-Express* on January 19, 1948, which explains how the University of California at Los Angeles handled the problem when American Youth for Democracy applied for campus recognition. The editorial reads as follows:

"Officials of the University of California at Los Angeles are to be commended for their action in refusing official campus standing to the American Youth for Democracy organization, successor to The Young Communist League, on the ground that it is a political organization and political organizations are barred from campus recognition.

The community will look with favor on this stand for positive Americanism and will now watch with interest to see what the university does about those faculty members who have been interested in Communism and in campus activities of the Youth for Democracy gang.

The university apparently recognizes that the un-American activities of a small but active minority have given the institution much criticism in Los Angeles, California, and throughout the United States.

UCLA realizes that bad publicity hurts and that a state university should so act that its actions are above reproach.

There is a growing sentiment throughout the country to throw the exposing spotlight of publicity on those individuals and those Communist-inspired groups and organizations which are spreading unrest and trouble, seeking constantly to bring about the eventual overthrow of this country's constitutional government and the American way of life. This is not a witch hunt, nor is it persecution, but is rather an honest effort to rid this country of a despicable menace. Among the subversive groups the American Youth for Democracy is one of the most offensively dangerous. Its members are without moral integrity, without social consciousness and without restraint in their desire to stir up race antagonism, create dissension and revile every good influence in this land.

Nothing good can be said for the American Youth for Democracy, those who belong to it, those who support it or those who are tolerant of it. It is evil and dangerous in every way.

UCLA has taken a commendable first step, a step which should be followed by further patriotic house-cleaning."

After the war the international Communist party line changed back to its old tough and militant program against all capitalist governments, and American Youth for Democracy was dissolved in 1948 to be replaced by another young Communist youth movement known as the Labor Youth League. This was also simply the Young Communist League under another title, with the same set of objectives, the same techniques, the same subversive program of infiltration, and was subject to the same Communist adult leadership as were its two predecessor organizations.

By May 1949, plans for the new organization had been formulated, and the first organizational meeting was scheduled to be held in Chicago on May 28 and 29, 1949. National headquarters was established at 799 Broadway, Room 314, New York City, and chapters planted in various key cities throughout the United States, largely built on the old organizational structure of American Youth for Democracy. All adult Communists and all party organizations throughout the country were urged by the Communist National Committee to give every assistance to the Labor Youth League. The Northern California operation was handled through the normal Communist Party apparatus in San Francisco, and in Los Angeles the organization opened an office at 232 South Hill Street, Room 205, Los Angeles 12. It later established its permanent headquarters at 233 South Broadway, Room 207.

During the past few years, however, the activities of the Labor Youth League were made exceedingly difficult because there was a proliferation of Marxist-oriented groups such as SLATE, Independent Student Union, Young People's Socialist League, and various radical student organizations at state colleges and universities that provided competition for the LYL. When the Sino-Soviet dispute began to splinter the various Communist organizations in the summer of 1960, the Labor Youth League faded out of existence, and the young Communist movement was represented by these diverse student organizations that sent their delegates to the youth festivals, maintained their organizational contacts with the World Federation of Democratic Youth, carried out the general Communist line and program, but were not welded together in any central organization.

The DuBois Clubs of America

This brings us to the formation of the DuBois Clubs of America, the new national Communist youth organization that is the lineal descendant of the Young Communist League, American Youth for Democracy, and the Labor Youth League. It is accorded recognition as a student organization on the University of California campus in Berkeley, and its national headquarters is situated across the bay in San Francisco. As a matter of fact, as we shall see, the idea for the National DuBois Clubs was conceived in Berkeley and San Francisco, and developed from three meetings: the first was the Progressive Youth Organizing Committee that met in New York in June 1963; next was a Conference of Socialist Youth in San Francisco in April 1964, and finally there was the turbulent convention in San Francisco in June 1964. As we describe these preparatory gatherings of radical youth, the reader will understand how a handful of leaders managed to capture all important positions, and how they manipulated the meetings to solidify their control. The same names occur with monotonous regularity, as the same people move from one strategic office to another.

The San Francisco DuBois Club was established in March 1963, when its constitution was approved and adopted. Article II of that document provided that a close working relationship should be maintained with the Berkeley DuBois Club, and Article III stated that "the purpose of this organization is to study Scientific Socialism, and to apply its theories to social, cultural, educational and political activities."* Article IV of the constitution provided that membership should be open to "persons between the ages of sixteen and thirty-five, who subscribe to the organization's statement of principles, who attend a minimum of two consecutive general membership meetings, and who pay a membership fee fee of \$1.00."

The name for the DuBois Club of San Francisco was adopted in honor of the late William Edward Burghardt DuBois, a Negro educator who was born on February 23, 1868, and died on August 27, 1963.† Dr. DuBois was one of the founders of the National Association for the Advancement of Colored People (NAACP), was a leader in the struggle for Negro rights, and made a dramatic announcement of his conversion to Communism in the December 1961 issue of *Political Affairs*, page 9. He had been an ardent fellow traveler and member of many Communist front groups for years before he became a formal member of the Communist Party, and his affiliation was hailed with great enthusiasm by Herbert Aptheker on page 13 of the same issue of the magazine.

Several years before his death Dr. DuBois renounced his American citizenship and became a citizen of Ghana, where the pro-Communist government was greatly influenced by both Dr. DuBois, who tutored the Ghanaian president, and his wife, Shirley Graham, who acted as an unofficial counselor to the regime.

The San Francisco DuBois Club became active immediately after it was organized. It met with similar clubs in the Bay Area, participated in civil rights demonstrations such as trespassing on the premises of the Sheraton-Palace Hotel and the Cadillac agency in San Francisco. It also sponsored such Communist speakers as Frank Wilkinson, who spoke on April 10, 1964, and J. P. Morray, who was billed as "a noted Marxist scholar." At

*The term "scientific socialism" is Communist Aesopian language for Communism.

†*Political Affairs*, October, 1963.

the same time a solid liaison was being established with other radical youth groups throughout the country. In California the counterpart to the San Francisco DuBois Club was the Youth Action Union in Los Angeles, which, as we shall describe at some length, grew from the old Independent Student Union. The YAU provided such hard-working leaders as Marvin Treiger, Tobey and Michael Bye, Ruth Greenbaum, Victor Oliver, Alan Zak, Frank Alexander, Dan Bessie, John Haag and August Maymudes.

We are devoting considerable attention to the formation of the DuBois Clubs, because they are now the actual organization of Communist youth, and more particularly because they provided the driving power for the Berkeley Rebellion, and they constituted the hard core of the so-called Free Speech Movement at Berkeley. This is the first detailed account of the DuBois Clubs, and unless one understands how the movement originated, what it proposes to accomplish, and how it functions, he cannot understand the defiant eruptions at Berkeley. Since the DuBois Clubs certainly were the most significant element in the united front that mobilized the students to rebellion, and SLATE probably came next in importance, it is essential that we know something about these organizations.

Progressive Youth Organizing Committee

There is always a period of behind-the-scenes preparation for any Communist program of major significance. Caucuses are invariably held before a Communist minority attempts to jam a party line resolution through a non-Communist organization; plans are made before a new front organization is launched in order to make sure that the real control remains in proper hands, and that this control is carefully concealed from the membership. These, of course, are some of the tactics through which a dedicated, disciplined minority can accomplish results far out of proportion to its numerical strength.

More than a year before the San Francisco convention of June, 1964, some carefully selected people from California attended meetings of the Progressive Youth Organizing Committee, 80 Clinton St., New York 2, N.Y. A school of instruction was held from June 25 to 30, at a cost of \$30.00 per student. The Marxist character of this enterprise may readily be seen from the invitation to attend the P.Y.O. School, which read as follows:

"Outlined below is the tentative context of the P.Y.O.C. school to be held June 25-30. As it appears that there will be a substantial number of youth new to P.Y.O.C. type organizations and who have not attended classes before, we are suggesting two separate courses. One will be for them and one for those who have had classes before.

For those who have had classes the content will be centered on those questions which will give greater clarity to the major ideological questions in the left and progressive youth movement and facilitate the building and growth of P.Y.O.C. type groups. The major emphasis will be what is a working class approach as opposed to a petty bourgeois radicalism in these areas;

1. The youth question and strategic goals of youth.
2. The Kennedy Administration, the ultra-right and electoral policy.
3. The fight for full equality for the Negro people and the role of progressive youth.

4. Working class youth, discussing their interests, level of organization and level of understanding.
5. P.Y.O.C., its role today and pressures to alter its outlook and character.

The classes for newer youth and those who have not attended classes before will be: Is Marxism True? An introductory course covering these topics:

1. Capitalism or Socialism: which can do a better job for man?
2. Is Socialism inevitable?
3. Does Marxism point the way to win daily improvements and Socialism?
4. Does Marxism enable one to scientifically discover truth in every field of human activity and in nature?
5. Criticisms of Marxism.
6. Does Marxism point the way to be happy?

PLEASE ADVISE US OF YOUR THINKING AND SUGGESTED CHANGES ON THE TENTATIVE CONTENT.

The school will be held at a camp, with a swimming pool and full athletic facilities. The cost for the six days is \$30.00 for food, room and all other expenses. A limited amount of money is available for scholarships to the school. Please do not apply for a partial or full scholarship unless there is absolutely no way to raise the money locally. The June P.Y.O.C. activities are already running around two thousand dollars in direct costs to the national office and will leave us substantially in the red."

One of the ubiquitous Hallinan boys, Matthew (Dynamite), went to New York and participated in the school. There were other delegates from San Francisco and Los Angeles, and it was here that much of the basic strategy was perfected for the new nationwide Communist youth movement that was to emerge from the convention held in San Francisco over the week end of July 19-21, 1964. As this convention got under way, the advance preparation became evident when it was disclosed that a device had been perfected through which votes would be allocated in such a manner that a solid Eastern bloc could team up with the San Francisco DuBois Clubs and control the convention in the event of a crisis. The formula gave San Francisco delegates one vote each; other California delegates two votes each, and those from out of the state three votes each. There were twelve delegates from New York, with a total of 36 votes—and at the convention (this not being deemed enough), it was voted to give the New York delegates a total of 72 votes. These, cast invariably in a bloc on all vital matters, enabled the hard core to dominate the convention, which it did completely and ruthlessly.

One of the most crucial votes was on the adoption of the constitution, a draft of which had been prepared by a student from the University of Michigan. There was much dissension about the adoption of portions of this document providing for organizational structure and authority. The final vote for adopting the proposed sections was 284 to 233, with 24 abstentions. Here was an instance where a minority of those present was able to exercise control. At this point an estimated 30% of the delegates walked out in disgust, but this left the hard core solidly in power, and the convention proceeded about its business. We will later discuss this June 19 convention in detail.

This is not the appropriate place to set forth in depth the constitution of the new Communist youth movement, the working papers and reports

that were discussed at length, nor the details of its organizational structure. It is, nonetheless, essential that we know something of the component parts of the new organization if we are to know anything about the Communist element in the Berkeley rebellion that occurred about three months after the convention adjourned. As we progress to a detailed examination of the rebellion itself, the names of the leaders of the DuBois Clubs of America will become increasingly familiar. At the convention, as we have indicated, were Trotskyites, members of the Young People's Socialist League, representatives from the Youth Action Union in Southern California, members of the Student Non-Violent Coordinating Committee, a handful of other and less important radical youth organizations, and, of course, those adherents of the Moscow Communist line who were in firm control of the proceedings from their inception to their conclusion with the emergence of the new Communist youth organization in the form of the DuBois Clubs of America.

We have no intention of describing each of these organizations in depth, but it is indispensable to know something about the Youth Action Union of Southern California because of its proximity to U.C.L.A., its decidedly Communist orientation, and its importance as one of the more influential participating groups at the San Francisco convention of June, 1964.

Virtually all of these radical youth organizations with a Marxist or firm Communist orientation had their own publications that appeared from time to time, carried the current Communist Party line, gave notice of lectures, schools, meetings, and civil rights demonstrations, and served the usual propaganda purposes of the organizations they represented. The Youth Action Union also had such a publication, as did the DuBois Club of San Francisco, but the official organ for the Young Communist movement in the United States was a little magazine published under the name of *New Horizons for Youth*. Its office was located at 1426 Bristol Street, Philadelphia 40, Pennsylvania. Its editor was Lionel Libson, and members of its editorial council came from San Francisco, Chicago, Detroit, Philadelphia, Iowa, Pennsylvania, and Ohio. In September, 1964, Arlene Schupak wrote the following letter, which is self-explanatory, and shows how most of the local organizations of radical youth discontinued their publications, and in many cases discontinued operating under the old names, and simply became DuBois Clubs. This was the case with Youth Action Union of Los Angeles. The letter to which we refer read as follows:

"September 8, 1964

Youth Publications, Inc.
1426 Bristol St.
Phila., Pa. 19140

Dear Subscriber:

Due to many editorial and financial difficulties which could not be resolved by the publishers of *New Horizons for Youth*, it has become impossible to continue publishing. Many of you responded to our recent subscription drive and thus have paid for totally or partially unused subscriptions. We feel it only fair that we offer your money back on the unused sub, if so desired.

However, we have been happy to hear that a publication similar in form and content to *New Horizons* will be forthcoming from the

W.E.B. DuBois Clubs of America—a nationwide Socialist-oriented action organization recently formed in San Francisco. Many of the writers and supporters of *New Horizons*, including this correspondent, were active in the formation of this exciting new youth organization.

The forthcoming publication will be popular in format and will be designed to appeal to those active in the progressive movements of today as well as those masses of youth we are trying to involve in action.

At the request of the publishers of *New Horizons*, the editors of the new publication—yet to be named—have agreed to honor the unused subs of NHY, if this is agreeable to the subscriber. Since we do not expect there will be too many objections to this procedure, we have decided to go ahead with the transfer, unless we hear from you to the contrary. In other words, if you wish your money back, write; if not, then you should expect to receive the DuBois Club publication. For information on the DuBois Clubs, write: 1007 McAllister, San Francisco, Calif."

We mentioned the Independent Student Union in our 1963 report at page 133. This Marxist organization was started late in 1959, and was kept alive largely through the driving force of Carl Bloice and Althea Sims. After Bloice left for San Francisco, however, the organization began to slowly wilt and it eventually expired in 1962. Some of its members carried on under the name of Students for Peace and Freedom, and then this organization evolved into the Youth Action Union, in which we are now interested.

Among those on the YAU mailing list in 1964, immediately before the San Francisco convention, were Jim Berland, Downey; Dan Bessie, Reseda; Michael and Tobey Bye, Los Angeles; Ruth Greenbaum, Westwood; Dorothy Healey, Los Angeles; Joan Kramer, Los Angeles; Tamara Losnick, Los Angeles; LaRue McCormick, Los Angeles; August Maymudes, Los Angeles; Gene Partlow, Los Angeles; July Rinaldo, Los Angeles; Jeff and Tony Wilkinson, Los Angeles.

In 1963 meetings were held at 4402 Melrose Avenue, Los Angeles, where classes in Marxism were given to interested members. These classes were conducted by Dan Bessie, Hugh DeLacy and Marvin Treiger, who was then president of the organization. Even at this early date there was considerable propaganda concerning United States foreign policy, and at the meeting held on August 13, 1963, at which there were approximately 40 people, average age about 23 years, a letter was read from the Viet Nam Youth Federation stating that thousands of people in Viet Nam had been killed because of bacteriological warfare waged by the United States.

Meetings of the YAU were also held at 4302 Melrose, and occasionally at the homes of some of the members. The organization has never been successful from a financial standpoint, and was compelled to move its headquarters from one location to another during the entire period of its existence. Immediately before the June 19th conference in San Francisco, Tobey Bye was elected chairman, and Alan Zak was elected organizational secretary for YAU. They had participated, to some extent, in preparation for this conference and when official notification of the time and place was received from San Francisco, much of the enthusiasm among YAU members in Los Angeles was generated by the activities of the new president and organizational secretary. These notices contained questionnaires which were to be filled out and be sent to Bettina Aptheker, 635 51st Street, Oakland, California, telephone OLYmpic 4-5668, and

added that additional information might be received from Matthew Hallinan, 2414 Dwight Way, Berkeley.

The first *Youth Action News* to be published after the San Francisco convention appeared in July 1964, announced the acquisition of new offices at 1104 N. Mariposa Street and carried the following statement concerning the launching of the new Communist youth organization:

"The Phoenix is a legendary bird which is repeatedly destroyed by fire, yet is reborn, and emerges whole from the ashes.

There is a Phoenix liberated in the land. Out of the debris of the old left, reduced by the cold war, McCarthyism, the nuclear threat of annihilation, and 'the silent generation,' there is a new voice of the militant youth in the United States, rising 'from the ashes'—the W.E.B. DuBois Clubs of America.

In an historic convention held in San Francisco last month, delegates from all parts of the United States formed a new Socialist youth group, intended to deal with the new problems in a new way. The convention was not without its problems, even heartbreak, but on the other hand, moments of inspiration. The result was a nation-wide organization of youth seeking answers to the great problems of our time—peace, jobs, and freedom, and willing to work for their solution.

As difficult as the creation of the DuBois Clubs of America has been, the hard part is coming. It is one thing to declare the existence of a group, and quite another to translate it into a viable instrumentality for meaningful action. Our paramount problem is organization.

Here in the Southwest region, headway is being made in that direction. There are, in the Los Angeles sector, 1½ DuBois Clubs now in existence (the YAU will not formally affiliate with the DC of A until the regional conference in August), and there are two more coming. The planning committee is already thinking in terms of specific issues and actions.

The future of the DuBois Clubs cannot be foreseen, at this time. At worst, it may be premature, subject to disinterest on the left and harassment on the right. At best, it may serve to form the nucleus of a mass organization of those youth beginning to understand that *the only solution to the ills of society is in the transformation of the society itself.*" (Committee's italics)

San Francisco Socialist Youth Conference

Over the week end of March 21 and 22, 1964, a Socialist Youth Conference had been held at the YMCA building, 1530 Buchanan Street in San Francisco. This meeting was sponsored by the DuBois Clubs in San Francisco, Berkeley, San Francisco State College and Los Angeles, and the Youth Action Union. Those in the Los Angeles area who desired to attend the conference were to contact Anne Levine, a UCLA student, and sets of working papers were then distributed by mail. For some reason that we cannot explain, most of these papers were prepared in Los Angeles and were the result of work done principally by Stephen Solomita, Anne Levine, Paul Rosenstein, Victor Oliver, Alan Zak, Marvin Treiger and John Titus.

The invitation for the conference reads as follows:

"Dear Friend, on the weekend of March 21-22, there is going to be a conference in San Francisco, at the YMCA 1530 Buchanan (Geary and Buchanan), sponsored by a number of Socialist Youth Organiza-

tions. We hope to bring together a broad spectrum of young people who are interested in examining the possibility of a Socialist alternative to contemporary social problems.

Today there is a growing number among our generation who refuse to accept poverty, unemployment, bigotry and war as somehow beyond the rational control of man. We feel that this conference will provide a much needed arena in which these people can exchange ideas and experience. We have too often been prone to discuss rather than act upon their ideas. We hope that this conference will be able to produce some form of program, or at least point to a direction, by which young people can begin to actively deal with today's pressing social problems. We invite all who would be interested in such a conference to meet with us in San Francisco.

(Signed) San Francisco DuBois Club, Berkeley DuBois Club, San Francisco State DuBois Club, West Los Angeles DuBois Club, Youth Action Union."

The working papers were entitled: 1. General Background, by Stephen Solamita; 2. Beginning Years, by Anne Levine; 3. Free by '63?, by Paul Rosenstein; 4. The Black Muslims, by Victor Oliver; 5. Local Civil Rights Organizations, by Alan Zak; 6. Roll (sic) of the Left and Present Stages of the Struggle, by Marvin Treiger; 7. The Glass Menagerie in the Bracero Movement, by John Titus.

The agenda provided that on March 20th, 8:00 p.m., there would be check-in and registration, followed by an informal gathering at the San Francisco headquarters of the W.E.B. DuBois Club, 1007 McAllister Street. After lunch on Saturday, the 21st, there was an address from 1 to 1:30 p.m. by the keynote speaker, who was originally announced as Louis Goldblatt, secretary-treasurer of the International Longshoremen's and Warehousemen's Union, but he was unable to appear for some reason and the substitute speaker was Dr. Carlton Goodlett, of San Francisco. The keynote speech was followed by area reports, being brief summaries of local conditions and activities prevailing in the three major areas represented at the conference, to-wit: the Pacific Northwest, San Francisco and Bay Area, and Los Angeles. From 2:15 to 4:00 p.m. there were workshop discussion groups which were aimed at discussing contemporary social problems, comparing experiences in the various areas represented, and developing better co-ordination among groups on the West Coast.

The workshops considered the following topics: 1. Automation and American Labor, by Kayo Hallinan; 2. The Southern Civil Rights Movement, by Carl Bloice; 3. The Northern Civil Rights Movement, discussed by the delegates from Southern California; 4. The Ultra Right, discussed by Robert Kaufman; 5. Peace and Disarmament, discussed by the representatives from Seattle, Washington; 6. Civil Liberties, discussed by representatives from the Portland, Oregon, area, and Bettina Aptheker. From 4:15 to 5:30 p.m. at the plenary session of the conference, there were reports from each workshop, brief summaries about conclusions reached during afternoon discussions and suggestions concerning the role of Socialist youth in solving current problems. At 8:30 p.m. there were art movies at the W.E.B. DuBois Club in San Francisco, followed by a reception.

On March 21st there were discussions about the building of a nationwide Socialist-oriented youth organization, the opening speech having been made by the chairman for the day, Mike Meyerson, a member of the Bay Area National Organizing Committee. On Sunday afternoon the

discussion revolved around the formation and functions of a national youth organization and the consensus resolution on the West Coast position concerning the formation of such a movement was concluded shortly before adjournment at 4:30 p.m. on Sunday, the 21st.

Obviously the documents that were distributed to persons attending this conference are far too long to be included here, and, indeed, would hardly be relevant to this portion of our report. There was, however, a paper on "The Question of Orientation: Campus and Community," which is extremely pertinent, and which we therefore reproduce:

"This paper grew out of a discovery of certain weaknesses in the approach used by Students for a Democratic Society in outlining policy for student participation in community activity. SDS had frequently taken the position that the role of youth is to work almost exclusively among the poor and the unemployed while not actively pursuing (sic) policies among their peer groups on campus. The result has been a lack of organization of youth on educational issues and the development of a 'social worker' outlook towards the working class community. SDS has sent its members into the community to foster change irregardless of the objective capability of the working class community at the time to accept college youth. In certain instances similar problems have arisen in the Berkeley DuBois Club.

The purpose of this paper is not to deny that youth can successfully work among working-class people. Rather we wish to emphasize the positive aspects of political organization on campus around issues such as *in loco parentis* and democratic education which are relevant to the development of political consciousness and academic freedom among student youth.

In organizing the national group, or for that matter any group, one matter of primary importance is the area in which the group will function. We must look at those persons or groups who are to be members of this organization, and attempt to determine where and in what issues these people would be most effective.

This conference is the best proof of the growing political sophistication of American youth. We have grown from the 1960 Civil Liberties demonstration against HUAC, and have suffered our birth pains in innumerable single-issue organizations. For many of us the initial commitment was a moral one: We grouped separately issues such as peace, abolition of capital punishment, civil liberties and civil rights. However, the same multi-issue orientation, which as students led us to participate in these various activities, soon caused us to search further for the basic causes of what were seemingly separate evils. It gradually became apparent that these issues were closely related. Eventually some of us, particularly those here today, became convinced that the problems stemmed from the basic nature of our economic structure. The DuBois Clubs grew from this realization and were established to give Socialist youth the opportunity to discuss the inter-relationship of problems and to propose solutions to them.

In charting the course of the NYO (National Youth Organization) we must carefully analyze our past experiences, particularly in terms of the movements from which we have sprung. As all of us who participate and know, these were student demonstrations with little or no response from the outside community, particularly from non-student youth. Only recently have working youth demonstrated an

interest in political activity, and this only in the areas which directly affected them. The past year has seen the slow development of Youth For Jobs type organizations. The thousands of youth who leave school every year must first and foremost be concerned with the search for jobs. Thus, their political orientation is in the area of unemployment. With increasing experience in this field an awareness of the inter-relationship between racial discrimination and unemployment among minority groups is developing. However, as the DuBois Clubs know through their participation in the recent demonstrations at the Sheraton-Palace Hotel in San Francisco, even the participation of Youth For Jobs members, is not yet of majority proportion. It is apparent that working youth and the Negro community are only beginning to involve themselves in militant action, and that this is predominantly single-issue oriented. It would be a great mistake to assume that the NYO can develop a higher theoretical understanding of the inter-relationship of societal (sic) problems among groups who have not yet fully committed themselves to participation in single-issue movements. Our contention is that a person is most effective when working with those type (sic) of people with whom he is most familiar; in other words, those people with whom he can best communicate due to a similarity of living conditions, a similarity of daily life problems, or membership in the same class. Of course, in the struggle toward Socialism, many groups which are now distinct in our society will have to merge in a unified struggle, but this will not take place until these various groups have achieved a certain level of consciousness which they do not have today. Eventually ties will be developed between them by interest in the same issues, and, more important, through social exposure to each other. Meanwhile, these groups will progress at different rates and in different ways. They will come to an understanding of the need for Socialism through the solution of their day-to-day problems. These problems, based on economic situations, are of course, different in the different classes; and thus, the understanding of these problems is different in the separate classes. Intellectually one can understand the problems of another, but until one has actually felt these problems and their ramifications, he cannot effectively deal with them. To identify with the problems of one class does not necessarily presuppose the ability to most effectively work within or contribute to the aspirations of that class. For instance, the major problem facing working class people today is job-security. This can be understood in academic terms by those who are not members of the working class, but as they have never really been affected by the problem, i.e., have never been laid off because of automation, have never had to worry about how their children are going to be fed and clothed, and have never had to be dependent on state aid such as unemployment compensation, workmen's compensation or welfare; their approach lacking this experience cannot be the most effective. In the same vein, the problem of academic freedom can easily be understood by working class people but it does not affect them and therefore has no concrete importance for them, whereas for the intellectual it does.

The stated purpose of the NYO is to provide socialist alternatives to problems current on the American political scene. In so doing, we must first determine from what segment of society our base will be drawn. Organizational policies and objectives must be based on

the abilities of this segment to communicate with our Americans. We must not over-extend ourselves by simply relying on the premise that the working class is the only revolutionary element of society. We must honestly evaluate our resources and try to discover, in terms of the analysis of the situation discussed in the preceding portions of this paper, whether in fact we have roots in the working class. If we find that we do not, or that these roots are minimal, we must then attempt to deal with that portion of society with whom we can most immediately communicate, not forgetting, of course, that in the long run we cannot be really successful without establishing close relations with the masses of people.

We propose that our main area of concentration at this time should be among campus youth. It would be incorrect to fail to develop a higher political consciousness among that segment of America which has consistently demonstrated an ability to understand the inter-relationships between socio-economic issues, simply because the most revolutionary elements of society have not yet reached a similar level of political consciousness. Further, we are best prepared as students to deal with our fellows on campus. Similarities of educational experience make communications easier and increase our ability to develop real political consciousness. *We urge that the NYO take the form of National DuBois Clubs.* (Committee's italics) We must participate most actively in developing from our socialist viewpoint an understanding among college youth of the basic problem of a capitalist economy. We must not attempt to convert single-issue organizations of the nature of Youth For Jobs into multiple-issue groups, because to do so would dissipate their still weak forces and strip them of their potency in the areas of their primary concern. We should concentrate our off-campus activities in those areas in which we have historically proved most effective: Civil Rights, Civil Liberties, Peace, and Political Campaigning. Rather than posing socialist alternatives to groups which already exist in these fields, we should aid them in the attempt to consolidate support in the community. We should assist in furthering full understanding of these single issues among the non-committed portions of the working class population, both white and non-white.

We feel that our program must recognize the predominate characteristic of an American political organization today: Its one-issue orientation. Although a few advanced groups such as SNCC (Student Non-Violent Coordinating Committee) in the area of minority relations, and the Women's Strike for Peace in the area of international tensions, have begun to demonstrate an understanding of the relationship of capitalist interest as a whole to specific problem areas, a comprehension of the inter-relationship between capitalism-peace-integration is virtually absent from the political scene. Further, the vast majority of Americans are only beginning to realize that any ONE of these issues exist. Homeowners confronted by the Rumford Fair Housing Act come awake to the existence of a crisis in race relations, while communities threatened with economic bankruptcy by the closure of military establishments realize that peace is also an issue.

The nature of the problems facing working people and members of racial minorities in this country dictate that these groups be basically single-issue oriented. The working man, faced with the

necessity to support a family, naturally is preoccupied with the problems of automation, similarly the Negro faced with the constant denial of his basic human rights engages in a grass roots struggle for his human dignity. Both of these issues are vital to the survival of the concerned group. (This artificial dichotomy between 'working class' and 'Negro' disappears when the minority discovers that human rights are virtually meaningless without the material means to enjoy them. Thus, the struggle for equality quickly merges into the greater single issue of employment.)

When a class or racial minority is confronted with what is more or less a life and death struggle, it has little time to devote to other issues which do not directly involve him.

Today the segment of American society which is in the best position to come to grips with the multi-issue platform is the student community. The presence of the individual in the classroom forces upon him a consciousness of the existence of certain problems. Although classroom discussion is frequently superficial and does not necessarily provoke further thought it does create a frame of reference. Through the academic approach, the student is forced to deal in terms of inter-relationships rather than with ideas in isolation. Over the past four years the student community has demonstrated an increasing awareness of the relation of academia to real life, as detailed in the introductory portion of this paper, and its academic multi-issue orientation has made it capable of discovering relationships between economic and political issues which other elements of society more directly involved in the material struggle for existence cannot pause to consider.

Thus we see that a multi-issue socialist organization, founded at this moment in history will have to appeal to the student community for its main source of support in order to be successful. This does not mean a total and prolonged isolation of the 'intelligentsia' from the working class. It rather enunciates a starting point. The evolution of these two groups in the overall struggle for Socialism will naturally be convergent."

The foregoing paper was submitted by Robert Mandel, Portland Friends of SNCC (Student Non-Violent Coordinating Committee); Donna Haber, Berkeley Community DuBois Club; Phyllis Glick, Berkeley Community DuBois Club.

It is interesting to note that the delegates from Portland submitted a paper which set forth the status of radical youth activities in that state. It explains how FOCUS, a student radical group similar to SLATE at Berkeley, was an outgrowth of youth movements which had supported the Progressive Party, and which existed on the campus of Reed College through the academic year 1961. Then other radical groups took over the operation of left political activities at Reed College and engineered "the unusual victory for academic freedom that came with the Gus Hall tour of 1962." (Gus Hall was then and is now the national head of the Communist Party of the United States.) From that point forward a large membership in the radical left student movement was built up around the Cuban Blockade protest, the Defeat of Civil Defense, a Trade with China Resolution and the Pacific Northwest Peace Conference. At Portland State College a radical student organization, much like SLATE at Berkeley, elected eight members to the community senate in its first political activity and concentrated its propaganda on the issues of *in*

loco parentis. The report concluded by stating that "it will be easy to organize a group at Reed that will be Socialist oriented."

Among the more active participants at the San Francisco Socialist Youth Conference were: Lee Goldblatt, Beverly Radcliff, Harold Supriano, Toby Bye, Matthew Hallinan, Mike Meyerson, Guy Sandler, Marvin Treiger, Rodney Larson, Carl Bloice, Terence Hallinan, William North, Alan Zak, Michael Bye, Bettina Aptheker, Carol Perry, Leslie Brooks, James Berland and Kenneth King. Lee Goldblatt is the daughter of Louis Goldblatt, who was originally scheduled to deliver the keynote address at the conference; Matthew and Terence Hallinan are the sons of Vincent Hallinan, a professed Marxist and candidate for the Presidency of the United States on the Independent Progressive Party ticket several years ago; Marvin Treiger is presently attending Los Angeles City College and is active in Marxist politics; Alan Zak is chairman of the Los Angeles DuBois Club; Michael and Toby Bye are young Marxian activists from Los Angeles; Bettina Aptheker is the daughter of Herbert Aptheker, as we have heretofore explained; Carl Bloice is the former spark plug for the Independent Student Union, Marxist-oriented youth group in Los Angeles, is a writer for the Communist newspaper in San Francisco, and is an active member of the San Francisco DuBois Club; Supriano was an employee of the State of California, and has been connected with several radical organizations; Kenneth King is a member of the San Francisco DuBois Club who made a trip to Cuba in defiance of the State Department regulation against such travel.

The New National Organization of Communist Youth

After the Conference of Socialist Youth in March, it was decided to hold the next convention in Chicago, and there form the new national youth organization. The Coordinating Committee determined to switch the meeting place to San Francisco, however, and to hold it on June 19 through 21, 1964. We have heretofore mentioned the reasons for selecting the Bay Area as most suitable for the seat of Communist power on the West Coast. The leaders of the new youth movement apparently agreed as they stated in their pre-convention publication that the west coast area had a "more favorable political climate."*

Copies of *The Convener*, position papers, schedules of activities, copies of agenda and other materials, were widely circulated prior to the meeting, and attendance from all parts of the country was anticipated. Carl Bloice edited *The Convener*, assisted by Mike Meyerson, Terence Hallinan, Eugene Alexander, Hugh Fowler, Keith and Phyllis Glick, Gerrit van der Hoogt, Kathy Olson, Tom Waite, Luria Castell, Stephan Argent and Sue Miller.

Pre-Convention regional meetings were held in Wisconsin, Philadelphia, Chicago, and New York. Propaganda materials were distributed, generally echoing the current party line about getting out of Viet Nam, changing our government to a Socialist system, resisting the draft, and participating in all civil rights movements. There were some who preferred to hold the new youth organization somewhat aloof from other Left groups, but it soon became apparent that this attitude was impracticable. The National Coordinating Committee was expanded to thirty people, and they actually made all preparations for the San Francisco

**The Convener*, vol. 1, No. 3, p. 10.

meeting. Through the columns of *The Convener* they set the general tone of the convention, and through the issuance of position papers the program was planned well in advance. It is to be noted that one of the omnipresent brothers Hallinan wrote an "Editorial Expressing the Views of the Staff of the *Convener*," describing the United States action in Viet Nam as an "effort to crush the revolutionary desire and upsurge of the Vietnamese people . . ." and referring to our use of "napalm bombs, torture, concentration camps and other forms of extreme terror."*

Members of the San Francisco DuBois Club proudly claimed that they led the demonstrations in San Francisco that resulted in a total of 395 arrests and pointed out that there were " . . . several new and important features to these demonstrations. One was the audacity and determination of the participants. Another was the widespread popular support that they obviously had and the positive results they were able to bring about. The most significant is that they were led by a Socialist youth group, the W.E.B. DuBois Club."†

Those who signed the call for this June 1964 convention, as set forth on page 15 of *The Convener* No. 4, were: Eugene Alexander, Student Legislature, S.F. State College; David Bacon, Berkeley High School Socialist Club; Robert Baum, Minneapolis CORE; Diane Beeson, San Francisco W.E.B. DuBois Club; Bruce Benner, Research Worker, International Longshoremens and Warehousemen's Union, San Francisco; James Berland, Community Senate, Reed College, Portland, Oregon; Mike Berry, SLATE, Berkeley; Don Bluestone, Associate Editor of *Sanity*, Madison, Wisconsin; Leslie Brooks, Chairman, Ad Hoc Committee to End Discrimination, Los Angeles; Roberta Bruce, Board Member, Chicago Committee to Defend the Bill of Rights; Karol Burkett, Representative-at-Large, Student Legislature, San Francisco State College; Toby Bye, Youth Action Union, Los Angeles; Edward Campbell, Vice Chairman, CORE, Bridgeport, Connecticut; Norman Chastain, Co-Chairman, Citizens Committee for Disarmament, San Francisco; Frank Ciociorka, Executive Officer, TASC San Jose State College; Ken Cloke, former president of SLATE and member of the Student Senate at the Berkeley campus of the University of California; Ted Cohen, President, Berkeley Young Democrats; Dave Cunningham, Editor, *Iowa Defender*, Iowa City; Bill Dady, Economic Research and Action Project, Students for a Democratic Society, Louisville, Kentucky; Roberta de la Torre, Demonstration Chairman, Madison, Wisconsin region, Madison CORE; Stewart Dowdy, former National Student Association Coordinator, Illinois-Wisconsin Region; Rick Drobner, Commercial Artist, Los Angeles; Barbara Easton, Executive Officer of TOCSIN, a peace group not to be confused with the anti-Communist publication by the same name, Cambridge, Massachusetts; Michael Eisenschel, president, University of Wisconsin Employees Association, Madison, Wisconsin; Charles Fisher, President, Student Peace Union, College of the City of New York; Steve Frankel, Bridgeport Union of Socialist Youth, Bridgeport, Connecticut; Dan Friedlander, Grinnell College, Iowa; Lester Galt, former President, North Dakota Young Democrats; Mickey Gillmore, President, Harvard-Radcliffe Socialist Club; Art Goldberg, Chairman of SLATE, Berkeley; Gene Gordon, Trade Unionist, Bridgeport, Connecticut; Ruth Greenbaum, Chairman West Los Angeles DuBois Club; Beverly Gudbrandson, Shop Worker, Minneapolis, Minnesota; Matthew Hallinan,

**The Convener*, April, 1964, p. 3-4.

†*The Convener*, vol. 1, No. 4, p. 3.

Executive Committee, Berkeley DuBois Club; Don Hammerquist, Teamster, Portland, Oregon; John Handy, Jazz Musician, San Francisco; Gail Kaliss, President, Chicago Call for Youth; Brian Keleher, Michigan State University Young Socialists, East Lansing, Michigan; James A. Kennedy, Associate Editor, *Studies on the Left*, Chicago; Joseph Kransdorf, Activist, SPU, Pittsburgh, Pennsylvania; Revel Liebert, former Chairman Columbia University CORE, New York; Arnold Lockshin, University of Wisconsin Student Government; Vincent Lynch, the *Sun-Reporter*, San Francisco; Art McEwan, former Student Body President, University of Chicago, Illinois; Kim Maxwell, Chairman SPU, San Jose State College; Kip Montgomery, Local 10, ILWU, San Francisco; James Moore, President of the University of Wisconsin Socialist Club; Mike Meyerson, Ad Hoc Committee to End Discrimination, San Francisco; Leslie Olson, Bergern, North Dakota; James Peake, Jr., former NAACP Youth Field Secretary, East St. Louis, Illinois; Nancy Ann Penick, Civil Rights Activist, Louisville, Kentucky; Carole Powell, Chairman, San Francisco DuBois Club; James R. Prickett, Regional Director, California Federation of Young Democrats; Paul Richards, Chairman, Berkeley DuBois Club; Thomas Rossen, Community Senate, Reed College, Portland, Oregon; Guy Sandler, San Francisco State College DuBois Club; Jim Soliz Sager, Los Angeles CORE, the Mexican-American Committee, Los Angeles; Robert Scales, Shop Steward, St. Louis, Missouri; Thomas Seatina, Oakland Youth for Jobs; Richard Schaefer, Local 10, ILWU, San Francisco; Ronnie Schmidt, Tolna, North Dakota; Michael Schneider, California Democratic Clubs, San Francisco; Jeff Segal, Student Body President, Roosevelt University, Illinois; Judy Shub, Bruin CORE, UCLA, Los Angeles; Arlene Shupak, Business Manager, *New Horizons for Youth*, Philadelphia, Pennsylvania; Albert E. Silverstone, Chairman, Portland Students for Peace, Portland, Oregon; Tracy Sims, Ad Hoc Committee to End Discrimination, San Francisco; Charles Smith, University Socialist Club, Austin, Texas; Steve Solimita, Action Chairman, YAU, Los Angeles; Marvin Steinbrecker, President, Socialist Discussion Club, Iowa City, Iowa; Ed Spannus, Friends of SNICC (Student Non-Violent Coordinating Committee), Iowa City, Iowa; Bernice Taylor, High School Discussion Group, New Haven, Connecticut; Frank Thompson, Local 17, ILWU, Sacramento; Mike Tigar, former officer of SLATE, Berkeley; John Tillotson, SPU, Minneapolis, Minnesota; Marvin Trieger, Chairman, YAU, Los Angeles; Joseph Uris, Student Council, Portland State College, Portland, Oregon; Rita Vatter, Students for Integration, Minneapolis, Minnesota; Arno Vosk, Chairman, Action, Columbia University, New York; Douglas Wanger, Trade Unionist, Chicago; Thomas Waite, Chairman, Youth for Progressive Action, Minneapolis, Minnesota; Richard Weston, Chairman, TASC, Santa Rosa Junior College; James Williams, former editor, *New South Review*, Louisville, Kentucky.

Marvin Treiger presided at the opening session of the convention, outlined the procedure and general program, and the group then divided itself into sections on organization, civil rights, Puerto Rico, Negro problems, unemployment, Bracero farm workers, peace, civil liberties, education & culture, political action, Viet Nam, and Socialist youth unity. Terence Hallinan's statement entitled "We Must Now Begin to Speak," was widely distributed and served to establish the general tone of the convention, being a five-page document which set forth the history and accomplishments of the W.E.B. DuBois Club of San Francisco and pointed out

that there were five clubs in the general area and three in process of formation. He declared:

"San Francisco, it is true, has long had a reputation as a progressive town. But, there are still the same problems here as in any major city. When we first started, none of the mass organizations would have anything to do with us. When the United San Francisco Freedom Movement, for example, was launched a year and a half ago, we tried to participate. There was such an uproar that we were forced to withdraw our application and were not even permitted to attend meetings. Today we have a situation where the same CORE leader who led the campaign against us declares to the press that if Khrushchev wants to come walk on their picket lines, he is welcome, and the secretary of the San Francisco DuBois Club is a member of the executive board of the San Francisco United Freedom Movement.

This position we now enjoy has not come to us easily. We have it only because we were willing to fight for it. Conditions today are such that we have been able to mobilize a great number of young people and to show the mass organizations that any repercussions they might suffer from working with a socialist youth organization would be more than compensated for by the help our club could provide. It is the firm belief of those of us in the Bay Area that the conditions for a Socialist youth organization on the order of the DuBois Clubs exists in every major city and campus in the country."

The various sections then convened at the ILWU Building; at 60 Leavenworth Street, Apartment 22; at 918 Buchanan Street, 1007 McAllister Street (San Francisco DuBois Club headquarters), and at the office of the American-Russian Institute, 90 McAllister Street. This latter organization is an old Communist front, headed by Holland Roberts, former Stanford University professor, and for many years head of the Communist School in San Francisco.

These various workshops continued through Friday and Saturday, June 19 and 20, and reported to the general meeting. Treiger caused the first of a series of angry outbursts and disagreements when he stated that minority reports could not be read, but would be ruled out of order because there was too much to be done and too little time. A compromise was finally effected when it was declared that the majority report would be read in its entirety, and that there could be one opposition speaker who had three minutes to present his views. There could only be three suggestions for amendments. Immediately after lunch on Saturday, the majority adopted the tactic of presenting two or three amendments, and leaving no chance for any substantial change of the original report. Minority reports were never permitted to be presented. The chair also adopted the practice of recognizing only the most unpopular delegates for opposition remarks, so that there was actually little danger of the majority faction losing its iron grip on the convention.

There were wide varieties of radicalism represented: the Maoists, the Trotskyites, the Socialists, the Anarchists, the independents, the various autonomous local groups, and the usual scattering of existentialist non-conformists who appeared to be opposed to almost every suggestion. There was much acrimony, much shouting; and it soon became clear that a slowly-mounting anger and resentment was developing as it became ever more evident that a small faction was in control and would brook no challenge to its power. And this was the Moscow line Communist group, consisting of the leadership in the DuBois and Youth Action Union

organizations. They had dominated the National Organizing Committee, then the National Coordinating Committee that set up the San Francisco Convention, and the Socialist Youth Conference in March.

Principle was sacrificed for expediency when a proposal was made that no one be supported who had voted in Congress for the Smith or McCarran Acts. The proposal was defeated, but only because some 490 members of Congress who voted for these measures that are so hated by the Left establishment could not then be supported—and some of them might be needed for other matters.

The resolution on peace provided that no member of the youth organization should serve in the armed forces assigned to fight in Viet Nam. But this was defeated because all members would be liable to prosecution as draft dodgers instead of conscientious objectors.

During discussions of the proposed constitution, Robert Kauffman suggested that as Article III specified no person should be eligible for membership who opposed the principles and policies of the new organization, then no member of another national Socialist youth group should be entitled to vote or hold office. This was aimed at the Young Socialist Alliance and Progressive Labor Movement, and precipitated much argument. Carl Bloice declared that no effort was being made to unite the Left, and that no member subscribing to other ideologies would be allowed to influence policy decisions. At that point another Negro delegate said that he came for the purpose of welding together a broad movement of Socialist youth—not to form a rigid organization preoccupied with expelling anyone daring to disagree with its program.

Allan Sharp, a delegate from the national committee of another nationwide youth organization, then declared that the invitations to the San Francisco convention had been a hoax; that there was never any real intention of forming a broad youth group, and that neither he nor his followers would be able to participate under the provisions then being adopted.

At that point, Sharp started walking out of the meeting, and was followed by others until approximately one-third of the delegates had permanently deserted the convention. Those who remained were the faithful members of the DuBois Clubs, Youth Action Union, and a few other of the more radical and Communist organizations. Even the San Jose State College unit of the DuBois Club announced that it had no intention of affiliating with the new national movement.

After the mass exodus, the convention settled down to a semblance of order, but there were still some dissident voices to be heard. Finally, there was the matter of selecting a name for the new organization, and an unidentified delegate arose and said that he implored the leadership not to use the word "Socialist" in the title, because he held that word sacred. With considerable emphasis he stated that after what had occurred any use of the name would be utter hypocrisy. Then he walked out of the hall, accompanied by a round of applause and still more disillusioned delegates.

About 139 people remained, and it was now apparent to them that they had gone too far, and that their rigging of the meeting to concentrate power and warp the membership to the radical ideological views of the small core of leaders had provoked too much resentment. They then rescinded the proposal about exclusion of other Socialist groups. As one observer remarked, this was the inevitable penalty that plagues a group that first puts itself together as a small, tight little center of control and then seeks to hold a rubber-stamp convention. But this is the way with

Communist organizations the world over; as we have explained in previous reports, Communist organizations operate on the principle of what they term "democratic centralism." In theory this consists in the decisions being made by the broad membership and transmitted toward the apex of the organizational triangle for action. In practice, however, the few at the top make the decisions, and they are rubber-stamped by the membership. Those who oppose this practice are condemned as disrupters of the class struggle, opponents and enemies of the world revolutionary movement, and are suspended or expelled.

At present there are five DuBois Clubs operating in Southern California. DuBois Central is comprised mostly of Mexican-American members, and is headed by Alan Zak and Sue Green. DuBois South, a small unit with about seven to ten members who attend with any regularity, is headed by Victor Oliver and Frank Alexander. DuBois West, which devotes itself almost exclusively to the UCLA campus, is headed by Ruth Greenbaum, and is the most active of the five. Marvin Treiger is busily organizing new units, and DuBois East is small and not especially active as this report is being prepared. There are also skeleton clubs, one of which operates in the Santa Monica-Venice area. In the Bay Area, however, the activity is on a much more sophisticated plane and far more effective for reasons that we have mentioned: in short, because the center of Communist power and the most mass following and tolerance exists in that part of the state.

J. Edgar Hoover has described the DuBois Clubs of America as a Communist youth organization, and the Clubs have made no effort to conceal that fact. Several years ago the officials at the University of California would have been aghast at any suggestion that such a group be extended an official welcome to function on the Berkeley campus, but under the present administration such recognition was extended and the DuBois Clubs were given campus status in 1963.* It was, therefore, made easy for the DuBois Clubs to collaborate in propagandizing other students, recruiting more members, spreading dissension against the university authorities, and eventually providing driving power for the united front that triggered the first demonstration on the Berkeley campus in the fall of 1964, and terrorized the very administration that allowed them to function officially on the campus. It seems strange that despite the Regent's policy of not tolerating Communists as employees of the University, the administration welcomes Communist organizations, throws the portals open to Communist speakers, and exhibits an easy tolerance of Communist activists that defies all reason.

At the present time there is being formed a new national organization of Communist adults. These are the tough followers of the Red Chinese line of permanent revolution; the most militant of the Communists who scorn any concept of peaceful coexistence and demand a permanent war against our way of life. It will be interesting to see whether the university administration will also succeed in charming the Regents into extending official campus recognition to this organization. Any demonstrations that follow should indeed be spectacular. It makes very little sense to us that the administration at Berkeley should expel SLATE when that organization defied the rules and called Clark Kerr some unpleasant names a few years ago, and then recognize the DuBois Clubs. Perhaps there is a difference without much distinction, as SLATE managed to capture seven out

**Daily Californian*, November 11, 1964.

of the eight positions in student government at Berkeley in the 1964 elections, so its proscription didn't cramp its operation to any serious degree.

Notice should be taken that the formation of the DuBois Clubs of America was concluded on June 21, 1964. The announcement was mailed from the newly-established national headquarters in San Francisco, a series of regional conferences were scheduled for the late summer, and plans were made for the building of a network of local chapters. Funds were solicited for the support of the temporary national office at 1007 McAllister Street, San Francisco, and plans were made for publication of newsletters both from the Bay Area and Southern California organizations. This was accomplished in the south with the issuance of *The Correlator*, and in the north with the appearance of *Insurgent*, in the spring of 1965. Carl Bloice edits this publication, and the first issue contained material presented under the joint efforts of the staff and contributors. They included Celia Rosebury, managing editor; Karol Burkett Supriano, art editor, and former secretary of the Marxist School of Social Science in San Francisco; Howard Harawitz; David Castro; Michael Folsom; Steve Murdock, from the *People's World*, and John Haag, owner of a Venice West restaurant, and a leader of the Southern California West DuBois Club. The national office of the DuBois Clubs of America is now situated at 1853½ McAllister Street, San Francisco. The first issue of *Insurgent* leveled its propaganda guns in the general direction of the Regents of the university as the villains representing Big Business in the class struggle, as against the Progressive Element of the faculty and administrators and the student rebels as the heroes. This is the customary theme of all Communist propaganda; the rich, privileged class of exploiters against the poor, underprivileged masses of exploited people—the bourgeoisie against the proletariat, in Marxist terms.

Background for Revolt

The first phase of events leading to the Berkeley Rebellion falls now into its proper place. We have seen how the Communist Party originally established its headquarters on the Pacific Coast in San Francisco, developed its indoctrination and educational system in that city, established its faculty and student units at the Berkeley campus of the University of California and steadily built a strong base of operations in the Bay Area of California and particularly at the principal campus of the nation's largest university. We have also traced the growth of various radical student organizations there—especially SLATE, and we have seen how this organization and other groups united to form a new Communist youth organization, the DuBois Clubs of America, with its national headquarters also situated in San Francisco.

It now remains to examine phase two of the Berkeley Rebellion, and we move a step closer to the outbreak of actual demonstrations in September, 1964. This second phase consists in examining the international Communist situation immediately preceding the eruption of the rebellion and a determination of what the international party line was for Communist youth at that time. We shall reserve until later a discussion of the reasons that moved the Communist elements of the rebellion to select Berkeley as its most vulnerable target, the general attitude toward Communism on the Berkeley campus having been demonstrated by the erosion of its security measures, the opening of the campus to Communist

propaganda speakers, and the easy tolerance of pro-Communist faculty members who made little effort to conceal their profound Marxian bias either from students or administration.

It is significant to note that there was a meeting in Moscow, September 16-24, 1964, of "A World Forum for Solidarity of Youth and Students . . ." This convention was sponsored by the Committee of Youth Organizations of the USSR, the International Union of Students and the World Federation of Democratic Youth. We have already alluded to the two latter organizations as being the most important of the international Communist youth fronts, and at this particular meeting there were representatives from more than one hundred nations. The delegates from the United States consisted of four representatives from the DuBois Clubs and some students from the University of Wisconsin.

The United States National Student Association refused to participate in this Communist conclave, and the non-Communist Student Peace Union ". . . was flatly told that it could send no more than one delegate and would receive no financial assistance."*

The main topic of the conference was an international drive to accelerate the recruiting of students, the unleashing of student demonstrations, and the establishment of an International Solidarity Fund to channel Soviet and other financial aid to national liberation movements and to provide technical and financial assistance to new nations. A "liberation movement" in Communist terms, means the subversive strategy used to accomplish the destruction of non-Communist institutions.

It is also significant to note that three prominent California activists were in the Soviet Union in September, 1964. They were Herbert Aptheker, Carl Bloice, and Dr. Carlton Goodlett. Aptheker, is the father of Bettina Aptheker, who played a prominent role in both the DuBois Clubs and the student rebellion at Berkeley, and whose descriptions of the events of the past six months have been printed in several Communist publications. Mr. Aptheker was for several years the editor-in-chief of *Political Affairs*, the monthly organ of the National Committee of the Communist Party of the United States. He has appeared on the Berkeley campus as a lecturer on several occasions, and is one of the most important Communists in the country. Carl Bloice attended the Moscow meeting as a delegate from the DuBois Club of San Francisco, and Dr. Carlton Goodlett will be remembered as the keynote speaker at the DuBois Club Convention in San Francisco. He also happened to be in Moscow in September of that year.†

We may note in passing that Herbert Aptheker was scheduled to speak under the sponsorship of Youth for Peace and Socialism, Forerunner of the Youth Action Union, at Park Manor, 607 S. Western Avenue, Los Angeles, on May 3, 1962. He was, according to the handbill issued by the sponsoring organization, to speak on the Negro question, and he was accompanied at the meeting by Dorothy Healey, chairman of the Southern Division of the Communist Party of California.

The September meeting of the World Forum for Solidarity of Youth and Students had been preceded by a "preparatory meeting" in Moscow in April of that year. Consequently, at the April meeting a permanent secretariat of the World Youth Forum was established, and this secre-

**Problems of Communism*, November-December, 1964, pp. 64-67.

†See *Communist Affairs*, July-August, 1964, page 10; *San Diego Union*, January 31, 1965; *Problems of Communism*, November-December, 1964, page 64; Washington Report, American Security Council, December 21, 1964.

tariat was, of course, rigidly dominated by delegates from the World Federation of Democratic Youth and the International Union of Students.*

The December report of the American Security Council, issued from Washington, reported on the establishment of the International Solidarity Fund, and described this international center for the financing of subversion throughout the world on the part of radical youth organizations as "A Fund for the Revolution."† The *Washington Report* read as follows:

"Moscow . . . decided to establish an unlimited global 'solidarity fund' to finance Communist-led student agitations throughout the world. For 1965, one hundred million dollars of this fund have been earmarked for Latin America, including our Eastern Atlantic ocean bastion that also faces the Caribbean—Puerto Rico.

The first announced monies from this fund were employed in South Viet Nam in the month of November, 1964. Fifty thousand dollars were intended to produce the instability of the Saigon government and to promote the Viet Cong cause of 'national liberation.'

Money was liberally poured into capitals throughout the Asian-African bloc and into the iron curtain countries to promote 'hate America' riots because of the air-borne rescue operation in the Congo. That Communist maneuver proved successful because the air-borne forces were withdrawn, under the bombardment of the Moscow-Peking propaganda before all the hostages were rescued.

The outbreak of student agitation and lawlessness on the campus of the University of California was not isolated from this global Kremlin plan. It followed the identical pattern of similar student agitation that has been the rule rather than the exception under Communist Party and Communist front direction in Latin America. Defiance of authority and demands for independent 'political' activity on the campus, have characterized Communist-inspired disorder there.

The first public announcement of the establishment of this 'solidarity fund' came to my attention in a dispatch published on November 13, 1964, in the official Communist Party daily *El Siglo* of Santiago, Chile. The dispatch was datelined from Moscow the previous day. It carried the by-line of Joaquin Gutierrez, a Costa Rican Communist who is married to a Chilean Communist. Gutierrez was listed in *El Siglo* as its correspondent in Moscow.

The *El Siglo* dispatch quoted Vladimir Yarovoy, vice-president of the Komsomol (Russia's Young Communist League), as the authority for the announcement of this 'solidarity fund.' It was significant that Yarovoy chose November 12 to announce the existence of this fund and used the vehicle of the official organ of the Communist Party in Chile for the purpose. It was the nineteenth anniversary of the founding of another arm of the International Communist apparatus, the World Federation of Democratic Youth.

The fund is to be employed to stimulate anti-American propaganda, organize demonstrations and riots against American embassies, consulates, United States information offices and libraries, and to attempt to undermine constituted authority wherever and whenever necessary. The plan, it has been learned, calls for the organizers to provoke the police to employ what the Communists charge is 'brutality' to suppress the riots and to compel the military to employ

**Tass*, April 18 & 20, 1964, p. 33.

†The American Security Council, *Washington Report*, issued on December 21, 1964; see also: *Bulletin for Study of the USSR*, November, 1964, p. 62, which states that establishment of the solidarity fund was announced in Moscow on September 26, 1964.

identical tactics. This is designed to blacken the image of, and arouse sentiment against, the only forces that are equipped to forestall a Communist takeover.

The decision to earmark the vast sum of money for Latin America to emphasize the role of youth was made in Moscow after a thorough critique of the setbacks suffered by the Communists this year in their never-discarded master plan to capture Latin America.

The new plan met with the gleeful approval of the Chinese Communist delegates who attended a secret high level planning meeting for that purpose during their visit to Moscow for the forty-seventh anniversary observance of the Russian Revolution. Although it is true that the Moscow line has appeared to look 'softer' than the Peking line, both converge for the avowed identical objective to promote agitation and subversion through the use of violence by high school and university students. Despite the apparent cleavage in the Communist camp, this unity of purpose and cohesion in the youth movement is still visible in Latin America.

The thrust for the re-invigorated student offensive in Latin America will come from Communist Cuba, but dollar-starved Fidel Castro will not be given control of the expenditure of the 'solidarity fund.' He will only receive an allotment to cover expenses for the modern college of Communist subversion which he established in 1960 and which he has since spread across the island with at least six model red campuses. An estimated eight thousand youths from other Latin American countries have already undergone indoctrination and training in Communist subversion, including guerilla warfare since late 1959. That the study of Marxism-Leninism has become a mass phenomenon in Cuba was reported on November 26, 1964, by Leonel Soto, national director of the official Party schools, at a national meeting in Havana of schools for revolutionary education. He reported that more than 'one hundred and nine thousand revolutionaries have studied Marxism-Leninism in these schools.'

On November 30, 1964, a crack force of two hundred fifty Spanish-speaking Komsomol 'technicians' arrived in Havana. According to the Cuban radio they were brought in to train the Cuban *campesinos* (peasants) in the operation of sugar cane combines and lifts which Russia persuaded Castro to buy in order to speed up the harvest.

This in itself is most contradictory. The Russian sugar crop comes from beets. Besides, Fidel Castro announced that all able-bodied Cubans, male and female, will have to cut cane—on a voluntary basis—in the current harvest. There are unofficial estimates that this year's crop will reach five million tons, an increase of one million two hundred thousand over that of last year.

The Komsomols got the V.I.P. treatment on arrival at Havana aboard the Russian ship *Mikhail Kalinin* on the night of November 30. At the dock to welcome them were Aleksander Alexseyev, the Soviet Ambassador; Carlos Rafael Rodriques, minister-president of the National Institute of Agrarian Reform, officers of the Union de Jovenes Communistas (Cuba's Young Communist League), and officers of the Federation of Students of the University of Havana.

Rodriques welcomed them in the name of the official party, which is now called the Partido Unido de la Revolucion Socialista (PURS), and in the name of the government. It was significant, too, that Havana radio reported that he told the Komsomols: 'This is the first

time we will have had the opportunity to work in an experimental way with these machines.'

The Komsomol leader who thanked Rodriques for the welcome declared that they had been trained in the combine factories in Moscow and Rostov and that their stay in Cuba will be six months.

The Komsomol, as is known, claims nearly twenty million members between the ages of 14 and 26. The mission of the organization, as stated in official Soviet publications and in its own newspaper, *Komsomolskaya Pravda*, is to train Soviet youth in the theory and practice of Communism and in military indoctrination and training. Never before has a force of Komsomol established a beachhead in a Latin American country.

Spearheading the intensification of subversion in Latin America will be the young people who have undergone intensive indoctrination and training courses at the general headquarters of the Communist International apparatus in Czechoslovakia, Russia, Communist China and Cuba.

The unlimited 'solidarity fund' is reported to have received its blessing from Premier Chou En-lai when he was in Russia for the forty-seventh anniversary observance of the Russian Revolution.

Our two defense outposts in the Caribbean, Panama and Puerto Rico, are high on the target list for 'solidarity fund' aid during 1965. The same is true of Venezuela, whose sea of oil and mountains of rich iron ore as well as the totality of more than four billion dollars of United States industrial development the Communists would like to control. Castro continues to furnish at least known moral support to the uncontained guerilla warfare in Venezuela. He has boasted over the Havana radio that 'every victory of the F.A.L.N. is a victory for Cuba.'

The contingent of Komsomols who arrived in Cuba might soon fan out, with Cuban passports, to Latin American countries, although most governments would deny them visas, to organize and command the student demonstrations and riots. They could also enter certain countries surreptitiously to perform their missions.

The 'solidarity fund' has a great amount of spare Soviet dollars to disburse, thanks in part to the fact that the Russians have been able to buy wheat, and are being offered other products from the United States on handsome terms of credit. Coming events in 1965 will prove, through the accent given to youth through that unlimited fund, the wisdom or the foolishness of accepting this type of co-existence."*

In previous reports we have given the names of those students at the University of California, as well as other Communist youth leaders in the San Francisco Bay Area, who have defied the ban placed on travel to Cuba by the United States Department of State, and who since became leaders of the Berkeley Rebellion. Until the assassination of President Kennedy the student Communist front organizations that were propagandizing in favor of Fidel Castro and his regime were exceedingly active. But when it became evident that Lee Harvey Oswald was a member of the Fair Play for Cuba Committee, and that this organization was completely controlled by the Communist Party, it quietly ceased overt operations, but the travel from the United States to Cuba by Communist student leaders has continued.

*Written by Jules DuBois, Latin American correspondent for the *Chicago Tribune*.

The next International Communist Youth meeting of any significance was the convening of the Eighth Congress of the International Youth Union of Students at Sofia, Bulgaria, on November 28, 1964. This affair, noted in *Communist Affairs*, September-October, 1964, p. 9, continued with the devising of strategy for youth demonstrations throughout the world, and served as an implementation of the Moscow meeting held during the preceding month. It should also be pointed out that on December 16, 17 and 18, 1964, a preparatory committee meeting was held in Algiers for the purpose of laying the foundation for the Ninth Communist World Youth Festival which is scheduled to open in Algiers on August 9th of this year. It will be preceded by a World Conference of Teachers, which is also a Communist front, scheduled to convene in Algiers on April 4, 1965.*

Leon Wofsy

Commencing on page 19 of our 1951 report was a section on the Labor Youth League, explaining how this Communist movement was formed in Chicago in May 1949, under the direction of Leon Wofsy. Since Mr. Wofsy is now employed by the University of California, and moved from its San Diego campus to Berkeley at about the time the student rebellion started, and since he unquestionably is the top expert in the field of organizing Communist youth movements, it is appropriate to examine his background here in more detail.

Leon Wofsy was born at Stamford, Connecticut, on November 23, 1921. He finished high school at New Haven, then attended City College of New York in 1942. While he was a high school student in New Haven he was also active in the American Student Union, a Communist-dominated organization, and at New York City College in 1941 he was president of the Marxian Cultural Society, a section of the Young Communist League, and in 1942 he was an officer of American Youth for Democracy in New York.

Having majored in science, Wofsy worked as a chemist for about a year and a half after leaving college, and then became a full-time Communist functionary, specializing in its youth division. From 1937, certainly through the next eighteen years, he was one of the most active and important Communist officials in the United States. In April 1946, the Communist Party summoned a number of its more important members to hear their leaders speak in New York, and Wofsy was one of the speakers.† Two months later he addressed the Second National Convention of American Youth for Democracy, and by 1947 was its executive secretary in the state of New York. He became national educational director for AYD in 1948, and applied for a passport to attend a meeting of the World Federation of Democratic Youth, but the government considered him a subversive leader and determined that he should not be permitted to go abroad for the purpose of equipping himself to return to this country and assist in its destruction, and his application was therefore denied.

The government was obviously accurate in its appraisal of Wofsy's role, as he was one of eight Communist leaders from New York, Pennsylvania, Illinois and California who went to Chicago for the purpose of planning a new Communist youth organization in 1949.‡ This was the

**Algiers Republican*, Nov. 23, 1964; *Communist Affairs*, Nov.-Dec., 1964, p. 11.

†*Daily Worker*, April 9, 1946.

‡*Daily Worker*, April 1, 1964.

Labor Youth League which was created at a meeting at the People's Auditorium, Chicago, May 28 and 29, 1949. Wofsy publicly declared that the Labor Youth League was an adjunct to the Communist Party, and proudly declared that he was a Communist.

In a report to the National Committee, Communist Party of the United States, delivered on January 24, 1949, Wofsy said:

"The fight for repeal of the Draft and the defeat of Universal Military Training legislation is vital to a genuine program for young workers, as well as to the whole struggle for peace."

* * * *

"Our concentration policy requires that a major political and educational campaign now be organized for all party youth. . . ."

* * * *

"There are many additional aspects to the job of mobilizing the Party's youth. Our work among students will be examined, so that every student club views as its basic permanent task the winning of the widest possible section of the students as allies of the working class and within the framework, knows exactly its duties to the industrial concentration work of the Party. The opening up of systematic work among national groups youth must figure seriously in our plans."*

This acknowledged expert in organizing Communist youth made another report to the National Committee of the Communist Party of the United States in 1950, in which he said:

"While we cannot here take the time to document these beginnings, the important thing is that these very elementary movements toward unity, especially on the peace question, can be expanded and unfolded quantitatively and qualitatively, into an important democratic upsurge among large sections of youth in 1950.

This is the major question that confronts our Party among the youth; one which, among other things, points up the importance of the leading role of the League (as an advanced youth organization with a Marxian content) in actively rallying and stimulating the broadest movements of youth everywhere—in all the youth organizations, in the unemployment lines, on the campuses.

In the period between now and the First National Convention of the League, the job of vastly enhancing the League's capacity for leading and influencing youth on a mass scale in the great struggle ahead must receive the constant attention, the dynamic and imaginative leadership, of every Communist and advanced worker."†

There was no person during the entire history of the American Communist Party who played a more significant and successful role in organizing Communist youth throughout the country than Leon Wofsy. The first concerted effort to organize American students and indoctrinate them with Communism was made in 1931, according to Gilbert Green, who was then the national secretary of the Young Communist League.‡

As we have seen, the Young Communist League dissolved itself in October 1943 and reformed as American Youth for Democracy, a movement in which Mr. Wofsy played a vital role as national educational director. So successful had he become by this time, that he was made the

*Political Affairs, March, 1949, pp. 34, 44, 45.

†Political Affairs, May, 1950, p. 155.

‡Young Communist Review, April, 1938, p. 4, cited in *The Communist in the Schools*, by Robert W. Iversen, Harcourt, Brace & Co., N.Y. 1959, p. 124.

organizer of the Labor Youth League, which was simply a continuation of American Youth for Democracy under another name, and it proliferated until the splits and schisms in the American Communist movement and the Sino-Soviet dispute broke it up into a number of Communist youth organizations that existed independently of each other. The next Communist youth organization had its origin in San Francisco, the DuBois Clubs of America.

Leon Wofsy made many trips to California in connection with his duties as national director for the young Communist movement in the United States. He lectured at Communist schools, to groups of important party members, to youth leaders, and the usual array of Communist front organizations. He has been a resident of California continuously since September of 1961, when he was employed as assistant research biologist at the University of California in San Diego at a salary of \$9,500 a year. Wofsy continued to work at the San Diego campus of the university until July of 1964, when he applied for a position on the Berkeley campus as an Associate Professor of Biology at a salary of \$10,600 per year. He arrived at Berkeley in September of 1964, just in time for the commencement of the demonstrations. Also working at the La Jolla campus of the university, at the Scripps Research Institute, was another scientist whose name will be familiar to the readers of these reports. He was Martin Kamen, the man who was an assistant to Dr. J. Robert Oppenheimer at Berkeley during the research that led to the development of the atomic bomb, and who was followed by government agents and photographed passing classified information to a Soviet Vice-Consul in a San Francisco restaurant.

In connection with making the change from San Diego to Berkeley, and, indeed, in connection with his original employment by the university, it was necessary for Mr. Wofsy to file what the university terms a form 1501, which is permanently filed in the President's office, department of administrative records, 681 University Hall, Berkeley 4, California. Wofsy's form 1501 was filed on March 24, 1964, gave his home address as 3110 Denver Street, San Diego, listed him as an associate professor in the department of bacteriology, and showed his previous employment as follows: from November, 1942, to January, 1943: a chemist for the May Chemical Company, Newark, New Jersey, at a salary of \$200.00 per month; from January, 1943, to September, 1943: United States Army; from September, 1943, to May, 1944: Pyridium Corporation, Nepera Park, New York, a chemist at \$225.00 per month; from May, 1944, to May, 1949: American Youth for Democracy, New York City, an executive at \$250.00 per month; from May, 1949, to May, 1956: Labor Youth League, New York City, New York, an executive at \$250.00 per month; from May, 1956, to July, 1956: unemployed; from August, 1956, to August, 1957: Armstrong Rubber Company, West Haven, Connecticut, a chemist at \$470.00 per month; from September, 1957, to January, 1958, North Branford, Jr. High School, Connecticut: a teacher at \$300.00 per month; from January, 1958, to August, 1958: Sterling Chemical Laboratories, Yale University, a laboratory assistant at \$300.00 per month; from September, 1958, to May, 1961: Yale University, New Haven, Connecticut, graduate student; from June, 1961, to August, 1961: Yale University, post doctoral chemist at \$1,000 for the period from September, 1961, to June, 1964: University of California, San Diego: assistant research biologist (I) at \$9,500.00 per year; from July, 1964, to September,

1964, and until the present time: University of California at Berkeley: assistant research biologist (III), at \$10,600.00 per year.

It is of parenthetical interest to note that as this portion of the report is being dictated early in April, 1965, an old comrade of Mr. Wofsy's in the Labor Youth League at New York, and who also was its state director, has an application pending to teach as an associate professor of law in the department of law on the Los Angeles campus of the University of California. It is also a coincidence that he, too, has stated that he became disenchanted with Communism and left the Communist movement in 1956. This is precisely the same thing that Mr. Wofsy declared when he secured his position with the state university.

We wish to make it unmistakably clear that we do not believe that any particular retribution should be made against people who in good faith left the Communist Party. It is tragically simple to slip into an attitude of easy tolerance toward an international organization that has never swerved one iota from its determination to weaken our country by subversive methods, render us vulnerable and then to destroy our way of life, take away our cherished freedoms, and make us a section of the world Communist government. It is difficult for Americans to realize that every dedicated member of the Communist movement in this country must work to achieve that very end; that the burden of proof lies upon the individual former Communist member to convince others that his disenchantment is sincere, and that he has actually left the Communist Party. We are aware that many liberals who have been lured into Communist front organizations, and who then discovered the concealed Communist control, have become resentful and frankly related their experiences. We are also mindful of the fact that most of these people have preferred to slink away and snarl at those who would remind them of their unfortunate experience.

It may not be inappropriate at this point to remind our readers that we have conducted entire hearings for the purpose of affording an opportunity to individuals who were unwittingly lured into front organizations to come forward and testify concerning their experiences, and thus afford them an opportunity to set the record straight. We are happy to report that our confidence has not been betrayed by a single one of these individuals, and that many of them who were suffering because of their public records as having been associated with Communist front organizations, thereafter had no difficulty in securing work, and our files contain letters of appreciation from them.

We are aware that one of the major upheavals of the international Communist line occurred in February, 1956, when Khrushchev delivered his famous speech at the Twentieth Congress of the Communist Party of the Soviet Union, blasting Stalin and his regime, repeating in more emphatic terms the charges that the rest of the free world had been making for many years. Those members of the Communist Party who had closed their eyes to the truth, and who had lived in an atmosphere that excluded everything except Communist propaganda and Communist activities, received a staggering blow when the report by the Central Intelligence Agency of Khrushchev's speech was fully corroborated as accurate by the Soviet Union. Many former Communists left the organization after this period, and it is quite possible that Leon Wofsy, after a period of intensive devotion to Communist activity since he was a teenager in high school, was one of those who left the party. If their break was really sincere, and if their party activities were of such importance that

their statements would be of value to their government, most of these former members went voluntarily to the Federal Bureau of Investigation and gave frank and complete statements concerning the real nature of the Communist apparatus that is seeking to destroy us. Many went before legislative committees, such as the House Committee on Un-American Activities or the Senate Internal Security Sub-Committee. Our own files contain many statements by such persons, and we have invariably respected their wishes not to betray some of their former comrades who may still be in the party.

Such top Communist leaders as Ben Gitlow, Earl Browder, John Gates, Howard Fast, Hede Massing, Elizabeth Bentley, Dr. Bella V. Dodd, Whittaker Chambers, Paul Crouch, John Lautner, Frank S. Meyer, and many others, have gone to government agencies and offered such assistance as was desired; some testified before legislative committees in open hearings, thereby facing a lifetime of the most vicious abuse and attacks by the Communist apparatus in an effort to destroy their credibility; some have written books about their experiences that have been valuable sources of reliable information concerning the Communist subversion that has been gnawing away at the vitals of our society since 1919.

It is possible that the officials of the state university who assumed the responsibility of employing this former director of Communist youth activities throughout the entire country, and whose whole life from the time he was a high school student until he was a mature man was devoted to the Communist cause, had some confidential information that his statement about becoming disenchanted with Communism and breaking away from the movement was sincere and truthful. It is, of course, common knowledge that in many instances such statements are made to naive persons for the purpose of securing a well-paying job as an undercover subversive agent so that subversive activities may be pursued at taxpayers' expense. If, indeed, Mr. Wofsy and his former colleague who is now an applicant for a position at UCLA, *did* go to any government agency and if they co-operated fully in at least making some effort toward atonement for their former actions to wreck our government, we have been unable to discover that fact. Until we do, we consider it our obligation to the students, the faculty, the taxpayers, the legislature and the people of the State of California to make this type of information available.

Mr. Wofsy has only been on the Berkeley campus a short period of time, but he has nonetheless aligned himself with a group of colleagues some of whom have exhibited considerable sympathy for the Free Speech Movement in general and its radical leadership in particular.

We do not know, either, whether Mr. Wofsy saw fit to explain to those university officials who assumed the responsibility of accepting his story and giving him a job, that there was a great deal more to his Communist background than simply the work he did for American Youth for Democracy and the Labor Youth League as set forth in his form number 1501. If he made a full disclosure to these officials, and a full disclosure to the appropriate agency of our government, we will be most happy to make that fact as public as we have made public Mr. Wofsy's Communist background in the foregoing account. Until that time it is perfectly plain that we have nothing more than his simple statement to the effect that he became disenchanted with Communism and left the movement in 1956.

For approximately twenty years Leon Wofsy played a role of ever-increasing importance in the American Communist Party, until he was making reports directly to its National Executive Committee and was

considered sufficiently reliable and indoctrinated to be placed in charge of its National Youth Movement. We know that he made an *involuntary* appearance before a legislative committee in Washington in 1955, and on that occasion when he was interrogated about his experiences in the Communist Party, he responded by seeking refuge behind the Fifth Amendment.*

Target Berkeley

At this point we have completed explaining how the concentration of Communist strength was developed in the Bay Area. We must now consider the next phase of the Berkeley Rebellion, which will be an examination of the reasons why the Berkeley Campus was selected as a target for the mass demonstrations that started in September 1964.

It should be apparent by this time that the move against the Berkeley campus was not spontaneous. The position of the university *in loco parentis* to the students had been the central theme of the three major meetings described above: the National Organizing Conference in New York in 1963, the Socialist Convention in San Francisco in March 1964, and finally the June 1964 convention in San Francisco which gave birth to the DuBois Clubs of America. All that remained to trigger the demonstrations was some incident—almost any incident would have served the purpose. That incident was provided on September 14, 1964, when Dean of Students Katherine A. Towle wrote the letter that set the entire Berkeley Rebellion in motion. It soon gathered momentum, formed a united front mass movement of protesting students and faculty members, intimidated the administration to the degree where it retreated to a point of no return and conceded virtually every major demand made by the students, produced a condition of anarchy on the Berkeley campus, and then proceeded to consolidate its position.

As we have heretofore indicated, most of the students who originally went along with the united front movement discovered that the real direction of the rebellion was in the hands of SLATE and the DuBois Clubs, and quietly dropped out of the movement.

Since it was Dean Towle's letter that precipitated the difficulty, we should point out that the letter was distributed only after preliminary conferences between the Chancellor of the university, the Dean of Students, the Campus Police and the Public Affairs Office on July 22 and 29, 1964, and their agreement that a strict interpretation of the rules promulgated by President Clark Kerr was necessary. The important letter written by Dean Towle on September 14, 1964, read as follows:

"To: presidents or chairmen and advisors of all student organizations. Beginning September 21, 1964, provisions of the policy of The Regents concerning 'use of university facilities' will be strictly enforced in all areas designated as property of The Regents of the University of California, including a twenty-six-foot strip of brick walkway at the campus entrance on Bancroft Way and Telegraph Avenue between the concrete posts and the indented copper plaques on Bancroft Way which reads 'property of The Regents, University of California. Permission to enter or pass over is revocable at any time.'

Specifically, section III of the policy referred to above prohibits the use of University facilities 'for the purpose of soliciting party

*"Investigation of Communist Activities, New York—Part II—Youth Organizations," hearing before the Committee on Un-American Activities, House of Representatives, Eighty-Fourth Congress, First Session, March 16, 1955, p. 219 et seq., United States Government Printing Office, Washington, D.C., 1955.

membership or supporting or opposing particular candidates or propositions in local, state or national elections,' except that Chief Campus Officers 'shall establish rules under which candidates for public office (or their designated representatives) may be afforded like opportunity to speak upon the campuses at meetings where the audience is limited to the campus community.' Similarly Chief Campus Officers 'shall establish rules under which persons supporting or opposing propositions in state or local elections may be afforded like opportunity to speak upon the campuses at meetings where audience is limited to the campus community.'

Now that the so-called 'speaker ban' is gone and the open forum is a reality, student organizations have ample opportunity to present to campus audiences on a 'special event' basis an unlimited number of speakers on a variety of subjects, provided the few basic rules concerning notification and sponsorship are observed. These are outlined in detail in the booklet, 'Information for Student Organizations,' distributed to all organizations and their advisors. The 'Hyde Park' area in the Student Union Plaza is also available for impromptu, unscheduled speeches by students and staff.

It should be noted also that this area on Bancroft Way described above has now been added to the list of designated areas for the distribution of handbills, circulars, or pamphlets by university students and staff in accordance with Berkeley Campus policy. *Posters, easels, and card tables will not be permitted in this area because of interference with the flow of traffic. University facilities may not, of course, be used to support or advocate off-campus political or social action.* (Committee's italics)

We ask for the cooperation of every student and student organization in observing the full implementation of these policies. If you have any questions, please do not hesitate to come to the office of the Dean of Students, 201 Sproul Hall.

KATHERINE A. TOWLE
Dean of Students."

Students representing eighteen off-campus organizations took advantage of her invitation and visited her on September 17th. On the following day she was presented with a petition from these organizations protesting her directive, and on September 21st the directive was reconsidered and a new one announced, which allowed a limited number of tables at the main entrance to the university. This, however, was not satisfactory to the students and they held the first defiant demonstration on September 21, 1964.

The university had long banned Communists from its campuses, either as speakers or as employees. It was obvious that in the political science department there were professors who were capable of teaching about Communism objectively, and there was, therefore, no necessity for throwing the gates of the institution open to Communist propagandists who would use the facilities provided at taxpayers' expense for spreading their message of subversion. It was also obvious that if students actually wanted to listen to such speakers and had the time to do so, there were innumerable facilities near the campuses where they might go and enjoy that opportunity. The YMCA at Berkeley is situated directly across the street from the campus and has been welcoming Communist speakers for years, and there would be no inconvenience to those students who

wished to go there and see what a Communist official would have to say. Indeed, the students have been doing precisely that for the past twenty years. In addition there has always been an abundance of Communist meetings and Communist front organizations in the vicinity of the campus ever since the first Communist unit was planted there thirty years ago.

When the present university administration took over, however, these restrictions were eased. The Regents were persuaded to rescind their long-standing prohibition against Communist lecturers on the university premises; radical student organizations were given official university recognition; the university's security officer was suddenly burdened with the handling of insurance matters as well as his security duties, and an atmosphere of easy tolerance of left-wing radical activities pervaded the campus at Berkeley. Other campuses of the university remained relatively stable under their local administration, but the concentration of Communist power in the Bay Area and the new liberal administration there made it an inviting target. Furthermore, the concentration of university power and authority lies at Berkeley, the President of the statewide institution has his office there, the statewide administration building is located in Berkeley, and there the decisions are made that affect the operation of the entire institution, the largest educational complex in the United States.

The Role of Clark Kerr

Clark Kerr became Chancellor of the Berkeley campus of the university in July of 1952, and President of the university exactly six years thereafter. Since the changes we have mentioned above occurred during his administration, it is essential that we examine his background, his associations, his experience and his temperament in order to understand the reason for the liberalizing of the rules, the granting of almost unlimited freedoms to the students and faculty, and the assumption, at least by some of the students, that they could get away with virtually anything at Berkeley.

It should hardly be necessary for us to indicate at this point that we do not make the slightest implication of any subversive affiliation or activity on the part of Dr. Kerr by reason of anything contained in this portion of the report. He is the chief executive officer of the university, he made the decisions which were approved by The Regents and led the way to the new liberalizing influence at Berkeley, and it was President Kerr whose decisions resulted in the appointment of Dr. Edward Strong as Chancellor of the Berkeley Campus, in his summary removal, and in the appointment of Martin Meyerson as his successor. In endeavoring to make a determination of how the Berkeley Campus became vulnerable to student rebels, and how a minority of Communist leaders managed to bring this great educational institution to its knees, it is indispensable that we know something of the background of the man who was in command when the rebellion occurred.

Clark Kerr was born at Reading, Pennsylvania, on May 17, 1911. He was a teaching assistant at the Berkeley campus from 1937 to 1939 and then became a professor at Stanford University. From 1940 to 1945 he was a professor at the University of Washington in Seattle, then returned to Berkeley, where he taught until 1952. He became Chancellor in July of that year, as we have stated, and has been President of the institution from July, 1958, to date.

While maintaining his status at the University of California and the University of Washington, Dr. Kerr engaged in a great many extra-curricular activities. He was appointed to a committee which investigated the San Joaquin Cotton Strike of 1933. This strike was one of the most violent in the labor history of the state, although not long in duration. The strikers were led by Pat Chambers, Caroline Decker, Lillian Monroe, and other well-known Communists. The governor was compelled to send forces of highway patrolmen into the San Joaquin Valley for the purpose of preventing angry mobs from taking control of local government facilities. Bales of cotton and farm buildings were burned at night, two strikers were shot and killed, and a subsequent investigation disclosed that the union which precipitated the strike was a Communist-dominated organization known as the United Cannery, Agricultural, Packing and Allied Workers of America, with headquarters in San Francisco.

From May, 1934, until January, 1935, Dr. Kerr functioned as a field advisor for the State Relief Administration's Division of Self-Help Cooperatives. This was the period when the Communist infiltration of the State Relief Administration was gathering considerable momentum. The infiltration had become so pronounced by 1941 that the Speaker of the California State Assembly appointed a committee to investigate the situation. This committee, of which Assemblyman Sam Yorty, now mayor of the City of Los Angeles, was chairman, conducted a series of open and executive hearings in most of the large cities of the state. It filed its report with the State Assembly, and submitted thousands of pages of sworn testimony and exhibits. It found that the State, County and Municipal Workers of America was a Communist-controlled union whose headquarters were also in San Francisco, with a regional office in the Wilcox Building in Los Angeles. It collaborated with yet another Communist-dominated organization known as the Workers Alliance, whose members comprised people who were on relief or unemployed. The headquarters for this latter union was in San Francisco, and it was headed by Alexander Noral, a registered member of the Communist Party.

Kerr served with several government agencies during and immediately after the war: in 1942 he was a senior analyst with the War Manpower Commission; he worked for the Office of Price Administration in Seattle, Washington, in 1942; he was a consultant for the Hawaiian Territorial War Labor Board during 1943-1945, and also served with the Twelfth Regional War Labor Board. During 1945-1946, he was with the Office of Wage Stabilization in San Francisco, and also did much of his work for the War Manpower Commission in that city. It was inevitable that he was brought into close contact with the many Communists who were also working in these agencies—and as we were then allies of the Soviet Union, many people thought little of such associations. We make no implication that there was any guilt by association, but we do make clear that many of Kerr's most intimate colleagues during these years were at the same time teaching at the Communist school and participating in a wide variety of pro-Communist activities. Some of them came to work at the Berkeley campus after Kerr became its Chancellor, and some found places with the Institute of Industrial Relations, which he headed.

We are fully aware that some readers will criticize us for what they consider to be red-baiting and witch-hunting, and implying all sorts of dark motives by bringing this background into the open—but it is, we believe, an indispensable part of this report, and has a direct and pertinent bearing on the innovations that characterized Kerr's administration, both

as Chancellor at Berkeley and later as President of the University. The tolerance of the radical student groups, the opening of the campus to Communist officials, the reluctance to curb the activities of the most brash and defiant student rebels, and the obvious distaste for adequate security precautions, speak for themselves.

No one can seriously doubt that there were swarms of Communists throughout our wartime agencies. There was an unparalleled opportunity for infiltration, and the Communist apparatus seized it with alacrity. American employees in these agencies were concerned with winning the war. Communists were concerned not only with winning the war, but primarily with using the opportunity to further the interests of the Soviet Union and to promote the world revolution. The sordid story of Soviet espionage and Communist infiltration of our wartime agencies has been told by authorities too eminent to be disregarded or disbelieved. Thus the former head of the Central Intelligence Agency wrote in 1963:

"... the Soviets had over forty high-level agents in various departments and agencies in Washington during World War II. At least this number was uncovered; we do not know how many remained protected. Almost all of them, like the atomic spies, were persons of pro-Communist inclinations at the time. Many have since recanted."*

During the trial of Joseph Weinberg for perjury in connection with espionage activities at the University of California, U.S. District Judge Alexander Holtzoff stated, in March 1953, that the testimony in the case disclosed "... an amazing and shocking situation existing in the crucial years 1939-1940 on the campus of a great university in which a large and active Communist underground was in operation." Judge Holtzoff was referring to the Berkeley Campus of the University of California.†

There were tough, experienced Communists in the War Production Board, the Office of Price Administration, the Works Progress Administration, the War Manpower Commission, and many other of our federal agencies during this critical period. We listed many of them who were employed in sensitive positions in our 1959 report, page 171, et seq. During this era it was uncommon to find any of these offices in San Francisco devoid of propaganda materials distributed by party members, front organizations and fellow travelers. Many of these employees were regimented in the United Federal Workers of America and the United Public Workers of America, each of these Communist-controlled unions being headed by a party member.

Yet another authoritative writer has stated that:

"... Even of those who now take their refuge in the plea of self-incrimination, some, I am sure, are not consciously disloyal, much less out and out traitors. But their personal motives do not in this case change the historical reality. Insofar as they aided the web, knowingly or unknowingly, they were advancing the cause of the Soviet Union and the World Communist conspiracy. And by their silence today, however it may be motivated, they continue to advance that cause."‡

**The Craft of Intelligence*, by Allen Dulles. Harper & Row, N.Y., 1963, p. 111; See also: *The Techniques of Communism* by Louis F. Budenz, Henry Regnery Co., Chicago, 1954, p. 288; *Masters of Deceit*, by J. Edgar Hoover, Henry Holt & Co., N.Y., 1958, p. 295, et seq.

†*Los Angeles Times*, March 6, 1953.

‡*The Web of Subversion: Underground Networks in the U.S. Government*, by James Burnham. The John Day Co., N.Y., 1954, p. 108, et seq.; see also *The Silvermaster Cell: Russian Conspiracy in the U.S.*, by Ronald W. Hunter, MSS., Sept. 1957, p. 66, et seq.; also *Soviet Espionage*, by David Dallin, Yale University Press, New Haven, Conn., 1955, p. 439 et seq.

It was inevitable that those who were subjected daily for a long period of time to a relentless, highly-slanted barrage of Communist propaganda, and who were in daily association with dedicated party members, would either come to detest Communism or to accept it as a way of life with an attitude of easy accommodation. Very few people managed to preserve a detached neutrality under such circumstances. Many who were unquestionably loyal to their country and who were certainly proficient and sincere in working for it during the period of World War II, established friendships and social relations with other employees they knew or had good reason to suspect were members of the Communist Party. Some of these other employees taught in the Communist school, some were students at that institution, others were members of Communist front organizations, some were active in the Communist-controlled unions of state or federal employees, and a few were subsequently unmasked as Soviet espionage agents.

As Mr. Dulles pointed out in his book, *The Craft of Intelligence*, many of the individuals who collaborated with Communists in these governmental agencies from 1941 through 1945, and even for several years thereafter, realized their mistake. Even people who were members of the Communist Party at that time and who have since withdrawn from the Party, nevertheless were imbued with a tolerance for Communists and Communist organizations that is extremely difficult to extinguish.

We have stated time and again in these reports that no former Communist should be forever barred from employment in a government position or educational institution merely because he once made a mistake. But we insist that the burden of proof that the individual has made a full and clean break from his subversive affiliations lies with him, and too often this free-wheeling tolerance toward Communism in general will impel a complete amateur in the field of intelligence to simply accept the statement—under oath or otherwise—of a former Communist to the effect that he has become disenchanted with the movement and is now pure. If such an individual refuses to cooperate with the F.B.I., and invokes the Fifth Amendment when asked to discuss his experiences in the Communist Party under oath, and who instead launches into a diatribe about red-baiting and invasion of his constitutional right of free political association, such an attitude should at least raise some doubt about the sincerity of his reformation. It is ridiculously simple, of course, for a person to informally state that he is through with Communism, secure a job in a strategic position, sign a loyalty oath, and refuse to cooperate with any official agency which seeks to establish the truth or falsity of his disassociation with the Communist movement. Communist cards and membership books have not been issued for years, and ex-Communists who have really become disillusioned with the party can hardly expect to be hired in a government job or at an educational institution solely upon their self-serving declaration that they are no longer connected with the Communist Party, and particularly when they defiantly refuse to cooperate when the employer endeavors to determine the truth or falsity of such a declaration and when they deliberately withhold vital information about subversive affiliations or activities.

Chairman of the War Manpower Commission of Northern California, the main office of which was situated in San Francisco, was Sam Kagel. Consultants to this commission, in addition to Kerr, included Irwin Elber, Paul Heide, a Communist, Carl Brandt, also a member of the Communist Party, and Paul Schnur, secretary of the Communist School. Kagel was

born in San Francisco on January 24, 1909, attended high school at Oakland, graduated from the University of California at Berkeley and did graduate work there in the department of economics from 1929 to 1931. For about a year he was a reading assistant in a course taught by Professor Charles A. Gulick, Jr., who many years afterward became a faculty sponsor for SLATE. Kagel then obtained employment with the State Department of Industrial Relations from December 1931 until 1933; during the next ten year period he was employed by the Pacific Coast Labor Bureau as an economist doing counseling and advisory work with trade unions in the San Francisco vicinity, and from 1943 to 1945 was with the Manpower Commission in San Francisco. From 1945 to 1948 he attended Bolt Hall of Law at the Berkeley campus, served as an arbitrator in labor disputes, and taught techniques of collective bargaining under the auspices of the Institute of Industrial Relations and the Extension Division of the university. From January 1949 until August 1952, Kagel was self-employed as an attorney and was also doing some arbitration of labor disputes.

In 1952, Kagel became an employee of the University of California at Berkeley and in 1953 he was lecturing in the department of law at Berkeley and served on a committee appointed by Chancellor Kerr for the purpose of drafting appeals procedure for non-academic employees. In August, 1954, Chancellor Kerr appointed him as Kerr's personal representative in grievance procedures on non-academic employees, and in July, 1958, Kagel was promoted from a lecturer to a professor of law. He has held this position from 1958 until the present time. We wish to make it very clear that we are not inferring that Mr. Kagel was guilty of any subversive affiliation, but we also believe it helpful to know that he was, in effect, Kerr's superior for at least a period of several months during World War II, that during that period and afterwards the two were in frequent association in connection with their governmental duties, and that Kagel was not only teaching courses at the Communist School at the time, but was actually directing one of the programs of the school in the field of industrial relations, a department that was headed by one of his appointees, the Communist Party member, Irwin Elber.

In his original biography, Form 1501, which he filed with the university on August 14, 1952, and through all of the successive annual supplements thereto, Kagel listed his teaching experience, the lectures he had given before and after being employed by the university and listed the institutions with which he had served. This recital commenced with his work for Professor Charles A. Gulick, Jr. in August 1929, and continued thereafter, listing a total of forty lectures, panels, moderating activities, seminars, workshops and forums. But Mr. Kagel refrained from disclosing that while he was a member of the War Manpower Commission he also lectured at the Communist School in San Francisco. He conducted a course during the winter and spring terms of 1944 at the Tom Mooney Labor School, 678 Turk Street, San Francisco, on Tuesday evenings from 7:00 until 9:30 p.m.; he had conducted a course at the Communist School in 1943, fall term, on Monday evenings at 8:00 p.m. in collaboration with Paul Chown, who had been identified under oath as a member of the Communist Party, and who also was connected with the War Labor Board in San Francisco. Collaborating in the same general course, under the heading of Trade Union Leadership II, was Paul Pinsky, C.I.O. research director, who has also been identified as a member of the Communist Party. Mr. Kagel taught a course at the Communist School during

the spring term of 1945 which was listed in the school's catalogue as "Full Employment—The Road to Security." Being chairman of this course, Mr. Kagel invited others to participate in the lectures on Tuesdays from 8:50 to 10:20 p.m., and these lecturers included the Deputy Director of the War Production Board and also the Director of the Communist School at that time, Mr. David Jenkins, who was affiliated with the Marine Cooks and Stewards Union in San Francisco, and has repeatedly been identified as a member of the Communist Party.*

Mr. Kagel also neglected to list in his biography filed with the university, and in the subsequent supplements thereto, the fact that he participated in the Institute on Labor Education and World Peace, which was jointly sponsored by the Communist School and the university at the Berkeley campus on May 3 and 4, 1946; that he was the principal speaker at the Hotel Bellvue in San Francisco on April 22, 1942, at a meeting of the State, County and Municipal Workers of America, or that he had been appointed as Pacific Coast Negotiator by the International Longshoremen's and Warehousemen's Union, a fact which was, however, dutifully noted by the Communist newspaper on December 21, 1948.

During the period of the war Mr. Kagel was in frequent conferences with Marcel Scherer, a member of the Communist Party from New York, and a graduate from the Lenin School of Political Warfare in Moscow and heretofore mentioned.

It is clear that during the period of the war, when the United States was collaborating against a common enemy with the U.S.S.R., it was no more than natural that there should be occasional contacts between our own official agencies and those of the Soviet Union. Thus Dr. Louis Bloch, a member of the War Manpower Commission under Kagel, was in frequent contact with Gregory Kheifitz, Soviet vice-consul and espionage expert in San Francisco; that the chairman of the War Manpower Commission should be in frequent contact with Marcel Scherer, the head of a union that comprised scientists doing important research work. This was the era when the American Communists were masquerading as American patriots, and just as they had taken advantage of the opportunity to infiltrate and exert a powerful influence in the California State Relief Administration during the critical depression years of the late 30's and early 40's, so did they seize advantage of the opportunity to infiltrate and exercise all possible influence in our war agencies during World War II, and so did they take advantage of *any* critical situation for the purpose of serving the interests of World Communism, and everything else will be subordinated to that cardinal objective.

We have already discussed the Communist School in San Francisco at considerable length. By this time there should be no doubt about the fact that every course in these schools, under whatever name it functioned, was under the complete control of the Communist Party. To believe for an instant that any such institution, created and operated by the Communist organization, would be permitted to function in any manner that would not promote Communism, is ridiculous. The institution was attended by the members of Communist-dominated unions, such as the International Longshoremen's and Warehousemen's Union, the Marine Cooks and Stewards Union, the State, County and Municipal Workers of America, the United Cannery, Packing and Allied Workers of America, the United Office and Professional Workers of America, the United Federal Workers of America, members of the

*Official Catalogues, Communist School in San Francisco.

ultra-liberal element of the American Newspaper Guild, and a host of other similar unions in the Bay Area. A glance at the faculty of these schools and an analysis of the roster of sponsors and board of directors who served for any considerable period of time will remove any possible doubt about the true nature of these institutions. There were, of course, large blocs of members in all of these trade union organizations, and in all of the front organizations, who were not only non-Communist, but many of them were anti-Communist. We point out that if it was deemed necessary for officials of our wartime agencies to contact large groups of trade union members, it could have been accomplished by going directly to the unions themselves, and not waiting until the most "progressive" elements had been concentrated in a Communist school with an extremely limited student body for the purpose of making that contact.

Virginia Marie Taylor worked both in the Institute of Industrial Relations at the Berkeley campus of the university, in the Chancellor's office, and in the office of the President, where she is now employed.

Miss Taylor was born in Seattle, Washington, and attended the University of Washington in that city from August 1940 until May of 1945, majoring in journalism and political science. Her scholastic record was extraordinary, because she was elected to several honorary societies, including Phi Beta Kappa, in 1943. From July, 1944, to May, 1945, she was employed by the Office of Price Administration in the City of Seattle; from May, 1945, to October, 1945, she was employed by the War Labor Board in Honolulu; from November, 1945, to June, 1946, she studied painting at the San Francisco School of Fine Arts; from 1946 to June, 1952, she worked for Dr. Clark Kerr, who was then Director of the Institute of Industrial Relations, doing research and administrative assistance work.

When Miss Taylor first came to work for the university in June, 1946, she had no access to classified information and hence was not required to file a personnel security questionnaire. Her duties were with the Institute of Industrial Relations, which was established on the Berkeley campus in 1945.

During July through September, 1948, Miss Taylor traveled in Mexico, and toured Europe during the period from July, 1949, to July, 1950. She then resumed her work under Dr. Kerr at the Institute of Industrial Relations, and became his senior administrative assistant when he was elevated to the position of Chancellor at Berkeley in July, 1952. At present she holds a position technically described as "administrative analyst IV" in President Kerr's office at Berkeley.

When Miss Taylor secured her position in the Chancellor's office she did have access to classified material for the first time, and was required to submit a Personnel Security Questionnaire. On it she set forth her scholastic record, the social organizations to which she had belonged at the University of Washington, the various trips she had made and the institutions she had attended. She added, as an addendum to this questionnaire, a statement to the effect that she had attended the Communist School in San Francisco during the year 1948. She took lessons in ceramics for two terms at the school, and stated that she did so because there were no comparable courses available in the area. There were many courses in ceramics being taught in 1948, and they varied, as one might expect, from the very excellent to the very poor. Certainly none of the others were taught at a Communist school.

The Personnel Questionnaire also disclosed that in the summer of 1942 Miss Taylor went as a delegate to Campobello, New Brunswick, Canada, to an International Student Service Conference. This organization was composed of American young people and was a component part of the Communist-controlled American Youth Congress, having been connected with that movement since 1939.

Miss Taylor did *not* disclose on the questionnaire that she had acted as secretary to the University Academic Senate in 1950, a fact reported by the Communist newspaper in November of that year. She also refrained from disclosing that while a student at the University of Washington in Seattle she had been a member of the national Communist youth organization, then known as American Youth for Democracy. We do not infer that Miss Taylor was a Communist or when she filed her Personnel Security Questionnaire in 1953 she was subversive, but it is abundantly evident that she followed a pattern of activity that had been indulged in by other employees of the university in deliberately omitting from an official document concerning her qualifications for employment, extremely vital and pertinent security information. Whether or not she would have received a security clearance, which she did receive, if the information about her membership in the national Communist youth organization had been included in the questionnaire, we are unable to state. That she was indiscreet and perpetrated a fraud on the university by deliberately omitting such pertinent information is too obvious to merit further discussion.

Miss Clara Ontell was also employed in Chancellor Kerr's office on the Berkeley campus contemporaneously with Miss Taylor. She also was required to file a Personnel Security Questionnaire for the first time in April 1953.

Miss Ontell was born in New York, graduated from high school at Los Angeles in 1943 and attended Los Angeles City College from 1943 to 1945. She was a good scholar, very popular socially, was politically active and became student body president of the college. From 1947 to 1950 she attended the university at Berkeley and worked for Harold Norton during the summer of 1947 in the State Department of Social Welfare. From February, 1947, to September of that year she worked in the Student Cooperative Organization at U.C.L.A., and from 1947 until 1950 she was manager of Student Housing Cooperatives in Berkeley. During 1949 until 1950 she acted as historian for the California Alumni Association at Berkeley, and from September, 1950, until July, 1952, she worked as a part-time senior clerk in the Chancellor's office at Berkeley under the direct supervision of Virginia Taylor, and thereafter until March 31, 1953, was principal clerk in Chancellor Kerr's Berkeley office.

As of April 1, 1953, when her Personnel Security Questionnaire had to be filed, it was shown to be "in preparation," and thereafter was marked "clearance pending." The clearance was refused, however, and Miss Ontell resigned from the university on September 19, 1957.

Institute of Industrial Relations

Since some of the alumni from the Communist School in San Francisco thereafter came to work for the University of California at Berkeley, and some found positions in the Institute of Industrial Relations, headed by Dr. Kerr, it is appropriate that we consider briefly the origin and

operation of this department at the Berkeley campus. We quote from a booklet issued in September of 1946 by the university as follows:

"Few areas in the domestic social life of the nation are vested currently with greater public concern than the field of industrial relations. The development of better relationships between organized labor and organized employers, and the integration of these relationships with the interests of the individual citizen and the nation as a whole, constitute one of the most serious problems facing our economic and social system today.

The Legislature of the State of California expressed its desire to contribute to the solution of this problem when, in 1945, it established an Institute of Industrial Relations at the University of California. The general objective of the Institute is to facilitate a better understanding between labor and management throughout the state, and to equip persons desiring to enter the administrative field of industrial relations with the highest possible standard of qualifications.

The Institute has two headquarters, one located on the Los Angeles Campus and the other located on the Berkeley Campus. Each headquarters has its own director and its own program, but activities of the two sections are closely integrated through a Coordinating Committee. In addition, each section has a local Faculty Advisory Committee, to assist it in its relations to the University; and a Community Advisory Committee composed of representatives of labor, industry, and the general public, to advise the Institute on how it may best serve the community.

This program is not directed toward the special interests of either labor or management, but rather toward the public interest. It is divided into two main activities; investigation of the facts and problems in the field of industrial relations, which includes an active research program in the collection of materials for a research and reference library; and general education on industrial relations, which includes regular University instruction for students and extension courses and conferences for the community."

There follow four pages of additional material grouped under the following headings: Studying the Problems, Assembling the Facts, Educating the Student, Educating the Community, Graduate Assistantships, and Information. Additional information, says the pamphlet, can be obtained by writing to the director or secretary of the Institute's office, which was located at 214 California Hall, University of California, Berkeley 4, and at 101 Library Building, University of California, Los Angeles 24. It is interesting to note that when the Communist School in San Francisco ceased its activity after having been subjected to a series of investigations and public hearings by this committee, and certified as subversive and Communist-controlled by the Attorney General of the United States and the Federal Subversive Activities Control Board, it has been replaced by other Communist educational institutions, and sent its catalogues and other vital papers to the library of the Institute of Industrial Relations at Berkeley.

Since one of the basic objectives of the Institute of Industrial Relations is to inquire into the economic and social forces which give rise to labor problems, and as it deals with the recurring conflict between management and labor, it is natural that the Institute should attract sociologists,

political scientists, economists, and those interested in the general problems of labor dispute arbitration, trade union organization and matters generally involved in the administration of research problems financed by the United States government. Many of these are being handled on facilities owned or controlled by the University of California. In order to accomplish these objectives, the training of undergraduates by the Institute drew upon other departments of the university, such as economics, business administration, psychology, political science, history and engineering. And those undergraduate students who wished to pursue this type of study could select several fields on which to concentrate their attention, while the graduate student was offered a curriculum of study leading to the degree of doctor of philosophy in economics.

There were community advisory committees established to lend a wide base of support to the Institute for Industrial Relations, both at the Berkeley and Los Angeles campuses. The Northern Division included, in 1946, Lincoln Fairley, research director for the International Longshoremen's and Warehousemen's Union; Sam Kagel, listed as then being an arbitrator for the San Francisco Garment Industry; Jack Maltester, and Paul Pinsky, research director for the California C.I.O. Council. There were, of course, other members of the Advisory Committee for the Northern Division of the Institute of Industrial Relations, but the records of those just listed will give some idea of the atmosphere that pervaded the Advisory Committee and that served to continue the association between teachers in the Communist School and supporters of Communist enterprises that had existed during the period of the war.

Lincoln Fairley, national research director for the International Longshoremen's and Warehousemen's Union, was an instructor at the California Labor School during the spring term of 1947. He is also listed in the catalogues issued by the institution as a director, a member of its faculty and a lecturer in 1948, 1949, 1951, 1952, and 1953.

Mr. Fairley also participated in the activities of a Communist-controlled organization known as the Statewide Legislative Conference in 1947, and delivered a lecture on the "Contributions of Marxism" at the Communist School in 1948. In September, 1952, Mr. Fairley, with three others, posted a bond in the sum of twenty thousand dollars to secure the release of Ben Dobbs, a fulltime official of the Communist Party of California, who had been prosecuted under the provisions of the Smith Act.

Jack Maltester, a member of Local 362 of the Printing Specialties Union, was listed in the official catalogue of the Communist School as a member of its board of directors in 1946.

Paul Pinsky started teaching in the San Francisco Communist School as early as 1942. He was Pacific Coast Organizer in 1938 for the Federation of Architects, Engineers, Chemists and Technicians, heretofore mentioned; was listed as a sponsor of the Communist School in 1942; and was a member of its faculty in 1944, 1945, 1946, 1947, 1948, 1950, 1951, 1952, and 1953. Mr. Pinsky has been identified under oath as a member of the Communist Party, having been affiliated with scientific and technical units of the Communist Party in the late 30's.

During the latter part of 1952 a responsible federal agency made evidence available to a member of the administrative staff at the Berkeley campus, who layed the dossier on Kerr's desk. It provided proof of the Communist Party membership of Carl Campbell, a graduate research economist with the Institute of Industrial Relations, and who was discharged from that position by Kerr.

In this report, where we are compelled to devote so much space to the Berkeley Rebellion in general, it is impossible to trace the personnel of the Institute of Industrial Relations from its inception in 1945 to date. The foregoing description of some of its supporters and members in 1946, when it was just getting under way, will indicate the pervasive accommodation with some of the alumni of the Communist School on the Berkeley campus. We conclude by pointing out that an identified member of the Communist Party is now employed by the Institute of Industrial Relations on the Berkeley campus. She is Margaret Gelders Frantz, the wife of Laurent Frantz, and she is the daughter of the late Joseph S. Gelders, who was also a member of the Communist Party. Laurent Frantz moved to Berkeley from Knoxville, Tennessee, in 1951, and was a delegate to the founding convention of the Civil Rights Congress, a Communist-front organization which served as a source of assistance to those members of the party and its fellow travelers who were arrested or were about to be deported from this country. Both Margaret Gelders Frantz and her husband were identified as members of the Communist Party by the testimony of Ralph Vernon Long, on November 30, 1954. Mrs. Frantz also served as Alameda County Director of the Independent Progressive Party, also Communist-controlled, during the 1950's.

Prediction

Four years ago we printed the following statement in our report:

"Quick to take advantage of the slightest opportunity, the Communist Party in California is now solidifying its position so far as the indoctrination and recruitment of youth is concerned. From sources that we consider eminently reliable, we have learned that the United Front movement we described in our 1959 report will be employed in this effort to manipulate the numerous radical organizations on the various campuses of our state university, at private institutions and in our state and junior colleges, into collaboration with Communist fronts and other groups that are in sympathy with the general Communist line. Most of the Party's brass consider that a great mistake was made when the last Communist youth movement (Labor Youth League) was liquidated."*

At the Seventeenth National Convention of the Communist Party of the United States, its leader, Gus Hall, stressed the necessity for the party to regiment youth on American campuses. He referred to growing indications of rebellion, to demonstrations, and the task of organizing the radical student groups in some broad action movement that the Communists could bend to their own advantage. This was the official signal from the top American Communist for a new national organization of Communist youth, and an order for attention to be thenceforth focused on the universities and other educational institutions throughout the country.

We also made some statements about the Berkeley campus of the university in our 1961 report that will bear repeating in the light of what occurred since. On pages 97-98 we said:

"There is no question that President Clark Kerr acted quickly and decisively in reversing the resolution adopted by the Academic Senate of Northern California which provided that faculty members

*1961 report, p. 89.

no longer would cooperate with the F.B.I. This resolution, however, was so patently illegal from its inception and a usurpation of the authority of the Regents of the institution that there was in fact no other course to take. The legal decision that the resolution was void and ineffective actually came from Counsel Cunningham for the university Regents, and the medium through which the decision was transmitted to the liberal gentleman who precipitated the resolution was President Kerr. But the Kerr Directive that precipitated a great deal of controversy from both right and left on the campus, and which originally forbade the discussion of off-campus issues by students, has been amended three times and watered down to the extent that it no longer provides any restraint whatever. The gates have been thrown open to Communists, faculty members, students, and anyone else who cares to utilize the university property as a brawling ground for political controversy. Now that the gates have been swung wider and written propaganda has been accorded free access to the university and students, it takes very little imagination to determine what disciplined, dedicated, organized subversive group will be delighted to take advantage of the opportunity. If this is the only way that absolute freedom of speech and freedom of expression can be assured to the state university and its faculty and its students, we wonder how it is that there have been so many successful, well-oriented, unhampered graduates of this institution during the years of its existence when it functioned as a great educational institution and its facilities were not thrown open to this type of controversial and radical agitation. The condition that unless members of subversive groups are permitted to address students on the campus, and unless faculty members are allowed to accomplish the same kind of thing on university property, and unless any kind of subversive literature can be freely circulated, that freedom of speech and expression are being smothered, is to us merely an excuse to substitute license for freedom."

Cogobierno

In connection with President Kerr's remark during the first stages of the rebellion that he was convinced there were followers of the Castro-Mao Communist line deep in the hard core of the Free Speech Movement, we wish to set forth a comparison between student revolutions in certain Latin American universities and the rebellion at the University of California. As we shall explain later, a vital part of the FSM program was the establishment of a so-called "Free University." This would consist in direct participation by the students in running the university, determining the courses to be offered, handling disciplinary problems, and generally edging into the entire administrative control of the institution. It would be an astounding coincidence if this program were not consciously patterned after the same program pursued by Communist student groups at colleges and universities throughout the world. In the Latin American countries there is a special word for this sort of activity, *Cogobierno*. This simply means student participation in university government, and there are seven public universities in Bolivia alone which all operate on the *Cogobierno* system, with an over-all coordinating confederation which is affiliated with the International Union of Students. It will be remembered that this is the international Communist youth organization to which Carl Bloice was a delegate from the DuBois Clubs in San Fran-

cisco. The vice-president for Latin American affairs of the International Union of Students is a former Bolivian University student named Oscar Zamora who distributes travel and study grants from the I.U.S. among students in all of Bolivia's seven universities, thus maintaining firm ties between them and the International Communist Youth movement. A special study of student rebellions and long range strategy in Latin American universities was made in December last year by an important sub-committee of the United States Senate. We quote from it as follows:

"The students' inability to cope with injustices in their society frustrates them and causes them to look for a panacea. The appeal of Communist ideas to Latin American students can often be explained as the appeal of a universal panacea to a relatively unsophisticated group."

"... Communists are finding a fertile field among the youth entering universities, many of whom have already been well indoctrinated in Marxist thought by Communist speakers in secondary schools... One constant feature of the reform movement which began in Argentina in 1918 and spread across the continent, was the democratization of the university, which meant direct participation by the students in the university administration. The students wanted to elect one or more of their own to voting status on the directive council of each faculty or college, and thus help determine university policy. Student representation on university councils provides a position of authority from which student-elected representatives can attack what they consider to be entrenched interests both in and outside of the university. Today, with few exceptions, students have their delegates in governing bodies of Latin American universities..."

"*Cogobierno* and university autonomy, along with political apathy on the part of the student majority, have contributed to a favorable climate for Communist entree to the universities. The Communist tactic is to develop among the students an intelligent, active, highly motivated leadership which can devote all or most of its time to the attaining of office, and consequently of power. To permit this dedication to student and university politics for national and international political ends, Communist students are subsidized. This gives them considerable advantage over non-subsidized students in allowing them the time required for organizational and propaganda activity."

The report points out that in five of the seven universities in Bolivia Communist strength is on the wane, but despite this fact Marxist professors and administrators are numerous in all except at the University of San Andreas, in La Paz. Even in that institution a well-known professor in the department of economics uses a Communist text for his five-year course with apparent impunity. The university in Cochabamba, where the university voted its first non-Communist rector in ten years in 1960, has witnessed a bitter struggle for control. Because of a deadlock between the opposing forces in the 1963 election, the rectorship was in doubt for more than a year, and during this time the interim director—in his younger days one of the Marxist founders of the Student Communist Confederation at the university—managed to pack the faculties with pro-Communist professors.

Once they have attained a position of power the Communists entrench themselves by the employment of a variety of devices. Each university grants free scholarships each year to deserving students and the policy

at universities where the Communist influence is pronounced is to grant such favors only to those who are willing to align themselves with the Communist movement. Those students, of course, who are courageous enough to express anti-Communist sentiments are punished by receiving poor grades.

All attempts by the Bolivian government to control this situation have only provoked long student demonstrations, strikes and violent uprisings. The government has found it impossible to interfere with the autonomy of a state university.

In Venezuela the Communists solidly entrenched themselves throughout the public school system by 1939. "Communist professors," says the report, "tend to turn the schools or chairs they direct into centers of Marxist indoctrination. Under the system of university autonomy, the government has been powerless to dislodge them."

In Honduras, as in the other Latin American countries, there was a long period of infiltrating Marxists throughout the educational system at all levels. National University is the only one in Honduras, and here the infiltration produced the "... clearly observable phenomenon that has been the Communist tactic of achieving chaos and disorder, lack of respect, and lack of discipline in the various classes.*

Since Fidel Castro won his revolution and Communized Cuba, that country has been the training center for the guerilla warfare tactics and the infiltration of terrorists throughout Latin American countries, and for generally exporting Communist warfare. Through the Communist front organization, Fair Play for Cuba Committee, which vanished quietly when President Kennedy's killer was disclosed as not being of the extreme right, but on the contrary a former activist in this front organization, American students were sent to Cuba for training. After the Fair Play for Cuba Committee passed out of existence, students from this country continued their pilgrimages to Cuba despite the ban placed on such trips by the United States Department of State. These defiant young radicals included many students who thereafter took part in the Berkeley Rebellion. In passing, and in connection with the Fair Play for Cuba Committee, it is interesting to note that Burton Wolfe, former publisher of a little paper called *The Californian* was subsidized by one of the early leaders of the Fair Play for Cuba Committee in New York, one Lyle Stuart. Mr. Wolfe devoted considerable space in his little paper to some vicious, and inaccurate, attacks against Senator Burns and the counsel for this Sub-Committee.†

Fifty-nine American students arrived in Cuba in violation of the Department of State regulation on June 30, 1963. They went by a circuitous route through Czechoslovakia, the round trip fare via Europe being more than five times the amount paid by these students. Levi Laub, a student at Columbia University in New York, was the organizer for this trip and also one of the organizers for the Progressive Labor Movement, most militant of the American Communist organizations. The head of press relations for this delegation, and a former editor of the publications of the Progressive Labor Movement, was one Phillip Abbott Luce. He has recently become disillusioned with the organization and has written a most important expose of its activities.

*"Communist Infiltration in the Latin American Educational System," Senate Internal Security Sub-Committee Dec. 15, 1964.

†Senate Internal Security Sub-Committee report, Feb. 8, 1963, p. 451.

On August 14, 1964, eighty-four students, having recently returned from their illegal trip to Cuba, stated through their spokesman, Charles Berrard, that there were eleven Negroes who made the tour and had banded themselves together in the new movement which they called the Black Liberation Front. This statement carried no particular significance when it was made, but it packed a sensational meaning on February 16, 1965, when members of the Black Liberation Front were arrested by F.B.I. agents for plotting to blow up the Statue of Liberty and the Washington Monument.

Charles Berrard was mentioned in our 1963 report on pages 159, 160 and 182. He received his early Marxist indoctrination as a member of the executive board of the Independent Student Union, the Los Angeles organization once headed by Carl Bloice. Bloice and Berrard were closely associated in Southern California, and the latter headed the Students Strike for Peace Committee, and was a delegate to the Eighth World Youth Festival at Helsinki in 1962. Here is the case of a young man who received his early Marxist orientation in the Independent Student Union, progressed through the world gathering of Communist youth at its Eighth Festival, visited Cuba in admiration of Castro with a group that hatched these terrorist Communist movements in our own country, the Progressive Labor Movement and the Black Liberation Front.

An entire volume could—and should—be written about the effect of Castro Communism on the youth of America. President Kerr recognized the impact, very late, when he declared these highly indoctrinated Castroites to be at the heart of the Berkeley Rebellion. We also find that a former professor from the Berkeley Speech Department, Joseph P. Morray, was on hand in Cuba supporting the Castro regime during its early period, and returned to California in 1962 for the purpose of assisting in the direction of the Marxist school in San Francisco. His wife teaches in the Speech Department on the Berkeley Campus. She is Mrs. Marjorie K. Morray.

Even the so-called filthy speech incident at Berkeley had its Castroite in the person of Edward Rosenfeld, who returned from Cuba in 1964, and participated in the invasion of Sproul Hall on December 2 and 3 of that year. He was born in Illinois, was twenty-eight years old in 1964, and resided at 2400 Durant Avenue, Berkeley, at the time of his arrest. Among others who made the trip to Cuba were Stephen Driggs, a student at San Jose State College and the son of Hal and Margaret Driggs. The father was on the staff of the Progressive Labor Movement paper in San Francisco and the mother was San Francisco representative for yet another pro-Communist publication, the *National Guardian*.

We referred to Helen Travis, the Communist who worked diligently in the Constitutional Liberties Information Center in Los Angeles, described in our 1963 report. She was convicted on May 14, 1964, for making illegal trips to Cuba. Richard Thorne made his visit to Cuba in 1963, and there conferred with Robert Williams, the propaganda expert for Castro who delivered a vicious speech against the United States in Peking in 1963. John Thomas, a contributor to the *Progressive Labor Movement Quarterly*, declared that most of the students who go to Cuba receive such an intensive indoctrination that they return to the United States as confirmed revolutionaries. This observation was fully confirmed by Phillip Luce, as we shall see. Jerry Rubin was a sociology student at Berkeley when he made the pilgrimage to Cuba in 1964, and Bernardo Garcia, former graduate student at the Berkeley campus, made his pilgrimage in

1960. His wife went the following year. Both were active in the student rebellion at Berkeley in the fall of 1964 and in the early part of 1965.*

Phillip Abbott Luce was an undergraduate at Mississippi State University, where he battled against segregation and became identified as one of the radical leaders on the campus. He then went to Ohio State University where he did graduate work in political science, and led a demonstration against the State Capitol Building during the Bay of Pigs Invasion in 1961. He then moved to New York in 1962, became interested in radical movements and went to Cuba with fifty-eight other students and young people. It is necessary that we understand something of the fanaticism and dedication that motivates the Castroite Marxists who participated in the Berkeley demonstrations, and here for the first time we have the public declarations of a member of this group. We therefore quote from Mr. Luce's recent observations. He said:

"For me and my contemporaries, Cuba had the same revolutionary appeal that Russia did for young radicals in the 20's and 30's. When Fidel was still in the mountains and I was still a student at Mississippi, I eagerly identified with him, and after the revolution I endorsed the Cuban form of Communism. Fairly certain before I went to Cuba that Fidel Castro and his government represented the future for the Americas, I was convinced by the time I returned; and although I have rethought much of my earlier uncritical support, I still feel drawn to the romantic image of Fidel and the Cuban Revolution. After I had thumbed my nose at the American State Department, seen the Revolution at first hand and become filled with new enthusiasm, there was no doubt that when I got back to the States I would formally join a revolutionary group."

Luce continued his narrative by saying that he found the PLM, which he joined upon returning from Cuba, stimulating and attractive. It believed in direct action, it worshiped Castro, and generally followed the Peking line of the Communist movement. It scorned the inactivity of the regular American Communist Party, regarded it as stagnated, and Luce found that his new existence in the PLM entailed an entirely new way of life, a life of excitement, risk, action, common goals, and a deep sense of solidarity. He described the May Second Movement (M-2-M) which commenced with an initial violent demonstration on that date in 1964. Luce describes the organization as follows:

"We decided last January (1965) that M-2-M, although set up as a radical peace organization specifically concerning Viet Nam, should also join in other campus protests, such as the one that led to the riot at the University of California at Berkeley. Although emphasis is still laid on the need for American withdrawal from Viet Nam, the organizers of M-2-M are bitterly trying to stir up student grievances on various campuses including Brooklyn College, Adelphi, Harvard, the University of Cincinnati and City College of New York. The agitators claim that since college administrations are the logical extension of the 'power structure' (the Government), every student grievance should be the cause for a student demonstration a la Berkeley. Progressive Labor speakers advocate student strikes, rallies, sit-ins in the administration building and picketing as ways to get the students in a mood in which they can be led into a campus riot. Any issue, they insist, must be used to stir up trouble.

*See: "The Communist International Youth and Student Apparatus," monograph prepared for the U.S. Senate Subcommittee on Internal Security, 1963; "Communist Infiltration in the Latin American Educational System," *op. cit.*

The philosophy behind all this action among students—and actually the P.L.'s basis tactic—is to involve students in a direct confrontation with the power structure upon any and all levels. Progressive Labor contends that any young person can be made into a revolutionary if he is led into a fracas with some authority symbol, especially the police. If he is arrested, or better still, beaten and jailed, the chances are then good that he will begin to hate the police and the court system. The members of the P.L. are constantly told that all police are the same and that all police are enemies.”

In this connection our 1961 report, describing the demonstrations in San Francisco that occurred in May 1960 against the House Committee on Un-American Activities, stated:

“It is quite true that few of the students who participated in the May 1960 riots were members of the Communist Party. A minority of them had affiliated with SLATE at the University of California, some with the Young Socialist League, or with some of the Marxist-oriented youth groups that have been flourishing in American universities since the dissolution of the Labor Youth League, which was the youth apparatus of the Communist Party. Many more were simply hoodwinked by the propaganda campaign and aroused to animosity against the committee, and still more were merely curious participants who were motivated by no particular political bias. But when the incidents of violence were provoked by the adult Communist leaders, and these non-Communist students were hit with streams of water from high pressure hoses and given a taste of police authority when the milling crowds refused to disperse, they quickly became antagonistic toward all sorts of authority, the House Committee, the Fire Department, and the Police Department. This precise reaction had been anticipated by the Communist strategists who planned the entire undertaking, and they were quick to follow up their advantage.”*

When Luce discovered that the Progressive Labor Movement was storing up secret supplies of arms and ammunition, that elite members were being trained in karate, and that an undercover “sleeper” apparatus was being formed—he decided it was time to break away from the movement. He said:

“ . . . in December I was invited to join a small number of members—about ten—who would train to ‘go underground’—that is, to shed their present identities, leave home and family, and take on totally new identities. The people chosen for this project were to receive extensive training in disguise techniques, karate and the forging of papers, and some were told that they would be sent abroad to complete their training before they would take up their new lives.”

Here the Progressive Labor Movement borrowed a page from the old Communist book of standard operating procedures, because immediately after World War II many members of the American Communist Party were ordered to leave their families and assume new identities and disappear into the Communist underground where they would be of more value to the party. We described this technique in previous reports and it is interesting to see that this new and more violently active Communist organization is pursuing precisely the same sort of activity.

*1961 report, p. 38.

Mr. Luce concluded his revelations as follows:

"I ultimately decided to do the obvious. Although P.L. seems to be frank and open, I concluded part of it is secretly planning sedition. It was not, however, until late January that I took out time from the frenetic life led by all P.L. members to stand back and consider all the facts. Actual membership in this organization keeps you busy day and night with meetings, demonstrations, picketing, etc. And it is not until you put the pieces together that you see the picture as a whole. After I put all of the evidence together I decided that I had to leave the organization, that I should try to warn unsuspecting members—and other young people who might consider joining Progressive Labor—about what is really involved. A month or so after I left, the P.L. leaders heard that I intended to write a magazine article. Furious, they decided to expel me (even though I had already quit; I was the first P.L. member ever to be expelled) and issued a press release accusing me of a variety of improbable sins.

I still consider myself a political rebel, and I still support the development of a democratic left wing in the United States. Moreover, I think that people who share these beliefs have a right to make these views known by public, peaceful demonstrations, among other ways.

But membership in a group such as Progressive Labor can only jeopardize the life, the reputation and the effectiveness of an honest leftist in a democracy. No government and no individual should tolerate an organization some of whose members secretly plan to launch a reign of terror."*

We have explained the origin and operation of the Progressive Labor Movement for the purpose of showing how this very vital element in the united front that eventually became the Free Speech Movement was committed to the use of force and violence, and created incidents through which there would be a direct confrontation between students and the symbols of power and authority. At Berkeley these symbols were the administrative personnel of the University of California and the peace officers who were called upon to prevent the students from taking over the entire institution.

A great deal of nonsense has been written about these demonstrations, leaving the impression that all of the members of the Free Speech Movement were interested in freedom of speech; that there was no hard core of Communist leadership; and that there had been no real freedom of speech on the Berkeley campus. We have spent considerable space for the purpose of giving the background of the elements that united to form the Free Speech Movement, and we have taken pains to point out that there were hundreds of students who were originally attracted to the student demonstrations and protests prior to December 2, 1964, who were in no sense subversive but who had what they considered to be a perfectly logical and natural complaint against an inept administration, its confusion of rules and regulations, and the general atmosphere of administrative and political weakness that pervaded the Berkeley campus. We also pointed out how the Youth Action Union, the DuBois Clubs, the Young Socialist Alliance, SLATE, the Socialists and Trotskyites, the Progressive Labor Movement, and other radical youth groups combined for the purpose of forming the original united front, and that after the Sproul Hall sit-in of December 2, 1964, a great many original adherents of the move-

*"The Explosive Revival of the Far Left," by Richard Armstrong. *Saturday Evening Post*, May 8, 1965, p. 27 at p. 32, et seq.

ment dropped away from it, leaving a highly-disciplined group of Communists and radicals in firm command.

Many accounts have been written concerning the chronology of events that composed the Free Speech Movement and its demonstrations. These accounts of what happened have been set forth in the press, in a number of magazine articles, in the Sunday magazine sections of newspapers all over the United States, in the *California Alumni Monthly*, and in an endless series of articles being written for a variety of magazines by university professors, some militantly opposed to the Free Speech Movement, and others who militantly support it. These accounts of the demonstrations vary in some details, but basically they are in agreement. We have set forth our own chronology at the opening of this report, merely for the purpose of giving the readers some general idea of what occurred before we examined the rebellion in detail. We have now reached the point where we have established the background of the various organizations that united to form the Free Speech Movement, and we have explained the militant nature of its leadership.

It will now be our purpose to take each of the major incidents on the Berkeley campus since September, 1964, setting forth some circumstances that attended them which have not been explained in the press or in the various magazine articles referred to above.

The Demonstration of September 21, 1964

There has been a great deal of speculation, both in the press and by members of the FSM, concerning the spark that ignited the first demonstration on September 21, 1964. There have been many reports to the effect that former Senator William F. Knowland, editor and assistant publisher of the *Oakland Tribune*, contacted the Berkeley administration and requested that student political activity on the Berkeley campus be banned. The student newspaper carried a statement attributed to Knowland to the effect that he made no such request of anyone in authority at the university. In order to settle the matter for ourselves we requested a statement from Mr. Knowland, and on March 4, 1965, received a letter which read, in part, as follows:

"I am familiar with the fact that several statements were made by members of the FSM at the Berkeley campus that I had contacted the President, the Chancellor or The Regents, urging certain action upon them. There is no basis of fact for any such charge. At no time did I, or anyone of authority to speak for me, contact the President, the Chancellor, or The Regents, urging any course of action. Any such statements are false."

This statement was signed by Mr. Knowland, and settles the matter so far as we are concerned.

There is no question about the confusion and controversy that attended the maintenance of tables at the main entrance to the university campus which led to the letter we have already set forth, signed by Katherine A. Towle, Dean of Students, and dated September 14, 1964. This letter was issued after a conference between the Dean of Students and other officials of the Berkeley campus, and simply stated that no posters, easels, or tables would be permitted in the area at the main entrance to the university because of interference with the flow of traffic.

Dean Towle's letter was sent to the presidents, chairmen, and advisers of all student organizations, calling attention to violations of university

regulations on the twenty-six feet of brick walkway beside the Bancroft-Telegraph Avenue entrance.

The recipients of the letter requested a meeting for the purpose of discussing the situation and a meeting was accordingly arranged on September 17, attended by representatives of eighteen "off-campus" student organizations: SLATE, Campus CORE, (Committee on Racial Equality), University Society of Individualists, DuBois Club, Young Peoples Socialist League, University Young Republicans, University Young Democrats, Young Socialist Alliance, Campus Women for Peace, Youth for Goldwater, Student Committee for Travel to Cuba, Student Committee for "NO on Proposition 14," University Friends of SNCC (Student Non-Violent Coordinating Committee), Students for a Democratic Society, College Young Republicans, Students for Independent Political Action, Youth Committee Against Proposition 14, and the Independent Socialist Club. A petition or statement was formulated at this meeting, for presentation to Dean Towle, and was in fact presented to her on September 18, requesting that:

"The intersection at Bancroft and Telegraph represents the most frequently traveled area near the campus. And because each of us takes seriously this obligation to be informed participants in our society—and not arm chair intellectuals—we feel that this location alone guarantees not only our right to speak, but to be heard! It is a valueless right to have free speech if our corresponding rights to reach people with our ideas and to advocate action on them are not protected.

All of us subscribe to Chancellor Strong's statement that 'the university is no ivory tower shut away from the world, and from the needs and problems of society.' To eliminate the use of Bancroft and Telegraph is to shut this university up in an ivory tower. It is to limit the freedom of our ideas which is necessary to produce truly educated citizens of a democratic society.

We believe that the continued use of the Bancroft and Telegraph privileges will cause Chancellor Strong's goal of 'exposure to critical questions and search for knowledge' to be furthered.

And, therefore, we respectfully submit for consideration as policy the following: 1. Tables for the student organizations at Bancroft and Telegraph will be manned at all times. 2. The organizations shall provide their own tables and chairs; no university property shall be borrowed. 3. There shall be no more than one table in front of each pillar and one at each side of the entrance way. No tables shall be placed in front of the entrance posts. 4. No posters shall be attached to posts or pillars. Posters shall be attached to tables only. We shall make every effort to see that the provisions 1-4 are carried out and shall publish such rules and distribute them to the various student organizations. 6. The tables at Bancroft and Telegraph may be used to distribute literature advocating action on current issues with the understanding that the student organizations do not represent the University of California—thus these organizations will not use the name of the university and will disassociate themselves from the university as an institution. 7. Donations may be accepted at the tables."

This statement, signed by the organizations listed above, was presented to Dean Towle on September 18, and she conferred with university officials

on September 21. She then issued a new and modified directive stating that approval would be granted for use on university property of a restricted number of tables for which permits would be required as in other authorized areas. It also permitted the distribution of materials "presenting points of view for or against a proposition, a candidate, or with respect to a social or political issue," and it established "on an experimental basis" a second and more central "Hyde Park" area at the main entrance to Sproul Hall, noting that speakers should be ready to identify themselves as students or members of the staff of the university, that there would be no interference with traffic or the conduct of university business, *and that voice amplifiers could not be used because of the disturbance of work in Sproul Hall.* (Committee's italics) This directive continued to forbid, however, the distribution of material "to urge a specific vote, called for direct social or political action, or to seek to recruit individuals for such action," and to forbid collection of funds "to aid projects not directly connected with some authorized activity of the university."

It will be noted that by this action Dean Towle was put in the humiliating position of having issued a firm and specific directive to eighteen student organizations after consultation with the appropriate authorities at the university; seven days later, as a result of capitulation to a student demand, Dean Towle was forced to issue a modified directive to the student leaders at a meeting on the campus, after which they politely thanked her, stated that they were not satisfied even with the modified directive, staged the first of a series of demonstrations on Sproul steps, and thereafter began deliberate violation of the regulations.

The account of the Chancellor to the Academic Senate, issued on October 26, 1964, stated that on September 22 he had issued a statement which was published in the student newspaper to the effect that "the open forum policy of the university is being fully maintained, but that its facilities were not to be used for the mounting of social and political actions directed to the surrounding community." In that connection he cited President Kerr's Charter Day address of May 5, 1964, wherein he stated that: "Just as the university cannot and should not follow the student into his . . . activities as a citizen off the campus, so also the students, individually or collectively, should not and cannot take the name of the university with them as they move into religious or political or other non-university activities; *nor should they or can they use university facilities in connection "with such affairs."* (Committee's italics)

On the night of September 23, a demonstration was held on the Sproul Hall steps, about seventy-five students remaining there until the following morning. On the next day further discussions were held with President Kerr, as a result of which there was a further modification of the directives, it now having been decided that permission to distribute non-commercial literature on the campus should be permitted and that henceforth the regulations would be understood to allow distribution in designated places on the campus of printed advocative materials that might urge a specific vote on a proposition or a candidate.

This new and modified directive was presented to the students at a meeting on Monday, September 28, but even while the Chancellor was announcing these revised rules, the meeting was invaded by pickets who marched down the aisles carrying signs of protest. These pickets, according to the Chancellor's report, were organized at an unauthorized free speech rally at the Oak Tree in Dwinelle Plaza under the direction of Mario Savio and Arthur Goldberg. The Dean of Men informed these students that

although the Berkeley administration supported their right to engage in picketing which did not interfere with university activities, they were in violation of regulations for holding a meeting at the time of a university meeting, and without the permit required for that area, and that disciplinary action would therefore be instituted against them.

On the morning of September 29, students were manning tables at the prohibited area, but all appeared cooperative and willing to either desist or secure the required permits except Sandor Fuchs, who was presiding at a SLATE table at Sather Gate. He was told to make an appointment with the Dean of Men for 4:00 p.m. to discuss disciplinary action against him, but did not appear to keep the appointment.

On the afternoon of September 29 Mario Savio deliberately violated the regulations by establishing a table for the Student Non-Violent Coordinating Committee at Sather Gate. On Wednesday morning tables were being maintained by the Young Socialist Alliance and Campus CORE, and the students who presided at them were cooperative with the university officials; but a table maintained by Student Non-Violent Cooperative Committee was operating without a permit and the two students guilty of the violation, Brian Turner and Donald Hatch, were subjected to disciplinary action. The same ultimatum was delivered to David L. Goines, who was at a SLATE table, Elizabeth Gardner Stapleton, at a Young Socialist Alliance table, and Mark Bravo at a Student Non-Violent Coordinating Committee table. Each of these students was instructed to report to the Dean of Students' office that afternoon.

But at 3 o'clock from three to four hundred students moved into the second floor of Sproul Hall, where Mario Savio announced that all of them acknowledged having violated the university regulations in exactly the same manner as those students who had been instructed to make appointments with the Dean of Students, and each of them wanted a similar appointment. The Dean of Men stated that he was concerned only with the violations that had already been specified, and requested the crowd to disperse. Savio responded that the group would *not* leave unless they were guaranteed that the same disciplinary action would be meted out to all present. The specified students who were cited did not appear for interviews, and the crowd remained in Sproul Hall until about 2:40 a.m. on Thursday morning.

Chancellor Strong described the ensuing events in his report by pointing out that when the students persisted in refusing to discuss their cases the Chancellor determined, on the night of September 30, to exercise his authority directly. The students had therefore been given the privilege of appearing before the faculty committee on student conduct, but on the basis of written reports from the Dean of Men, and *after conferring with President Kerr* (Committee's italics), the Chancellor suspended the eight students who had been observed in violation of the university regulations, who had been warned but refused to desist from their violations, and who had been informed that this disciplinary action would be instituted against them.

On Thursday morning, October 1, mimeographed statements were distributed on the campus soliciting student and faculty support for the suspended students and announcing a "free speech rally" at noon on the Sproul Hall steps where tables began to appear in deliberate violation of the regulations. The Chancellor's report stated that at approximately 11:45 a.m., Deans Murphy and Van Houten and Police Lieutenant Chandler spoke to a man who was soliciting funds at a Campus CORE

(Committee on Racial Equality) table and who refused to identify himself or to leave the table. Chandler informed the individual (later identified as Jack Weinberg, a former student) that he was under arrest and went for assistance and a police car. The car was thereupon surrounded by demonstrators and mounted by Savio, who urged that students immobilize the car by sitting around it, and that the demonstrators invade the Dean of Students' office. On persuasion of the President of the Associated Students, Charles Powell, Savio left the gathering to meet with the Chancellor. He demanded that Weinberg be released and the suspended students reinstated. The Chancellor refused to accede to these demands, replying that he must enforce the regulations of the university. In San Francisco, Governor Brown was declaring, "This is not a matter of freedom of speech on the campuses" but "purely and simply an attempt on the part of the students to use the campuses of the university unlawfully by soliciting funds and recruiting students for off-campus activities. This will not be tolerated. We must have—and continue to have—law and order on our campuses."

Savio returned to the crowd surrounding the police car and described his conversation with the Chancellor. One hundred and fifty to two hundred students then entered Sproul Hall and announced their plan to hold Deans Towle and Williams hostage. Women employees left through windows, over the roof. When officers attempted to close the front doors of Sproul Hall at about 6:30 p.m., demonstrators interfered and one policeman went down, had his shoes removed and was bitten by Savio. The police car was held captive through the night. Students who disapproved of the methods of the demonstrators began to gather; the Dean of Men approached individual students and Assistant Dean Rice made an appeal to the crowd in an effort to head off the possibility of open conflict. Demonstrators who had immobilized the police car containing Mr. Weinberg, the arrested man, informed campus police officers that they held the officers responsible for providing protection against student counteraction in maintaining law and order on the campus.

On Friday morning, October 2, only authorized persons were admitted to Sproul Hall. Then another mimeographed sheet appeared setting forth the demonstrators' demands, and black arm bands were sold at Sather Gate to sympathizers with the Free Speech Movement. The California Students for Goldwater and the University Young Republicans, announced at this point that they did not "condone the disorderly means of protest that are now being used." The student newspaper published a statement of the Chancellor, dated October 1, emphasizing that "the university's policy prohibiting planning and recruiting on the campus for off-campus political and social action, and prohibiting also the solicitation or receipt of funds for such purpose is now, and has always been, the unchanged policy of the university," and that "the university has not restricted or curtailed freedom of speech of students on campus by any change of its open-forum policy." President Kerr, speaking at a San Francisco meeting of the American Council of Education said, "There is no freedom of speech issue at Berkeley . . . the rules in question are the historic policy of the University of California and they are as follows: (1) Solicitation of political funds on campus is not permitted. The law of the State of California does not permit such solicitation on state property. (2) Recruitment of pickets on university property is prohibited. (3) We do not permit meeting on campus for planning social and political action against the surrounding community."

Omitted from the Chancellor's report are the colorful details of events following Weinberg's arrest. We now quote from the official University of California alumni magazine, *California Monthly*, for February 1965, p. 10, where the events are described as follows:

"... Just before noon a university police car drove to the front of Sproul Hall—Weinberg stepped into the car and immediately approximately two hundred irate individuals surrounded it and sat down. The move was neither calculated, nor in any sense riotous—simply a spontaneous capture.

For the next thirty-two hours, student protest leaders—among them Mario Savio and Art Goldberg, a graduate student and former chairman of SLATE—periodically stood upon the car, a symbol of power and bargaining, decrying the growing 'machine of the multi-versity,' and exhorting students to fight for the right of free speech on campus according to the First and Fourteenth Amendments of the Constitution. They demanded release of Weinberg and lifting of suspensions. From the top of the police car student leaders argued that the administration had picked on the eight arbitrarily, that if they were going to suspend anyone they should suspend all the students who were at the card tables Wednesday. A number of students had signed a petition attesting that they had also manned tables contra regulations. Inveighing against what they interpreted as an attempt by the administration to divide and to conquer, leaders said that these four hundred students had demanded the same treatment from the Dean's Office that was meted out to the eight. But the Dean's Office just wanted a few. The police car in front of Sproul Hall continued to be surrounded by a growing crowd of students. The plaza in front of Sproul is central to the campus dining area and the Telegraph Avenue concourse, hence a natural spot for such a crowd to form.

Thursday night, October 1, about three hundred students carried the protest to Dean Towle's office in Sproul Hall. They sat down; a few stayed through the night. Gradually, these students left and concentrated again on the police car.

On Friday, October 2, Sproul Hall closed down, (offices were operating) and speculation swept the campus that the students would be arrested en masse. Control over the police car had placed the administration in a defensive posture, one that demanded action either through arbitration or force. The car had become a symbol not only for the dissident students, but for the administration, the public and the law as well. Toward the evening hours that Friday, Mario Savio and others began to instruct students who were sitting down to take off their watches, loosen their ties, and prepare for expected 'police brutality.' "

From members of the FSM movement, interested observers, university officials, and from our own independent sources of information we learned that although the demonstration started as a spontaneous movement, it quickly became evident that Savio, Art Goldberg, Dick Roman, Bettina Aptheker, and others, were fully prepared to assume leadership. As the students climbed on top of the police car, in which Weinberg was sitting with an officer, the top became dented, the fenders smashed, and the crowd continued to grow as tensions mounted. The demonstration had commenced on Wednesday, September 30, when the card tables were set up

in front of Sather Gate in plain defiance of campus regulations, with the suspension of the eight students who were members of radical political organizations, the invasion of Sproul Hall by approximately three hundred students who demanded to see the Dean of Men and to be suspended with their eight colleagues, the arrest of Weinberg, the invasion of Dean Towle's office on October 3 by about three hundred students, some of whom stayed through the night, and the October 2 immobilization of the police car by a mob of students.

During the vigil through the first night, a group of fraternity men appeared and threw eggs at the demonstrators, and a group of off-campus Latin American men then retaliated with deadly aim, saying that they were old hands at this sort of thing. People were now sleeping around the car, and on Friday night mentors were fanning through the crowd instructing them to make no resistance if the police came, but to go limp. They acted with far too much precision, speed and unity not to have been appointed ahead of time. The police arrived in large numbers at about 6:00 p.m., and tensions continued to mount. The officers formed a line across the plaza, and then Mario Savio and Dick Roman went to confer with President Kerr. Runners kept the crowd informed about the progress of the conference, and suddenly a loud roar was heard which turned out to be the motor police returning to Oakland. Savio said that Kerr had agreed to conciliate. The crowd immediately dispersed. It had reached a total of about six thousand students by Friday evening. Some of the students studied, some sang, some displayed placards bearing sarcastic remarks about President Kerr and the administration. Large numbers of the extreme left-wing element of the mob were highly emotionalized and angry. By the time the officers arrived the riot potential was very acute, and there were six hundred and forty-three officers from the Berkeley and Oakland police departments, the sheriff's office in Alameda County and the California Highway Patrol, fully armed, provided with riot equipment, and capable of caring for any situation that might arise. Zero hour had been set at 6:00 p.m. on October 2, at which time the police were to disperse the mob by any necessary means, restore order to the campus and take the prisoner to jail. But shortly before that time the police officers in charge of their forces were told that negotiations were in progress, that they should stand by, and that a few minutes after 7:00 p.m. an accommodation was effected between President Kerr and Savio, and the police left the campus.

Kerr had been giving a speech in San Francisco, returned to the campus and conferred with eight of the student leaders, with Savio doing most of the talking, at University Hall. The compromise provided, in effect, that the demonstrations would cease, there would be no further deliberate violations of university regulations, and that the university would refrain from pressing charges against Jack Weinberg, whose arrest had been effected by the University of California police department.

It was also agreed that a committee should be established representing students, faculty and administration and which would be empowered to conduct an investigation into all aspects of on-campus political activity, and that another committee should be established which would decide the matter of discipline in connection with the eight suspended students. At this point the article in the California alumni magazine pointed out that "in the final agreement, the latter committee was called the "Student Conduct Committee of the Academic Senate." In fact, no such committee existed. The agreement, at that point, contained a *misnomer* which carried

the implication that the students' cases would be referred to a committee of faculty members appointed by the Academic Senate."*

Even under the excitement and strain that provided the background against which these negotiations were conducted, it is incredible that such a mistake should have been made by the administration, and that this matter, together with other misunderstandings between the FSM representatives and the campus officials, should lead to a complete breakdown of negotiations and the resumption of student demonstrations on a more serious level.

Apparently the administration was thinking of the Faculty Committee on Student Conduct, which was appointed by and was advisory to the Chancellor, and the students assumed that it was something entirely different. The article in the Alumni magazine continued to state that "misunderstandings such as this characterize the period of negotiations—with the students and administration proceeding from entirely different premises and points of view, and deriving different meanings from common terms. The agreement effective between the administration and the FSM spokesman, a copy of which was obtained from the Chancellor's office, read as follows:

"1. The student demonstrators shall desist from all forms of their illegal protest against university regulations. 2. A committee representing students (including leaders of the demonstration), faculty, and administration will be immediately set up to conduct discussions and hearings into all aspects of political behavior on campus and its control, and to make recommendations to the administration. 3. The arrested man will be booked, released on his own recognizance, and the university (complainant) will not press charges. 4. The duration of the suspension of the suspended students will be submitted within one week to the Student Conduct Committee of the Academic Senate. 5. Activity may be continued by student organizations in accordance with existing university regulations. 6. The President of the university has already declared his willingness to support deeding certain university property at the end of Telegraph Avenue to the city of Berkeley or to the ASUC.

Signed

JO FREEMAN	CLARK KERR
PAUL C. CAHILL	JACKIE GOLDBERG
SANDOR FUCHS	ERIC LEVINE
ROBERT WOLFSON	MARIO SAVIO
DAVID JESSUP	THOMAS MILLER."

During the following week there was complete disagreement between the FSM leaders and the administration over matters of procedure. The spokesman for the FSM seized on the mistake in the name of one of the committees, charging that the apparent error had not been inadvertent and that this duplicity on the part of President Kerr created the opportunity for him to ram the settlement through and disperse the mob of students, and also to hand-pick a special committee that would be more representative of his own views than those of the FSM. Chancellor Strong pointed out that since there was no committee on "student conduct" of the Academic Senate, he turned the matter over to the *Faculty Committee on Student Conduct*, which was a duly constituted body that had been in existence for some time.

* *California Monthly*, February 1965, p. 11.

The Robley Williams Committee

Pursuant to the agreement mentioned above, Chancellor Strong appointed members to the Faculty Committee on Student Conduct as follows: Student members, Charles Powell, president of the Associated Students at the University, and Marcia Bratten, Sproul Award winner; faculty members, Theodore Vermeulen, Joseph Garbarino, Henry Rosovsky, and Robley Williams, who was elected chairman; the administration was represented by Vice-Chancellor Allen Searcy, Dean Katherine Towle, Dean Milton Chernin, and Dean William Fretter. The other two student members were to be nominated by the FSM. The FSM was completely dissatisfied with the establishment of the Robley Williams Committee, contending that it was illegally constituted, asking for its dissolution, and complaining that they had no voice in its establishment. There ensued a period of complete confusion with unwieldy faculty committees, protests and threats from the FSM, indecision and weakness on the part of the administration, and the inevitable concessions by the campus officials to the demands of the student rebels who were now fired with success, becoming more arrogant and defiant, and threatening mass reprisals unless their ultimatums were met.

The American Civil Liberties Union indicated that it might interest itself on behalf of the eight suspended students, only two of whom had obeyed the request from Robley Williams to confer about setting the time for hearing their cases. On October 12 the FSM spokesman bluntly told the administration that the Robley Williams Committee was stacked in favor of the administration and they would have nothing to do with it unless they had a more substantial representation. On October 13 the Academic Senate resolved that it was pleased to declare itself in favor of maximum freedom for student political activity. It also expressed itself as hopeful that peace and order in the intellectual community could be maintained, and that full use might be made of the joint faculty-student administration committee for that purpose. That evening, however, the controversial committee held an open meeting on the campus of the university. The gathering was jammed with FSM representatives who insisted that the committee was illegally constituted and should immediately be disbanded. On October 15, FSM leaders met with representatives of the administration on the Berkeley campus and threatened "mass demonstrations" if they were not permitted to present their case to the Regents of the university. That evening Professor Arthur Ross, from the Institute of Industrial Relations and chairman of the Committee on University Welfare, conferred with FSM spokesmen and agreed to consider modifying interpretation of the six-point agreement. On the following day the administration diluted its position still further by agreeing that the Robley Williams Committee would be expanded to include six members from each category, should hold two or three public meetings each week and wind up its affairs within three weeks. It was further agreed that a maximum of five "silent" observers and two "silent attorneys" would be entitled to attend all meetings, and that all findings and recommendations were to be made by a consensus of opinion. On October 18, the FSM named as its representatives Mario Savio, Bettina Aptheker, Suzanne M. Goldberg and Sydney R. Stapleton. The other two student members, Charles Powell and Marcia Bratten, had already been appointed by the Chancellor.

The Robley Williams Committee on Campus Political Activity held meetings on October 21, 24, 28, 29 and November 4, 5, 7 and 10, 1964. The first meeting was devoted to organization, the second meeting was chiefly characterized by objections from the FSM representatives. For instance, Mr. Stapleton contended that no political activity was being allowed on the campus and that he believed existing regulations were not valid because the Robley Williams Committee had been established to determine the validity of the rules. Suzanne Goldberg contended that she did not feel the October 2 agreement was relevant or valid because it had been disregarded by the administration, and that if the committee did not function properly the FSM was prepared to decide for itself what the proper channels of communication should be. The FSM delegation, in effect, completely repudiated the agreement of October 2, and declared that it now considered itself free to take the situation at the main entrance of the university into its own hands.

We can see little to be gained by presenting in detail the various wranglings and the incredible amount of hair-splitting technicalities, bickerings, and indecision that characterized the other meetings of the Robley Williams Committee. We have a complete file of the minutes, and can only point out that the attitude of the FSM representatives made it utterly impossible for the committee to perform its functions efficiently, and that this situation was evident at the second committee meeting on October 24, 1964. An attorney from the legal office of the university was present representing the administration at each of these meetings, and on occasion the FSM was represented by Robert Treuhaft, who has been repeatedly identified as a member of the Communist Party and who was one of the first persons arrested during the massive invasion of Sproul Hall on December 2, 1964. The minutes disclose that those members of the committee who represented the university administration very rarely called upon their counsel for advice; on the other hand, the FSM representatives frequently called upon their counsel, Malcolm Burstein, or Mr. Treuhaft, and it soon appeared that as acrimony and disputes developed between the three elements represented at the meetings, the original prospect of some agreement quickly faded to the vanishing point.

At the conclusion of its November 7th meeting, one of the longest, most argumentative and unfruitful in the short and stormy history of this body, it was agreed to again convene on Wednesday, November 11. But before this could be accomplished the Robley Williams Committee was dissolved by the Berkeley administration on November 9.

The faculty members of the committee issued a report on November 12, 1964, which consisted of ten separate items, being the views of the six appointed members of the Robley Williams Committee representing the faculty, but since they were somewhat involved, and since nobody seemed to pay much attention to them in any case, we can see no useful purpose in describing them here.

President Kerr commented on their report in the student newspaper, accompanied by his expression of conviction that "most of the students and their leaders who participated in the violation of campus rules did so *with heavy hearts.*" (Committee's italics) He concluded by stating that for the period of twelve years during which he was Chancellor and later as President of the university, he had always sought to "protect and increase the freedom of faculty members and students, always with the confidence that with greater freedom would go a greater sense of respon-

sibility. This view and the progress resulting from it is now meeting its severest test within the university and before the eyes of the entire State of California."

It will be seen, however, that President Kerr's insistence that the university be opened to professional Communist propagandists, and his statement that the tough leaders of the student rebellion performed their acts of violence and defiance "with heavy hearts," were precisely the sort of misapprehensions that paved the way for the demonstrations he deplored. And the biggest demonstration of all had not yet occurred.

The Heyman Committee

There is a *Committee on Committees* (our italics) of the Academic Senate at Berkeley, and on October 19, 1964, it appointed a Committee on Suspensions. Its members were Ira M. Heyman, professor of law, chairman; Robert A. Gordon, professor of economics; Mason Haire, research psychologist, Institute of Industrial Relations; Richard E. Powell, chairman department of chemistry, and Lloyd Ulman, director Institute of Industrial Relations.

The Heyman Committee released its report on November 13, submitting it to the Academic Senate which appointed it, instead of to Chancellor Strong. Since this committee had no authority to take any direct action, and was considered advisory to Chancellor Strong, he naturally expected the report to come to him. He, therefore, issued a statement on the day the report was released, stating, among other things, that:

"Although The Regents, the President and I had understood the Committee was to be advisory to me, Professor Heyman has 'addressed' the report to the Academic Senate and its committee concludes 'that it should render its report to the Berkeley division of the Academic Senate, with copies of the report to the university administration and the students involved.' President Kerr and I completely disagree with this procedure. Out of respect for and courtesy to the Academic Senate, we shall however await the reaction of the Berkeley Division to the report before commenting on its recommendations."

The Heyman Committee Report emphasizes the confusion that arose from an intricate complex of rules, administrative practices, and a lack of a clear, concise compendium that was sufficiently explicit to enable students to know what was prohibited and what was permitted. The basic policies were contained in a pamphlet and entitled "University of California Policies Relating to Students and Student Activities, September, 1963." These rules, however, were qualified and amended annually by supplements and qualified by what the Heyman Committee called "memoranda of clarification and modification" issued by Dean Towle and the statements made and practices followed by Chancellor Strong.

No one could find any requirement for a permit to operate tables on the campus, although such permits had nonetheless been required for several years. All were agreed that on-campus solicitation of funds for off-campus purposes (except for the Bay Area United Crusade, Cal Camp, and the J. F. Kennedy Memorial Fund) were clearly forbidden. In the cases of the eight suspended students, funds had been solicited for the Student Non-Violent Coordinating Committee, Young Socialist Alliance, and SLATE—hence the violations were obvious. There was some doubt concerning the SLATE solicitations by students David L. Goines and

Sandor Fuchs, because their solicitations might be construed as having been made for on-campus purposes. In addition, five of the suspended students refused to see Dean Williams at his request.

The Heyman Committee recommended that students Bravo, Goines, Fuchs, Hatch, Turner and Mrs. Stapleton be reinstated and their records expunged, and that each of them be punished by being placed in a state of "censure" for a period of no longer than six weeks; and that students Goldberg and Savio be suspended for six weeks beginning with September 30, 1964. The report concluded as follows:

"The imposition of academic penalties on these eight students would amount to additional punishment, and of a severity disproportionate to the offenses. We recommend that, so far as is feasible for each student, he be permitted to complete his course work for the present semester, but without academic penalty. We further recommend that each, at his option, be permitted to drop one or more courses, or to withdraw from the balance of the semester, but without loss of academic credit or the imposition of other academic penalties."

After President Kerr yielded to demands by the FSM for more representation on the Robley Williams Committee and throughout the period of that committee's deliberations, and also during the deliberations of the Heyman Committee, the Bay Area press was reporting continued activities on the part of FSM leaders. On October 31 the chief of the Berkeley police department issued a statement to the effect that the presence of police officers on the Berkeley campus "without action" was extremely injurious to officer morale and damaged public respect for law enforcement. He was referring to the summoning of police officers, members of the Alameda County Sheriff's office and the highway patrol to the Berkeley campus and then having them sent back again when President Kerr and Mario Savio reached an accord. Richard P. Hafner, university public affairs officer, stated in a letter dated November 18, 1964, to an agent of this committee that:

"The cost of repairs to the police car captured during the recent demonstrations was \$334.20. As far as students helping to pay for these repairs, rumor has it that the can in which contributions were being collected was found to be empty when the students went to pick it up. We have not been able to confirm this."

An itemized statement of the cost of police services rendered, on the occasion of the demonstration on October 1 and 2, 1964, is as follows: 1). U C Campus Police, 25 men, 517 man-hours, \$2,377.26; 2) Lawrence Radiation Laboratory, 28 men, 249½ man-hours, \$926.44; 3) City of Berkeley, 104 men, 501½ man-hours, \$2,170.96; 4) Alameda County Sheriff's Office, 185 men, 913 man-hours, \$3,628.60; 5) City of Oakland Police Department, 237 men, 1,086½ man-hours, \$4,580.78. This amounted to a total of 579 officers who spent a total of 3,267½ man-hours, at an expense of \$13,684.04.

On October 21, 1964, Mario Savio acted as a member of a panel at Willard Jr. High School, in Berkeley, at a meeting sponsored by the Friends of the Student Non-Violent Coordinating Committee, of which he had acted as campus president, to hear a report by Mrs. Irene Paull, concerning her activities with the Freedom School at Hattiesburg, Mississippi. Among the other qualifications of the principal speaker, one could mention her activities as an organizer for the Young Communist

League in Minnesota in 1938, and her invoking the Fifth Amendment when asked about her visit to Cuba in 1963 by the House Committee on Un-American Activities. Mrs. Paull is also a contributor to the *National Guardian*, Communist Party line newspaper. Other members of the panel were Mrs. Fay Stender, a member of the National Lawyers Guild in 1964, and an attorney with the firm of Charles R. Gary and Benjamin Dreyfus. Dr. Carlton Goodlett, who has already been mentioned in this and in previous reports, was also a participant in the program.

On November 4, 1964, the FSM scheduled a picketing of Sproul Hall to commence at 11:30 a.m. and to conclude at 4:00 p.m. At the rally coincident with this activity, Mrs. Elizabeth Stapelton, one of the eight suspended students, declared that "we are playing a great chess game with the administration. They have the political and economic power. All we have is the power of the masses." And the FSM threatened that unless the committee on political activity supported complete freedom of speech, assembly and association for the students, the FSM would adopt other means to secure its rights.*

Two hundred and fifty FSM pickets paraded in front of Sproul Hall on November 5, 1964. Art Goldberg addressed the group demanding "total political freedom on the campus," and threatened more demonstrations. At this demonstration there were between two and three hundred unsympathetic viewers, all students, who signed a resolution favoring law and order and condemning the disorderly tactics of the FSM in settling disputes on the campus. Another resolution condemning such tactics was passed by the senate of the Associated Students of the university, which represented the overwhelming majority of the enrolled student body.

On November 6, Savio, acting as spokesman for the student representatives on the Robley Williams Committee, rejected a proposal of Professor Sanford Kadish to the effect that the university should be permitted to take action against on-campus activities that resulted in off-campus illegal demonstrations, and on the following day Savio declared that since the FSM negotiations with the administration's committees had broken down, the Free Speech Movement would no longer consider itself bound by existing regulations. Speaking from Sproul Hall steps to a crowd of about four hundred he threatened "we'll break the regulations again and again and again." This determination to resort to still more defiant activity was implemented on November 9 when Stephen Weisman, chairman of the Graduate Student Coordinating Committee on the Berkeley campus and a member of the FSM, announced that there would be an effort to persuade teaching assistants, who comprised the bulk of the instructors for undergraduate teaching, to "tie up several of the larger departments of the university."

Several days prior to the threats of renewed demonstrations unless the administration agreed to the demands of the FSM, Mortimer Scheer, leader of the militant Progressive Labor Movement from New York (the most militant Communist organization in this country) appeared in Berkeley and contributed his talents to arousing the radical element among the rebellious students to more violent action. Scheer resided at 2679 Action Street, Berkeley, and is now the official representative on the West Coast for the recently-created Progressive Labor Party, an outgrowth of the Progressive Labor Movement.

*San Francisco Chronicle, November 4, 1964.

On November 9, Chancellor Strong warned the students against their planned demonstration on Sproul steps, and threatened disciplinary action. At the appointed time, however, about fourteen hundred students assembled, and Savio mounted the rostrum again with his familiar public address system. The rally was held in defiance of the administration, and tables were maintained and funds solicited in direct violation of the campus directives. Representatives of the administration took sixty names, but the demonstration nevertheless continued. A group of teaching assistants and graduate students working for higher degrees announced that they would also sit at the tables and join in the demonstration. This announcement was made by their spokesman, Robert Richeimer, a teaching assistant in the history department and a member of the FSM. Simultaneously a statement was issued by Richard Schmorleitz, FSM press secretary, to the effect that his organization would break off all communications with the university administration. On the following day two hundred teaching assistants, led by Stephen Weisman, joined the students. Twenty-two of them manned the illegal tables, but there was no effort to make any check on the part of the administration.

By November 16th the Chancellor's office had cited seventy students for violations of university regulations and the FSM thereupon commenced raising a defense fund. Signatures were also gathered on an FSM petition to the Regents, calculated to strengthen the Academic Senate report, which was not yet issued, but about which the FSM had prescient information.

Savio, Martin Roysher and Brian Shannon left Berkeley for Southern California on November 16 for the purpose of making visits and addresses at fifteen Southern California campuses for the purpose of spreading the FSM doctrine. The institutions on this speaking agendum were: the five associated Claremont colleges; the University of California campuses at Los Angeles, Riverside and San Diego; Occidental College; the University of Southern California; state colleges in the San Fernando Valley, Long Beach and Los Angeles; and city colleges at Los Angeles and Santa Monica. Savio also spoke at Stanford, addressing a meeting of a hundred and fifty students, sponsored by the young democratic organization.

On November 19, Assemblymen-elect John L. Burton and Willie Brown, Jr. sent messages to the university Regents demanding complete political freedom on the campus, and simultaneously the Academic Senate at Berkeley called for more liberal policies by the administration.

The Regents met at Berkeley on November 20th and modified but did not substantially change the rules regarding political activities by the students. They refused to allow on-campus activities in support of illegal off-campus actions, and added that the university should discipline students for illegal on-campus activities.

The Regents accepted the recommendations of the Heyman Committee and rescinded suspensions of the eight students who had been disciplined for violation of the campus rules. They declined to meet with representatives of the FSM, and during their session a silent demonstration of four thousand students was held, while Joan Baez, Carmel folk-singer, appeared and entertained the crowd. When Savio and Steve Weisman announced the Regents' decisions, the students sat in stunned silence. FSM leaders clearly considered that as a result of this meeting they had suffered a serious defeat, and declared that they were determined to proceed with further and more violent demonstrations. They received some support from Ralph J. Gleason, a columnist for the *San Francisco*

Chronicle who has addressed the San Francisco DuBois Club and had been a frequent observer of the student demonstrations. In his column "On the Town," which appeared on November 23, he praised Joan Baez and lauded the FSM, saying "a movement like this cannot be squelched." His fellow-columnist, Herb Caen, observed, however, that "the free speech rumpus over at Cal is getting more left-wing by the day . . ."

On November 25, Bay Area papers printed a statement by Kent Pursel, chairman of the Alameda County Board of Supervisors, who expressed himself as follows:

"The continued demonstrations on the university campus show that a movement of students is publicly flaunting the authority of the administration. Even the weak-kneed compromise by the Board of Regents was unacceptable to them . . .

Unfortunately, a 'noble ideal' (free speech) is being used to transform a respected institution into a common battleground between lawful authority and those who stand to gain by a continuation of chaos."

Pursel stated that "the Regents must be reminded that they represent all the people of California. Until the administration and the Regents stop marching in reverse, the university will have to remain subject to the harassment of a defiant minority."

On November 25th SLATE requested permission to exhibit a French film on homosexuality, entitled "Un Chant d'Amour." When this request was denied, Art Goldberg suggested that it nevertheless be shown against the wall at Sproul Hall, and another protest rally was staged on the steps of that popular building at noon.

In the November 26th issue of the *San Francisco Chronicle*, an editorial summarized the situation at Berkeley as follows:

"Under liberalized regulations, students may now assemble, speak, advocate, solicit and recruit to their hearts' content without restrictions, save one: they are subject to university discipline if they advocate on-campus actions that are illegal under California or federal laws . . .

The campus cannot become a breeding place for off-campus lawlessness. As President Kerr has observed, the university is not a fortress from which students (or non-student agitators) may mount attacks on the surrounding countryside . . ."

By this time the united front aspect of the Free Speech Movement was beginning to disappear. Many of the more conservative students who originally entered the movement as a sincere protest against a bewildering complexity of rules and regulations that were constantly being expanded, rescinded, supplemented, and amended, had realized that the entire movement was slowly but surely being taken over by Communist-oriented leaders. University offices and university typewriters, mimeograph machines, and other equipment, were being used by the FSM for its own purposes, and off the campus they had established offices known as "centrals," each one handling a special phase of the FSM strategy. The first of these centrals was maintained at Savio's home. Thereafter others were established to handle legal matters, public relations, press releases, planning of demonstrations, communications, and all of the other attributes that were now being organized with the precision of a military establishment. At the same time an intelligence

system was being established whereby liaison could be maintained with graduate students, teaching assistants, the academic senate, and an astonishing number of faculty members who were enthusiastic supporters of everything the Free Speech Movement espoused. There were also contacts and sources of information in the Chancellor's office, the offices of the various deans of the university, and in other key campus positions which enabled the leaders of the FSM to keep accurately informed of the plans of both the Academic Senate and the administration.

Savio had established himself, at least in the public mind and in the minds of most of the students, as the charismatic leader of the rebels. Disinterested and apathetic at meetings, impatient with long political discussions and arguments about ideological distinctions, this young man was a dynamo of activity when he mounted a rostrum with a bull horn in his hand and aroused his listeners to a high emotional pitch. He thrived on direct action, and cultivated a tough, condescending and arrogant attitude even toward the President of the university, to say nothing of the other administrative officials whom he treated with uniform contempt. Without the background of the FSM movement Savio and his handful of cohorts would have remained anonymous students at a big educational institution. Against the background of the FSM movement they were able to direct the activities of thousands of discontented students, force the university administration into retreat after retreat and concession upon concession. They were soon issuing ultimatums and threatening more demonstrations unless their demands were met within the time specified, and for a variety of reasons they were able to secure the support of a large segment of the faculty.

At the same time that the united front was becoming a para-military sort of organization, and the control was being consolidated in the hands of a few leaders, more and more adults appeared on the campus at the demonstrations, some of them known members of the Communist Party, some, like Mort Scheer, leaders of the Communist element that followed the tough line of Red China; some were students who had been indoctrinated on clandestine trips to Cuba; and there were the usual large numbers of chronic supporters of Communist fronts who always lend their assistance to such movements. After all, this was the greatest student rebellion in the history of the United States, and it occurred on the main campus of the country's largest educational institution. The classic united front organization that we described earlier had now become a tightly-disciplined, thoroughly organized, well-equipped movement. And it was about to stage the greatest demonstration of all, which was scheduled for December 2, 1964, with the invasion of beleaguered Sproul Hall.

On December 1, the press announced that Strong had brought disciplinary action against four FSM leaders: Mario Savio, Arthur Goldberg, Jacqueline Goldberg and Brian Turner, for their actions during the demonstration on October 1. This provoked a response from Robert Paul Kaufman, a graduate history student who had aided in the founding of the DuBois Clubs of America, had been active in Student Non-Violent Coordinating Committee, and who had been a member of the Fair Play for Cuba Committee, to the effect that graduate students would join in a demonstration with FSM. Kaufman, one of the leaders of the student rebellion who came to Berkeley from U.C.L.A., had established his Berkeley residence at 2734 Haste Street.

Savio then issued a statement giving Chancellor Strong twenty-four hours within which to meet a list of five demands by the FSM or face a massive demonstration. The five demands were as follows:

1. The dropping of all charges against Mario Savio, Arthur Goldberg, Jacqueline Goldberg, and several student organizations cited for breaking university rules.*
 2. An administration guarantee against further disciplinary action until a final settlement was reached with the Free Speech Movement.
 3. A statement that no regulations would be adopted by the university restricting students or organizations from exercising their full political rights on the campus.
 4. An administration agreement that only the courts should have authority to regulate the political activities on the campus.
 5. The adoption of a policy that all rules governing political expression on the campus should be determined, interpreted and enforced by the faculty-student-administration committee, whose judgment would be final.
- If these demands were not met, threatened Savio, the university would face a sit-in demonstration and the Graduate Coordinating Committee, headed by Stephen Weisman, stated that it would launch a strike if any police were called to quell the demonstration.

The Invasion of Sproul Hall

On December 2 there was a noon rally at Sproul Hall. Savio, microphone in hand, in top form and plainly enjoying his work, spoke to two thousand students and threatened to "bring the university to a grinding halt," because the FSM ultimatum had not been met. He was flanked by Joan Baez, folksinger from Carmel who was currently in difficulty with the Department of Internal Revenue for refusing to pay all of her income tax because she did not wish to make any contribution to the government's activities in Viet Nam. Other leaders of the December 2 demonstration were Jack Weinberg of the Committee on Racial Equality, a non-student; Stephen Weisman, heretofore mentioned; Arthur Goldberg and his sister Jacqueline, and Robert Treuhaft, the husband of Jessica Mitford Treuhaft, and who has been repeatedly identified as a Communist lawyer.

At 12:30 Baez and Savio began singing "We Shall Overcome," and led the march into Sproul Hall. Like the children of Hamelin following the Pied Piper, about five hundred of the assembled multitude followed their leaders into the building while two hundred stood silently and watched. With military precision the invasion proceeded. Savio was restrained from breaking into Dean Towle's office, but aside from that the sit-in proceeded in accordance with advance plan. The third and fourth floors of the building were used as study areas; the lobby was devoted to recreation, a first-aid station was established, and arrangements made to secure food.

By this time most of the broad base united front organization of the FSM was withering away, leaving the Communists and the more radical elements of the movement in full charge. Robert Treuhaft, counsel for the FSM delegates to the Robley Williams Committee, was observed at several of the student demonstrations and participated in this one—the most massive and defiant of all. He was also one of the first to be arrested. Treuhaft was a lecturer at the Communist School in San Francisco in 1947, and had worked as an Assistant Disputes Director for the War Labor Board and as a hearing Commissioner for the O.P.A. He also has

*The *San Francisco Examiner* also included Brian Turner in this list.

been active in virtually every Communist front organization in the Bay Area since the early 40's. In 1964 he attended the Communist-controlled International Association of Democratic Lawyers in Argentina with Robert Kenny of Los Angeles, Conrado Gomez of Argentina, and Norman Endicott of Canada. After attending the meeting these four went to Portugal where they endeavored to stir up difficulty over civil rights matters, and were summarily ordered to leave that country.

At about 4 p.m., Jack Weinberg—the arrested hero of the October 1-2 demonstration—made a dramatic appearance on the second floor balcony of Sproul Hall, standing in front of a large red and white FSM banner and announcing that there would be a program of entertainment during the evening which would consist of singing by Joan Baez, the showing of the film "Operation Abolition," which was calculated to arouse animosity against the House Committee on Un-American Activities, and an exhibition of the revolutionary motion picture, "Juarez."

Just before the invasion of the Sproul Hall building commenced, Charles Powell, student body president, endeavored to persuade the leaders not to invade the building. But the apostles of free speech booed, jeered and made so much noise that he could not be heard, and called him "a strike-breaker and a fink." At this point the Young Republicans, who had been a part of the FSM united front movement in its earlier stages, announced that the group would not condone this sort of action and withdrew their support. Thereafter the spokesman for the campus Young Republican Organization, Warren L. Coates, Jr., issued the following statement:

"The Republican Party and its Young Republicans have always favored the freest possible expression of ideas and political activities consistent with democratic processes, law and order. The activities of the University of California Young Republicans at Berkeley have been completely consistent with these principles. We negotiated in good faith with President Clark Kerr and the university administration for the broadening of political activities on this campus. At the same time we opposed the educationally disruptive and unlawful tactics of the group calling itself the 'Free Speech Movement' (FSM).

We remained members of the FSM with the hope of moderating their tactics. On December 2 we withdrew from the FSM convinced that it was hurting the image of a great university and destroying any chance of a further broadening of already liberalized political regulations.

The sad fact is that the FSM has inflicted irreparable damage on this campus. The university's independence and faculty-student relationship are at stake and may never be the same again. The fact that many of the FSM more militant tactics were suggested by identified Communist infiltrators and that these same infiltrators have greatly increased their influence over the FSM, makes us all the sicker. The situation on the Berkeley campus is bad and will probably become worse. But it is important to understand that the FSM neither represents nor is typical of the vast majority of Cal students."

By evening of December 2, the FSM organization had provided blankets, sleeping bags and food, a duplicate public address system, and even walkie-talkie equipment so that contact could be maintained with agents outside the building. Some of the teaching assistants who partici-

pated in the invasion conducted classes, and pleas by the administration and orders from both the police department and university officials for the students to vacate the building were greeted with boos and disdain. President Kerr conferred with Governor Brown. Peace officers in the East Bay Area were again alerted, and the Berkeley Police Department by this time expressed some impatience at being summoned and sent home repeatedly, since on the occasion of the October demonstrations they had been summoned and dismissed seven times in one day by a Berkeley administration that could not seem to make up its mind to take decisive action to enforce the university regulations, discipline the violators, and put an end to the demonstrations by using whatever force might be necessary for the accomplishment of that purpose.

At 7 p.m. the doors to the administration building, Sproul Hall, were closed, with approximately eight hundred invaders in full possession of the building. Some university Regents arrived at San Francisco airport, and met with President Kerr and Chancellor Strong; there were other San Francisco meetings, while inside the building classes were being held to instruct the demonstrators how to resist arrest by going limp and refusing to cooperate with officers in the event there was any attempt to clear the building by force. At midnight Savio had sentinels posted at the building's entrances to observe outside activities, and at 2:30 a.m. on December 3, Stephen Weisman told the demonstrators to dispose of any illegal objects they might be carrying. Among the illegal objects that were found when police finally took measures to clear the building was a supply of marijuana cigarettes in the possession of Lee M. Rhoads, 2615 Channing Way, Berkeley, 22, a salesman from Virginia who was a sympathizer with the students, and who was held by the Oakland Police Department in lieu of \$150.00 bail.

President Kerr and his administration had decided to allow the students to remain in possession of the administration building until they got tired and decided to emerge. This attitude was expressed not only by Kerr to Governor Brown, but also by other members of the Kerr administrative staff, who seemed determined to make any concession instead of resuming control of the campus by whatever steps might be necessary. But the public, responsible officials in Oakland and Berkeley, and high-ranking peace officers had other ideas as they watched the students settle down with their abundant supplies of food, blankets, communication systems and outside supporters, and they communicated with the Governor, who thereupon issued the following statement:

"I have tonight called upon law enforcement officers in Alameda County to arrest and take into custody all students and others who may be in violation of the law at Sproul Hall.

I have directed the California Highway Patrol to lend all necessary assistance. These orders are to be carried out peacefully and quietly as a demonstration that the rule of law must be honored in California."

Approximately seven hundred peace officers then proceeded to clear the building. Their forces comprised 150 highway patrolmen, 212 police officers from Oakland, and officers from the campus police department, the Berkeley police department and supplementary forces. Immediately before the arrests started, Joan Baez and other FSM leaders who were considered too important to be immobilized by arrests, escaped from the building and disappeared into the crowd. At 3:20 a.m. Police Lieutenant

Merrill Chandler followed Chancellor Strong into Sproul Hall to warn all demonstrators who refused to leave that they were in violation of the law, in that they were refusing to discontinue an unlawful assembly and that they were trespassing by occupying the building after it had been closed. Ten minutes later the arrests began, commencing on the fourth floor of the building and working down. The tensions were high, officers lined the hallways, ready for anything that might develop. The demonstrators were milling around outside the building, and the FSM leaders who had escaped were calling for a general strike by all of the 27,500 members of the student body. Jack Weinberg screamed and cursed as he was taken into custody; Savio shouted and sang and protested even after he had been incarcerated. There were a few who resisted arrest by struggling; some locked arms to make it more difficult for the officers to effect an arrest and to take them into physical custody, but most of the "freedom classes" had been sufficiently successful in telling the students to simply go limp and refuse to cooperate with the officers, and this was the procedure that most of them followed. In that connection it may not be inappropriate to refer at this point to an opinion rendered by Alameda County Superior Court Judge Robert H. Kroninger, in a case in which three juvenile Berkeley sit-ins were convicted of unlawful assembly during the December demonstration. The decision was mentioned in a column sent to newspapers throughout the country from Washington, D.C. on May 3, 1965, was written by Bruce Bioassat, and read, in part, as follows:

"The notion is growing in the United States that there is a curious nobility in breaking, ignoring or misinterpreting the law if it is done in a 'good cause.'

The cause, of course, can be racial desegregation, campus freedom of one sort or another, U.S. action in Viet Nam, or whatever.

Favoring job integration, some lawyers in Washington have consciously and deliberately advocated a misreading of the Taft-Hartley Labor Law to give it a racial content its authors and supporters never intended.

Lawyers, politicians, scholars, teachers, artists and clergymen were among the countless persons who voiced unconditional sympathy for the nearly eight hundred law-breaking demonstrators who rebelled last December on the University of California's Berkeley campus.

They appear to have the grossly mistaken view that if an uprising is basically passive and is styled as 'civil disobedience,' it somehow falls outside normal concepts of law violation.

In a little-noticed decision convicting three juvenile Berkeley sit-ins of unlawful assembly in the December rebellion, Alameda County Superior Court Judge Robert H. Kroninger (in the Berkeley-Oakland area) went right to the heart of that issue.

He cited section 148 of California's Penal Code which bars any intentional resistance, delay or obstruction of a police officer in the performance of his duty. Arresting persons unlawfully assembled in a school building was, he said, proper discharge of an official duty. Then Kroninger declared:

'It is clear that the response of lying down and relaxing the muscles of the extremities was intentional. And it is equally clear that the purpose and effect were to delay and obstruct the police officers. It matters not that the participants described such a resistance as passive, or seek exculpation under the mantle of civil disobedience. Such

terms merely obscure the question, as the purpose and effect of such conduct differ only in the degree from the responses of flight or violence. Resistance to the rule of law, whether active or passive, is intolerable . . .'

Unforgivably, the 378 University of California faculty members who sent Governor Edmund G. Brown a telegram of sympathy for the law breakers showed not the faintest awareness of this point. In ignoring it, they and all other sympathizers were dangerously close to arguing that the end (the demonstrators' objectives) justified the means (violating the law).

Judge Kroninger sensibly took note of that danger in his opinion when he said that 'to excuse lawlessness by diverting attention to its avowed purpose would be to reject the rule of law and invite chaos.' Kroninger also said that those who consciously act unlawfully must accept responsibility as law violators and not plead, as did many demonstrators and sympathizers, for amnesty the moment they were arrested."

The arrest of almost eight hundred limp and uncooperative people crowded into several floors of a building, and their booking, photographing and fingerprinting, obviously took a great deal of time. The booking was done at the campus police station which was conveniently situated in the basement of Sproul Hall, and thereafter the men were taken to the Alameda County Rehabilitation Center and the women were booked at the Oakland Hall of Justice and incarcerated in the Oakland jail. A list of those individuals who were thus engaged in the invasion of Sproul Hall and who were arrested and booked and are now being tried for the alleged offenses are as follows:

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- Baron, Richard
1821 Addison St.
Berkeley, Calif.
- Barter, Kenneth
2217 Channing Wy.
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- Bartlett, Deborah Ann
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- Baum, Carol
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- Bearden, Dennis E.
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- Beasley, Richard L.
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- Bekes, Robert
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- Bell, Bruce
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- Berg, Darwin K.
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- Bergmann, Peter E.
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- Bergren, Carl B.
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- Bergsten, Gordon S.
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- Berkowitz, Madelon
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- Berris, Linda G.
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- Biasotti, JoAnn
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- Bills, David
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- Bingham, Edward
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- Bishop, John M.
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- Black, Allen E.
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- Blickman, Victoria
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- Blum, Elizabeth
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- Blum, Joseph A.
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- Bolliger, Karen
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- Bond, John Eric
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- Bordin, Charles
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- Boris, Jacquelyn
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- Botkin, Joseph
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- Bouchard, Thos.
3044 Wheeler
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- Bowman, Judy
2615 Parker St.
Berkeley, Calif.
- Boyden, Thos. G.
1208 Shattuck
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- Bozman, Barbara
2225 Blake St.
Berkeley, Calif.
- Bradford, Della
1118 Cornell
Albany, Calif.
- Bradsher, Ann W.
2325 McKinley, No. 18
Berkeley, Calif.
- Brady, Victoria
2650 Haste, No. 213-D
Berkeley, Calif.
- Brannam, David
2428 Channing
Berkeley, Calif.
- Bridges, Barbara A.
2414 Parker, No. 6
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- Brindeiro, Glenn
2739 Webster
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- Brister, Bob
Bowles Hall
U. C. Campus
- Broadhead, Richard
1849 Arch St.
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- Brodsky, Joel
2516 Regent
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- Brown, Anthony
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- Brown, Lana D.
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- Brown, Stephen K.
2520 Durant
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- Brownlee, Jean
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- Bruderlin, Fred M., Jr.
2338 Channing Way
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- Bruenn, Jeremy
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- Brunke, Frederick
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- Byxbe, Michael
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- Callaghan, Martha
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- Calmus, Lawrence
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- Calvin, Elin
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Doe, J. Number
(Brady, Victoria)

Doe, J. Number 184
(Goodwin, Jerrold)

Doe, J. Number 202
(Hutchin, Mona)

Doe, J. Number 205
(Neidori, Margaret Rose)

Doe, J. Number 186
(Pilancinski, Bohdan)

Doe, J. aka Number 21
(aka Shapiro, Ann Melva)

Doe, J. Number 183
(Skiles, Derward)

Doe, J. Number 201
(Wedgley, Steven)

Doe, J. Number 295
(West, Sumner Lee)

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2231 Ward, No. E
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- Ferguson, Shannon
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- Forester, Phillip
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- Frank, David L.
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- Frank, Katherine
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- Franke, Peter
2314 Ellsworth St., Apt. 18
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- Franklin, Joan Helene
2721 Haste St.
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- Freed, Ira M.
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- Freeman, Jo
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- Freudenthal, Mark M.
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- Friedland, Marian
2542 Durant
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- Friedman, Ellen
2446 Dana St.
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- Friedman, Jane
2515 Benvenue, No. 4
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- Friedman, Warren B.
2313 Ward
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- Garlock, Susan
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- Garrison, Daniel
1710 Lincoln
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- Garson, Barbara
1815 Delaware
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- Garson, Marvin
1815 Delaware
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- Gleason, Philip L.
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- Goertzel, John
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- Goglio, Robert
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- Goldberg, Arthur
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- Goldberg, Devora
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- Goldberg, Jacqueline
2455 Prospect
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- Golson, Jean
2422 Channing Way
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- Golwin, John
2631-A Durant
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- Goodman, Jerrold
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- Gordon, Barry R.
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- Gray, Lance
2613 Durant
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- Green, Alex
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- Hanover, Ilene
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- Harris, Halli
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- Harris, Joseph
2224 Roosevelt
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- Harris, Sandra
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- Hunter, Richard B.
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- Irving, Margaret
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2927 Lorina
Berkeley, Calif.
- Jackson, Janet L.
427 63rd. St.
Oakland, Calif.
- Jacobs, Alan
1049 9th St.
Albany, Calif.
- Jacobsen, Marna
International House
Berkeley, Calif.
- Jacoff, Ethyl
2638 Regent
Berkeley, Calif.
- Jaffe, Sherril A.
2437 Piedmont Ave.
Oakland, Calif.
- James, David R.
2305-C Acton St.
Berkeley, Calif.
- James, Michael
5006 Telegraph Ave.
Oakland, Calif.
- Janke, Peter
651 Fairview
Oakland, Calif.
- Jankowski, Nicholas
1212 30th St.
Oakland, Calif.
- Jeter, Howard
2112 Ashby Ave.
Berkeley, Calif.
- Johnson, Elsa
1734 Delaware St.
Berkeley, Calif.
- Kalitsinsky, Sylvia
657 53rd. St.
Oakland, Calif.
- Kamornick, Phillip
2231 Ward St.
Berkeley, Calif.

- Kanter, Elliot
1852 Virginia St.
Berkeley, Calif.
- Kapiloff, Paul L.
2443 California St.
Berkeley, Calif.
- Kashinsky, Daniel J.
2628 College Ave.
Berkeley, Calif.
- Kasinski, Harold
1613 Walnut St.
Berkeley, Calif.
- Kass, Robert L.
2248 Blake St.
Berkeley, Calif.
- Katz, Paula
2538 Durant St.
Berkeley, Calif.
- Kaufman, Denise V.
2400 Durant St.
Berkeley, Calif.
- Kausek, Carolyn
4811 Davenport Ave.
Oakland, Calif.
- Keig, Daniel J.
210 Stonewall Rd.
Berkeley, Calif.
- Kennedy, Linda
2539 Etna
Berkeley, Calif.
- Kennedy, Susan M.
2520 Ellsworth Ave.
Berkeley, Calif.
- Kepner, Diane
2045 Ashby
Berkeley, Calif.
- Kepner, Gordon
2045 Ashby
Berkeley, Calif.
- Kerber, Virginia A.
2035 Channing Way
Berkeley, Calif.
- Kerr, Andrew, III
1922 Walnut
Berkeley, Calif.
- Kershaw, Alex
1726 10th St.
Berkeley, Calif.
- Kettering, Fred H.
2024 University Ave.
Berkeley, Calif.
- Keyser, Charles H., Jr.
2517 Durant, Apt. 1
Berkeley, Calif.
- Keyston, Robert C.
1221 Monticello Rd.
Lafayette, Calif.
- Kilstein, Ina
1628 Walnut
Berkeley, Calif.
- Kimball, John P.
2426 Fulton St.
Berkeley, Calif.
- Kimball, Kathleen
2403 Milvia
Berkeley, Calif.
- King, Jonathan
2632 College Ave.
Berkeley, Calif.
- Kirohner, Daniel J.
123 Echo Ave.
Oakland, Calif.
- Kirkland, Kenneth
1930 Haste St.
Berkeley, Calif.
- Kirmmse, Bruce
2283 Hearst
Berkeley, Calif.
- Klapper, Bonnie
2426 Grant St., No. 8
Berkeley, Calif.
- Klein, Margaret
2215 Grant St.
Berkeley, Calif.
- Klein, Michael L.
2215 Grant
Berkeley, Calif.
- Kline, Karen
2328 Piedmont Ave.
Berkeley, Calif.
- Knight, William
2225 Channing Way, Apt. 201
Berkeley, Calif.
- Knop, Larry E.
1136 Euclid Ave.
Berkeley, Calif.
- Knowles, Jonathan
3037 Wheeler St.
Berkeley, Calif.
- Knowlton, Judy
2248 Blake St.
Berkeley, Calif.
- Kogan, Michael
1924 Blake St.
Berkeley, Calif.
- Kolodney, David
2228 Parker St.
Berkeley, Calif.
- Kopp, Gary
2283 Hearst Ave., Apt. 20
Berkeley, Calif.
- Korshak, Gerald
6026-A Harwood Ave.
Oakland, Calif.
- Kovaacs, Irene
2527 Ridge Rd.
Berkeley, Calif.
- Kraft, Kris
2555 Buena Vista Way
Berkeley, Calif.
- Kramer, Dana
2350 Hilgard St.
Berkeley, Calif.
- Kramer, Fredrica
2620 Daniel St.
Berkeley, Calif.
- Kramer, Ivan
2632 Regent St.
Berkeley, Calif.
- Krantz, Grover
2337 Grant St.
Berkeley, Calif.
- Kroll, Michael
2906 Telegraph
Berkeley, Calif.
- Kroll, Robert E.
2939 Dwight Way
Berkeley, Calif.
- Kroopnick, Peter
2724 Derby
Berkeley, Calif.
- Lakeland, William
1143 Spruce St.
Berkeley, Calif.
- Lander, Robert
2307 Haste
Berkeley, Calif.
- LaPenta, Joseph S.
2516 Ridge Rd.
Berkeley, Calif.
- Lapham, Barbara
2927 Lorena St.
Berkeley, Calif.
- Lapointe, Joe
2954 Benvenue
Berkeley, Calif.
- Larson, Gary
835 Riley Dr.
Albany, Calif.
- Launer, Dona
2333 Fulton St.
Berkeley, Calif.
- Lawrence, Patricia
2006 1/2 Parker
Berkeley, Calif.
- Lazlo, Frank
2650 Durant, No. 405D
Berkeley, Calif.
- Leary, Sally
833 Ashbury
San Francisco, Calif.
- Lehtman, Harvey
2400 Durant
Berkeley, Calif.
- Leiter, Ronald L.
2414 Parker St.
Berkeley, Calif.
- Leonard, Kenneth W.
2420 Ridge Rd.
Berkeley, Calif.
- Leonard, Stephen
1927 Dwight Way
Berkeley, Calif.
- Lester, Lewis J.
2648 Stuart St.
Berkeley, Calif.
- Levant, Lowell A.
2726 Hillegass
Berkeley, Calif.
- Levenson, John W.
2336 Grove St.
Berkeley, Calif.
- Leventhal, Linda J.
604 Davidson Hall, Rm. 2650
Berkeley, Calif.
- Levi, Louis Landes
2316 Blake
Berkeley, Calif.
- Levin, Emily
2400 Durant Ave.
Berkeley, Calif.
- Levine, Anita S.
6536 Telegraph
Oakland, Calif.
- Levitin, Teresa
2208-B Parker
Berkeley, Calif.
- Levy, Esther
2422 Channing Way
Berkeley, Calif.
- Lhospital, Claude R.
2540 College
Berkeley, Calif.
- Lima, Margaret
891 Carolina St.
Berkeley, Calif.
- Linder, Sheila E.
2423 Blake No. 202
Berkeley, Calif.
- Lindheim, Daniel
2315 Dwight Way
Berkeley, Calif.
- Lindo, William
2434 Bowditch
Berkeley, Calif.
- Linsey, Jerry
2001 Channing Way
Berkeley, Calif.
- Linsky, Elizabeth Frances
2514 Regent St.
Berkeley, Calif.
- Lipner, Leonard
1827 Addison
Berkeley, Calif.
- Lipson, Steven M.
2414 Dana St., Apt. 5
Berkeley, Calif.
- Lipsy, Ronald
2230 Haste, No. 4
Berkeley, Calif.
- Lipton, Peter
1456 Sacramento St., No.
San Francisco, Calif.

- Litewka, Albert B.
2536 College Ave.
Berkeley, Calif.
- Lloyd, Mary
2526 College Ave.
Berkeley, Calif.
- Lorette, Michael
1320-B Josephine
Berkeley, Calif.
- Lorimer, Michael G.
2029 Durant
Berkeley, Calif.
- Loskutoff, Cheryl
1439-D Josephine
Berkeley, Calif.
- Loskutoff, Douglas
1439 Josephine, Apt. D
Berkeley, Calif.
- Lowe, Donald F.
1508 Oxford St.
Berkeley, Calif.
- Lowery, Ann
2520 College
Berkeley, Calif.
- Luben, Paul B.
1818 Virginia
Berkeley, Calif.
- Ludeke, Russ J.
2201 Glenn Ave.
Berkeley, Calif.
- Lustig, Richard J.
2336 Dwight Way
Berkeley, Calif.
- Lustig, Stephen
1510 Oxford
Berkeley, Calif.
- Lutz, Rolf H.
648 Santa Fe Ave.
Albany, Calif.
- Lyons, Glenn
2016 Blake, Apt. 6
Berkeley, Calif.
- MacLaren, Robert B.
2510 Bancroft, No. 302
Berkeley, Calif.
- Mac Laughlin, Douglas
2575 LeConte Ave.
Berkeley, Calif.
- McClintock, Robert S.
6395 B, Dana St.
Oakland, Calif.
- McDaniel, John F.
1301 Henry St.
Berkeley, Calif.
- McGah, Walter B.
2729 Elmwood
Berkeley, Calif.
- McKean, Margaret
2400 Durant
Berkeley, Calif.
- McKean, Sandy
1810 Virginia
Berkeley, Calif.
- Mainhart, Alys Marie
2234 Haste, No. 4
Berkeley, Calif.
- Malbin, Edward
228 Parker Ave., No. 3
Berkeley, Calif.
- Mallard, Thomas I.
2312 Warring
Berkeley, Calif.
- Maraskin, William
2221 Dwight Way
Berkeley, Calif.
- Marcus, Mike
1829 Bancroft Ave.
Berkeley, Calif.
- Marcus, Michela
1829 Bancroft Way
Berkeley, Calif.
- Margetti, Louis
1340 Oxford
Berkeley, Calif.
- Mark, Brian Leslie
1911 Grove St., Apt. 4
Berkeley, Calif.
- Mark, Karen
Stern Hall
Berkeley, Calif.
- Markley, Landis
2827 Regent St.
Berkeley, Calif.
- Marsh, Phillip N.
2669 Virginia St.
Berkeley, Calif.
- Marshik, Larry
2140 Oxford
Berkeley, Calif.
- Mason, John Clark
2904 Adelene
Berkeley, Calif.
- Masterson, Martha
2939 Dwight Way
Berkeley, Calif.
- Matteson, Peter
2736 Dwight Way
Berkeley, Calif.
- Mattox, Susan
2133 Haste St.
Berkeley, Calif.
- Mellin, Pamela Ann
1640 Euclid
Berkeley, Calif.
- Mellon, Paula
2551-B Benvenue Ave.
Berkeley, Calif.
- Melnik, David
2961 Benvenue
Berkeley, Calif.
- Menderhausen, Ralph R.
2138 McGee
Berkeley, Calif.
- Merrill, Elizabeth Bradley
402 Cunningham
Berkeley, Calif.
- Meyer, John
2735 Hillegass
Berkeley, Calif.
- Meyer, Richard R.
2424 Channing Way
Berkeley, Calif.
- Meyers, Richard E.
2933 Linden St.
Berkeley, Calif.
- Michen, Helen
2001 Channing
Berkeley, Calif.
- Miller, Evelyn
1944 Berkeley Way
Berkeley, Calif.
- Miller, Richard
2429 Haste St.
Berkeley, Calif.
- Miller, Wendy
2545 Hillegass
Berkeley, Calif.
- Miller, William
2312 Ellsworth St.
Berkeley, Calif.
- Milligan, John O.
2532 Hillegass
Berkeley, Calif.
- Milligan, Marilyn
2542 Hillegass
Berkeley, Calif.
- Millstein, Carolyn Israel
2623 Benvenue Ave.
Berkeley, Calif.
- Millstein, Jerry
2623 Benvenue
Berkeley, Calif.
- Minch, Mary
1672 Oxford
Berkeley, Calif.
- Minkus, David
2248 Dwight Way
Berkeley, Calif.
- Mintzer, Dorian
2519 Ridge Rd.
Berkeley, Calif.
- Mitchell, Charles C.
2533 Channing
Berkeley, Calif.
- Mock, Donald
1543 Spruce St.
Berkeley, Calif.
- Moon, James D.
1820 Dwight Way
Berkeley, Calif.
- Moore, Stanley A.
2626 College Ave.
Berkeley, Calif.
- Morris, Mark
1821 Addison
Berkeley, Calif.
- Morrison, Ronald
2850 Telegraph Ave.
Berkeley, Calif.
- Morshead, Judith
1921 Delaware St.
Berkeley, Calif.
- Mortenson, Elfreda Lou
2603 Hillegass
Berkeley, Calif.
- Mosher, Michael A.
2419 Dowling Pl.
Berkeley, Calif.
- Moule, Robert
2424 Channing
Berkeley, Calif.
- Muldavin, Hanna
1930 Walnut St.
Berkeley, Calif.
- Muldavin, Peter
1930 Walnut, No. 5
Berkeley, Calif.
- Mullen, Rodney
1113 9th St.
Albany, Calif.
- Muller, Richard
2423 Blake St.
Berkeley, Calif.
- Murayama, Carol
2815 Forest St.
Berkeley, Calif.
- Murphy, Craig
1811 La Loma
Berkeley, Calif.
- Murphy, Stephen T.
Bowles Hall
Berkeley, Calif.
- Nagy, Niklos
2208 McKinnley
Berkeley, Calif.
- Nanas, Richard H.
1519 Walnut, Apt. 2
Berkeley, Calif.
- Neidorf, Margret
2642 Derby St.
Berkeley, Calif.
- Nelbach, Mary Elizabeth
2508 Hilgard
Berkeley, Calif.
- Nelson, Mary Louise
1443 Willard St.
San Francisco, Calif.
- Nelson, Victoria L.
2422 Channing
Berkeley, Calif.
- Nickerson, Steven D.
1970 Curtis St., Apt. 14
Berkeley, Calif.

- Noble, David H.
1955 Chestnut
Berkeley, Calif.
- Normandin, James
1823 Blake St., No. 2
Berkeley, Calif.
- Novick, Robert
5379 Boyd
Oakland, Calif.
- Nusinow, Carol
2241 Durant Ave.
Berkeley, Calif.
- Oleson, Norman Lee
2339 Hilgard Ave.
Berkeley, Calif.
- Olive, Michael
2533 Grant St.
Berkeley, Calif.
- Oliver, Robert
2239 Derby St.
Berkeley, Calif.
- Oliverira, Edwin J.
2315 Parker
Berkeley, Calif.
- Olsson, Madeline
5637 Van Fleet Ave.
Richmond, Calif.
- Opler, Nora Jean
2127 Haste St.
Berkeley, Calif.
- Osbood, Elenor
2650 Haste St.
Berkeley, Calif.
- Paik, Daniel
2927 Lorina Ave., Apt. No. 1
Berkeley, Calif.
- Papo, Michael
2643 Fulton St.
Berkeley, Calif.
- Park, David C.
2234 Dwight Way
Berkeley, Calif.
- Paskin, Peter R.
1734 Cedar St.
Berkeley, Calif.
- Patterson, Eugene P.
2650 Haste St.
Berkeley, Calif.
- Patton, Sandra Joan
1729 Oxford St.
Berkeley, Calif.
- Paulson, Allan
1824½ Rose St.
Berkeley, Calif.
- Peacocke, Dennis T.
6838 Saroni Dr.
Oakland, Calif.
- Peacock, Terry
6838 Saroni Dr.
Oakland, Calif.
- Peters, Judith
2283 Hearst Ave., Apt. 25
Berkeley, Calif.
- Peterson, Susan
2133 Haste St.
Berkeley, Calif.
- Phillips, Merrilynn
2400 Durant Ave., No. 109B
Berkeley, Calif.
- Pickard, Ronn
2537 Ridge Rd.
Berkeley, Calif.
- Pierce, Thomas M.
2440 Dwight Way
Berkeley, Calif.
- Pilacinski, Bohdan
54 Norwood Ave.
Berkeley, Calif.
- Pinsker, Harold
1829-A Berkeley Way
Berkeley, Calif.
- Plagemann, Stephen
1930 Walnut St.
Berkeley, Calif.
- Platt, Martha Ruth
2231 Blake St., No. 5
Berkeley, Calif.
- Power, Patricia Margaret
2542 Durant Ave.
Berkeley, Calif.
- Pyle, Lynn
2463 Prince
Berkeley, Calif.
- Radey, Jack N.
2139-A Rose
Berkeley, Calif.
- Radu, Judith
2519 Ridge Rd.
Berkeley, Calif.
- Rafkind, Faith B.
2535 Hillepass
Berkeley, Calif.
- Raugh, Michael
2729 Elmwood
Berkeley, Calif.
- Rawlins, Eric
2400 Durant
Berkeley, Calif.
- Rechsteiner, Martin C.
758 Alcatraz St.
Oakland, Calif.
- Reece, Craig T.
2740 College, Apt. 107
Berkeley, Calif.
- Reichbart, Richard Hugh
2283 Hearst
Berkeley, Calif.
- Reinsch, John A.
2311 Piedmont Ave.
Berkeley, Calif.
- Reske, Tanga Joella
1423 Oxford
Berkeley, Calif.
- Rhett, Norman
1970 Curtis, No. 14
Berkeley, Calif.
- Rhoades, Lee
2715 Channing Way
Berkeley, Calif.
- Rice, Barbara
2622 College Ave.
Berkeley, Calif.
- Rice, Walter F.
2315 Dwight Way
Berkeley, Calif.
- Richardson, David
2603 Benvenue
Berkeley, Calif.
- Robbins, Allan
2311 Hearst
Berkeley, Calif.
- Roberts, John C.
2416 Roosevelt Ave., Apt. 5
Berkeley, Calif.
- Robinson, Judy
2527 Ridge Rd.
Berkeley, Calif.
- Robman, Steven I.
2522 Hilgard
Berkeley, Calif.
- Rock, Martin H.
2315 Dwight Way
Berkeley, Calif.
- Rodriguez, Carl
2605 Durant
Berkeley, Calif.
- Rogers, Janet Ruth
2131 Blake St.
Berkeley, Calif.
- Rosen, Hal J.
2302 Dwight Way
Berkeley, Calif.
- Rosenfeld, Edward J.
2400 Durant
Berkeley, Calif.
- Rosenzweig, Larry
2400 Haste St.
Berkeley, Calif.
- Rosenzweig, Richard
2732 Haste
Berkeley, Calif.
- Rosi, Leonard A.
1101 Mound St.
Alameda, Calif.
- Ross, Andrew
2122 Dwight Way
Berkeley, Calif.
- Rossmann, Debora Lynn
2630 Dana St.
Berkeley, Calif.
- Rossmann, Michael D.
2516 Ridge Rd., Apt. 3
Berkeley, Calif.
- Rothe, Cyndy
2024 Cedar St.
Berkeley, Calif.
- Rovelli, Nedda
1642 Francisco
Berkeley, Calif.
- Rubin, Carolyn Corbelli
2330-A Webster
Berkeley, Calif.
- Ryan, James
1309 Morton
Alameda, Calif.
- Sabinson, Mara
1908 Berkeley Way
Berkeley, Calif.
- Sade, Donald
1246-A Berkeley
Berkeley, Calif.
- Salo, Earl C.
1849 Arch St.
Berkeley, Calif.
- Salzberg, Kenneth C.
2420 Ridge Rd.
Berkeley, Calif.
- Sammuels, Barbara
642 Alcatraz Ave.
Berkeley, Calif.
- Samuels, Jim
1425-B Cypress
Berkeley, Calif.
- Sanders, Peter A.
International House, 2299
Berkeley, Calif.
- Sandifur, Leland
2600 Ridge Rd.
Berkeley, Calif.
- Sapiro, Ruth
2650 Durant
Berkeley, Calif.
- Sapp, Paul
2140 Oxford
Berkeley, Calif.
- Saslow, Steven
664 Coulsa Ave.
Berkeley, Calif.
- Satterthwaite, William
2208 McKinley Ave.
Berkeley, Calif.
- Saunders, Richard
2311 Ward
Berkeley, Calif.
- Savio, Mario
2536 College
Berkeley, Calif.
- Schiffirin, Rebecca
2806 Regent St.
Berkeley, Calif.
- Schimenti, Emile D.
2150 Channing Way
Berkeley, Calif.

- Schlessinger, Mike
2135 McGee
Berkeley, Calif.
- Schmorleitz, Richard
2138 McGee
Berkeley, Calif.
- Schoenbrun, Maxine
2979 Piedmont
Berkeley, Calif.
- Schoene, Katura
2536 Regent St.
Berkeley, Calif.
- Schorer, Judith
2727 Regent, Apt. 4
Berkeley, Calif.
- Schott, Diane
2486 Shattuck
Berkeley, Calif.
- Schreiber, Michael
3237 Ellis St.
Berkeley, Calif.
- Schultz, Marston
2542 Chilton Way
Berkeley, Calif.
- Schumm, Uriel
2140 Oxford St.
Berkeley, Calif.
- Schwartz, Judith Ann
2635 Hillegass St.
Berkeley, Calif.
- Seay, George C.
2307 Haste St.
Berkeley, Calif.
- Senf, Diana E.
77 Panorama Way
Berkeley, Calif.
- Shapiro, Ann
2708 College Ave.
Berkeley, Calif.
- Shapiro, Dana R.
2527 Ridge Rd.
Berkeley, Calif.
- Shapiro, Lawrence M.
2600 Ridge Rd.
Berkeley, Calif.
- Shapiro, Marsha
2620 Dana St.
Berkeley, Calif.
- Shattuck, Kate M.
2630 Dana St.
Berkeley, Calif.
- Shavitz, Richard
2423 Blake St.
Berkeley, Calif.
- Shaw, Robert J.
2208 McKinley St.
Berkeley, Calif.
- Shea, Michael A.
2334 Roosevelt Ave.
Berkeley, Calif.
- Sheats, Michael C.
2816 Grove St.
Berkeley, Calif.
- Shechner, Mark
1914 Channing Way
Berkeley, Calif.
- Sheingold, Joan
2735-A Derby St.
Berkeley, Calif.
- Sheldrick, Dennis
2140 Oxford St.
Berkeley, Calif.
- Sheppard, Mary
2241 Derby St.
Berkeley, Calif.
- Shippee, Mary E.
1050 Sterling
Berkeley, Calif.
- Shodell, Michael
1835-A Addison
Berkeley, Calif.
- Showers, David G.
2650 Haste St.
Berkeley, Calif.
- Shub, Beth
2437 Shattuck Ave.
Berkeley, Calif.
- Shub, Michael
2437 Shattuck Ave.
Berkeley, Calif.
- Shurin, Jeffrey
2801 College Ave.
Berkeley, Calif.
- Siegel, Irene
2939 Dwight Way
Berkeley, Calif.
- Siegel, Leni
1734 Hearst St., Apt. 2
Berkeley, Calif.
- Silveira, Edward Joe
308 Smyth
Berkeley, Calif.
- Silverman, Ann J.
2650 Haste
Berkeley, Calif.
- Silverman, Barbara R.
2650 Durant Ave.
Berkeley, Calif.
- Silverman, Barry M.
503 Forest
Oakland, Calif.
- Silverstein, Murray S.
2401 Piedmont
Berkeley, Calif.
- Siminowsky, Tedi
1811 Miivia St.
Berkeley, Calif.
- Simons, Keith
2400 Dwight Way, No. 309
Berkeley, Calif.
- Skiles, Durward
2130 Haste
Berkeley, Calif.
- Skolnick, Marcia
2602 College
Berkeley, Calif.
- Slatkin, Samuel P.
1706 Grove St.
Berkeley, Calif.
- Smith, David P.
2500 Webster
Berkeley, Calif.
- Smith, Garwood
2538 Durant, Apt. 2
Berkeley, Calif.
- Smith, James C.
2411 Bowditch
Berkeley, Calif.
- Smith, Jerry S.
2453 Webster St.
Berkeley, Calif.
- Smith, Joh Rogers
2228 McKinley
Berkeley, Calif.
- Smith, Linda F.
2006 University Ave.
Berkeley, Calif.
- Smith, Michael J.
1928 Magee St.
Berkeley, Calif.
- Smith, Michael R.
2235 McKinley
Berkeley, Calif.
- Smith, Sharon
2400 Durant
Berkeley, Calif.
- Smith, Valerie Anne
2442 Piedmont
Berkeley, Calif.
- Snodgrass, Herschel
2133 Carlton St.
Berkeley, Calif.
- Snow, Andrea
2527 Ridge Rd.
Berkeley, Calif.
- Snyder, Russell
2041 Ashby
Berkeley, Calif.
- Sobel, Suzanne
2314 Dwight Way, Apt. 3
Berkeley, Calif.
- Soklow, Fred
2002 Parker
Berkeley, Calif.
- Soklow, Steve A.
2012 Channing Way
Berkeley, Calif.
- Sonnenschein, Susan Iris
2721 Haste St.
Berkeley, Calif.
- Sosna, Leonard
2314 Oregon
Berkeley, Calif.
- Stanton, William
2434 Bowditch
Berkeley, Calif.
- Stapleton, Beth
2328-B Oregon St.
Berkeley, Calif.
- Stapleton, Sydney
2328 Oregon
Berkeley, Calif.
- Stein, Bernard L.
2210 Cedar St.
Berkeley, Calif.
- Stein, Julia
125 Stonewall
Berkeley, Calif.
- Steinberg, Alan B.
1077-H Monroe
Albany, Calif.
- Steiner, Karen
2305 Ward St.
Berkeley, Calif.
- Stephenson, Marylee G.
1944 Berkeley
Berkeley, Calif.
- Stering, John R.
2816 Grove
Berkeley, Calif.
- Stern, Lee
2016 Blake
Berkeley, Calif.
- Stevens, Michael R.
2400 Haste, No. 9
Berkeley, Calif.
- Stiffer, Price
2415 Hilgard
Berkeley, Calif.
- Stine, Peter
2322 Carleton
Berkeley, Calif.
- Stromberg, Gene
2315 McGee
Berkeley, Calif.
- Sucher, Elizabeth
2333 Fulton
Berkeley, Calif.
- Sugarman, Gary
2024 University Ave.
Berkeley, Calif.
- Sullivan, Thomas
6838 Saroni
Oakland, Calif.
- Summers, Frank
2140 Oxford St.
Berkeley, Calif.
- Sumner, Terry
33 Canyon Rd.
Berkeley, Calif.
- Switzer, Mark H.
2143 Emerson
Berkeley, Calif.

- Tabachnick, Stephen E.
2452 Bancroft Way
Berkeley, Calif.
- Taft, Penelope
1920 Milvia St.
Berkeley, Calif.
- Takagi, Mae Myle
1275 Grove St.
Berkeley, Calif.
- Tangen, Jan
1927 Dwight Way
Berkeley, Calif.
- Tapper, Barbara
1749 Oxford St.
Berkeley, Calif.
- Taylor, John
2538 Durant, No. 2
Berkeley, Calif.
- Taylor, Karen Reeder
1930 Ward St.
Berkeley, Calif.
- Taylor, Lyn
2526 Hillegass St.
Berkeley, Calif.
- Tempey, Damon
1810 University, Apt. 7
Berkeley, Calif.
- Tener, Marvin
2315 Dwight Way
Berkeley, Calif.
- Terwilliger, Paul
2531 Ridge Rd.
Berkeley, Calif.
- Thomas, Lois
2314 Ellsworth
Berkeley, Calif.
- Thon, Adrienne
2211 Wood St.
Berkeley, Calif.
- Thoreen, Keith
2540 LeConte
Berkeley, Calif.
- Tout, Carol
2131 Parker, No. B
Berkeley, Calif.
- Treuhaft, Robert
6411 Regent St.
Oakland, Calif.
- Trupin, Sue
2151 Mason St.
San Francisco, Calif.
- Turner, Brian
2536 College
Berkeley, Calif.
- Turner, William
1912 Addison, No. 18
Berkeley, Calif.
- Tussman, David A.
1700 La Vereda
Berkeley, Calif.
- Upton, Albert L.
2283 Hearst Ave., Apt. 28
Berkeley, Calif.
- Urmann, Michael
2150 Channing
Berkeley, Calif.
- Van Eps, John
2035 Channing
Berkeley, Calif.
- Vaughn, Carolyn Lee
2650 Durant St.
Berkeley, Calif.
- Veedell, Esther
2324½ Carleton
Berkeley, Calif.
- Viani, Brian
2736 Haste
Berkeley, Calif.
- Vinograd, Julia
2510 Benvenue, No. 33
Berkeley, Calif.
- Vogel, Robert
1600 Bancroft
Berkeley, Calif.
- Vree, Dale
2531 Ridge Rd.
Berkeley, Calif.
- Wald, David
665 Fairview St.
Oakland, Calif.
- Wald, Hazel
665 Fairview St.
Oakland, Calif.
- Waldron, Jack
1420-B Spruce
Berkeley, Calif.
- Wall, Hyale
137½ Shattuck
Berkeley, Calif.
- Wallach, Marlin
Bowles Hall
Berkeley, Calif.
- Walsh, Carolyn
1912 Addison
Berkeley, Calif.
- Walter, Jeffery E.
293 41st St.
Oakland, Calif.
- Walters, Alfred W.
1395 Neilson St.
Berkeley, Calif.
- Warren, Phillip Michael
2031 Dwight Way
Berkeley, Calif.
- Watson, Donna Mae
2515 Fulton
Berkeley, Calif.
- Webb, William F.
404 Ehrman Hall
Berkeley, Calif.
- Wedgley, Stephen
404 Ehrman Hall
Berkeley, Calif.
- Wedige, Walter S.
942 Humboldt St.
Richmond, Calif.
- Wedum, Ellen
2726 Channing
Berkeley, Calif.
- Weil, James
2442 Piedmont
Berkeley, Calif.
- Weinberg, Jack
2536 College
Berkeley, Calif.
- Weinberger, Michael A.
157 Park Pl.
Richmond, Calif.
- Weitman, Judith
2437 Shattuck Ave.
Berkeley, Calif.
- Weldon, Alice Temple
2001 Haste
Berkeley, Calif.
- Weller, Tomas W.
2232 Haste, No. C
Berkeley, Calif.
- Wellings, Julie
979-A Stannage Ave.
Albany, Calif.
- Wellman, David
5006 Telegraph
Oakland, Calif.
- Wells, Andrew
3033 Deakin St.
Berkeley, Calif.
- Wells, Benjamin F., III
2130 Haste
Berkeley, Calif.
- Wells, Carolyn
2700 Bancroft
Berkeley, Calif.
- Wennerberg, Marjorie
1932 Yosemite
Berkeley, Calif.
- West, Summer Lee
2042-B Hearst St.
Berkeley, Calif.
- White, Lorace A.
2234 Haste St., Apt. 4
Berkeley, Calif.
- White, Lynda Gaylene
2400 Haste St., No. 210
Berkeley, Calif.
- White, Ruth Eleanor
2131 Blake
Berkeley, Calif.
- Wickland, Sara
2210 Parker St.
Berkeley, Calif.
- Wiczai, Diane S.
2423 Blake
Berkeley, Calif.
- Wiczai, Louis James
2423 Blake
Berkeley, Calif.
- Wiesner, Peter
1407 Spruce St.
Berkeley, Calif.
- Wilde, Anthony
2247 Dwight Way
Berkeley, Calif.
- Willis, Lyle
2732 Haste St.
Berkeley, Calif.
- Wilson, Jeanne L.
2311 Ward St.
Berkeley, Calif.
- Wilson, Kathleen
2002 Parker
Berkeley, Calif.
- Windgate, Seth
6026 Harwood
Oakland, Calif.
- Winter, Robert
2236 Durant Ave.
Berkeley, Calif.
- Winthrop, Susan
2456 Parker St.
Berkeley, Calif.
- Wirt, David Ross
1810 Berkeley Way
Berkeley, Calif.
- Wirtz, Steven C.
2337 Prince St.
Berkeley, Calif.
- Wofsy, Alan M.
2907½ Grove St.
Berkeley, Calif.
- Wolf, Goldye
2532 Benvenue Ave.
Berkeley, Calif.
- Wolfson, Robert C.
2314 Ellsworth
Berkeley, Calif.
- Woodner, Jonathan
6212 Racine
Oakland, Calif.
- Wosk, Myrna
2333 Channing Way
Berkeley, Calif.
- Yee, Warren S. F.
1709 Grove St.
Berkeley, Calif.
- Yellin, Florence R.
2006 University
Berkeley, Calif.
- Yoder, Ronald K.
2600 Ridge Rd.
Berkeley, Calif.
- Zahn, Barbara Ellen
2650 Haste St.
Berkeley, Calif.

Zaretsky, Malcolm D.
2512 Regent St.
Berkeley, Calif.
Zeiger, Ronald
2035 Channing Way
Berkeley, Calif.
Zimmerman, Laurel Elaine
2526 College Ave.
Berkeley, Calif.

Zion, Matthew Williams
273-B 62nd St.
Oakland, Calif.
Zimdars, Janis
1640 Euclid, Apt. 1
Berkeley, Calif.
Zvegintzov, Nicholas
2535 Piedmont
Berkeley, Calif.

Zysman, Madeline
2426 Grand St.
Berkeley, Calif.

Some of the patterns of residence given by the arrested demonstrators show how they were concentrated in little groups. For example, at 2536 College Avenue, Berkeley, were Mario Savio, Dunbar Aitkens, Charles E. Artman, David L. Goines, Ilene Hanover, Albert B. Litewka, Martin H. Rock, Brian Turner, Samuel B. Slatkin, and Jack Weinberg. Sandor Fuchs, Arthur Goldberg, Jonathan King, and Wendel C. Brunner, gave their address as 2632 College Avenue, Berkeley.

The premises in which little groups of demonstrators were housed consisted of dormitories operated under the supervision of the university, boarding houses, and apartment houses. There were some instances where a group of men or women would rent a house, but these were the exception rather than the rule. The pattern of occupancy is interesting insofar as it gives the geographical locations and the proximity to the campus of these component parts of the FSM movement. In addition to those addresses already given some of the other most popular locations in Berkeley were 2700 Bancroft Way; 2532 Benvenue Avenue; 2131 Blake Street; 2248 Blake Street and 2423 Blake Street; 2424 Channing Way; 2630 Dana Street; 1927, 2315, and 2939 Dwight Way; 2400, 2542, and 2650 Durant Street; 2515 Fulton Street, 2215, 2231, 2309 and 2426 Grant Street; 2650 and 2721 Haste Street; 2283 Hearst Avenue; 2635 Hillegass Street; 2100, 2208, 2228, and 2325 McKinley Street; 2140 Oxford Street; 2420, 2516, 2519, 2527, 2531, and 2600 Ridge Road; 2437 Shattuck Avenue; 2231 Ward Street; and other addresses from Alameda, Albany, Belvedere, Lafayette, Oakland, Orinda, Palo Alto, Stanford, Richmond, Sacramento, and San Francisco.

The first charges of police brutality were made on December 4. Bonnie Flemming, who was not one of those arrested, stated that she glimpsed some officers with long clubs striking students on the second floor of Sproul Hall when she was standing on the steps of a nearby building; Martin Rock, 20, said an officer broke a pane of glass on the second floor of Sproul Hall and blamed a student for causing the accident. Peter Israel said that he was slapped, Arthur Goldberg said the police beat the hell out of him, and Mike Entin said that the police were "unduly forceful." Michael Smith, a political science senior, said the physician at Santa Rita Rehabilitation Center had treated him for possible concussion; but Dr. James Terry, the responsible medical officer at the Santa Rita facility, made a flat denial of this accusation.

Judge Rupert Crittenden, presiding judge of the Berkeley Municipal Court, acceded to pleas from a delegation of university faculty members, headed by Professor Larzer Ziff, associate professor of English, when they asked him to reduce the normal bail for trespassing and refusal to disperse from \$165.00 to \$55.00, and the normal bail for resisting arrest from \$275.00 to \$110.00. Professor Ziff stated that the faculty had raised a bail fund of \$8,000 by December 4, and had arranged for the posting of bail in the aggregate of \$80,000 by a bail bond firm.

On the evening of Thursday, December 3, an unofficial emergency meeting of the Berkeley faculty was called, and approximately 1,000 of

them attended. At this meeting a vote was taken, with 15 dissents, criticizing the administration for its handling of the demonstrations and calling for the ouster of Chancellor Strong. Other resolutions passed at this emergency meeting were recommendations that all students arrested for the sit-in should receive full amnesty, that a faculty committee should be established to hear appeals from any students punished for breaking university rules, that new rules for campus political activities should be declared in effect and enforced "pending their improvement," that the presence of highway patrolmen on the campus be condemned together with the refusal by police officers to allow interested faculty members to enter Sproul Hall during the period of the invasion. A telegram was sent to Governor Brown embodying most of these points, and it was signed by 378 of those attending the meeting. Dr. Michael Duodoroff drafted the message to Governor Brown with the aid of his colleagues Dr. R. Y. Stanier, Dr. Leon Wofsy, to whom we have already alluded, Dr. Ben Papermaster, Dr. Nathan Glazer, Dr. Henry F. May, Professor Mark Schorer, Professor John H. Reynolds, Paul Jacobs, Dr. Henry N. Smith, who took charge of collecting the bail fund for the jailed students, Dr. Dell H. Hymes, who declared that he intended to resign in protest against the handling of the sit-in demonstrators and thought others should do so, and others who expressed themselves in general terms as critical of both Governor Brown and the university administration. From San Francisco State College, Professor Urban Whittaker spoke out against the Berkeley administration, and was joined by Professor Dan Knapp of that institution, who denounced Governor Brown.

President Kerr then issued a statement on December 4th to the effect that Governor Brown had made the decision to call the officers and end the unlawful occupation of Sproul Hall, and called upon the faculty, the staff and the students to carry on the orderly processes of the university and to reject "what has become a free speech movement attempt at anarchy."

Kerr declared that when the FSM issued its ultimatum and set a deadline for compliance by the administration, that its demands had nothing whatever to do with free speech which it well knew, and that it was also aware that the university could not possibly accept the conditions. He said that the FSM and its leaders knew from the start that the police would have to haul them out and were now finding that they had thrown themselves into the arms of a community at large which was less tender and which had fewer scruples about administering discipline.

On this occasion President Kerr had nothing to say about the students carrying on their demonstrations "with heavy hearts."

The Campus Strike

No sooner were the leaders of the student rebellion released from jail when they started planning more demonstrations and more acts of defiance. They first called for a general strike of the university, by the student body, teaching assistants, staff and faculty. This action was originally calculated to include a great many non-students who resided in the immediate vicinity of the university campus, and who had been participating to some extent in previous demonstrations. Even as the police were making their arrests on the morning of December 3, FSM leaders who had escaped from the building drove through the Berkeley streets during the pre-dawn hours with a sound truck broadcasting

appeals for demonstrators to block all traffic accesses to the campus, and several hundred people responded. A picket line was established at one of the entrances to the university and another one at a parking lot near Harmon gymnasium.

On December 4th the student strike was joined by graduate students and teaching assistants who protested the Sproul Hall arrests, as well as a number of faculty members. Some professors, employed to teach and drawing their salaries for that purpose, closed their classes and refused to carry out their responsibilities because they were in sympathy with the protesting pickets and the rebellious students. Other members of the faculty expressed views that might be epitomized by the statement by Wallace F. Smith, an assistant professor of business administration, who declared:

"One of the saddest experiences I've had in my life was in the midst of this disorder. To be asked by my students in class to suggest means that they might use to counter it, and seeing no effective means other than to resort to the same tactics and violence, there was nothing I could suggest. And clearly they were asking for assistance in overcoming this attack upon their reputability, seriousness, and respect for the community."*

The picketing continued through December 5th and 6th, but as this was over a weekend, many classes that might otherwise have been disrupted were not being held. The most serious effect of the picketing was on Friday, December 4, when sharp lines of faculty splits were drawn between the extreme liberals who were highly critical of Governor Brown and the university administration and vehement in their support of the FSM rebels, the moderate faculty members who advocated the use of normal channels of authority and communication for the purpose of restoring order to the strife-torn campus, and the more conservative element that advocated swift and firm disciplinary action on the part of the administration as the only possible method to bring an end to chaos and anarchy that had been engulfing the Berkeley campus since the first demonstration occurred in September, 1964.

There are reports to the effect that during the period of the general strike, many professors who were sympathetic with the FSM used their classrooms for the purpose of expressing these sentiments to their students. There are many instances of this sort of flagrant violation of what the faculty refers to as "academic freedom," and there were other instances of professors and teaching assistants deliberately indoctrinating their students in an attempt to gain support for the FSM.

It should be noted that the teaching assistants are graduate students who are working towards a Master's or Doctor of Philosophy degree, and who are employed by the university to conduct sections of large classes under the direction of a professor. Some of the classes in the liberal arts department of the Berkeley campus comprise several hundred students, and are therefore broken down into sections under a number of teaching assistants, who are neither regarded as students or members of the faculty. They are in much more intimate contact with the students than are the professors, and therefore exert a strong influence over them, and are in turn subject to a powerful influence by their students. Savio, when he threatened to bring the university to a "grinding halt" was referring to a

**California Monthly*, February, 1965, p. 14.

strike by these teaching assistants, which would in effect paralyze the university.

There is a wide variety of views about the effectiveness of the general strike of December 3rd and 4th. Many classes were cancelled without authority, and in some instances heads of departments requested their professors to cancel classes while many graduate students and teaching assistants joined the strikers. At noon on December 4th a rally was addressed by Joan Baez and Assemblymen-elect Stanton, Burton and Brown. There was a picket line of approximately fifteen hundred people across the entrance to the university at Telegraph Avenue and Bancroft Way, about half of the classes were not functioning, and the university did "grind to a halt," as Savio had predicted. SLATE had called for similar violent action earlier in the year when the supplement to its bulletin, issued in large quantities to these students, declared that: "this institution . . . does not deserve a response of loyalty and allegiance from you. There is only one proper response to Berkeley from undergraduates: *that you organize and split this campus wide open!*" (Committee's italics.) The rest of the booklet contained typical Communist propaganda.

The university administrators wisely determined that they should postpone any effort at negotiating with the FSM leaders until after the weekend, and thus allow the situation to cool and settle somewhat. But the FSM was busy also.

Until the Sproul Hall invasion there had been a loosely-knit organization which called itself the Free Speech Movement. Many of its meetings resembled group therapy sessions, with the participants sitting around and examining themselves and each other and arriving at very little in the way of plans for action. There were large numbers of people who belonged to no organization and who detested organizations of any sort. But all of this disorganization vanished like magic after December 3rd, and in some astounding manner was immediately replaced by a highly organized structure, complete with departments and sub-departments, an executive committee and a steering committee, plenty of finances, and an abundance of technical equipment.

At Mario Savio's apartment a "Work Central" was established, and soon there were so many people in his quarters that he and Art Goldberg were compelled to take steps to procure larger facilities. Then, in rapid succession, other "Centrals" were established. In addition to the Work Central there was a Press Central, a Legal Central, FSM Central, Command Central, Strike Central, Correction Central, Finance Central, a Night Legal Central, and a Running Expenses Central. The two Legal Centrals could be reached by calling the following telephone numbers: 843-2101 and 848-1208. The telephone for the Command Central was 849-1028, and the Finance Central was listed in the records of the FSM as University of California extension 4941.

It was at this point that the united front movement was jettisoned and in its place appeared this highly sophisticated and efficient FSM organization with its executive committee and steering committee and its system of centrals and its mobilization of supporters that were scattered in key positions throughout the entire Berkeley campus. The dominant figures on the Steering Committee immediately prior to the Sproul Hall invasion were Arthur Goldberg, Mario Savio, Brian Turner, Bettina Aptheker, Sherry Stephenson, Jack Weinberg, Dick Roman, Tom Miller, Sydney Stapleton, Jack Weisman and Mike Rossman. The personnel of this committee changed slightly from time to time, but after the Sproul Hall inva-

sion it became crystal clear that the main leaders were Arthur Goldberg, Mario Savio and Bettina Aptheker.

There has been much speculation as to whether faculty sympathizers for FSM worked to bring order out of the chaos and give that movement some direction and guidance. On more than one occasion, at times of extraordinary tension and when one of the FSM leaders such as Goldberg or Savio was present and making mistakes—some faculty sympathizer would curtly order them to quit talking, and there was instant obedience from these defiant students. That there was some guidance from the left-wing of the faculty was clear. How far it went, and how much authority the faculty exercised in the running of the rebellion, is another matter.

Stephen Weisman was also an important member of the steering committee, and although a non-student, was affiliated with Independent Socialist Club on the Berkeley campus, a peripheral socialist group of factionalists who opposed working with liberals or supporting Democratic Party candidates. Weinberg was recruited out of the Committee on Racial Equality into the Independent Socialist Club approximately one week before he was arrested, and was considered by his colleagues to be politically inexperienced. Mario Savio had joined the Young People's Socialist League at Berkeley in the spring of 1964—a fact which has not hitherto been disclosed, to our knowledge. YPSL was a Trotskyist Communist organization, but he took very little interest in it, was quiet and detached at most of the meetings, and was considered politically lethargic. In the summer of 1964 Savio went to Mississippi to help the Student Non-Violent Coordinating Committee, and returned to the Berkeley campus fired with enthusiasm for the civil rights movement. He still took very little interest in meetings, but soon became a dynamic figure on the top of a battered police car, on the steps at Sproul Hall, on a podium, grabbing a microphone out of a professor's hands on the stage of the Greek Theater, and proving himself so adroit at arousing a crowd of students to a high emotional pitch that he soon became identified as the spokesman for the entire FSM movement.

Arthur Goldberg was an ex-chairman of SLATE, and is still active in that organization as well as in the Communist movement that follows the tough Chinese Communist line. Many close observers have expressed doubt that such leaders could devote the time and energy or, indeed, that they had the organizational talent to put together the FSM "Central" system over the week end of December 5 and 6, 1964.

The invasion of Sproul Hall and the campus-wide strike which followed, might be accurately described as follows:

"... Attitudes are bitterly and rigidly sectarian, and political warfare is waged at a pitch that strikes the outsider as close to hysterical. Classes are frequently disturbed by political rallies, and sometimes they have to be suspended because of student strikes."

But this description is of another university, the Central University of Caracas, Venezuela, and is an excerpt from an article by Bernard Taper.*

The full quote is as follows:

"Like most other Latin-American universities, it is an intensely political place. Attitudes are bitterly and rigidly sectarian, and political warfare is waged at a pitch that strikes the outsider as close to hysterical. Classes are frequently disturbed by political rallies, and sometimes they have to be suspended altogether because of student

*"Letter from Caracas," by Bernard Taper. *The New Yorker*, March 6, 1965, p. 101 at p. 124.

strikes. The most recent strike, a protest against the new university rule that students who repeatedly flunked two or three of their courses would be kicked out. In most parts of the world, such a rule would be taken for granted, but student leaders here declared that the reasons students were flunking was that the professors were reactionary and incompetent and their teaching methods antiquated. There is truth in that charge, but, characteristically, the quarrel had its roots in politics—an assertion by the university authorities that many of the students were on the campus solely to agitate, and had no intention of devoting any time whatever to academic work.”

Greek Theater Meeting, December 7, 1964

By December 4, the antagonism toward President Kerr that had been consistently exhibited by the FSM, began to spread to other segments of the student community. On December 4, the *Daily Californian* reproduced an editorial signed by the editors of student papers at Berkeley, Los Angeles and Davis campuses. It was entitled “We Need A Leader,” and stated that “Clark Kerr has shown perception and good will through his many statements to the press and the community. But to this day he has not come down to the level of the students, down to the base court.”

Three days later the Greek Theater meeting was called. The administration announced that classes would be suspended and that students and faculty alike would assemble to hear what President Kerr had to say. By 11 a.m. the theater was jammed. Thousands of people lined the nearby slopes while still others listened to the proceedings on remote loud speakers. The meeting had been carefully organized, and was in charge of Professor Robert Scalapino, chairman of the Department of Political Science. Kerr’s speech was one of dignity and a plea for moderation on the part of the faculty, administration, and students. At the conclusion of his talk he announced a further capitulation on the part of the administration, promising forgiveness to students for all offenses committed prior to the day after the invasion of Sproul Hall. This, of course, amounted to complete forgiveness for all offenses committed by the students since the inception of the demonstrations.

When Kerr finished speaking, he turned the podium over to Scalapino and while Scalapino was in the process of adjourning the meeting, he was shouldered from his position by Savio, who seized the microphone. This was an act of unwarranted and brash intrusion whereby Savio sought to inject himself without invitation on a program that had been carefully structured by the university administration. No invitation had been extended to, nor had any been requested by, the FSM movement. Savio merely saw an opportunity to keep the emotional fervor of his followers at a high pitch, and took this sudden and dramatic means to accomplish that purpose. Dramatic it was, indeed, as the campus policemen wrestled him to the floor, took the microphone from his hand, and dragged him on his back across the stage to the rear entrance of the theater. Professor Joseph Tussman, chairman of the Department of Philosophy, persuaded the police to release Savio so that he might speak, and he returned and announced, in a low and controlled voice, that there would be a noon rally on the steps of Sproul Hall. This rally was attended by the largest student assemblage in the history of the Free Speech Movement, estimates ranging from six to seven thousand, who listened while Savio attacked President Kerr, repudiated his proposals, and declared that the FSM would continue with its demands and its demonstrations.

While Savio made his sensational grab for the microphone, President Kerr stood in amazement, observing part of the occurrence from the door of a conference room where he had gone for a scheduled press conference. The acting chairman of the Department of Speech, Professor Robert Beloof, accompanied by Art Goldberg, approached the President and told him that he must let Savio address the audience. When Goldberg interrupted in an effort to catch the attention of Kerr, Beloof said, "for once in your life, shut up." And Goldberg meekly obeyed. President Kerr said that this would have to be arranged with Professor Scalapino, who was the chairman of the meeting, and after he had consented Savio announced the time and place of the rally.

Professor Beloof later recalled that the lack of communication between the Berkeley administration and its faculty was underlined by the fact that although he had been on the campus for sixteen years, during which time he had been promoted from a lecturer to chairman of his department, and Kerr had gone from a professor to president of the university, the two men had never spoken before.

Immediately prior to entering the Greek Theater to make his address, Kerr stated to two members of the faculty who were standing immediately outside the entrance, that Governor Brown had "double-crossed" him because when they had conferred about the invasion of Sproul Hall, the Governor had agreed with Kerr that the situation at the University of Chicago had been handled correctly by simply allowing the students to remain in a building until they became tired instead of ousting them forcibly. This was the course of action Kerr recommended at Berkeley, but he declared that when irate citizens and law enforcement officers began to telephone the Governor demanding that something be done to prevent continued violations of the law, he broke his prior commitment with Kerr and ordered officers to clear the students from the administration building.

Witnesses who were present at the news conference immediately following the Greek Theater program watched arrogant young leaders of the FSM talking to the President of the university as though he were their inferior, exhibiting no respect whatever for his position, issuing their demands and ultimatums, while Kerr stood and endured the situation. One cannot but wonder what would have happened if he had followed the action of Professor Beloof and told these arrogant youngsters to shut up and make their demands with some degree of respect, and at the proper time and place.

We should not close this description of the Sproul Hall invasion, the arrests, and the campus-wide strike that followed, without mentioning the fact that in connection with the strike FSM had a committee of almost one hundred and fifty members calling university students over the week end and asking for their support, and many students received anonymous telephone calls from people purporting to be their teaching assistants, advising them that it would not be advisable for them to attend classes during the strike. The Berkeley Chapter of the American Federation of Teachers also directed a statement to President Kerr, which, although employing polite language, made it clear that if any disciplinary measures were taken against teaching assistants or faculty members for deserting their posts to support a group of rebellious students, a strike would doubtless ensue. The pertinent part of this message read as follows:

"We would like to inform you that any punitive action taken against teaching assistants or officers of instruction would be in-

tolerable to our group and create *a situation in which class instruction could not continue . . .*" (Committee's italics)

Pending a meeting of the Academic Senate on December 8, the FSM temporarily suspended its strike at midnight the previous day. We have already mentioned the result of this meeting of the Academic Senate: general support of the FSM position by a vote of 824 to 115. At almost the same time candidates from SLATE for important positions in the student government won victories in all seven of the positions for which they were candidates, and Sandor Fuchs, SLATE chairman and FSM member, declared that:

"The victory for SLATE is a victory for the Free Speech Movement, and an independent ASUC. It comes at a time of the greatest victory for the student movement, just hours after the Academic Senate voted for full free speech on the campus."

Almost simultaneously the Senate of the ASUC (Associated Students of the University of California) passed this resolution:

"The ASUC Senate urges all professors, instructors and teaching assistants to be most tolerant of and lenient toward students missing classes, examinations, and papers during this semester, and especially during the last week."*

The Role of Chancellor Strong

On the night of Saturday, December 5, 1964, Chancellor Strong was taken to the university medical center in San Francisco. His physicians tentatively diagnosed the difficulty as a gall bladder upset, and stated that he would be hospitalized for at least a week. For this reason one of the most controversial and outstanding figures during the whole period of the Berkeley Rebellion was unable to attend the important meeting in the Greek Theater.

There should be no mistake about the political sentiments of Edward Strong. He had opposed the ouster of two Communist professors from the University of Washington at Seattle in 1948, and it is a coincidence that Raymond B. Allen, who was then President at the University of Washington, and who wrote the first important work establishing the complete contradiction between Communism and academic freedom, later became Chancellor of the University of California at Los Angeles.

Strong also was a militant opponent of the loyalty oath at the University of California several years ago, and has always been in favor of throwing the campuses open to known Communist officials and allowing them to lecture to the students. We say it is important for us to know this liberal tendency on the part of Dr. Strong, because in spite of this attitude when he became Chancellor of the Berkeley campus he undertook to enforce the existing rules and regulations without timidity and without favoritism.

This attitude, of course, met with the universal disapproval of the FSM and its faculty supporters. It also met with the disapproval of certain conciliatory elements in the administration of the university. On several occasions Chancellor Strong was encouraged by the administration to proceed with disciplinary action, and when he did so he found that negotiations to nullify that action were being carried on by superiors without his knowledge or consent. It was Chancellor Strong who declared on September 30, during the first sit-in at Sproul Hall, that:

*The foregoing quotations are taken from the *California Monthly*, February, 1965, pp. 68-69.

"The university cannot and will not allow students to engage in deliberate violation of law and order on the campus . . . When violence occurs, the university must take disciplinary action. Such action is being taken . . . I stand ready, as always, to meet with the officers of any student organization to discuss the policies of the university."

This comment provoked a statement from Mario Savio: "I think they (the administration) are all a bunch of bastards."

It was Chancellor Strong who took the decisive action to suspend the eight students whose names have been mentioned before, and it was Chancellor Strong's determination to enforce existing campus rules that brought him into disfavor with large segments of the liberal campus community. We do not contend that Chancellor Strong was the best of university administrators; we disagree with his views that known members of the Communist Party should be permitted to teach in an educational institution, or that they should be permitted to have access to campuses for the purpose of propagandizing large groups of students. But we are convinced that despite his liberal convictions, and despite his extreme popularity with the liberal element of the Academic Senate at Berkeley before the rebellion commenced, he had the integrity and determination to do the best job of which he was capable in attempting to enforce the rules he had been given to uphold. Then, as might be expected, his former liberal supporters turned upon him and joined with the FSM rebels to become his most bitter critics. We are further convinced that Strong was placed out on the end of a limb to receive the blows and the criticisms as the chief campus administrative officer, and when his unpopularity became apparent, the limb was chopped off and he was tossed into the discard. This action of summarily disposing of Chancellor Strong seems to us all the more reprehensible because it was not done openly, but the public relations department at the Berkeley campus issued statements that created the impression that Chancellor Strong *wished* to resign from his position because of ill health, and that *he* suggested Martin Meyerson as his successor. Fortunately, Strong himself issued a statement giving the lie to these contentions, and establishing the fact that he never had any intention of resigning and was told that he would either have to submit his resignation or be kicked out of office, and that he never did more than agree to accept Meyerson as his assistant, not as his replacement.

The Strong document went further and declared that he had been hamstrung at every turn from the moment the student rebellions commenced, and that he was continuously being by-passed in such a manner that his authority was whittled down and his prestige as Chancellor undermined.

Chancellor Strong refused to follow the recommendations of the Heyman Committee to reinstate the eight suspended students, but they nevertheless were granted amnesty through subsequent proceedings. We have noted that there were occasions when Chancellor Strong would take disciplinary action against some of the rebellious students for clear violations of the university rules, and then without his consent these same students would confer with other members of the administration, an *ad hoc* committee of the Academic Senate would be created without Strong's consent, and it would usually issue a recommendation completely opposed to the action the Chancellor had already taken. This procedure is, of course, characteristic of the cold, computer-like manner in which the university—especially the Berkeley campus—was operated.

The FSM, with its system of Centrals, the coordination of its activities, and the strength and firmness with which it acted, was far superior to the organization of the Berkeley administration, that was floundering in a bureaucratic tangle, with no clear and definite leadership, no firm insistence on the enforcement of its own rules, and an unwillingness to stand solidly behind the actions of the Chancellor. There were endless committee meetings, faculty resolutions, disruptions in the chain of command, and an area of confused overlapping between the administration of the state-wide university and the administration of the Berkeley campus.

On December 9 the executive committee of the Berkeley Chapter, American Association of University Professors, which had insisted on dismissal of all charges against the arrested demonstrators and demanded "a new chief campus officer" issued this statement: "Chancellor Strong has long been a respected member of this faculty. We are immensely saddened by the news of his illness and hope for his early recovery to full health." Strong was released from the hospital three days later and on the fourth day after his return to the campus moved swiftly to cancel use of Wheeler Auditorium on the Berkeley campus by the arrested students and their attorneys for a meeting at 7:30 a.m. on December 13.

There had been some intimations in the press, especially the *San Francisco Chronicle*, to the effect that Chancellor Strong would soon resign. We have positive information that these statements were never authorized by the Regents, but may have originated through unauthorized statements by one or more members of the Board of Regents who had advance information concerning Strong's ouster. These maneuvers behind the scenes, the hasty "off-the-record" meeting of three Regents at Hilton Inn at the San Francisco airport, and the announcement on January 3, 1965, that Strong had been removed from his position at his own request "for reasons of health," and that Martin Meyerson had been appointed Acting Chancellor in his place, so disturbed many of Strong's friends who were in a position to know the true facts of the matter, and they persuaded him to issue a statement on December 20, 1964, which was handed to each member of the Board of Regents and all of the Chancellors of the various campuses.

The following excerpts are taken from the Strong document:

"... The manner in which authority acts in relation to its responsibilities determines the reactions of others. Authority has reacted to violation of the rules and regulations, threats and intimidation with inconsistency rather than consistency, and through negotiation with *ad hoc* and often self-appointed groups and organizations rather than through established agencies involving appropriate persons and organizations. Too often reliance has been placed, or credence given, to individuals and groups without portfolio. Because of these mistakes there resulted an undermining of the acceptance of and respect for traditional ways of handling complicated matters of rules and regulations established both for the safety of the University and for the welfare of its members. There resulted an undermining of the respect for those campus officers normally responsible for carrying out the policies of the University. Too often there has been the announcement that 'henceforth law and order will prevail,' followed by vacillation, concessions, compromises, and retreats. No wonder, then, that an increasing number of persons have felt insecure or have become confused about the rightness of the University's position. During the days leading up to the fateful evening of October 2, the position

was stated and restated for all to hear that the University would never negotiate with individuals who were at that time engaged in unlawful behavior—for thirty-two hours, for example, holding captive a police car and the prisoner within. Despite these firm statements negotiation did follow. Established committees were bypassed. An *ad hoc* committee of the Academic Senate was established to deal with violations. The implications were far-reaching. Credence was given to the idea that administrative committees were even less fair or less capable than *ad hoc* bodies, and a breach between the administration and the faculty was opened. Negotiations by-passing the Chancellor left a vacuum in authority on the campus. Into this vacuum rushed scores of individuals and groups, some intent on saving the situation and others on gaining power.

Why throughout these many days we have not had consistency in the expression and enforcement of rules and regulations is a long and complex story. Why we have not consistently supported the integrity of established instrumentality is to be explained, in my opinion, by a too political rather than a moral approach to our difficulties. That these things have occurred is a fact.

What must the future course be? It must be the opposite of the past. We must not take one more step in retreat. We must be consistent and steadfast in enforcing rules and regulations. We must work only through established organizations and agencies. We will listen to all. But we will not yield to threats, pressures and defiance.

It is revealing that on December 9, Mr. Steve Weisman, a graduate student leader, had a rally on Sproul Hall steps, announced that now that the advocacy battle was won, the FSM would seek to enlist students in a campaign of academic reform—that is, a campaign to influence course content and to change the grading system. This was the campaign announced at the beginning of the semester by the SLATE Supplement, calling upon students to split the campus wide open. After three months of student demonstrations, there can be no doubt about the basic issue which now confronts the University. The legitimate authority of the University is being challenged and attacked in a revolutionary way. It is imperative that respect for duly constituted authority be upheld. The conciliation undertaken by the President in his agreement of October 2 with leaders of the student demonstrations was flouted by resumption of deliberate violations of rules. Every succeeding concession has been followed by further demands. Efforts to restore order and to enforce rules of right conduct have been crippled by three deficiencies: (1) The lack of a consistent and stable position in enforcement of rules; (2) The lack of clear and firm policies consistently maintained; (3) Infirmary of delegated authority to act at the local level as needed to enable the Chancellor to meet the responsibility assigned to him in restraining conduct not in keeping with the educational purposes of the University."

There is much more to Strong's statement, and there was amplification of the material quoted above in documents handed to the Regents in Los Angeles. Strong made it very clear that in his opinion discipline at the Berkeley campus was shattered by the attitude of President Kerr, who repeatedly gave in to the demands of the student rebels, and that not one student was under censure, probation, dismissal or expulsion for acts of civil disobedience subsequent to October 1, 1964, and that members of

the teaching staff who joined in the student strike during the first week of December were given immunity under the Kerr amnesty decree. Strong emphasized that he was literally forced from office over his protests, and that the statement he gave out at the time was simply not true, and that he had been forced to make it under pressure, and did so for what he then considered the best interests of the university.

Dr. Strong, now 63, probably made his final appearance in connection with the Berkeley rebellion when he appeared on April 2 to testify pursuant to a subpoena in Judge Crittenden's court where the first group of one hundred and fifty-five defendants were being tried. After describing the general succession of events in which he participated from September until the time of his ouster, he stated that spokesmen for the Free Speech Movement had issued an ultimatum which came to him through President Kerr on December 2, ordering him to yield to FSM demands and to grant amnesty to suspended students or face massive trouble. He stated: "I could do nothing while they were holding a gun at the university's head." Dr. Strong is now living quietly in his home at 1155 Euclid Avenue, Berkeley, and maintaining his teaching status without participating in the stormy affairs on the Berkeley campus that smoulder and erupt sporadically as tensions ebb and flow.

When Martin Meyerson assumed his new position as Acting Chancellor at Berkeley, he issued a statement on January 3, 1965, containing the following passage:

"It was only last night after Chancellor Strong's request for a leave that I was asked by him, by the Regents, and President Kerr to be acting Chancellor."

It is quite possible that Chancellor Meyerson might have been laboring under a misapprehension, and that could be attributed to the peculiar press releases that were appearing out of the university's public relations department. In any case, it is completely disputed by Strong's declaration that he never requested a leave, was given an ultimatum of either resigning or being fired, and did not join in any request with the Regents and President Kerr to be replaced by Meyerson, or anyone else.

Four months after the first student demonstrations occurred, the Board of Regents announced the appointment of two committees of its members, one to study possible changes in rules on regulating political activities on the campuses, and the other to investigate causes of the disturbances at Berkeley. The first committee, headed by Theodore R. Meyer, a San Francisco attorney who was elected chairman, and which is commonly known as the Meyer Committee, was comprised of the following Regents, in addition to the chairman: Donald H. McLaughlin, a San Francisco mining engineer and formerly prominent member of the department of Geology and Mining on the Berkeley campus; Mrs. Elinor Heller, Ather-ton, former Democratic National Committeewoman; John Canaday, vice-president of Lockheed Aircraft Corporation, Burbank; Mrs. Randolph A. Hearst, Hillsborough; Lawrence J. Kennedy, attorney at Redding, and Samuel B. Mosher, president of the Signal Oil and Gas Company in Los Angeles.

The other committee, commonly known as the Forbes Committee, or Byrne Committee, was composed of the following Regents: William E. Forbes, of Los Angeles, chairman; Philip A. Boyd, Riverside; Mrs. Dorothy B. Chandler, Los Angeles; William K. Coblenz, San Francisco; Norton Simon, Fullerton; Jesse W. Tapp, Los Angeles, and Edward Pauley, Beverly Hills.

It should be observed at this point that the Board of Regents has never had any adjunct that would enable it to make an independent investigation of important university matters. It has drifted into the habit of relying completely upon information received from academic committees, representatives of the administration, and upon personal representations from the President. Indeed, during the Kerr administration, the Regents were persuaded to institute an innovation. It consisted of private, off-the-record sessions with the President of the university at gatherings immediately preceding the formal Regents' meetings. At these affairs, carefully restricted so that no other members of the university administration and no members of the news media were permitted to attend, the real work of the Regents was done and the strategy planned that was formalized at the open Regents' meeting the following day. It should be quite obvious that many of the representations made by committees of the Academic Senate, the administration, or the President of the university, might be self-serving, and when the Board of Regents has no other means of ascertaining the objectivity of the representations, it acts, in practice, as a sort of rubber stamping mechanism for virtually all of the recommendations submitted to it by the President as the chief administrative officer of the university. The dangers inherent in this sort of operation are obvious. And since the ground rules for the operation of the university forbid faculty members, students or other members of the administration from making any direct contact with the Regents or with state officials on matters pertaining to the operation of the university without first going through the President's office, it is sometimes difficult for the Regents to know exactly what is going on.

It should be noted that the first of the student demonstrations commenced in the fall of 1964, and the Regents had no independent observers of their own authorized to gather objective information until the formation of the Forbes Committee which was created in December, 1964, but which did not actually start to function until February, 1965. Its 85-page report was submitted to the Regents in May, and appeared in the press on May 12th.

"How Are Things at Berkeley?"

On February 26, 1965, a special committee headed by Professor Arthur M. Ross issued a statement for circulation among hundreds of colleges and universities throughout the country in order to bring them up to date concerning conditions at Berkeley. Other members of this committee were Raymond G. Bressler, school of agricultural economics; Earl F. Cheit, school of business administration; Carl E. Schorske, department of history; Arthur H. Sherry, school of law; Robley C. Williams, department of molecular biology, and Richard W. Jennings, school of law.

The tenor of the report was that the Berkeley campus had finally settled down. "The primary academic functions of teaching, learning and research have regained their proper places," it said, together with fresh, and new discussions about the purposes and methods of the educational process. It announced that there were better communications between students and professors "in classrooms, studies, restaurants and professors' homes," and it announced that political advocacy was occupying a secondary place.

Problems were now being solved, according to the report, "by rational discussion and mutual adjustment." This Emergency Executive Com-

mittee, after conferences with the Regents, President, Chancellor, faculty and students, reported that the troubles had been solved. President Kerr had shown "discerning judgment," and Acting Chancellor Meyerson had "imaginatively opened new perspectives for the university community." The report chided some of the more liberal faculty members and FSM supporters because they had presumed to ask Judge Crittenden to dismiss the pending cases against the Sproul Hall invaders; it soothingly pointed out that campus tensions had relaxed; it saw no danger of students controlling education, and it concluded by declaring confidently that "With the crisis over political activity largely behind it, Berkeley has thus turned its attention to the larger problems of higher learning on the American urban frontier. What might have been a fatal community crisis has become instead a constructive opportunity for relating the traditions of scholarly life to the spiritual requirements of a modern democratic society."

This confident and comforting document was signed by all members of the Emergency Executive Committee and on February 27 the Bay Area papers reported that the document was being mailed to the colleges and universities originally intended.

But "How are things at Berkeley?" proved more optimistic than prescient, because the Filthy Speech Movement exploded on the Berkeley campus five days later, and on March 9 Kerr and Meyerson called a press conference and resigned. Thus when copies of the Ross Committee's report reached the colleges and universities with the question "How are things at Berkeley?" the recipients could easily find the answer in the newspapers without reading the document.

The Filthy Speech Movement

The Filthy Speech Movement started on March 3 when a thin, barefoot lad of twenty-two, a non-student named John J. Thompson, strolled across the Berkeley campus bearing a large sign on which was a four-letter word for sexual intercourse. He was arrested and as he was being conducted from the premises protested that he was only opposing censorship.

The American Civil Liberties Union in San Francisco, usually alert and deeply concerned with such things as free speech, civil disobedience and censorship, was informed of the occurrence. Its Northern California director is reported to have simply exclaimed: "Good Grief!" But Arthur Goldberg, of SLATE and FSM notoriety, promoted another student demonstration, and he was quoted as saying, "a guy had a right to express himself like he wants."*

At the time this new incident triggered another demonstration, there were faculty committees in abundance, new rules had been announced, and the Regents had demanded a tougher policy on the part of the administration. The vast majority of the 27,500 students at Berkeley were still trying to get an education despite all of these disturbances, when this barefoot boy with his dirty little sign appeared. SLATE and FSM leaders started a demonstration that attracted twenty-three hundred students, including women and minors, and the offensive four-letter word was repeatedly shouted. It seemed as though the administration had suddenly surrendered and withdrawn from the arena. Tables were set up, one of them bearing the sign "F— defense fund," which the campus police allowed to remain after an altercation with Goldberg. But when David

**Daily Californian*, March 4, 1965.

Bills, a freshman, sat down at the table to make collections, he followed young Thompson off to jail. Other arrests were made as follows: Stefan Argent, a student from Oakland City College; Michael Klein, a senior in the engineering department at Berkeley, who led a crowd into Sproul Hall basement and began to read the more juicy portions of "Lady Chatterly's Lover;" Edward Rosenfeld, another non-student, who had also been arrested during the Sproul Hall sit-in, and who was displaying signs "Support the F— Cause."

When Chancellor Meyerson was located by reporters and asked for a comment he stated that he had no comment, "not even one word." President Kerr could not be reached.*

It will be recalled that the theme which was pounded home over and over again during the SLATE conferences at Berkeley, and also by the founding conventions of the DuBois Clubs of America, was the complaint that the university stood in the position of an intolerant and authoritative parent toward its students, *in loco parentis*. This incident would seem to indicate that perhaps there should have been a substitute for a parent who had the good sense to get down the razor strap and haul the kids off to the wood shed. But in the anarchy that was allowed to prevail, the handful of bullies again ran over the vast majority of stable, well-behaved students by interfering with their rights to obtain an education without these disturbances that were now beginning to assume the atmosphere of a comic opera at Berkeley, and subjecting them to a barrage of obscenity and gutter language.

On March 5 a crowd of over seven hundred students gathered as the rally continued. An English professor, Mark Schorer, had the courage to appear and tell the defiant group "this protest fits more appropriately into the category of a panty raid, a sex-and-beer party." Professor Arthur Ross stated that the demonstration was not an enterprise worthy of young adults; Chancellor Meyerson declared that the students had "defied public law and therefore were arrested;" the barefooted young John Thompson, out on bail, appeared on the campus again and said that he represented the May 2nd Movement which was an organization against the presence of American troops in Viet Nam.

Then yet another twenty-two-year-old young man appeared, a pre-legal student at Berkeley, and signed complaints against the chief offenders at these rallies, who persisted in thrusting themselves and their offensive language on the majority of the student community. This courageous young man who alone seemed to have enough determination to take these actions was Mark Van Loucks, of Oakland. He was quoted as declaring, in his lone crusade for decency on the campus: "If the law can protect our freedom of worship or assembly or speech, why can it not also protect our feelings?"†

There was widespread indignation throughout the state over this last defiance of order at Berkeley. There were irate messages from Regents, and a sarcastic editorial in the *San Francisco Chronicle* of March 8, stating: "When students at the University of California last week displayed their acquisition of a four-letter word that does not appear even in Webster's New International Dictionary . . . one should certainly put that down as a significant learning achievement . . ."

On March 10, the *Chronicle* declared that Regents had telephoned the university and demanded that Kerr and Meyerson act immediately to

**San Francisco Chronicle*, March 5, 1965.

†*Oakland Tribune*, March 7, 1965; *Daily Californian*, March 8, 1965.

expel the students responsible for the demonstration, but President Kerr demurred, not defending the student action, but insisting that the campus must follow the disciplinary procedures worked out in the FSM disputes of the preceding fall and winter.

The Regents refused to be put off, however, and demanded that Kerr assume a position of leadership and take immediate disciplinary action against the students involved. At this point President Kerr was faced with three alternatives: he could either follow the orders of the Regents and expel the students or take other appropriate disciplinary action against them; he could let the courts handle the matter, as was done in the case of the invaders of Sproul Hall; or he could escape personal responsibility by passing the burden to one of the many committees of the Academic Senate. He elected to follow the latter course, but when he tried to find an appropriate committee to handle the situation, he was unsuccessful. This time the Academic Senate balked, declined to assume jurisdiction of the matter, and the President and Acting Chancellor then resigned, as we have stated.

At this point we are reminded of the earlier statement made by President Kerr, that the alternative of giving students total immunity could engender a situation akin to that in the University of Caracas, where student revolutionaries "used the campus as a fortress from which to sail forth to attack the general society." It was painfully clear that at this point the university campus at Berkeley was operating without any discipline or restriction whatever, compendia of filth were being distributed on and off the campus, and in support of this nauseating campaign were some of the most prominent leaders of the Free Speech Movement whose dedication to Communism they had disdained to conceal.

Kerr and Meyerson "Resign"

Before proceeding with a discussion of the Filthy Speech Movement, the background leading up to the resignation of President Kerr deserves some attention. It had long been his custom to ask and receive a vote of confidence from the Regents whenever he deemed it expedient, but at the meeting held in February of 1965, he had asked for such a vote and failed to receive it. He had been violently opposed to any attempt on the part of the Regents to investigate his administration of the university, and his protests had been ignored. He was thoroughly aware that many of the more influential Regents had become dissatisfied with his failure to take a firm command during the crisis at Berkeley and were tired of seeing the responsibility thrust upon one faculty committee after another. The eruption of the Filthy Speech Movement, on the heels of a reassuring statement by the emergency executive committee headed by Professor Ross, was simply the culmination of a series of events that indicated growing dissatisfaction on the part of the Regents with the Kerr administration.

In the meantime, nothing was being done in the way of discipline against the offending students, but the statewide administrative office at Berkeley was busy issuing statements about the resignations through its public relations department, while, as the *Oakland Tribune* stated on March 11, 1965, "a fresh shipment of statements arrived from El Cerrito (Kerr's off-campus residence), where the outgoing President had lashed away at the latest campus disgrace . . ."

Senator Burns, in Sacramento, declared at a press conference that a state of anarchy had developed on the Berkeley campus, that drastic

action must be taken to end this strife, that Kerr had demonstrated his inability to cope with the situation, and that since Kerr's resignation had been dramatically delivered to the press instead of the Regents, it indicated to Burns that Kerr was not very serious about having his resignation accepted.

Commenting on the Burns' statement, Senator J. Eugene McAteer, Democrat of San Francisco, declared that the legislature should insist that the university make security checks of its faculty members and other employees. His remarks were printed in the *Oakland Tribune* on March 12.

Subsequent events indicated that Senator Burns was not far wrong when he predicted that Kerr's dramatic resignation was not exactly what it seemed. A convocation of Chancellors was held at Kerr's request, and they issued a statement asking that his resignation be withdrawn. At the same time messages began to appear from various organizations and individuals, all imploring the President and the Acting Chancellor to withdraw their resignations, but while there was considerable student and faculty support for Meyerson, there was noticeably less for Kerr.

The impact of the filthy speech incident among legislators at Sacramento, among the alumni of the university, and the community at large was enormous. The state apparently had its fill of these astounding antics at Berkeley, and it was clear that the administration was powerless to do anything toward successfully restoring order and had fumbled about since September issuing reassuring statements, passing responsibilities from one committee to another, and wrangling incessantly over the wording of complicated resolutions on matters of technical procedure, jurisdiction and recommendations. There was no strong, dominant figure who emerged to assume charge of the situation during the crisis with the fairness and the firmness that was so desperately needed.

On March 18 Mario Savio and Stephen Weisman issued the familiar old warning that all sort of unpleasant things would happen to the university if students were disciplined for circulating obscenity. In early March a dirty little magazine called *Spider* was issued and sold in large quantities both on and off the Berkeley campus. Its staff consisted of Jacqueline Goldberg, sister of Art Goldberg, who was arrested during the Sproul Hall invasion; Sue Currier; Jim Prickett; Richard Currier; Andy Magid; Sandor Fuchs, the president of SLATE and one of the persons arrested during the Sproul Hall invasion; Stephen DeCanio, also one of the arrestees and participants in the Free Speech Movement, and Alice Huberman, also a Free Speech participant and a Sproul Hall arrestee.

DeCanio had an article entitled "Bourgeois Slave Morality—Opiate of the People," on p. 9, wherein he stated "... we have to fight and destroy institutions, interests, or individuals when they stand in the way." And "revolutionaries realize that it is their duty to seize and consolidate political power, even if it means the total annihilation of the enemy."*

The second issue of this magazine outdid its predecessor in obscenity, carrying a boldly frank interview with four of the dirty speech advocates in a series entitled "To Kill A —ing Bird." Chancellor Meyerson barred sale of the first issue of *Spider* on the campus, and when the second one appeared on March 18, he ordered it withdrawn and sent Dean of Men Arleigh Williams and Professor Neil Smelser to warn those who were selling the magazine that if they did not desist they would be subject to

**The Spider*, March 1965, 398—61st St., Oakland, California, pp. 9-10.

immediate disciplinary action. Notwithstanding the first warning, the students persisted in endeavoring to sell copies of the second edition of *Spider* on the Berkeley campus, received another warning and retreated. But the issue was sold out, about a thousand copies, and ten students led by a non-student, Charles Artman, staged a sit-down demonstration outside Chancellor Meyerson's office. Richard Schmorleitz, director of the FSM Press Central and a leader of the FSM movement, offered for sale published copies of a play entitled "For Unlawful Carnal Knowledge", another dirty word publication which Chancellor Meyerson also banned.*

It should be observed, however, that both issues of *Spider* and the play sold by Schmorleitz remained on sale at the student book store on the campus, and on March 24, despite the ban, *Spider* was being sold openly in a crowd of 3,000 students on the campus and at Sproul Hall in a probing strategy to find out what response could be provoked on the part of the Berkeley administration. There were no arrests, no interference, and the editors of the magazine conferred with Dean Williams and agreed to halt their sales for that day.

The trial of Arthur Goldberg, David Bills and Michael Klein, arrested during the obscenity rally on the campus, was set for April 20, before Municipal Judge Floyd Talbott, and pending the outcome of that trial and the case which resulted from the complaint filed by Mark Van Loucks, the Filthy Speech Movement, led by prominent members of the FSM, became dormant—at least for the time being.

We have no doubt that the Filthy Speech matter will not plague the campus as long as the most recent ruling of Acting Chancellor Meyerson remains in effect, because in April he ruled that the ban on the distribution of *Spider* which had been in effect although not observed since March 18, would be lifted. Immediately a third issue of the magazine was undertaken by its publishers. Meyerson ruled that the dirty little publication could be sold only by student organizations, and that shouting obscenities or displaying them on posters and handbills attached to doors, buildings, trees or other objects on the campus would be sternly prohibited.

When the Regents met in Berkeley last March, several of them expressed vehement criticism of the disciplinary laxness at Berkeley, but praised Chancellor Ivan S. Hinderaker for his handling of similar problems at the Riverside campus of the university. The student council at Riverside had passed a resolution calling on President Johnson to intervene in Selma, Alabama, which was obviously an off-campus issue and forbidden by the campus regulations. Chancellor Hinderaker did not endeavor to escape his responsibilities by shifting them to some faculty committee, but warned the council directly that he would dissolve it forthwith unless it rescinded its action. The action was rescinded, five of the students resigned from the council, and the educational processes at the Riverside campus of the university proceeded as usual.

On March 16, 1965, the senate of the Associated Students of the University at Berkeley passed a similar resolution, asking President Johnson to send Federal Marshals to protect citizens in Selma, Alabama, and the motion was carried. The response from Chancellor Meyerson consisting in a mild reminder to the ASUC Senate that off-campus issues were in violation of the "Kerr Directive."

*See *Daily Californian*, March 11, 1965, and *San Francisco Chronicle*, March 19, 1965.

On March 13 there was a five and a half-hour closed meeting of the Regents, specially called for the purpose of handling the emergency situation at Berkeley. Kerr and Meyerson withdrew their resignations, and announced later to the press that they would stay withdrawn "pending further discussions with the Regents."

On May 11, Judge Floyd Talbott found all nine of the defendants in the Filthy Speech case guilty. They were: Arthur Goldberg, James Prickett, John Thompson, Charles Artman, Daniel Rosenthal, Michael Klein, David Bills, Edward Rosenfeld and Stephen Argent. Time for pronouncing sentences was fixed by Judge Talbott for June 8.

The Free Student Union

About twenty-five hundred students gathered at Sproul Hall on April 22nd and listened while Mario Savio and Art Goldberg attacked the Acting Chancellor for imposing discipline upon the filthy speech offenders. Savio delivered another ultimatum, giving the administration until Monday, April 28, to rescind its action, and Goldberg lamely tried to defend himself for his participation in the incident, but his effort proved ineffectual. For the first time some students spoke in favor of the administration, and it was distinctly noticeable that support for the leaders of the FSM was waning.

On the following day Regents Meyer and Carter observed that new and tougher rules for student conduct had been suggested and that although the FSM would not like the new measures, there would be no capitulation on the part of the Regents. Savio addressed an audience of about three hundred, stating that telegrams from FSM would be sent to the Regents demanding reconsideration of the cases of the filthy speech participants by a special faculty committee, and reconsideration of the new rules of conduct before the Regents for consideration. But this time the Savio charm failed to work. Finally, he was interrupted by Brad Cleaveland, who said: "You're hot for direct action. It's stupid; you'll get crushed!"*

Three days later Savio bade his colleagues goodbye and good luck, stating that he was leaving the university because he could no longer "keep up with the undemocratic principles" of the administration. He said there was a widening gap between the FSM and the students in general, and he sarcastically assured his listeners that this was not "a Kerr-type resignation." When some of the most prominent figures of the FSM elected to support the Filthy Speech Movement, they were caught with an unsupportable cause. Their timing was also bad, because many of the students had been devoting so much attention to the stimulating activities of the FSM that their academic records had suffered badly. Steve Weisman had departed to work with the students for a Democratic Society in Georgia; Jack Weinberg had temporarily gone to San Francisco to work with the Committee on Racial Equality; Ron Anastasi, Martin Roysher and Mark Rossman were reported to have left the FSM altogether. With no dynamic speaker to replace Savio, the movement appeared enervated. It had long been apparent that dissension was growing, and that when Savio discovered his crowd was no longer responsive to his exhortations, he lapsed into his old attitude of detachment and left the arena.

On April 28, the Free Student Union appeared on the Berkeley campus. Jack Weinberg returned from San Francisco to assist Bettina Aptheker

**San Francisco Chronicle*, April 24, 1965.

with establishing the new organization. They declared that it would be operated with broader base support and tighter control than was the FSM, and defiantly declared that students would govern their own campus affairs, set their own standards of conduct, and join the faculty in determining the nature and form of the curriculum. It was announced that the new organization would fight to end "outside interference." Bettina Aptheker stated that the organizers of the FSU would not necessarily be its leaders, and Weinberg added that the weapon of the strike would be used, a more sophisticated and effective device than the sit-in.

We should add here that Bettina Aptheker had been one of the most indefatigable and effective leaders of the FSM, and had sent long descriptions of its activities to various Communist publications throughout the country; to the California Communist newspaper *People's World*, and to the official publication of the American Communist Party, formerly edited by her father, *Political Affairs*.*

On May 6th the new FSU held an organization meeting in Harmon gymnasium, a building with a seating capacity of 9,200. There were about 300 present to hear Bettina Aptheker, Jack Weinberg and Mike Lerner explain the structure of the FSU, which then claimed a membership of approximately 2,000 students.

Immediately following this meeting 500 students were recruited, and it was announced that support had been obtained from the Graduate Coordinating Committee and other sympathetic organizations, and that similar movements would be inaugurated on other campuses throughout the country "to represent the interests of all students." The FSU was a carefully-planned organization, whereas the FSM started spontaneously when students from all parts of the campus population became disgusted with an inefficient administration and translated their protests into defiant actions.

The Free University

One of SLATE's most important objectives was a drive to give students some control over their courses of instruction at Berkeley. Brad Cleaveland was a leader in this activity. He was a charter member of SLATE and had served as its treasurer in 1958, working closely with Marvin Sternberg who coordinated the Berkeley organization with other radical student groups at other campuses. There was a particularly close liaison between SLATE and the Independent Student Union in Los Angeles as early as 1958.

Soon SLATE was issuing student evaluations of university courses at Berkeley, and in some cases gave the most liberal professors the lowest ratings. Writing in a SLATE publication in 1963, Cleaveland stated that students should have some authority in determining the course of studies that they would pursue. He attacked the administration's bureaucracy that "... is now upon us with a terrific force through all its elements. Those elements began with publish-or-perish (no teachers): with departmentalization, and come all the way down to units, courses, and grades. Knowledge has been exploded, torn apart, dissected, and finally comes through to us by way of an insanely administered flood of fragmented bits."

These remarks by Cleaveland in 1963 set the pattern for FSM complaints a year later, and he concluded his statements by declaring that:

"As students we permit to some extent, and witness, the existence of a terrible chain of confusion. We permit faculty irresponsibility by

*See *Political Affairs*, January, 1965, p. 53; March, 1965, p. 10.

not demanding extended thought and dialogue. The faculty permits bureaucratic imposition to prevent facing the problem. The administration snuggles up to the seats of power in Washington by selling, or helping professors to sell themselves, to power. The only rub is that Washington is more interested in weapons than anything else these days . . . so is California . . . we've lost the free university. And Washington is entertaining international politics with the narrow view which comes from the market place, with no depth, with little broad understanding.

The size of Berkeley is not an argument against meeting the problem. Learning is ultimately a deeply personal experience; size does not necessarily make this impossible."*

A booklet called *SLATE Supplement* is published five times during the academic year. Two issues are supplements to the university catalogue containing a description of all of the courses of instruction offered, and the other three issues are open to articles concerning "higher education, ranging in scope from teaching practices to the call for revolution in this issue." (*SLATE Supplement Report*, Vol. 1, No. 4) It was in the fourth issue of this publication that Cleaveland issued his frequently repeated advice that the students "organize and split this campus wide open," accompanied by twelve pages of florid revolutionary propaganda.

It is also of interest to note that the editorial staff of these *SLATE Supplements* included Sandor Fuchs, Steve DeCanio and Ken Cloke, former president of *SLATE* and now a contributor to the Communist newspaper, *Sue Currier*, Jo Freeman, David Goins and Art Goldberg. Many of these were also on the staff of *Spider*, the publication that became a part of the Filthy Speech Movement.

The attacks contained in the *SLATE Supplements* included demands that the Regents delegate to the Academic Senate authority to handle student discipline, and that students and faculty combine to handle problems relating to curriculum. This insistence that the students have increasing authority in the operation of the institution is a system followed by radical students in other countries, is generally known as the demand for a "Free University," and is now becoming the chief concern of the Free Student Union. The term has long been used in other countries, and probably had its origin on the Berkeley campus because of a situation that arose at Adelphi College in New York.

In February, 1965, Dr. Allen Krebs, 31, was fired from his position as assistant professor of sociology at Adelphi College. An open Marxist, Krebs emphasized Marxism in his classes, but he did not believe that that was the real reason for his ouster. "The real problem," he said, "is that if you restrict yourself to a strict intellectual role in the classroom you are o.k. But if you become visible—if you act—you are squashed like a cockroach. The system cannot tolerate a real exposure of what America is in the world today."† But his department told him he was presenting Marxism unobjectively, and had used his teaching position as a propaganda forum. He had also organized the students and they supported him with a Free Student Movement last January. He was also supported by a petition from the Berkeley campus signed by 814 students and faculty members, led by Mario Savio.

Krebs and another discharged teacher announced that they would form a Free University in New York City, "that would expose students to what

**The Cal Reporter*, *SLATE* publication, Vol. 4, No. 1, May 13, 1963.

†*National Guardian*, March 13, 1965.

is kept from them in most U.S. colleges—Marxian theories.” And he agreed with Robert Armstrong, an Adelphi student, who told the press recently: “You want to know why he’s been fired. He’s been axed because a small-minded university like Adelphi—located in the middle of suburbia and with a lot of rich, conformist businessmen on its board of trustees—can’t tolerate a radical.”*

The student paper at Berkeley carried two items concerning the establishment of a Free University in March, and the massive Communist youth front, International Union of Students, is presently carrying on a propaganda campaign on the campuses of the University of California with its organ *News Service*, which advocates the planting of Free Universities throughout the world.† It will be remembered that the San Francisco DuBois Club sent Carl Bloice to Moscow when he attended the international meeting of Young Communists sponsored by the International Student Union in September, 1964. World headquarters for the ISU is at Vokelova 3, Prague 2, Czechoslovakia, which is the stopover place for American students en route to and from Cuba.

Issues of the ISU publication found in student lounges at Berkeley and UCLA referred to “students of the Free University in Brussels,” and describe radical student movements in Algeria, Cambodia, Brazil, Japan, Mauretania, Morocco, Portugal, Puerto Rico, Sudan, Uruguay and Venezuela. Jacqueline Goldberg, Art Goldberg’s sister, is on the policy committee to make arrangements for the Ninth World Youth Festival to be sponsored in Algeria by ISU.‡

Robert Armstrong’s description of the Adelphi College trustees as “rich, conformist businessmen,” is typical of attacks against authority made by the FSM at Berkeley. Marvin Garson, a Sproul Hall arrestee, wrote a twenty-two-page booklet attacking the Regents, basing his criticism on the fact that they were rich, did not consider themselves accountable to the public, and operated in secret. The fact that successful men control the university is obvious. The other extreme would be to hand the responsibility to unsuccessful men. Private ownership, free competition, and the opportunity to acquire wealth through such competition is not yet an offense in this country. Nor are the unsuccessful people necessarily good while the successful ones are necessarily bad. These concepts belong to class-struggle systems.

Two pages of Garson’s booklet criticize the alleged operation through secret meetings, but the rest of it is an attempt to sow distrust of the Regents because they are wealthy and successful business people.§

The FSM attempted to sell copies of this Garson booklet on the Berkeley campus on April 7, but since they had no permit to operate the tables and were collecting funds for the defense of Sproul Hall sit-in defendants, the campus police seized the tables, whereupon FSM called a protest march to the Dean of Students office, but managed to drum up a following of only twenty students, and the incident passed without attracting any particular attention.

Professor Joseph Tussman, Chairman of the Department of Philosophy at Berkeley, has recently advocated a new educational program for the Berkeley campus. It would consist of sixty units of instruction, to commence in the fall of 1965, and the course would initially be taught by Tussman, Albert Bendich of the speech department, and Norman Jacob-

**National Guardian*, op. cit.

†*News Service*, No. 23, Dec., 1964.

‡*News Service*, op. cit.

§*The Regents*, by Marvin Garson.

son, of the Department of political science. Dr. Tussman has been an ardent supporter of the student rebellion at Berkeley, cancelling his classes out of respect for and in assistance of the strike that followed the invasion of Sproul Hall, and he declared in a speech delivered on April 7, 1964, that he believed Communism must be given a chance to win the American mind. Tussman has also been an advocate of opening the campus to Communist speakers, in accordance with the plan announced by SLATE, and signed a petition circulated by a Communist front known as the Emergency Civil Liberties Committee, protesting the State Department ban against travel to Cuba. This State Department directive was recently upheld by a decision of the Supreme Court of the United States, and the Department of Justice is presently proceeding with prosecution of students who made the pilgrimage to Havana while the prohibition was in effect.

Mr. Bendich came directly from his position as attorney for the American Civil Liberties Union in San Francisco to accept a position as lecturer in the Department of Speech at Berkeley. His course is described as "superb" in a recent SLATE Supplement, and he has not only been active in support of the student rebellion on the Berkeley campus, but has acted in a legal capacity for the FSM and its members.

Bendich worked as a bus boy in the co-operative cafeterias in Berkeley while he was attending the university there, refused to sign a loyalty oath as a prerequisite for obtaining his salary, and brought a suit against the university in that connection. His attorneys were Dreyfus, McTernan & Lubliner, and Vincent Hallinan. In 1952 Bendich signed a letter in behalf of the Rosenberg atom spy defendants, issued by a Communist front known as The Bay Area Committee to Save the Rosenbergs. In 1953 he married Hilary Hancock Solomon, the daughter of Louis Solomon and Wilma Shore. She had been an active member of the East Bay Civil Rights Congress, which has been officially designated as a Communist front organization. Her mother, a motion picture writer whose pen name is Wilma Shore, has been identified by sworn testimony as a member of the Communist Party. In 1955 Mr. Bendich was associated with Richard Gladstein, a San Francisco attorney who has long been counsel for the Communist Party and its many front organizations and Communist-controlled unions. He became counsel for the Northern California Division of the American Civil Liberties Union, replacing Lawrence Speiser when the latter moved to Washington, D.C.

Norman Jacobson was also an ardent supporter of the FSM, having joined with Bendich and others in signing a statement of criticism against the administration at Berkeley for failing to recognize the FSM crisis as a legitimate campaign to secure freedom of speech on the Berkeley campus. He also accompanied Bendich and Jacobus Ten Broeck, Sheldon Wolin, and Howard Schachmen when they presented Judge Crittenden with an eighty-page document on January 21, requesting him to dismiss the cases against the Sproul Hall defendants.

Apparently the suggestion advanced by Dr. Joseph Tussman met with approval by certain elements of the faculty and the administration because it was announced in the *New York Times* on March 21, 1965, that the faculty had approved and President Kerr had promised support for the establishment of the institution suggested by Tussman. It was scheduled to commence operating in September, 1965, with an initial enrollment of 150 incoming freshmen. This is precisely the sort of educational innovation the FSM and FSU have been demanding.

Communist Professors?

With an admirable sense of timing, SLATE issued one of its *Supplemental Reports* in 1965 entitled "Is It Time for Communist Professors?" A few years ago SLATE did not consider the time ripe for such a proposal, but now that the university was open to Communist speakers, since there was a new spirit of liberalism pervading the campus, and with the almost total success of the FSM program, the time appeared more propitious.

In this *SLATE Supplement*, William Mandel, the middle-aged Communist member of the FSM Executive Committee, wrote the affirmative argument, which was reprinted from his debate with Dr. Fred Schwartz. The negative was prepared by Assistant Professor Frank Ficcara from the Department of Philosophy at Chico State College. His was the lone dissenting voice. Mandel, however, was bulwarked by a supporting article from one of Ficcara's colleagues from the Philosophy Department at Chico, Knowle Mottershead.

It was, no doubt, a pure inadvertence that occurred in the preparation of this *SLATE* publication that caused Mandel's article to run smoothly and consecutively for seven pages. Ficcara's reply should have followed but it didn't. Mottershead's did. The reader was asked to skip from page 12 to 19 to find Ficcara's refutation. And even after finding it he could only read one page before being instructed to turn back to page 14 to finish it. By this time the reader's train of thought had been disrupted, and he was weary of puzzling out the chopped-up segments of the lone argument against employing Communist professors at Berkeley. In other words, the arguments in favor of hiring Communists to teach were accorded first place in the booklet, and then the reader was led through a maze of disrupted pages in order to pursue the dissenting opinion.

The editorial comment preceding Mandel's article was entitled "The Next Step Beyond Free Speech." An advertisement for *The Spider* magazine appeared on page 18 of this booklet.*

The matter of Communist faculty members at Berkeley was involved in the appointment of Eli Katz, who held a temporary position as assistant professor in the German department in 1964. He was not re-hired because he refused to answer questions before the House Committee on Un-American Activities, and also refused to give satisfactory answers to the same general questions about his Communist background when interrogated by the Chancellor's office. Katz had taught at San Diego State College, had been active in the Communist youth movement for a number of years, was identified as a member of the Communist Party in Los Angeles, was a delegate to the Los Angeles County Communist Convention in 1957 and also had taught Communist classes in schools operated by the party.

The case was submitted to an appropriate committee of the Academic Senate, and there were four copies of its report rendered. One went to the President's office, one into the archives of the Academic Senate, one went to the office of the university's legal department and the other to the office of the Chancellor.

The highly articulate and insistent left-wing of the faculty immediately took up the action and insisted that Katz be restored to his position. The matter was taken up by the Berkeley Chapter of the Association of University Professors, and Ernest Besig, director of the American Civil Liberties in San Francisco, made threats of bringing a legal action.

**SLATE Supplement*, Vol. II, No. 4, 1965.

Just before Katz was fired, Kerr sent word that he could remain for one more year if he would agree not to go to a lawyer or to the ACLU. But news of this undercover arrangement leaked out, and even many liberal members of the faculty were disgusted at such negotiations and such ridiculous conditions, and the moderate members of the faculty were disgusted because of this undercover deal with a teacher at the expense of the university and its students.

The administration has apparently yielded to pressure from the insistent Left because in late April of this year the President's office sent for all copies of the Katz file, and refuses to release them to anyone.

In stark contrast to prevailing conditions at Berkeley since the late 50's, it is interesting to see how the Committee on Academic Freedom formerly regarded the employment of professors who defied lawfully constituted committees of the state or federal governments when asked to testify about their subversive affiliations and activities. In 1953 the Academic Freedom Committee made a report which read, in part, as follows:

"... The Committee on Academic Freedom believes that a member of the Faculty of the University of California is under an obligation to testify in a cooperative manner in inquiries lawfully conducted by legally constituted State and Federal investigating committees."*

This report was signed by Robert B. Brode, Emily H. Huntington, Kenneth S. Pitzer, William W. Wurster and Wendell M. Stanley, chairman. But the report was made before the new policy of complete freedom and liberalism came to the Berkeley campus, and obviously conditions have vastly changed since this report was rendered in 1953. Dr. Kenneth Pitzer was formerly chairman of the department of chemistry at Berkeley and played a top role in the development of the atomic bomb for the United States. He is now President of Rice College, and shortly before he was appointed to that position the Regents of the University of California desired to offer him the position of Chancellor at Berkeley. They sent word to him by President Kerr, and Pitzer refused. Later, when asked about the matter by one of the Regents, Pitzer stated that Kerr had offered him the Chancellor's position on any of the university campuses *except* Berkeley.

On the question of employing Communist faculty members at the University, it is interesting to review the attitude of Kerr's predecessor, Dr. Robert Gordon Sproul, when he was President of the university. He declared in June of 1954 that the university served blunt notice on the so-called "liberal" forces that had been sniping at the loyalty requirements of the university. There would be no compromise with Communism, and that no Communist would be employed either in the faculty or in any other capacity, Dr. Sproul declared. He was quoted as follows:

"As for the argument, made off campus by a minor faculty member, that 'one or two Communists' should be hired to present the Communist point of view, Dr. Sproul promptly declared it to be utter nonsense. 'It is as ridiculous to suppose we must have Communists as teachers as that we should have astrologers in the astronomy department, or African witch doctors in the medical school,' he said."†

On October 11, 1940, the Regents concluded that adherence to the Communist Party disqualified a person as an objective teacher, and announced the policy of excluding Communists from membership on the

*Report of the Committee on Academic Freedom to the Academic Senate, Northern Division, March 25, 1953.

†Los Angeles Times Editorial, June 1, 1954.

faculty of the university. An excerpt from the minutes of the Regents' meeting on this date read as follows:

"The Regents believe that the Communist Party gives its first loyalty to a foreign political movement and, perhaps, to a foreign government; that, by taking advantage of the idealism and inexperience of youth and by exploiting the distress of underprivileged groups, it breeds suspicion and discord, and thus divides the democratic forces upon which the welfare of our country depends. They believe, therefore, that membership in the Communist Party is incompatible with membership in the faculty of a state university."

President Sproul further emphasized the general policy of the university on August 27, 1934, when he told the Northern Section of the Academic Senate, in substance, that:

"Essentially the freedom of a university is the freedom of a competent person in the classroom. In order to protect this freedom, the university assumes the right to prevent exploitation of its prestige by unqualified persons or by those who would use it as a platform for propaganda. It therefore takes great care in the appointment of its teachers; it must take corresponding care with respect to others who wish to speak in its name."*

The foregoing general statement is incorporated in university regulation No. 5, has been included in each edition of the statewide *Faculty Handbook* to and including the most recent edition, February, 1963. On January 18, 1965, a revised edition of the handbook for faculty members was in process of preparation under the supervision of Virginia Taylor Smith, in the President's office.

The clear and unequivocal statement of the Regents was first included in the faculty manual and other publications of the university on October 11, 1940, and continued to be printed in each issue thereafter *until 1958*. In other words, this statement commenced by declaring that: "The Regents believe that the Communist Party gives its first loyalty to a foreign political movement and, perhaps, to a foreign government; that, by taking advantage of the idealism and inexperience of youth and by exploiting the distress of underprivileged groups, it breeds suspicion and discord, and thus divides the democratic forces upon which the welfare of our country depends." And it continued to state, for these reasons, that membership in the Communist Party was incompatible with membership on the faculty of the state university. This left no possibility of mistake about the firm attitude of the Regents against the employment of Communists.

Since 1958 this clear statement of policy has been omitted, although President Kerr has at times alluded to it in public speeches. The 1958 edition of the faculty handbook, issued from the office of the President, omitted the specific statement, and under the heading of "academic freedom," printed the following:

"Essentially the freedom of a university is the freedom of competent persons in the classroom. In order to protect this freedom, the university assumes the right to prevent exploitation of its prestige by unqualified persons or by those who would use it as a platform for propaganda. It therefore takes great care in the appointment of its teachers; it must take corresponding care with respect to others who wish to speak in its name."

Obviously, these vague and general expressions do not serve to announce the ban against employment of Communists to employees of the uni-

*Proceedings, Academic Senate, Northern Section, August 27, 1934.

versity, nor does it express the firm position of the Regents of the university against Communism in general.

This policy of excluding Communists from university employ received a further dilution when Kerr submitted a report to the Regents suggesting that the rule be applied only to members of the American Communist Party and that foreign Communists, temporarily at the university, be excluded from its provisions although they were compensated from university funds. This suggestion was made despite an opinion submitted on April 30th from the legal department of the university to the Regents, advising them that the rule applied to all Communists, and not just to the members of the organization in any particular country.

On September 24, 1964, Kerr suggested that the Regents might wish to reconsider the wording of the ban against employment of Communists in general, and that he would present his recommendations later. As yet no such recommendations have been submitted.

Omission of the specific anti-Communist language expressed by the Regents would remove any possibility of offending the sensibilities of the more progressive members of the faculty who are not bashful about expressing their resentment against the use of this sort of language in official publications. There is no question about the continuance of the university policy against hiring members of the Communist Party, but it is very clear that since 1958 the provisions have been gradually toned down, the specific language has been lost and has not appeared in any of the books of rules since 1958, and that for political, ideological, or other reasons, the foundation and supporting structure of the policy against hiring Communists has been loose, general, and transitory. It is still in operation, but it is now treated more as custom, subject to modification as the political climates demand, than as the clear and well-established rule of the Regents.

Communists on the Campus

No Communist speakers had been allowed to lecture on university property since January 1952, until President Kerr persuaded the Regents to rescind that prohibition about three months before the Berkeley Rebellion commenced. Said the *California Monthly* alumni magazine:

"Despite this policy, students could and did hear Communist speakers across the street or, at most, a few blocks away from university campuses. Moreover, the ideas of Communists were available to students and the daily press, over radio and television and in books and periodicals in the campus libraries. Political activists in the student body, usually caring less about Communists than about the right to hear all sides of current issues, engaged in intricate series of skirmishes with the administration of the university. Permission to hold meetings featuring speakers of a wide range of controversial persuasions was sought. Whether permission was granted or not, sponsors of such meetings gained campus and public notoriety far out of proportion to their real influence among the students on the campus. One effect of the 'ban,' President Kerr reported to the Regents, was that it 'permitted American Communists to pose as civil liberties martyrs denied the "right" to speak on the campus, rather than presenting them as the puppets which in reality they are.' ***

**California Monthly*, October, 1963, p. 7.

Prior to 1951 there were bans against Communist speakers at the individual campuses of the university, but no protests against the restriction developed during the 1950's, the opposition actually commencing about 1958 or 1959. A campaign was then waged by the Student Civil Liberties Unions at various campuses, by SLATE at Berkeley, by Declare, a similar radical student organization at the Riverside campus, by the Independent Student Union at UCLA, and by groups of petitioning students and members of the faculty.

On December 6, 1962, the Berkeley Chapter of the American Association of University Professors issued a resolution deploring the continued ban against Communist speakers, and asked President Kerr to persuade the Regents to rescind the long-standing prohibition.

Governor Edmund Brown had declared emphatically in a speech delivered on September 19, 1962, that:

"I don't believe we should permit any subversives to speak on our campuses. I don't see any reason why we should give them any platform from which to spread their poison."*

Early in 1962 the student group comparable to SLATE at Berkeley endeavored to arrange a program on the Riverside campus involving a panel discussion including Dorothy Healey, chairman of the Southern Division of the Communist Party of California, and Ben Dobbs, a veteran Communist functionary. They were to be opposed by two anti-Communists. The Chancellor of the university enforced the Regents' rule forbidding Communists to speak on university facilities, and the American Civil Liberties Union filed suit in April 1962 on behalf of a group of the students against the Regents of the university, Herman Speith, Chancellor at Riverside, and its Dean of Students, T. L. Broadbent. The official title of the suit was "Edward J. Lessin, et al, v. Regents, et al." After both sides had been heard, Superior Court Judge John G. Gabbet decided in favor of the Regents, and A. L. Wirin, chief counsel for the American Civil Liberties Union in Southern California, announced that he would immediately file an appeal. His appeal was filed, and the Regents' brief was submitted to the appellate court in January 1963. From that point on this case pursued a very peculiar course. Mr. Wirin, a tenacious and capable lawyer in cases of this type, requested a voluntary dismissal of the ACLU appeal on May 10, 1963, and it was accordingly dismissed three days later. On that day ACLU president Lloyd M. Smith wrote to President Kerr, saying:

"Press reports indicate that the Regents would promptly re-examine their policy if it were not for the fact that the Lessin case is still pending in court."

And on the following day, May 14, the *New York Times* said:

"The American Civil Liberties Union moved today to drop a suit to force the University of California to allow Communist speakers on campuses. The unusual move was understood to be based on the belief that the university Regents may reconsider its policy on speakers."

The Regents had won their suit. The ban against throwing open the university to Communist lecturers now had the firm sanction of the court. What moved the Regents to rescind their prohibition after winning this victory? The answer apparently is found in a statement from one of the appellants, Richard Unwin, who said he received a message by telephone

**Los Angeles Times*, September 20, 1962.

from the ACLU attorneys who told him of a conference between themselves and Dr. Kerr, who had assured them that he would lift the ban if the appeal were withdrawn. Kerr predicted an early decision by the Regents, saying: "Today's college students are not Communist sympathizers. They are pro-civil liberties."**

On May 21, 1963, by a vote of 15 to 2, the Regents opened the university to Communist lecturers on Kerr's recommendation. The new policy provided that a Chancellor "may if he considers it appropriate," require that the meeting be chaired by a faculty member with tenure, that questions from the audience be allowed, and that "the speaker be appropriately balanced in debate with a person of contrary opinion."†

Ron Moskowitz, education editor for the *San Francisco Examiner*, declared that there was some contention to the effect that Communists should be placed in a somewhat different category than other speakers, since the United States Supreme Court had ruled that the Communist Party of the United States was the tool of a foreign power, and advocated the overthrow of our government.‡

Albert J. Lima, Northern California chairman of the Communist Party, was the first to speak at Berkeley under the new "free speech" policy of President Kerr. Then came the deluge. In came Malcolm X, William Buckley, Jr., Mark Lane, Dr. Fred Schwartz—an endless procession of political candidates, folk-singers, and an incredible procession of controversial figures ranging from the extreme right to the extreme left, with heavy emphasis, in our view, on the left. The students no longer had to walk across the street to Stiles Hall, the YMCA facility where Communist speakers had been holding forth for years, because the university was now bringing the Communists to the campus. As might be expected, Lima's appearance was sponsored by SLATE, the Communist-oriented radical movement that we described as a transmission belt for Communism in our 1961 report, and which has since become almost wholly under the influence of the Communist Party, as can be seen from the activities and affiliations of its officers and former officers; by the Young Socialist Alliance, which is the young Trotskyite branch of the Communist movement, and by the DuBois Clubs, which are Communist from top to bottom.

Not all educational administrators are convinced that their institution should be opened to Communist propagandists. In June 1964 Mr. Charles Luckman, chairman of the board of trustees of the California State Colleges, delivered a commencement speech at San Diego State College which provoked considerable wrath from academic circles. He stated:

"There is indeed nothing to choose between Nazism and Communism, except that the latter is far more dangerous because of its seductive intellectual appeal. No teacher should hesitate to condemn both these tyrannies . . . Communist ideology is demonstrably false. Its economic theories have been disproved by history. Its practical applications have been characterized by the imposition of terror; by the complete disregard for human life and liberty; by the rejection of all the traditional moral and spiritual values which underlie Western Civilization."§

It is difficult for us to understand how a disciplined Communist who addresses a crowd of students for 30 minutes can actually teach them anything worthwhile about Communism. Certainly not anything they could

^{*}*San Francisco Chronicle*, May 18, 1963.

[†]*San Francisco Chronicle*, May 22, 1963.

[‡]*San Francisco Examiner*, July 5, 1963.

[§]*Los Angeles Times*, July 7, 1964; *National Review*, July 28, 1964, p. 650.

not learn much better from the thousands of books on the subject in the university library. The Communist is obviously there to indoctrinate and recruit, so he benefits. But the student, presumably there to learn, gains nothing except a satisfaction of his morbid curiosity and 30 minutes of entertainment.

If, as a result of several years of exposing students to the propaganda emitted by Communist lecturers, one student is drawn into the Communist conspiracy against his own country, who is really to blame? We conclude it must be the persons who are charged with the high responsibility of caring for and teaching the students entrusted to them. The Communist speaker is clad with the reflected prestige of the university where he is a guest; and we are unable to understand why the people should contribute to their own destruction by making their public institutions available to those who are dedicated to the task of overthrowing our government by any means available.

And what about the political science department at the university? Are there no professors capable of teaching objectively in this field? If not, we are wasting our money. If there are such teachers, and if the students really desire to learn something about Communism, why don't they have these experts deliver the lectures, or why do they not attend their courses? It is our considered view that to throw wide the portals to any controversial speaker who wishes to utilize the opportunity to harangue a college audience, is to put curiosity and entertainment above the educational process, and to appeal to the morbid and emotional rather than to the scholarly and the intellectual.

In 1964, J. Edgar Hoover, testifying before the Committee on Appropriations, House of Representatives, Eighty-Eighth Congress, Second Session, declared:

"One of the primary recruiting targets of the Communist Party, U.S.A., is the youth of America and the party has continued its intensified program aimed and directed at our youth. The intensity of this program is revealed in a statement made by Gus Hall in March 1963 when he spoke on the party's success in placing its speakers on various college campuses throughout the country. The youth program of the party, he said, is so important that he or any other national leader would go anywhere to meet with young students even if but one student is met. Admitting that the old timers are still the backbone of the party, Hall nevertheless concluded that the future depends on the youth.

Subsequently, Hall was optimistic about their possibilities, reasoning that the party would eventually be afforded a fertile field for recruiting youth because millions of young people would be entering the labor market and many would be unable to find employment.

Skillfully imparting the Communist line with espousals paralleling Soviet views, Soviet spokesmen appeared before forty-five student groups, mostly at on-campus sites during the calendar year 1963.

That the party is enjoying some success as a result of expanded contacts with college students is indicated in the comment of Daniel Rubin, National Youth Director of the party, in June 1963, that of the number of young people attracted in its last recruiting drive, sixty-five percent were students."

A table submitted as an exhibit with the testimony of Mr. Hoover, disclosed that on February 20, 1963, Herbert Aptheker spoke at the University of California, and at San Francisco State College the following

day; that Albert Lima spoke at the University of California on July 22, 1963, and at Marin Jr. College on October 8, 1963; that Dorothy Healey spoke at the California Institute of Technology on October 16, 1963, and at the University of California in Los Angeles two days later; that Lima spoke at the University of the Pacific with Herbert Aptheker on October 28, 1963; that Aptheker spoke at San Jose State College on October 29, 1963, University of California at Berkeley on the following day, and also at Oakland City College; and that Dorothy Healey spoke at the Riverside campus of the University of California on November 18, 1963.

Our view of the problem is in complete accord with the sentiments of Governor Brown, whose perceptive statement will bear repeating:

"I don't believe we should permit any subversives to speak on our campuses. I don't see any reason why we should give them a platform from which to spread their poison."

Governor Brown made this statement a little more than a year before the Regents rescinded the ban against Communist lecturers on the campus. We trust the Governor has not changed his attitude in the matter since he made the vehement statement in September 1962.

In conclusion, we wish to point out that if the Regents and President Kerr believe that members of the Communist Party are unfit to teach at the university, it is difficult for us to understand how they can justify allowing Communist officials who are not members of the faculty come on the campus and lecture to the students. It reminds us of the ambivalent attitude of the American Civil Liberties Union. It considers Communists unfit to hold any official position in their organization, but is always eager to file a law suit for the purpose of forcing them into official positions in other organizations.

Security

The Berkeley campus in recent years has been opposed to security measures that would at least help keep it accurately informed concerning problems of subversive infiltration. In cases where projects are operated under contracts with the U.S. Department of Defense, the administration has no choice. It is required to secure Personnel Security Questionnaires from all employees who have access to classified information. In such matters the F.B.I., and occasionally some other governmental agency, will conduct the necessary security investigations.

A member of the university administrative department is usually designated to handle the perfunctory office work involved in seeing that these questionnaire forms are properly executed and filed.

In 1951 representatives of this committee offered its facilities in assisting universities and colleges in California to obtain information concerning subversive front organizations on or near their campuses, and in making an effort to prevent subversive infiltration. Some institutions had little need for such services, as they were not subject to any serious infiltration problems. The larger institutions had contracts with the Department of Defense and were under the obligation to designate some employee for the purpose of seeing that the necessary personnel security questionnaires were distributed and properly filed. These institutions also designated persons whom the committee could contact for the purpose of effective interchange of information in the counter-subversive field. This co-operation did not consist of monitoring classes, maintaining any spies on campuses, or the utilization of university facilities; but it did make

available a source of information and co-operation that in most cases proved exceedingly valuable.

The offer of co-operation was received graciously and enthusiastically by the presidents of universities in this state. Letters in our files attest to this cordial relationship, and we quote brief excerpts from four of these letters, each signed by the president of a university or college, as follows:

"... The university ... is proud of its relationship with you and will continue to co-operate in every way possible in your future work."

"Your method of procedure is far more effective than the televised hearings of some ... committees."

"I wish to congratulate you on the excellent work which has been done by your committee."

"I believe that all of us in the academic world in California are much in debt to you ..."

The Chancellor at the Los Angeles campus of the University of California testified concerning his participation in this cooperative system when he appeared before the committee on December 10, 1956. The testimony was as follows:

"Q. About three or three and a half years ago, the president of the university, Dr. Sproul, designated each chancellor and each provost on each of the eight campuses of the University of California for the purpose of maintaining a liaison with this committee. Is that right?"

"A. Yes, indeed."

"Q. That liaison has been maintained so far as your office is concerned, has it not?"

"A. That is correct. I think that liaison occurred before I arrived. It was in May, 1952."

"Q. Yes."

"A. It preceded me; I picked it up since."

"Q. Pursuant to that directive on the part of the president, contact has been made and maintained between the committee and your office, is that right?"

"A. That is right, but I want to underline this: not in any sense to mean that this committee which is established by the Legislature, the Senate and the Assembly, has intruded one iota into the affairs under my jurisdiction; in terms of management, responsibility and internal organization, we function on our own."

"Q. May I add that the committee will continue to follow that policy."

"A. I know that is the case. You wouldn't want it any differently and I wouldn't want it any differently. In view of the fact that the committee, the State Legislature, the Regents, and myself, and as far as U.C.L.A. is concerned, we are working toward exactly the same end, that there should always be a free America, that conspirators will be uncovered. It only makes good sense that I, as top administrator acting under President Sproul's approval and under the direction of the Regents, shall exchange any information which is of interest and help in achieving the objectives that every honorable American is seeking."*

When Kerr, then Chancellor at Berkeley, learned that all chancellors had been designated as liaison with our committee, his reaction struck

*1957 report, pp. 15 & 16.

us as peculiar, because, instead of communicating with us directly, or at all, he made the following statement in the student paper:

"President Robert Gordon Sproul requested me early in August to serve as the official on the Berkeley campus whom the Burns Committee might approach. I accepted. In the intervening period the committee has not communicated with me nor have I been in communication with the committee. Moreover, I have no plan for communicating with the committee.

Should problems ever arise, from relations with the committee, I shall consult with faculty and student leaders on this campus."*

The committee considered this public declaration supercilious and antagonistic, and for that and other reasons there was a minimum contact with the Chancellor's office on the Berkeley campus, although contact was nonetheless maintained with the situation through other channels.

After Kerr became President, he again disclosed his aversion to loyalty investigations in general when he spoke to the Representative Assembly of the Academic Senate in Berkeley as follows:

"... and I trust, whatever happens, that the faculty will not cease to be concerned with the impact of the pressures for conformity in our society, including some of those expressed in the form of loyalty investigations, upon academic and student freedom and with the search for the best methods by which the University can resist those pressures. I conceive it to be one of the primary duties of university administration to support affirmatively free discussion of all issues within the University and to protect actively students and faculty from any unfair or unwarranted frictions resulting from such discussions."†

And, in 1964, in connection with the controversy over Eli Katz, heretofore mentioned, President Kerr said: "The university has not and does not have a system of security clearance for appointment, except when required for specific federal contracts."‡

There had been a security officer for the statewide university, with headquarters at Berkeley. His duties, in addition to the ministerial function of collecting and filing Security Questionnaires, consisted in maintaining proper contacts with other agencies investigating subversion in general, and in building up an efficient collection of material dealing with problems of infiltration, operation of front organizations, and all of the other pertinent information that would enable an education institution to protect itself against subversive influences. This officer was a graduate of the F.B.I. Academy and a veteran of more than twenty years on the campus police department. When Kerr succeeded Sproul as president, he gave this statewide security officer so much extra work to do in the field of insurance at Berkeley, that he made it impossible for the officer to handle his full statewide security work.

On July 2, 1954, the committee agreed with the university administration that because the security officer had been falsely accused of acting as a "thought policeman," that his duties should be limited to matters concerned with defense contracts, and a public declaration issued to that effect. Thereafter the criticisms died down, and the security officer was thenceforth consulted on all problems pertaining to subversive activities and organizations affecting the university. This practice continued until

**Daily Californian*, October 3, 1952.

†Academic Senate Record, Northern Section, Berkeley, May 25, 1959, Vol. V, No. 6, p. 6.

‡Letter dated June 9, 1964.

after Kerr became president, when the security officer was given so much insurance work to handle that his counter-subversive operation was smothered.

At a meeting on January 17, 1963, Kerr stated to some Regents that a full-time security officer was not necessary, because arrangements had been made to obtain the information from the F.B.I. As we have explained, the F.B.I. had investigated persons working under federal contracts before Kerr became chancellor, and this routine had nothing whatever to do with the investigation of infiltration of the university, or with any other counter-subversive matters in connection with the institution. And that was what concerned the Regents—properly so, in our opinion, as has been amply proved by subsequent events.

We made an inquiry through the appropriate channels and learned that no such information was ever provided to the university by the F.B.I., that no arrangements had been made to obtain it, and that no request to that end had ever been made by the university.

Thus, when the first demonstration occurred in the fall of 1964, the university had no security officer. The title appeared in the directory, but the only work done in the security field was the routine office work of handing out, collecting and filing Personnel Security Questionnaires from those employees who were working on federal contracts. There once had been files of vital information concerning subversion in general, but now there were none, and there had been none for several years.

One high administrative official at Berkeley had assumed that when the rebellion commenced its security facility would be able to furnish vital information, but learned with astonishment that there was no real security officer and there had been none for years. So, having had some experience in intelligence work prior to coming to the Berkeley campus, he functioned as a temporary security officer during the emergency period, but obviously under a great handicap.

A representative from the Berkeley campus had also been sent to the Berkeley Police Department prior to the commencement of the demonstrations and attempted to find out how the department obtained its information concerning subversion on the Berkeley campus. Failing in this effort, the Berkeley Police Chief was asked to discontinue maintaining channels of contact on the campus concerning subversive infiltration. The Chief refused, and we are glad to state that the Berkeley Police Department, noted for being one of the best in the nation, has for many years maintained an excellent counter-subversive division.

At the height of the rebellion there was some attempt on the part of the university administration to find a full-time security officer and put him to work. Even the old one, still working on insurance and questionnaires, was asked if he would like to resume his full-time job. So far as we know, the position has not yet been filled.

Communists in the Rebellion

Conditions at Berkeley in the fall of 1964 provided an ideal situation for Communist activity. The administration was opposed to the maintenance of proper security facilities; there was a militant left-wing element in the faculty; there was a lack of communication between the administration, the faculty and the students; there had been an alarming influx of Communists to the Berkeley area; there had been an easy acceptance of radical student organizations that had become both arrogant and defiant; there was a confusion of rules and directives concerning student

activities; the Regents had been persuaded to rescind their long-standing ban against Communist speakers on the campus; the headquarters for the nationwide Communist youth organization had been established in San Francisco; there was general student resentment of the cold and bureaucratic atmosphere on the Berkeley campus, the inaccessibility of university officials, and obviously weak administration and confusion of rules and restrictions that were constantly being amended, repealed, supplemented, and reinterpreted.

In the early portion of this report we emphasized that we have maintained a continuous investigation of activities of the University of California as well as other educational institutions in the state since the inception of this committee more than twenty-five years ago. During all of this time we have developed our sources of information, added to our files, and endeavored to keep abreast of the situation to the best of our ability, so far as our staff and our finances would permit. We also made it clear that our investigation of the Berkeley Rebellion commenced with the first demonstration in the fall of 1964 and has been continuous thereafter. We found that the original demonstrations represented almost every segment of the student body, that even during the united front period of the Free Speech Movement there was no Communist control of the movement in general or the FSM in particular. But we wish to emphasize with all the force possible, that there *was* increasing Communist control of the FSM immediately prior to and after the invasion of Sproul Hall on December 2, 1964. At that time the movement lost its non-radical support almost entirely, closed its ranks, created its extremely effective organization, and thenceforth operated through the facilities of its executive committee and its even smaller steering committee.

Communists are not hesitant about declaring that they are too weak and disorganized to control anything. They tell the naive and inexperienced that there may have been a few members of the FSM who were somewhat inclined to favor Marxism, but that they actually exercised no influence in the movement. One could hardly expect a subversive organization such as the Communist Party or any of its splinter groups to come forward and admit that they were actually controlling any organization except the Communist Party itself.

By the fall of 1964 the Communists had not only perfected their youth organization in the Bay Area, but there were hundreds of nomadic young radicals living around the perimeter of the campus—a supporting force of agitators and activists. It is incredible that anyone could be so gullible as to believe that these Communist leaders, whose names are listed herein, presented with the opportunity at Berkeley and occupying strategic positions in Communist organizations as well as in the FSM would simply sit on their hands instead of making a determined drive for leadership. Let us take a look at some of the individuals who occupied important roles in the leadership of the FSM and who participated in its demonstrations.

Bettina Aptheker is the daughter of Herbert Aptheker, a member of the national committee of the Communist Party of the United States; leading party theoretician; lecturer at Communist schools and on university campuses throughout the country; former editor-in-chief of the official publication of the National Committee of the Communist Party, *Political Affairs*; presently the head of a Communist school in New York, which is being conducted with the assistance of Vincent Hallinan, the father of the ubiquitous Hallinan brothers, and who is secretary-treasurer

for the school. Bettina Aptheker's father is also one of the alumni of the Communist school in San Francisco. When Bettina came to Berkeley she lived at apartment 18, 6321 Dover Street, Oakland 9, where she received the Communist newspaper during 1963 and 1964. She has been affiliated with SLATE, the DuBois Clubs, and resided for a short time with the family of Albert Lima, whose daughter was also prominent in the FSM demonstrations as an undergraduate at Berkeley, and whose father is the head of the Northern Division of the Communist Party of California. Miss Aptheker has also lived at 1579 Scenic Way, Berkeley, an address which was also the residence of Pat and Mike Hallinan and Kenneth Cloke, all of whom have been heretofore mentioned. Miss Aptheker was a member of both the executive and steering committees of the FSM, and when arrested in connection with the invasion of Sproul Hall on December 3, 1964, was living at 1005 53rd Street, Oakland.

Robert Paul Kaufman, a member of the FSM executive committee, was formerly a member of SLATE during his undergraduate days at Berkeley, was active in the Fair Play for Cuba Committee, and played a leading part in the organization of the DuBois Clubs of America. He is now a teaching assistant in the Department of Social Science at Berkeley.

Jacqueline Goldberg, the sister of Arthur Goldberg, came from Los Angeles to attend the university at Berkeley. She soon became the head of U.C. Women for Peace, a front organization, and was its delegate to a Moscow meeting in 1963. She was also active in the American-Russian Institute at San Francisco, cited by the Attorney General of the United States as a Communist-dominated organization, and is now a member of the Policy Committee for the next World Communist Youth Festival which is scheduled to be held in Algeria. She was a member of both the executive and steering committees of FSM, and was arrested during the invasion of Sproul Hall.

Arthur Goldberg, who was a member of both the executive and steering committees of the FSM, received his early Communist indoctrination as a member of the Youth Action Union in Los Angeles. At Berkeley he identified himself openly with the more militant Peking line of the Communist movement, proclaimed that he was a follower of the Progressive Labor Movement, and was present to hear Mort Scheer, West Coast Representative for the PLM, deliver a lecture at Stiles Hall Y.M.C.A., across the street from the Berkeley campus, in August, 1964. Scheer then resided at 6929 Acton Street, Berkeley, and Goldberg, who had also been chairman of SLATE at Berkeley, lived at 2536 College Avenue. Listed as residing at the same address were Sandor Fuchs, who was also chairman of SLATE; Mario Savio, Jack Weinberg, and Charles Artman, identified with the Filthy Speech Movement, and David L. Goins. All were arrested with Goldberg at the time of the Sproul Hall invasion.

Alex P. Hoffman had been a speaker for the Labor Youth League, young Communist component of the Party, has been acting as an advisor for the FSM, has made no effort to conceal his Marxist convictions, and was a research assistant at the law center on the Berkeley campus. He recently transferred into the Department of Speech.

Phyllis Haberman, East Bay chairman of the DuBois Club, was a former roommate of Bettina Aptheker at 2231 Grant Street in Berkeley, and at 635 51st Street in Oakland.

Mort Scheer, already mentioned, was a former member of the Communist Party, found it too tame and inactive for his taste, and was expelled with several other founders of the Progressive Labor Movement

for what the Communist theoreticians would term "left-wing deviationism." He had been present at all of the FSM demonstrations, is an associate of Arthur Goldberg, and with his adherents has been active in distributing propaganda literature on the Berkeley campus.

William Mandel, is a middle-aged member of the FSM executive committee. He is also Moscow correspondent for radio station KPFA in Berkeley, the recent target of an investigation before the U.S. Senate Internal Security Sub-Committee. He has been identified as a member of the Communist Party, and formerly lived at 545 West 164th Street in New York City. When questioned about his Communist affiliations by the Senate Internal Security Sub-Committee during its investigation of the Institute of Pacific Relations, he invoked protection of the Fifth Amendment. Mr. Mandel has also been present at virtually all of the FSM campus demonstrations, although he has no connection whatever with the university, and has delivered pro-Communist lectures at Berkeley and at schools and colleges elsewhere. He has been exceedingly active as a member of the FSM executive committee.

Sydney Stapleton and his wife, Elizabeth, are typical of the Trotskyist Communist element in the FSM movement. Sydney was a member of the FSM executive and steering committees, and both were arrested during the Sproul Hall invasion.

Margaret Lima, the daughter of Albert J. Lima, was active in SLATE and the U.C. Women for Peace. As we have stated, Bettina Aptheker lived with the Lima family when she first came to Oakland, and Margaret was one of the persons arrested during the Sproul Hall invasion.

Kathleen Grossman, who, like Margaret Lima was a student at the Berkeley campus, is the daughter of Aubrey Grossman, who was active on the Berkeley campus when he was a student at the same institution. He had repeatedly been identified as a member of the Communist Party, has been its legal representative, and was formerly listed on its official stationery as the Party's educational director in San Francisco.

Lee Goldblatt, a student at Berkeley, is the daughter of Lou Goldblatt, and served as secretary-treasurer of the East Bay DuBois Club. Miss Goldblatt was also arrested at the time of the Sproul Hall invasion.

Ann Goldblatt King, sister of Lee Goldblatt, and also active in the FSM, was organizational secretary for the East Bay DuBois Club.

Barbara Garson, the wife of Marvin Garson, who wrote the booklet "The Regents," heretofore mentioned, was a member of the FSM executive committee, was formerly active in the Fair Play for Cuba Committee, was affiliated with the Young Socialist Alliance, the Trotskyist branch of the Communist movement, and was arrested during the invasion of Sproul Hall.

Sandor Fuchs, chairman of SLATE, was also a member of the FSM executive committee, and arrested during the Sproul Hall demonstration.

Larry Barnes, active in SLATE, and a member of the FSM executive committee, was arrested during the Sproul Hall invasion.

James Burnett, head of the Trotskyist movement on the Berkeley campus and formerly national president of that organization, was a member of the FSM executive committee.

Stephanie Koontz, a member of the DuBois Club and also the FSM executive committee, was arrested during the Sproul Hall invasion.

Deward Hastings, was a member of SLATE and also the FSM executive committee.

Louis Lester, arrested during the Sproul Hall invasion, was a member of both the DuBois Club and the FSM executive committee.

Steve Weisman, whom we have heretofore discussed at length, was a member of both the steering and executive committees of the FSM, and was also civil rights chairman of the East Bay DuBois Club.

Jack Weinberg, whom we have also discussed at some length, was a representative of the East Bay DuBois Club on both the executive and steering committees of the FSM, and was arrested during the Sproul Hall invasion on December 3, 1964.

Mike Rossman, a Sproul Hall arrestee, was a member of the FSM steering and executive committees as a representative of the DuBois Club.

David Rynan, formerly active in SLATE, and whose father is a professor in the Speech Department at Berkeley, was a member of the FSM executive committee.

Jan Tangen, also arrested during the Sproul Hall invasion, lived at 1927 Dwight Way in Berkeley, and came from a mountain home ranch near Calistoga. Other FSM activists who lived at the same address were James D. Moon, Bruce Bell, Frank Garfield and Stephen Leonard. All were arrested with Jan Tangen during the Sproul Hall invasion.

Robert Treuhaft, who has been repeatedly identified as a member of the Communist Party and who is the husband of Jessica Mitford Treuhaft, was one of the first to be arrested at Sproul Hall. Since he is attorney for the FSM movement it was hardly necessary for him to be formally listed as a member of its executive or steering committees. Obviously he was in constant communication with the leadership of the FSM, and if he had not had some influence with them, they would undoubtedly have dispensed with his services. The fact that this veteran Communist lawyer was closely associated with the FSM and obviously exerted great influence on it is too clear to warrant further consideration.

Elena Flemming, a Berkeley student, visited Cuba in 1963 and was also one of the Sproul Hall arrestees.

Brian Shannon, a leader of the Young Socialist Alliance, was also active in the FSM demonstrations.

We do not consider it necessary or productive to extend this list further. It would be possible to do so, but we submit that it is perfectly obvious that after December 3, 1964, with the perfection of the FSM system of Centrals, the establishment of its executive and steering committees on a highly effective basis and with the type of leadership we have already mentioned, those who still doubt that there was a Communist domination of the movement after December 3, 1964, could not be convinced even if we produced a document showing that the FSM movement was actually operated by the members of the national committee of the Communist Party of the United States, the heads of the Trotskyist movement, and the leaders of the Progressive Labor organization.

In addition, in March, 1965, the director of the Federal Bureau of Investigation testified that while the FSM movement at Berkeley had not been *originated* by Communists, they had exploited it for their own purposes, and that forty-three persons with subversive backgrounds, including five faculty members, had participated in the demonstrations.

Charles E. Moore, a special agent for the Federal Bureau of Investigation for ten years, now director of public relations for the International Association of Chiefs of Police, testified before the Internal Security Sub-Committee of the U.S. Senate on May 17, 1965, that he personally

investigated the situation at Berkeley, and that he found the entire FSM action was dominated by hard-core Communists.*

The *Los Angeles Times* of May 18 amplified Mr. Hoover's testimony somewhat by quoting him to the effect that of the forty-three individuals with subversive records who were actively involved in FSM activities, thirty-eight of them were "students or otherwise connected with the university." Although he had testified on March 4th of this year, Hoover's testimony was released to the public on May 17th.

During the progress of our own investigation of the Berkeley Rebellion, covering a period of eight months, we contacted every official agency in the area that possessed reliable information concerning the demonstrations. We also conducted interviews with and received statements from university officials. We had sources of confidential information from inside the FSM movement, the DuBois Clubs, the Trotskyist organizations and SLATE, as well as various Communist front organizations that were concerned with the FSM. From all of the sources available to us we came to the inevitable conclusion that while the FSM movement started by many students who were certainly not Communist dupes or members of any subversive organizations, and while some of them were emphatically anti-Communist, that there were experienced and disciplined members of the Communist movement deep in the heart of the FSM from its very inception. We also found as a result of all of our investigations and contacts that members of the Communist organizations on the executive and steering committees of the FSM were in firm control of the situation continuously after December 3, 1964.

Information apparently reached the State Department about the control of conditions at the Berkeley campus because it refused to participate in the so-called "teach-in on Viet Nam," scheduled for May 21 and 22 on the Berkeley campus.

Jerry Rubin, an organizer of the mammoth outdoor rally, said that State Department official John W. Piercy telephoned that there would be no State Department representative on hand, although two had originally been promised. Rubin declared, with some rancor, that the State Department objected that the program was not balanced.

Perhaps Mr. Piercy's sources of information had disclosed that Rubin himself was one of the students who had made an illegal trip to Cuba in defiance of State Department regulations, and that after his return in 1964 he and another student named Jeff Lustig addressed an FSM rally on October 9, 1964, and extolled the virtues of the Communist Cuban regime.* The news media on May 20 also carried statements that Robert Scalapino, chairman of the Department of Political Science at Berkeley, and Eugene Burdick, professor of political science, and well-known author, also declined to participate in the Viet Nam "teach-in" for much the same reasons expressed by the State Department.

The first issue of *Insurgent*, the DuBois Club organ, sneered at the idea that Communists actually exerted any influence in the student rebellion. The utter duplicity of this position is shown by the fact that the editor of the publication, Carl Bloice, is a Communist. He was active in the Independent Student Union at Los Angeles, the DuBois Clubs in San Francisco, is a member of the staff of the Communist newspaper, and had written reams of propaganda publicity for the FSM. We had already discussed his presence in Moscow at the International Communist Youth

**San Francisco Examiner*, May 18, 1965.

Conference immediately prior to the occurrence of the first student demonstration in September 1964.

Mario Savio and Bettina Aptheker are probably the two FSM leaders who received the most publicity. Savio, aside from a mild and unimportant alliance with the youth branch of the Trotskyist Communist organization, Young Socialist Alliance, had no subversive background. Bettina Aptheker, on the other hand, had a background that was virtually nothing else but Communist, and exerted a powerful influence on Savio. We have already referred to her articles in the Communist magazine that her father formerly edited, as well as her articles in the *People's World*.

One of her articles in the Communist magazine was entitled "Free Speech Revolt on Berkeley Campus." She described the events that started in mid-September, 1964, as the commencement of "one of the most significant student movements in the country," she described the birth of the Free Speech Movement, stated that "the Chancellor and President of the University did everything possible to squirm out of the Pact of October Second. Only the threat of renewed demonstrations compelled them to abide by the agreement."

We have described the presence of Joan Baez, folk-singer from Carmel, who appeared on the campus after the demonstrations were well under way, and contributed her music to the festivities. She and Savio led the march into Sproul Hall on December 2, and prior thereto she entertained the assembled multitude during their vigil when the Regents were meeting at Berkeley on November 20, 1964. No representative of this committee has ever had occasion to witness the versatility of Miss Baez, but a surprising account was contributed by Bettina Aptheker in her article when she wrote: "On Friday, November 20, the day of the meeting, the most impressive demonstration ever held on the campus took place. It was a demonstration conducted in the spirit and with the dignity of the March on Washington. The steps of Sproul Hall served as the speaker's podium. Joan Baez sang, her voice whistling through the grass—", a truly remarkable achievement.

After the students had been informed of the results of the Regents' meeting, Miss Aptheker wrote:

"The 6,000 students sat in stunned silence as the decisions of the meetings were read. Then, there was instantaneous indignation and anger. 'We have no voices. We were not heard. We were not seen.' Joan Baez spoke: 'Your voices have never been louder. You are being heard all across the country.' We shall overcome . . . we shall overcome . . . the truth shall make us free.

Now we are setting up our tables wherever we want. We hold our rallies on the steps of Sproul Hall. We advocate whatever we please. The faculty has finally moved to support FSM. The entire campus is organized. The administration knows it. We will continue the battle until our demands are won. We ask for no more than our rights as citizens of the United States. We will never accept less."*

Miss Aptheker also contributed an article to a subsequent edition of *Political Affairs*, entitled "Revolt on the Berkeley Campus," in which she describes events commencing with the Sproul Hall invasion of December 2, 1964. She described the removal of the invaders as "brutal assaults on the eight hundred peacefully demonstrating students, carried out by helmeted police, armed with tear gas (fortunately never used), clubs and

**Political Affairs*, January, 1965, p. 53, et seq.

guns, and the imprisonment of the eight hundred for twenty-four hours in the Santa Rita Prison Farm, formerly used as a concentration camp for Japanese-Americans during World War II." She described the strike that paralyzed the Berkeley campus by stating that on the Monday following the Sproul Hall invasion, "we estimated that the strike was 82 percent effective. For almost a week the FSM brought the University literally to a 'grinding halt,' refusing to end demonstrations until Freedom was a reality. The faculty, appalled by the use of police on the campus, refused to teach. On blackboards, on doors of offices and classrooms, members of the faculty wrote hasty notes to their students: 'I will not teach while 600 police are *on my campus*.'" (Committee's italics.)

Miss Aptheker describes the noon rally on Friday following the Sproul Hall invasion by stating that "thousands attended the FSM rally. State Assemblymen John Burton, Willie Brown and Bill Stanton spoke. Joan Baez sang. Messages of support poured into FSM centrals on Friday, Saturday and Sunday, and for weeks following. The state board of the California Democratic Clubs (CDC) condemned the Governor for calling out the police, in support of the FSM. CDC clubs in the Bay Area, for example the Seventh Congressional District and the Sixteenth Assembly District, came out with equally strong statements. Democratic congressmen and assemblymen—Phil Burton, Nick Petris, James Roosevelt, Don Edwards and others condemned the Governor. Bill Stanton called for a revision of the board of Regents and that a Negro leader like Martin Luther King be appointed."

The article refers sarcastically to President Kerr and Robert Scalapino as "Kerr and Robert Scalapino," and stated that "Kerr spoke noble words, but granted none of the substantive demands of the student protest. His speech represented no plan for the future, and no peace for the present."

Borrowing from the booklet entitled "The Regents," by Marvin Garson, Miss Aptheker states that the Regents were "not easily subject to the political pressure of an enraged faculty or student body." Concluding her article on a note of optimism, Miss Aptheker wrote:

"At Berkeley, it appears that the appointment of a new Chancellor, we have won the political fight. Hopefully, at the start of the Spring Semester, there will be new regulations that will maximize political freedom. The alliance between the faculty and the students, and the coalition between all the student groups, represent new possibilities for moving in the direction of a transformation of the university into a truly free community of scholars and students."*

The description of faculty co-operation during the campus-wide strike described by Miss Aptheker, is emphasized by the fact that in an examination given by Assistant Professor Clyde D. Wilson, in Biochemistry No. 213, one of the questions asked the students was whether they were familiar with civil disobedience, which is a matter that may in some way be related to biochemistry, but appears to us more like an instance of using a teaching position to violate a most basic rule of academic freedom. In another Biochemistry examination, Charles A. Dekker asked the following question: "In your opinion what were the events, conditions, acts and/or other factors which led to the campus turmoil of the past seven months, in particular the sit-in at Sproul Hall and the campus-wide strike?"

**Political Affairs*, March, 1965, p. 10, et seq.

As we prepare this concluding portion of our report, Mario Savio, who had been suspended from the campus, has just been readmitted, although the matter still is not finally determined, as it provoked considerable controversy on the campus. When the Forbes Committee, headed by attorney Jerome C. Byrne, first went to the Berkeley campus in February, 1964, it inserted a statement in the student newspaper asking for any interested individuals with pertinent information to contact Mr. Byrne at Pauley Auditorium. Savio stood in the back of the room and made audible sarcastic remarks about the Regents and their committee headed by Regent Forbes that was undertaking to investigate the general administration of the university and the immediate causes for the student demonstrations. When the report was made public on May 12, 1965, Savio exclaimed: "It sounds like a great report. It represents a tactical defeat for the Regents."*

Jack Weinberg's remarks, together with those of Art Goldberg, were quoted in the same issue of the *San Francisco Examiner*. Weinberg said: "I'm only surprised that the Regents allowed such a report to be published." Goldberg said: "I'm delighted to hear about this report. I was one of the FSM leaders interviewed. I'm glad the committee took notice of what we had to say."

We do not know what Goldberg told the committee, but we do know that there has been considerable controversy concerning whether or not any follower of the Peking line of the Communist Party, the line of militance and violence, played any important role in influencing the activities of the FSM. Arthur Goldberg certainly was a follower of this line, by his own statements. It may be contended that he exerted little influence in the FSM, but he was a member of its executive committee, and his influence is attested by a respectable authority, Mario Savio. Savio stated that over the "marathon week-end meeting of October 3 and 4," when the FSM was actually created, the sessions were held in the two-room residence of Arthur Goldberg. On many occasions there were as many as fifty people participating, and Savio said he spent forty-eight hours there with Goldberg putting the FSM together. So here, assuredly, was at least one Maoist who exerted considerable influence in the FSM.†

About a month before the Byrne Report was published, a preview of it appeared in another magazine, *Science*, which published a series of two articles entitled "Crisis at Berkeley; The Civil War, The Second Front." These articles were written in the same general vein as the report itself, and reached much the same conclusions concerning the reasons for the Berkeley Rebellion. The articles were written by Mrs. Christopher Jencks, wife of one of the more prominent staff members of the Byrne Committee. She wrote the articles under the name of Elinor Langer. Apparently Mrs. Jencks had interviewed President Kerr, as she quoted him as follows:

" 'There were tensions before,' Kerr commented. 'Underneath the great public support for university expansion under the master plan there were always political resentments. On a wide variety of issues running from the lifting of the ban on Communist speakers to the abolition of compulsory ROTC we were usually able to persuade the Regents to go along—usually on the argument that it was best for the university. But the sit-ins and the strike really provoked the

**San Francisco Examiner*, May 12, 1965; *Daily Californian*, February 10, 1965.

†*The New Yorker*, March 13, 1965; *Oakland Tribune*, May 19, 1965.

public, and the obscenity issue was simply the last straw. I believed it when I argued that giving the students freedom would lead them to act responsibly,' he concluded, 'and it has been a great personal disappointment to me that it didn't.' ""*

In addition to the support and advice given to the student rebellion by adult Communists in the United States, such as Herbert Aptheker, Lou Goldblatt, and William Mandel, there was also support from international Communist movements. In the second issue of *Insurgent*, recently published, is this statement:

"The Secretariat of the International Union of Students has expressed solidarity with the Free Speech Movement at Berkeley, California, in a telegram sent to FSM leader Mario Savio. This action indicates the world-wide attention that has been given to the FSM."†

The same issue of this publication contains a long and favorable account of World Youth Festivals by Kenneth Cloke, heretofore mentioned, urging students and other young people to attend the Ninth World Youth Festival which is scheduled to be held in Algeria, July 27 to August 7.

One of the most recent activities of the FSU consisted of a meeting with President Kerr by Bettina Aptheker and James Burton. He suggested that they meet with Regents McLaughlin and Heller, so they might voice their objections to the Meyer Report. This report, recommending new and tough rules for student conduct, would obviously be a great obstacle to future demonstrations. Whether or not the two Regents mentioned have consented to meet informally with these students has not been disclosed at the time of this portion of the report is being written.

The Chairman of the Board of Regents, Edward Carter, rejected a wire from the FSU for a meeting with the Regents, stating that: "We find no reason now to make an exception for your group and particularly because of the threatening tone of your telegraphic request." The wire had said: "If this demand is not met the only conclusion which we and other citizens of California can make is that the legitimate channels for negotiations are closed to us." The FSU wished to discuss the Meyer Report, with which they disagree, and the Byrne Report with which they do agree.‡

The Critics Chorus

There have been, as one might expect, numerous magazine articles, surveys, questionnaires and booklets, dealing with the Berkeley Rebellion. All agree that weak and irresolute administration was responsible, in that it allowed the situation to develop that presented the Berkeley campus as an irresistible target for radicals of all varieties. There is also agreement that when the demonstrations commenced they drew wide support from students who were not connected with any organization—certainly none with the Marxist and outright Communist groups.

It is important to observe how the vast majority of Berkeley's 27,500 students were largely ignored by the administration and the press during these long months of incredible rebellion. At least 23,000 students who were trying to get an education were subjected to brainwashing in their classrooms; were excluded from their classes during the campus-wide strike in early December; were subjected to a barrage of filth and pornography, and *their* civil rights were not deemed worthy of attention by the

**Science*, Vol. 148, April 9, 1965, pp. 198-202; April 16, 1965, pp. 346-349.

†*Insurgent*, Vol. 1, No. 2, May-June, 1965, p. 8.

‡*San Francisco Chronicle*, May 19, 1965.

ACLU, or the administration, or the press. Certainly one of these was the right to pursue their studies, without undue interference.

This vast student majority was not organized as was the FSM. It was not sensational, and therefore not newsworthy. But who can say it was unimportant? It *was* the university, an institution operated at public expense and entrusted to the administration of the Regents for one purpose: the education of our young students. During these eight months of demonstrations and disruptions the official student government was paralyzed and utterly incapable of coping with this brash minority of activists. It represented all the students, but when its duly elected president pleaded with the FSM to desist its tactics of violence and disruption, the lovers of free speech drowned his pleas with jeers of derision.

For those who may wish to study the growing literature dealing with the rebellion, we have included a bibliography of sources. They are, mostly, magazine articles written by close observers of and some participants in the scene at Berkeley. Some are university professors, some are students in and out of the FSM, others are experts in the field of education, and yet others are professional journalists. The list is by no means exhaustive, but it does present many important aspects of the subject in broad terms.

Some of these writers believe that the Regents and the university administrators have fallen into the belief that since the university was big and had the most students, the largest faculty, the most campuses and lots of money, that it must, therefore, be the best of all educational institutions. They point out that President Kerr indicated an awareness that size and quality were not necessarily synonymous when he delivered the Godkin Lectures at Harvard in 1963.* But, they insist, the problem should have been anticipated long ago, and then something should have been done to solve the difficulties instead of accepting them as inevitable and waiting patiently for the campus to explode.

One writer, a sociologist, has described the concentration of Communists and their supporters at Berkeley:

"During 1963-64, my first year as a teacher at Berkeley, student political activity was vigorous beyond anything I had recently seen at any other American college." "There was," he said, "a grand chaos of oratory, advocacy and action . . . in 1951, when I visited Berkeley for the first time, a number of socialist youth leaders from the East had just migrated here, because they found the political climate peculiarly congenial to their work. In addition, it was my impression that Communism, too, retained more life and relevance in the Bay Area than in the East. Some of these socialist youth leaders became students; some worked at the university; others worked in the community, becoming part of the perambula of campus life which, at Berkeley, involves many people who are neither students, faculty, nor staff . . ."†

Mr. Glazer is the author of "The Social Basis of American Communism," Harcourt, Brace & World, Inc., N.Y., 1961. This was a volume in the series called Communism in American Life, which was financed by the Fund for the Republic. Dr. Glazer was professor of Sociology at Berkeley during the rebellion and observed it at first hand.

Some of the writers reject the concept that because the university is big, it will lose contact with its students, who will then become unhappy

*See: "The Uses of the University," Harvard University Press, 1963.

†"What Happened at Berkeley," by Nathan Glazer, *Commentary*, February, 1965, p. 39, et seq.

and take over the buildings by force. These observers point out that only a relatively small minority of the students reacted in such a manner, and that spoon-feeding on a campus will not necessarily insure student serenity.

Fred M. Hechinger, education expert for the *New York Times*, observed that "... the administrators, instead of mediating daily, let themselves be cut off from their constituents—the students, the faculty, and even the Regents. They mediated—like labor mediators—after the breakdown of communications. At that point, with the balance of power upset, the faculty, either troubled by its own conscience or intent on increasing its power, joined forces with the students against the administration."*

An article in the *Washington Post*, February 18, 1965, stated that: "... the key role played by the Communist Party and several of its splinter groups has somehow become obscured," and quoted Mort Scheer as declaring after he moved to Berkeley that he was going to forge "a new revolutionary movement," based on "pure Marxist-Leninist principles."

Aside from attacks by the FSM and FSU, perhaps the most critical anti-Kerr article appeared in the liberal *Frontier* magazine. It was written by Colin Miller, who was sent to study the rebellion by the Center for the Study of Democratic Institutions (formerly The Fund for the Republic). Clark Kerr has acted as a co-author and consultant for the Center and the Fund on occasion. The article was entitled "The Student Revolt," and is a "... distillation of Miller's long report for the Santa Barbara Center," and appeared in *Frontier* for the first time. Miller proceeds without delay to his theme. In the first paragraph of the article he wrote:

"Despite widely held conclusions drawn from the March 13 meeting of the University of California Board of Regents, the resignation of Clark Kerr is inevitable. His ultimate retirement is an unscheduled appointment on the University calendar for three reasons: (1) The divisions between the Kerr administration and the faculty have broadened rather than narrowed since the crises of last fall; (2) the absence of a flow of trust from student body to the Kerr presidency makes the Berkeley campus subject to sudden dissensions; (3) Kerr's failure to prove he can stabilize the University by techniques of mediation rather than leadership have given the Regents cause for a lack of security in his administration."

"Without solid faculty, student or Regent support, the Kerr regime cannot be considered in control of the University. The actions of March 13, when Kerr withdrew his abrupt resignation of four days earlier, are no more than a temporary extension of his stay in office. This is true although his departure may be as much as a full year away."

"Both the proposal to increase Forbes Committee Funds, which passed, and the Meyer Resolution (calling for stern measures against students thenceforth) which didn't, were implicitly critical of Clark Kerr. His March 9 resignation before a hurriedly called press conference was no less precipitate than the unexpected acts of civil disobedience perpetrated by FSM last fall. How secure can the Regents be with the administration of nine campuses in what may be regarded as unpredictable hands?"

"On two successive days Clark Kerr released statements of apology to the press. The first, on March 12, was to the faculty for his accusa-

*"Campus Dispute," *New York Times*, Dec. 20, 1964.

tion two days before that faculty committees had sought to 'avoid responsibility' in disciplinary problems. The second was to the Regents for his resignation via the press instead of through customary channels. These messages of regret are temporary palliatives without precedent in Kerr's career as President."

Miller contended in his article that Kerr understood all about the complex multiversity of which he wrote, except his own role as chief administrative officer. Thus in commenting on the closing of the Telegraph-Bancroft entrance area to tables manned by students, Kerr told the press, according to Miller: "I thought it was a mistake and that we should return this area to the students, but that was difficult. It had just been taken away—we could hardly turn around and hand it right back." But, Miller points out, "had he chosen to assume command he might have averted the most sizable manifestation of civil disobedience ever seen on a university campus."*

*"The Student Revolt," by Colin Miller, *Frontier*, April, 1965, p. 11, et seq.

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THE FRONTS AND THE FAR LEFT

As the new and vigorous Communist youth organizations developed, they not only drew heavily on the old CPUSA, but their bold attitude operated to eclipse many of the front groups. These fronts had always been set up in such a manner that the handful of Communists who really controlled them functioned from far behind the scenes. They invariably advocated some worthy cause that would be attractive to liberals, and the front would then serve as a medium for the passing of party line resolutions, the gathering of petitions, placing advertisements in various publications and generally furthering the Communist cause. They were also used to spread Communist ideology in small and subtle doses, and recruit more members to the movement. Exposure has been the nemesis of the fronts, for as the true nature of these organizations and their leaders is made public, they lose their members and their financial support.

The U.S. Department of Justice has published a list of subversive organizations as a guide for the public, and as a group is placed on this list, it is certified to the Subversive Activities Control Board and may appear before that body and resist the listing. If an adverse decision is made, the alleged front has the right of appeal through the courts. The listings are made after investigations by the FBI.

In May only twenty of the 274 organizations formerly listed by the Attorney General were still active, and there was some indication that the list might be discontinued. According to testimony given to a Congressional committee by J. W. Yeagley, head of the Department of Justice's Division of Internal Security, the FBI had been so successful in penetrating these fronts that the Government might have more to lose than gain if the listings were resisted and it was forced to produce evidence before the Subversive Activities Control Board to support its charge of Communist control.

The Constitutional Liberties Information Center, a new and exceptionally active front in Los Angeles, was described at length in our last report. It is now dormant. But there are a few other front groups of long standing that are still operating in California. The most prominent are the Committee for Protection of the Foreign Born, Citizens Committee to Preserve American Freedoms, American Russian Institute and the National Committee to Abolish the House Un-American Activities Committee (NCAHUAC). This last-named front is now more active than ever in California.

The House Committee has been accumulating its expertise and its files for some twenty-six years, and the dissemination of information about the affiliations and activities of Communists and fellow travelers is a source of immense discomfort to the Communist groups. The massive proportions of the propaganda campaign against the House Committee is amazing, continuous and relentless. And this particular front organization, NCAHUAC, will therefore continue to operate as long as the House Committee continues to exist.

Frank Wilkinson has been the leader of the effort to liquidate the House Committee for years, commuting between California and Washington, speaking at meetings and rallies throughout the country, and

carrying on a campaign of correspondence and propaganda. Headquarters for this front with the awkward name, more conveniently known as NCAHUAC, is at 555 North Western Avenue, Los Angeles, and its facilities have also been used by another front, The Citizens Committee to Preserve American Freedom.

Wilkinson's efforts to bring about the liquidation of the House Committee have been futile. Indeed, it has been given larger appropriations in recent years than ever before, although there are always a handful of votes opposing its appropriations. When the negative vote increases a little, the NCAHUAC spreads the news with alacrity through Communist propaganda machinery; when the vote decreases, there is silence. Wilkinson has been spending less time in Washington lately, and his duties have been largely taken over by Dale Gronemir, who presides over the San Francisco office, which was opened in March, 1965, and who seems to have been making all of the important decisions lately. Just as the Bay Area was selected for the massive demonstration against the House Committee in 1960, and as the Berkeley campus of the university was selected for the demonstrations of 1964-1965, so San Francisco was apparently selected as the new base of operations for the NCAHUAC. The letterhead still proclaims that Los Angeles is the main office, but our own sources, which we consider reliable, indicate that the decisions are now being made in San Francisco. As recently as last February the operations in the Bay Area were being run from Post Office Box 77201, San Francisco. The move to the present San Francisco headquarters at 1005 Market Street was made in March. It is estimated that the San Francisco mailing list has now reached a total of approximately 4,000 names.

The Socialist Workers Party is the Trotskyite branch of the Communist movement, and its youth divisions are known as Young People's Socialist League and Young Socialist Alliance. All three of these groups are active, although not large in membership. The youth divisions are almost entirely restricted to university students, while the SWP has, like the CPUSA, become noted for its elderly rank and file members and their love of long and contentious arguments on ideological matters. A few years ago the SWP was noted for the fiery nature of its program and its advocacy of permanent revolution through direct action. Now much of this has been appropriated by the Progressive Labor Party, with its militant adherence to the Peking-Castro line.

The so called *ad hoc* fronts will always be with us, as they spring into existence for some special cause and then vanish again when their purpose has been fulfilled. Most of them are created to raise defense funds, wage a petition-signing campaign, solicit names for newspaper protests of one sort or another, to organize marches, sit-ins and the like. This sort of activity was formerly handled by permanent Communist fronts, but their very permanence rendered them vulnerable to exposure, and it is now considered a more elastic and reliable tactic to create these temporary fronts and then liquidate them quickly when their function has been performed.

THE FAR RIGHT

There has been considerable discussion about the Minutemen in California. J. Edgar Hoover has stated that the F.B.I. has penetrated the organization and is keeping abreast of its activities, but that there was "little real evidence that the Minutemen are anything more than essentially a paper organization with just enough followers over the country so that they can occasionally attract a headline."

The complete list of the twenty organizations on the Attorney General's list which are still regarded as active subversive front organizations by the U.S. Department of Justice are as follows: The American Committee for the Protection of the Foreign Born; American Russian Institute, New York (also known as the American Russian Institute for Cultural Relations with the Soviet Union); American Russian Institute of San Francisco; American Russian Institute of Southern California; Armenian Progressive League of America; Chopin Cultural Center; Communist Party, U.S.A., its subdivisions, subsidiaries and affiliates; Industrial Workers of the World (IWW); Jewish Culture Society; Johnson-Forrest Group of Johnsonites; Ku Klux Klan (including all present versions); Labor Research Association, Inc.; National Council of American-Soviet Friendship; Nationalist Party of Puerto Rico; Nature Friends of America; Proletarian Party of America; Socialist Workers Party; Veterans of the Abraham Lincoln Brigade; Yiddisher Kultur Farband; Yugoslav-American Cooperative Home, Inc., and Yugoslav Seamen's Club, Inc.

In connection with a bill pending before the California Legislature which seeks to outlaw paramilitary organizations in California, Thomas C. Lynch, Attorney General, submitted a report on such organizations, including the American Nazi Party, The National States Rights Party, The California Rangers, The Minutemen, and The Black Muslims. We discussed all of these organizations in our 1963 report. To those who are interested in pursuing the subject further, we recommend that they write to the Attorney General's office for copies of his report which was issued on April 12, 1965.

We regret that space does not permit us to include detailed reports concerning these organizations from 1963 to 1965, but the situation at the University of California in Berkeley was considered of far more importance. As was stated by J. Edgar Hoover, the Minutemen organization consists largely of a paper group, interested in sensational publicity; the American Nazi Party activities in California has never amounted to much, and the Attorney General agrees that in California it has "never been represented by more than a handful of members."

The Attorney General also agrees with our findings in 1963 that the National States Rights Party is probably more active and dangerous than any other ultra-right organization, and states that the incident that we reported as involving the leaders of the NSRP in charges of disturbing the peace and assault and battery, and their subsequent conviction on those charges, marked the end of the organizational drive by the movement in California.

All of these far right organizations advocating violence, provided with arms and ammunition, and some of them obsessed with the idea that

hordes of Communist forces are poised and ready for invasion of the Pacific Coast area at any moment, will always pose an imminent source of domestic danger regardless of the size of their memberships. This type of organization inevitably attracts a highly emotional, fanatic type of follower—often anti-Negro and anti-Semitic—who are inclined to make anonymous telephone calls, scrawl swastikas on places of worship, use home-made bombs, and commit similar acts of violence and lawlessness. The danger potential from this type of organization is, obviously, out of all proportion to its size. Neither the Attorney General's investigators nor our own have found any serious organization of the Ku Klux Klan in this state, although there are evidences of collaboration between the KKK and the National States Rights Party. This knowledge was developed through statements made at a meeting in the William Penn Hotel, Whittier, California, on Tuesday, October 15, 1963. Col. William P. Gale declared on that occasion that he was the founder of the California Rangers, which had been inactive during the past three years; that Conrad Lynch, NSRP organizer in California, was also a minister in Church of Jesus Christ, Christian, headed by Wesley Swift, and that there was close collaboration between the church, the NSRP, the KKK, and the Minutemen. Only twelve people attended this meeting, and at least two of them were undercover agents for official government agencies. The general tone of the meeting was anti-Negro and anti-Semitic.

THE PROGRESSIVE LABOR PARTY

Our last report contained a section which explained the origin and development of the Sino-Soviet split, and its effect upon the Communist Party in the United States, and especially in California. During the last two years that split has deepened, and with the opening of the Red Chinese propaganda outlet in San Francisco, and the establishment of the Progressive Labor Movement in the Bay Area, the effect has been serious and far-reaching.

Realizing that an adequate discussion of the Berkeley Rebellion would necessarily include a discussion of Communist front organizations in the vicinity of Berkeley, the activities of the Communist Party in general, an explanation of the reasons for the concentration of Communist power in Northern California, and the general vulnerability of the Berkeley campus to Communist infiltration; and realizing that such discussions would occupy so much of the present report that there would be little space for other subjects, we have endeavored to incorporate most of them in the section dealing with the demonstrations at Berkeley.

It is necessary, however, to devote some special attention to this new and most militant wing of the Communist movement which was created as an indirect result of the Sino-Soviet split, and which is now rapidly growing throughout the country.

The expulsion of Earl Browder from the American Communist Party in the mid-forties was a signal for the decline of that organization from a top membership of approximately one hundred thousand immediately after World War II, to its present status of about ten to fifteen thousand formal members in the United States. In 1957 John Gates, former editor of the *Daily Worker*, not only resigned but wrote a book entitled "The Story of an American Communist." (Thomas Nelson & Sons, New York, 1958) In the acknowledgements the author expresses his gratitude to Joseph Starobin for help in its preparation. Starobin's son, Robert, is a graduate student at the University of California in Berkeley and participated in the FSM demonstrations. His father, like Gates and many other party leaders, became disillusioned with the general decline and ineffectiveness of the Communist Party, and left. Some of them, like Gates and Howard Fast, wrote books that expressed the reasons for their disillusionment, and explained the causes for the party's stagnation. With the establishment of a Communist regime in Cuba, with the declarations from Red China that Moscow had deviated from the Communist cause, and repudiated the basic principles of Marxism-Leninism, and with a growing split between these two great Communist countries, the Peking line of tough, militant action caught the fancy of many young members of the Communist Party. They then advocated a line of force, action, demonstrations and direct agitation in this country that led to their expulsion from the CPUSA.

Among those who were expelled were Levi Laub, Milt Rosen and Mort Scheer. They were the founders of the Progressive Labor Movement in 1962, and were soon organizing trips of young people to Cuba for revolutionary indoctrination. These travelers returned to make sarcastic and critical comments about the old CPUSA with its aged members, its inflexi-

bility, and its insistence on clinging to the Moscow line of peaceful coexistence.

Richard Armstrong, *Saturday Evening Post* writer, spent a period of eight months interviewing members of the various organizations of the far left throughout the country, and described the Progressive Labor Movement in an article entitled "The Explosive Revival of the Far Left," *Saturday Evening Post*, May 8, 1965. He stated that whereas the membership of the old CPUSA is composed of people who are both elderly and bound by faith in a movement that was out-dated years ago, they are unable to concede the fact of change. The belligerent new Communist movement is composed of members 90% of whom are under thirty years of age, and "when these young radical groups get together, as they did in the leadership of the student riot at Berkeley, California, last December, they can turn the town upside down."

The impact of the Sino-Soviet split in the Communist Party in California is eloquently proclaimed in a statement made by the late Elizabeth Gurley Flynn, former chairman of the Communist Party of the United States, when she wrote in the party organ, referring to a collection of editorials from the Red Chinese paper *Jenmin Jih Pao*, and a booklet entitled "Long Live Leninism," both published in Red China, that: "... I had also received a letter from the Party representative in California who said that these publications were causing a great deal of confusion among our comrades there."*

The Progressive Labor Movement quickly spread from New York to other cities throughout the country. Milt Rosen had been labor secretary of the CPUSA for the State of New York, and Mort Scheer had been its organizer in Buffalo. Soon it had a publication called *Progressive Labor*, edited by Fred Jerome, the son of V. J. Jerome, who was active with John Howard Lawson in the infiltration of the motion picture industry in California several years ago. Scheer came to California, as we have seen, in the early summer of 1964, as West Coast organizer, and established a residence at 2629 Acton Street, Berkeley. He soon built the nucleus of a PLM group in the Bay Area around Lee Coe, Rose Jersawitz, Edward Lee, Stanley and Jane Gow, Larry Harris and John Thomas. The organization soon began to penetrate other left-wing activities, and to broaden its circle of influence. In August, 1964, Scheer was instrumental in organizing a rally of about a hundred people who marched to Union Square, San Francisco, and demanded an end to foreign intervention by the United States. His appearance at Stiles Hall, which we have already described, was attended on August 4, 1964, by Art Goldberg, then chairman of SLATE, John Thomas, Leonard Glaser and Michael Klein, who was active in the FSM, and who was chairman for the meeting. From these activities emerged a PLM organization known as the Committee for Independent Political Action, which became one of the organizing groups of the Free Speech Movement, and which further negates any concept that the PLM had no influence in the FSM.

The May Second Movement (M-2-M), is another national youth group with headquarters at 640 Broadway, New York City, and which is an outgrowth of the PLM. Deriving its name from the first demonstration it staged, a protest in New York at the United Nations building against U.S. policies in Viet Nam, it publishes *Free Student*, which is directed to the youth of America, especially its students. Its founder-chairman is

**Political Affairs*, November, 1963, pp. 24 & 25.

Russell Stetler, and its representative on the West Coast is Rick Manderfield, P.O. Box 583, San Francisco, 94101. On the back page of the issue of this publication for April 1965 there is a statement signed by a long list of young Americans of draft age who signify their opposition to United States participation in the Viet Nam war by stating that "we herewith state our refusal to fight against the people of *South* (sic) Viet Nam." We presume that in their zeal to rush their sentiments into print—or for some more obscure purpose—this slip passed the editors and was printed in too many issues of the publication to be changed. Since the people of *South* Viet Nam, in collaboration with the forces of the United States, are fighting the communist Viet Cong, from *North* Viet Nam, the mistake is interesting, indeed. The list includes 82 young men of draft age from California, most of them from the Bay Area, and many of them, including Mario Savio, who were active in the FSM demonstrations.

The heroes of the PLM, the May Second Movement, and the Committee for Independent Political Action, are admirers and followers of Mao Tse-tung, Ho Chi Minh, the Communist leaders of North Viet Nam, and Fidel Castro. The PLM has also been extremely active in organizing illegal trips by students to Cuba by way of Czechoslovakia, as we have heretofore described.

On March 27, 1965, on the sixth floor of the Hotel Shattuck in Berkeley, there was a highly secret conference of about fifty delegates from various localities on the West Coast, assembled to prepare for the national organizing convention for a Progressive Labor Party in New York. Notice of the Berkeley meeting was given by word of mouth, the only printed material used being a mimeographed agenda prepared by David J. Rike, and which was closely guarded.

Over the week-end of April 17 and 18, 1965, the Progressive Labor Party replaced the Progressive Labor Movement, claimed fifteen hundred members at the end of its four-day convention, and announced that Milton Rosen, 38, had been elected president. Mortimer Scheer of Berkeley and William Epton of New York, were elected vice-presidents, and a national executive committee of twenty was created.

It is already apparent that the new Progressive Labor Party is not only the most militant and aggressive Communist organization in this country, but that it is drawing younger members of the old CPUSA out of the ranks, and attracting large numbers of radical youth from all parts of the country. Some of its propaganda outlets have been located at Box 137, Planitarium Station, New York City; Box 996, Chicago 90, Illinois; Box 6604, Cleveland 1, Ohio; Box 8442, Philadelphia, Pennsylvania, and Box 72112 Watts Station, Los Angeles. The revelations of Phillip Abbott Luce who left the PLM when he was sufficiently trusted to learn about its program for terror and violence, have already been set forth herein. Vice-President William Epton of the new Progressive Labor Party, is now under indictment for directing acts of violence in New York, and one of the conditions for his release on bail was a stern restrictive order by the court forbidding him from coming to California on a projected campus lecture tour.

On March 9, 1965, New York police arrested five young men and women charged with criminal contempt of a grand jury investigating the role of the PLM in last summer's ghetto riots. The persons arrested were: Robert Apter, PLM member in New York; Michael Brown, New York organizer and member of the National Coordinating Committee of the May Second Movement; Susan Karp, Otis Chestnut, Jerry Gellis, Levi

Laub, and Ellen Shallit, secretary of PLM's Student Committee for Travel to Cuba.*

The PLM and the PLP have been repeatedly condemned and repudiated by responsible Negro leaders, especially Roy Wilkins, the executive director of the NAACP. Nevertheless, the PLP is finding enthusiastic support from the more irresponsible and violent elements in various Negro organizations, is continuing to attract large numbers of members, and, as pointed out by Victor Riesel in a recent newspaper column, the movement apparently had a source of ample funds from its very inception. He pointed out that to keep the one hundred and ten out-of-state delegates for a week would cost at least \$2,000 a day, and that additional thousands of dollars were needed for the printing of the leaflets, booklets, and a forty-eight-page convention agenda. "Whatever the mysterious sources are," Riesel wrote, "they're also providing thousands of dollars for the maintenance of headquarters . . . in Berkeley, San Francisco, Chicago, Buffalo, Louisville, and Williamsport, in addition to three major offices in New York City. Apparently there is no doubt of the gold flow. PLP leaders are planning to publish not only a Marxist-Leninist quarterly, the national newspaper and a series of anti-imperialist booklets, but also a slick magazine fashioned after the pro-Chinese Communist 'Revolution' now issued in Paris for the European continent . . . The party is made up of young people . . . dedicated to stirring wildcat action in the factories and on the streets. They are a very successful and militant band of young revolutionists and had ample money since the first day they went into business . . . in 1962."†

During the last two or three years there has been a great deal of talk about the ineffectiveness of the Communist movement in the United States. Every professional source has pointed out the utter nonsense of this conception. As long as there is a global contest between the forces of Communism and the free world and as long as the United States remains the most powerful and successful example of the free enterprise system, it will also be the main target for Communist subversion. We have stated many times that without an understanding of the international Communist movement, it is utterly impossible to understand the Communist movement in this country. The Sino-Soviet split has exerted a profound effect on every Communist organization in the world, and when the CPUSA was regarded as too mild and inactive, a number of new, potent, pro-Peking Communist organizations sprang into existence with a program of direct and forceful action.

To those who contend that we should forget all about the perils of domestic Communism, we would point out that many venerable and effective propaganda outlets for the CPUSA are still in business, despite the fact they all operate at a considerable deficit. They are: *The Worker*, *People's World*, *Communist Viewpoint*, *National Guardian*, *Political Affairs*, and a group of pro-Communist and ultra-liberal publications, each of which carries recommended reading lists of Communist propaganda that is available at various California outlets. In addition, as we have stated, the Red Chinese propaganda outlet in San Francisco is doing a rushing business, as are the amply-financed publications of the new Progressive Labor Movement.

We would also point out that when William C. Taylor ran on the open Communist Party ticket and as a Communist member, for the office of

**National Guardian*, March 13, 1965.

†*Oakland Tribune*, April 26, 1965.

supervisor of Los Angeles County in the last election for that office, he received 33,576 votes, a support out of all proportion to the estimated strength of the formal Communist Party membership in this state. The same sort of large and disproportionate vote was received by Bernadette Doyle, a Communist Party member, and Holland Roberts, former director of the Communist School in San Francisco, when they ran for state offices in California several years ago.



THE JOHN BIRCH SOCIETY

In 1963 we devoted sixty-one pages of our report to the John Birch Society. Much of the report was highly critical, but because we did not find the society subversive, we were accused in some quarters of having given it a thick whitewashing. It was natural to expect that the extreme Right would view the report with favor, the extreme Left with disfavor, and that the John Birch Society would utilize the favorable statements and ignore our more pointed criticisms. This is precisely what happened, although we were glad to find that J. Edgar Hoover, when asked whether or not the F.B.I. had investigated the society, replied that it had not because it only investigated subversive organizations.

Surprisingly, many liberals who analyzed our conclusions about the society with care, found the report fair and objective. Among these are Dr. H. A. and Bonaro Overstreet, who have written three anti-Communist books that earned for them the criticism of the far Left, and in 1964 published a book called "The Strange Tactics of Extremism," which earned them an equally savage attack from the far Right. The Overstreets devote pages 25 to 112 in their book to the John Birch Society, and although their criticisms are far more emphatic than ours, they do not find the organization subversive.

On page 8 of our 1963 report we concluded our discussion of *The Politician*, with the following statement:

"We are dealing at length with the allegations contained in *The Politician* because it set off the criticism of the John Birch Society when its contents became known, because most of the top officials of the John Birch Society attribute the attacks against it to the contents of *The Politician* and because it serves to highlight the character of Robert Welch as the founder and present leader of the movement. Furthermore, it will be necessary to refer to the document hereafter, in distinguishing between the critics of the statements contained in it and efforts to attribute the statements of its author to all the members of the Society."

The Politician was issued as a letter of three hundred sixty-eight pages by Robert Welch, in 1954. This was four years before the founding of the John Birch Society. In this extraordinary document Welch made the accusations that described President Eisenhower, John Foster Dulles, and other high members of our government as either Communists or Communist dupes. We characterized these and similar assertions contained in this 1954 Welch letter as not only ridiculous, but entirely unsupported by proof, and as statements that the members of the John Birch Society as a whole had repudiated. We pointed out that the statements were made four years before the society was even founded, that Mr. Welch assumed all responsibility for them, and that he had repeatedly declared that they had nothing to do with the membership of the John Birch Society.

But since our report was published, and after long and stormy sessions with the National Council of the John Birch Society, Welch decided to publish *The Politician* again. His insistence in this regard led to the resignation of several members of the National Council, but the entire

document was re-published on October 31, 1963. There was now no escaping the fact, despite slight modifications and tempering of some of the more rash statements in the original edition, that it was published at a time when the John Birch Society was active, and was published after sessions with the National Council of the Society, and either with its approval or in spite of its disapproval. Thus there was a repetition of the old controversial accusations and assumptions, and once again the original document was given a far wider circulation with its charges against Milton Eisenhower, described as a Communist of thirty years standing; former President Eisenhower as a "dedicated, conscious agent of the Communist conspiracy," and former Presidents Roosevelt and Truman, Chief Justice Earl Warren, John Foster Dulles and his brother Allen, as aiding the Communist conspiracy, consciously or otherwise.

The private circulation of *The Politician* in the form of a multi-paged letter in 1954 is one thing, because it was then the work of one man, was circulated to his close friends and acquaintances only, and there was no John Birch Society in existence at the time. But its re-publication late in 1963, after a session with the National Council of the Society, is something else again, and in our opinion merits the most serious criticism. We are not alone in our view, because, as we pointed out, some members of the National Council agree with us as evidenced by their resignations when it became clear that Welch was determined to proceed with his project.

Another matter which occurred since the publication of our 1963 report, and which brought added criticism to the Society, was a series of two articles that appeared in *American Opinion*, a monthly magazine issued under the aegis of the Society, by Revilo Oliver, dealing with the assassination of former President Kennedy.* Mr. Oliver had stated at a speech delivered at Santa Ana Valley High School, that the assassination of President Kennedy was anticipated by the government because he had double-crossed the Communists, and had been "executed by the Communist conspiracy because he was planning to turn American."† Oliver declared that an army unit had been rehearsing Mr. Kennedy's funeral in Washington for a full week before the assassination. But when Oliver was called before the Warren Commission and examined under oath, and was pressed for proof of this assertion, he produced an item from the Jackson Mississippi *Clarion-Ledger* of February 24, 1964, which was an interview with a Captain Richard C. Cloy. Mr. Oliver was then asked: "... in the article what Captain Cloy says is not what you state in your speech. He said that before the assassination his special unit had been rehearsing for the anticipated possible death of President Hoover, who was ill." And Mr. Oliver replied: "That is right. . . ."

The two-part article in the *American Opinion* was in such bad taste, and so crammed with undocumented statements, inferences, conclusions, and accusations of disloyalty on the part of the dead President, that it filled its readers with revulsion.

There have been some changes in the organizational structure of the John Birch Society in California. Richard Pine is now the Major California Coordinator, and resides in Rialto, near San Bernardino. Working under his direction are a number of Area Coordinators, as follows: four in Los Angeles County; two in San Diego County; one for San Bernardino and Riverside Counties; one for the San Joaquin Valley, whose area runs

*"Marxmanship in Dallas," *American Opinion*, February-March, 1964.

†*American Opinion*, February 1964, p. 18.

from Bakersfield to Stockton; one in San Jose; one in Marin County, whose jurisdiction extends to Humboldt County; one in Sacramento, whose territory runs to the state line, and two in Orange County. Each chapter in California averages from fifteen to thirty members at present, the California Regional office is located at San Marino, and has recently moved to larger quarters.

Edward Griffin, formerly the major coordinator for California, now heads the Society's National Audio-Visual program, and supervises the circulation of books, movies, tapes, and speakers' programs. Former Congressman John Rousselot became National Director of Public Relations for the Society as of July 1, 1964, and maintains his chief office at the San Marino headquarters, where Robert Welch plans to spend approximately one-third of his time. There are two hundred and ninety-five book stores operated nationally by or through the Society, fifteen of which are situated in California. Other book stores also carry the literature of the Society, and our agents recently visited some of these outlets for the purpose of sampling the sort of materials being sold. One booklet entitled "We Shall Fight in the Streets; A Guide to Street Fighting," by Captain S. J. Cuthbert, was printed in Great Britain. Our copy is the sixth edition, issued in December, 1953, and bears a sticker on which appears "Minutemen, P.O. Box 68, Norborne, Missouri. We Will Never Surrender." Another booklet was entitled "Blaster's Handbook," fourteenth edition, issued by E. I. Du Pont De Nemours & Company, Explosives Department, Wilmington, Delaware, 1963.

These books may, of course, be purchased by anyone, including members of the Minutemen, National States Rights Party, American Nazi Party, or any of the other groups, ultra-right or ultra-left, that may believe they have some practical use for this type of material. We need not point out that if the John Birch Society wishes to disavow any connection with the Minutemen, its literature outlets should not be handling publications bearing the stamps or imprints of the Minutemen.

The John Birch Society *Bulletin* for August, 1964, attacks Robert D. De Pugh, leader of the Minutemen, who was once a member of the Society, and who made "about two years ago the most continuous and determined effort to bring about extensive collaboration of the Minutemen with the John Birch Society that we have experienced with any group." De Pugh is about forty years old, lived in Norborne, Missouri, and organized the Minutemen in 1960 as a military-type underground organization trained in the use of firearms and guerilla warfare. He was once an ardent admirer of Robert Welch and the John Birch Society and became a member. De Pugh later decided that the Birchers were much too gentlemanly and conservative. And at about the same time, the Society decided that De Pugh was a trifle too impulsive and rash, and there came a parting of the ways. De Pugh declared that he resigned, and the John Birch Society declared that it decided to drop him from membership and has a cancelled check for the refund of his dues.

There is no question that the John Birch Society has grown considerably since 1964, when there were one hundred and twenty people on the payroll at the main office at Belmont, Massachusetts; there were sixty coordinators, and the total staff of about two hundred employees cost the Society approximately thirty thousand dollars per week. Its income in 1962 was \$1,200,000.00; in 1963, \$1,621,844.91; in 1964, \$3,000,000. The membership almost doubled between January 1, 1964 and December 31 of that

year. The 1964 budget amounted to approximately \$2,500,000.00 of which twenty per cent was earmarked for California.

According to reliable sources, we would estimate that the Society has grown so rapidly that it has attracted a lunatic fringe that is now assuming serious proportions. We find very little anti-Negro sentiment among the members, but we do find a growing incidence of anti-Semitism, although the Society as a whole is far from anti-Semitic.

We stated on page 35 of our 1963 report that it was too early to predict the outcome of the growing pressures against the continuance of one man rule by Mr. Welch. His insistence upon the re-publication of *The Politician* and the resignation of some members of the National Council now indicate that the authority of Mr. Welch is absolute, and that if members of his National Council become so obdurate that they persist in opposing his projects, then they are either overruled or resign and are replaced by individuals who are more tractable.

During 1964 and early in 1965, the participation of members of the John Birch Society and the activities of young Republican organizations in California drew considerable criticism from Republican party leaders, both young and old. To these critics the Society, usually through its director of public relations, Mr. Rousselot, replied that there were both Democrats and Republicans in the Society, that they were politically active, and had a right to engage in partisan politics.

On page 53 of our 1963 report we observed that "as this movement steadily becomes larger it finds itself facing the problems that inevitably beset any organization of national proportion that is sustained on a high degree of emotionalism. As efforts are made to recruit more members, and as more subordinate officers are sent out into the field, there is an increasing probability that among the new members will be a fringe of unstable, chauvinist people who are prone to accept as accurate the most irresponsible charges of Communist activity. This is the sort of person who is quick to accuse an innocent liberal of being a Communist, and of forever damning anyone who was trapped into joining a Communist front group. Some of these members have been making accusations that are impossible to sustain, and as a result have found themselves facing legal actions for libel or slander."

The John Birch Society is certainly charged with a high degree of emotionalism, and it certainly has grown enormously since 1963. It has, as we predicted, been beset by an influx of emotionally unstable people, some of whom have been prosecuted in the courts for their hoodlum tactics in disrupting meetings, and heckling speakers with whom they disagree.

We do not disavow any of the findings we made in our 1963 report, but we make the foregoing observations for the purpose of bringing that report to date. We are more critical of the Society now than we were then for the reason that it has, in our opinion, merited such criticism by reason of its activities as exemplified by the irresponsible articles by a member of its National Council, the re-publication of *The Politician*, the inexcusable actions of its minority of irresponsible members, and dangerous increase of anti-Semitism among a minority of the membership.

We again emphasize that the F.B.I. has not seen fit to undertake an investigation of the Society because it only investigates organizations suspected of being subversive, and that even the Society's most outspoken critics, H. A. and Bonaro Overstreet, agree with our conclusion that the John Birch Society is not a subversive organization.

In conclusion it should be observed that Mr. John Rousselot was appointed director of public relations for the purpose of presenting a more dignified image of the society to the public. His diligent efforts to that end have apparently been satisfactory, as the John Birch Society *Bulletin* for April, 1965, stated that "... the attitude of the American press as a whole is definitely invisibly becoming less unfair to the Society ..."

LETTERS AND STATEMENTS

On the evening of July 17, 1953, agents of the committee observed a number of individuals leaving their parked automobiles and entering the premises at 2016 Seventh Street, Berkeley, which we described in our 1961 report as the Herman Sons Hall. The meeting was addressed by Joseph Clark, Moscow representative for the *People's World*. Our account on page 30 of the 1961 report listed the names of the registered owners of those vehicles from which individuals were seen to emerge and enter the hall where the meeting was being held, and among them were A. C. Scott and wife. Mr. and Mrs. Scott wrote to us on July 3, 1963, stating that they were not in Berkeley on July 15, 1963, and were at a loss to know how a vehicle registered to them could have been included in the list. We advised them to send us a signed statement, which we would publish in our next report. We accordingly received the statement, as follows:

"Thank you for answering our letter of March 5, 1963. Regarding the meeting held in Berkeley on July 17, 1953, we wish to make the following statement for publication in your next report:

We, Alger Chamberlain Scott and Alice Howard Scott, state that we did not attend a meeting at the Sons of Herman Hall, 2016 Seventh Street, Berkeley, on July seventeenth, 1963; that we are not now or ever have been communists or in sympathy with the cause of communism; and that we are loyal citizens of the United States of America under its present system of government and will do everything in our power to preserve that system of government.

Alger Chamberlain Scott
Alice Howard Scott."

On September 1, 1963, the committee received a letter from Bonaro W. Overstreet, the wife of H. A. Overstreet, which read, in part, as follows, and which we quote with Mrs. Overstreet's permission:

"It is a matter of record that the committee's reports for a number of years—from 1948 to 1953, I believe—contained items about Mr. Overstreet's 'affiliation' with certain front groups: All these items adding up to an approximation of the list in the House Committee files. It is a matter of record, also, that there was a carry-over of membership on the (California) committee from the 1948-1953, to 1959. The committee, in brief, that issued the 1959 report was not by any means a new, inexperienced group that had never had its attention focused on Mr. Overstreet's 'record.' Rather, it was a group that showed its willingness and its capacity to recognize that a citizen not previously alert to sense the presence of Communist influence could become aware of the nature of the Communist menace.

"This is why we are so appreciative of this report. It gives us a concrete, documented chance to say to cynical 'liberals' that it is simply not true that the committee, having once 'branded' a person as pro-Communist, 'hounds' him for ever after. And even more important, it gives us a chance to say that the committee sees a

function that can be usefully performed by non-Communist liberals who, having been unwarily attracted, at some stage of their lives, to one or more Communist fronts, are *not* 'content to remain silent when by speaking boldly they could strike an effective blow against the menace that attracted them to its periphery.' That phrasing from the 1959 report is the best that we have come across for the expression of this necessary point of view . . . our own double aim, for the past ten years and more, has been, first, to make unmistakably clear to the widest possible public the nature of international Communisms aims and methods; and, second, to bring into being, in this country, a broad, solid liberal-conservative anti-Communist front: one broad enough to embrace persons of many different viewpoints, on many different subjects, but unanimous in its firm rejection of totalitarian, conspiratorial Communism."

On pages 39 and 40 of our 1963 report we listed 175 names of members of the John Birch Society from whom we had received letters or statements. The name of B. G. Chynoweth was listed on page 40. He thereafter advised us that he was not a member of the Society, and we gladly make the correction herewith at his request.

In describing a meeting of the National States Rights Party held at the Embassy Auditorium, Los Angeles, on February 8, 1963, we referred to a reporter for the *People's World* as follows:

" . . . As the meeting ended, a minor scuffle occurred when one of the NSRP members recognized Lionel Rolfe, *People's World* reporter, who had been taking notes. Both Rolfe and the young lady who accompanied him (a UCLA student) were threatened with injury if they came to another NSRP meeting. The *People's World* published an account of this affair in its issue for February 15, but neglected to give the name of the reporter."

The committee recently received the following letter, dated May 7, 1965, from Mr. Rolfe, addressed to R. E. Combs, Committee Counsel, as follows:

"Dear Sir: On page 198 of the 1963 Un-American Activities in California Report, I am listed as a reporter for the *People's World*. I severed my connection with this publication and the group that controls it on August 14, 1963.

Sincerely,
Lionel F. M. Rolfe."

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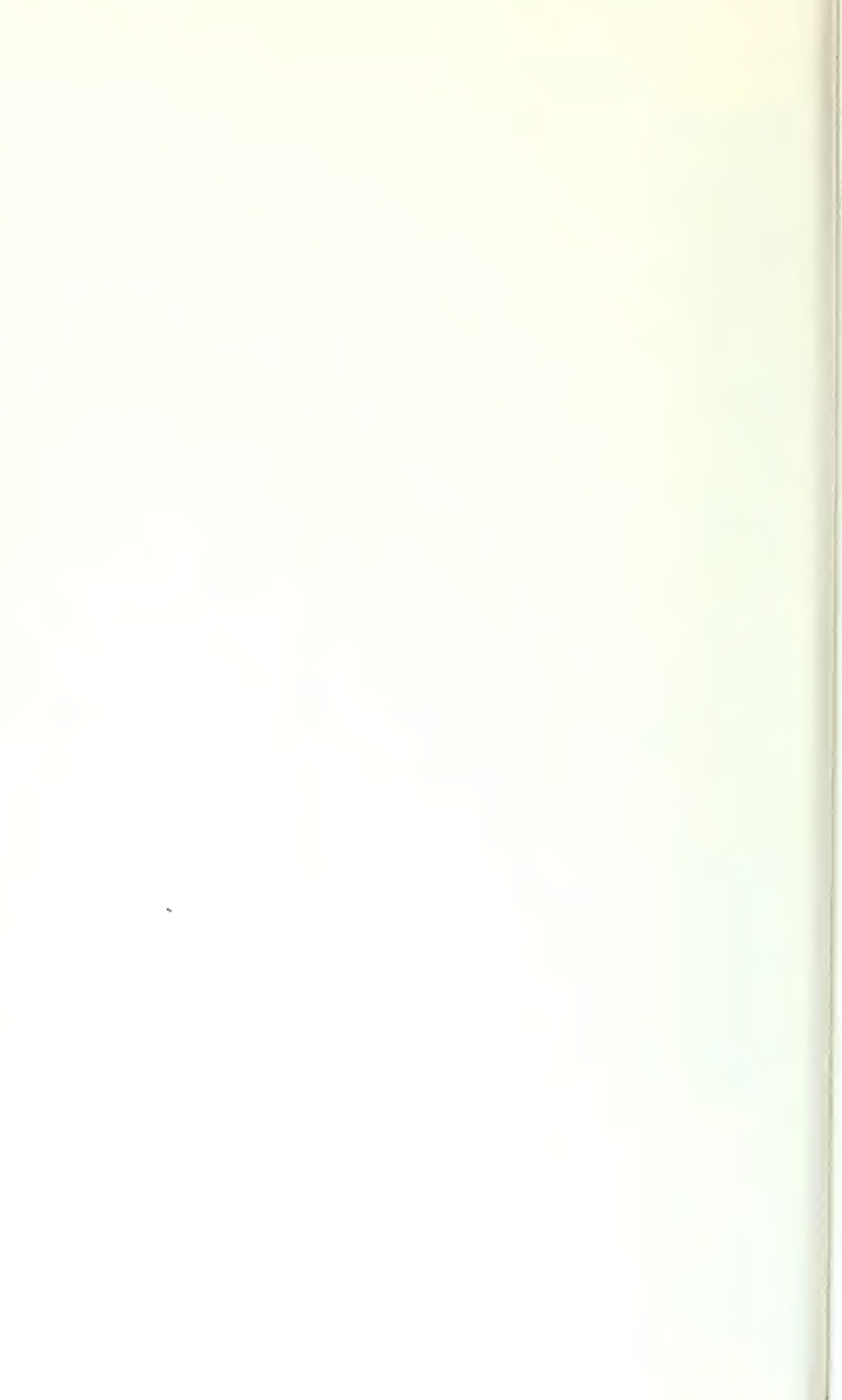
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PARTIAL REPORT OF THE SENATE FACT FINDING COMMITTEE ON WATER RESOURCES

SEPTEMBER 1965

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William J. O'Connell, *Consulting Engineer*
Acting Executive Consultant
Kay Coleman, *Secretary*

REPORT OF PROPOSED TRANSFER OF NORTHERN BRANCH OF THE DEPARTMENT OF WATER RESOURCES TO RED BLUFF

REPORT No. 1

September 1965



Senate Chamber, State Capitol
Sacramento, September 21, 1965

The Honorable Glenn M. Anderson
President of the Senate
and
Gentlemen of the Senate
Senate Chamber, Sacramento

MR. PRESIDENT AND GENTLEMEN OF THE SENATE:

The Senate Fact Finding Committee on Water Resources, as authorized by Section 12.5 of the Rules of the Senate, submits herewith a partial report on its interim activities.

Respectfully submitted,

JAMES A. COBEY, Chairman
GORDON COLOGNE
HUGH P. DONNELLY
PAUL J. LUNARDI
EUGENE G. NISBET

STAN PITTMAN ¹
JOHN G. SCHMITZ ²
JACK SCHRADER
HAROLD T. SEDGWICK
WILLIAM SYMONS, JR.
HOWARD WAY

¹ Separate comment by Senator Pittman attached to this report.

² Separate comment by Senator Schmitz attached to this report.

REPORT OF PROPOSED TRANSFER OF NORTHERN BRANCH OF THE DEPARTMENT OF WATER RESOURCES TO RED BLUFF

September 21, 1965

Committee Hearing

The Senate Fact Finding Committee on Water Resources held a hearing on August 27, 1965, on the proposed move of the Northern Branch of the Department of Water Resources to Red Bluff. During the 1965 First Extraordinary Session, three Senate resolutions¹ were introduced which requested the department to study "the feasibility and timing of the transfer of the Northern Branch of the Department of Water Resources" to either Chico, Redding, or Red Bluff. Each study was to "consider particularly the preferability of locating said branch . . . in terms of services and advantages to the state as a whole as well as to the operations and functions of the department." The Director of Water Resources was requested to report on the subject of the resolution not later than the fifth legislative day of the 1966 Regular Session.

On July 15, 1965, the Director of Water Resources by memorandum advised the chairman that he had selected Red Bluff as the site for the northern district and proposed to establish the district there on or about October 15, 1965. Because it is customary for departments to report during the following session on legislative resolutions requesting studies so that the Legislature can act on the information derived from the study, several members of this committee and other affected senators felt that a public hearing should be held on the matter. A hearing was scheduled by the committee chairman and all interested parties were invited to testify. Members of the Assembly Interim Committee on Water were invited to sit with the Senate committee and several did participate in the hearing.

Testimony was received from the Department of Water Resources, the senators and citizens representing the Cities of Chico, Red Bluff, Redding, Willits and Eureka, the Legislative Analyst, as well as representatives of the California State Employees Association representing the employees of the Northern Branch.

History of Departmental Decentralization

The Department of Water Resources first officially proposed in 1961 to decentralize its activities to four districts in northern and central California based on the pattern of the existing district office in Los Angeles. The Legislature disapproved of this decentralization and by

¹ Senate Resolution No. 11 (Pittman) as amended, page 23, *Senate Journal*, June 28, 1965. Senate Resolution No. 12 (Marler) as amended, page 53, *Senate Journal*, June 29, 1965. Senate Resolution No. 24 (O'Sullivan) as amended, page 64, *Senate Journal*, June 30, 1965.

limiting language in the Budget Bill, prevented its execution. In 1963 the department supported a concurrent resolution which the Legislature adopted recommending a district office in Fresno. In 1964 and again in 1965 the department recommended establishing its second district office—the one for the bay area—in San Jose. On the last day of the 1965 General Session, the Senate by Senate Resolution No. 302 (page 4503, *Senate Journal*, June 18, 1965), approved such a district office but recommended its location in the north bay area rather than the south bay area. In the very brief special session thereafter, resolutions were adopted requesting the study of Chico, Redding and Red Bluff as possible locations for the northern district office of the department.

The committee notes that the just-mentioned Senate Resolution No. 302, pertaining to the San Francisco bay area office, was adopted on June 18, 1965. Although as just stated, it merely requested the Director of Water Resources to establish a branch office somewhere in the north bay area, the department suddenly announced on July 16th that the City of Vallejo had been selected and presented the Legislature with a fait accompli in this respect.

Members of the Assembly Interim Committee on Water who attended the August 27th hearing observed that the Assembly had not formally taken any position on the Vallejo location. Moreover, at this date the Assembly has not taken any position on the selection of a site for the northern district office among the Cities of Chico, Redding and Red Bluff; but on the basis of resolutions adopted by it at the general session²; it obviously favors the establishment by the department of a northern district office.

Testimony

The Department of Water Resources testified at the committee's hearing that the City of Red Bluff is favorably located for the execution of the department's work in northern California. Since this work centers around the planning activities of the Eel River and flood control activities along the Sacramento River, the department has concluded that Red Bluff is the most appropriate site. The department expressed the opinion that living conditions would be adequate for its employees although conceding that in this regard Chico and Redding had some advantages.

Senators Pittman, O'Sullivan, Marler, Christensen, and Petersen presented testimony on the merits and desirability of cities within their respective senatorial districts as prospective sites for the office. Representatives of local government and other interested parties assisted in presenting this data. In addition, the committee received many communications and requests from individual parties, business firms, and public agencies expressing an interest in having the department locate in their respective areas. Considerable testimony was presented regarding the availability of housing, office space, airports, public transportation, educational institutions, and other factors of

² House Resolution No. 606 (Davis), page 4998, *Assembly Journal*, June 7, 1965. House Resolution No. 51 (Davis) as amended, pages 5092, 5101, 5102, *Assembly Journal*, June 7, 1965. House Resolution No. 8 (Ray E. Johnson), 1965 1st Extraordinary Session, pages 10-11, *Assembly Journal*, June 25, 1965.

interest to the department's employees who may be transferred to the area.

Representatives of the California State Employees Association spoke on behalf of the employees of the proposed northern district and indicated a strong preference for Redding over Red Bluff existed among the employees. This preference was based largely on living conditions and particularly the availability of housing. The spokesman noted that, currently, there is an excess of private housing available in Sacramento with the result that prices are depressed and a "buyers' market" exists in Sacramento. This means that some employees who may transfer would be required to sell their homes in Sacramento during unfavorable market conditions and may sustain considerable loss compared to purchase prices in recent years. On the other hand, the influx of approximately 100 departmental employees in a city of about 8,000 population, such as Red Bluff, would tend to create a "sellers' market" in housing there which would also be adverse to the employees' interest.

Testimony from the office of the Legislative Analyst described some of the organization and management problems of the department's headquarters in Sacramento which confront the department in supervising district offices. This testimony noted that progress has been made in solving these problems but, upon specific questioning, the analyst's office was unable to indicate whether the department could successfully establish and administer an office in Red Bluff. The success of such an endeavor, it was noted, is largely dependent on the personnel and management policies of the department in carrying out the relocation and on the future management practices of the department in overcoming certain disadvantages inherent in locating specialized personnel in smaller communities.

Relocation Considerations

In 1963 when the Department of Water Resources first proposed to establish a district office in Fresno, members of this committee questioned the department about the existence of an overall departmental plan for decentralization. The department did not produce such a plan in 1963 but, instead, cited decisions it made in 1961 at the time the original decentralization was proposed. On subsequent occasions, as decentralization questions have arisen, the committee has found that it was necessary to approach each proposed move by itself. It is, therefore, difficult to review the history of departmental decentralization efforts and arrive at any conclusions which reflect any consistent patterns or set of management objectives. Because the move to Red Bluff is the last of the proposed decentralization moves and the Senate has itself given prior approval to preceding moves, the committee does not feel it is appropriate at this time to reconsider the basic problem of the lack of an overall plan for such decentralization.

The testimony presented at the hearing did not indicate a clear advantage for any one of the five cities proposed for a departmental office. In terms of size, possible availability of office space, and the location of a state college, Chico appeared to be preferable. However, Chico is on the extreme eastern edge of the district. Similarly, Eureka is on the opposite edge of the district. Since the department emphasized in its presentation that the travel to and from the northern

branch office would be mainly by air, comparative distances from Sacramento to the various cities are not of major importance timewise, but air accessibility obviously is. The City of Willets was proposed for a field headquarters rather than a district office but the department does not propose to establish this type of an office.

The remaining two cities, Red Bluff and Redding, have both advantages and disadvantages. Red Bluff is located somewhat more favorably for the department's work but Redding is preferred by the employees as a headquarters city. It is difficult for the committee to evaluate the desirability of a particular location from the employees' point of view since this can be heavily influenced by many subjective factors. The committee points out, however, that the department faces serious difficulties in locating at Red Bluff in view of the statements from employee representatives at the hearing and the letters received from individual employees by the committee that the employees prefer Redding to Red Bluff.

The department has indicated that desirable office space is not available in either Redding or Red Bluff. It, therefore, anticipates that the state will eventually need to construct an office building to house the northern district or provide space through lease arrangement. The department is confronted with a somewhat similar problem in Vallejo and its Fresno office is currently situated in three different buildings.

Conclusions

Legislative Counsel Opinion No. 280 (requested by the chairman), indicates that the Director of Water Resources and the Governor are specifically authorized to select branch or district office sites and that under the present provisions of Section 125 of the Water Code, the Legislature does not have any power to determine the site by action of any of its duly constituted committees.

Furthermore, under the separation of powers provided in our Constitution, it is not the Legislature's function to direct particular solutions to departmental management problems—particularly where, as here, discretion to solve those problems has been expressly vested in the department by the Legislature. In such a situation neither the Legislature nor this committee should substitute its administrative judgment for that of the department.

The committee in this matter has, through its hearing and this public report, served well its role of being a sounding board to all localities and persons interested in this matter.

In closing, the department's administrative responsibility for making such a selection wisely and equitably must be stressed. It is the clear responsibility of the department to manage any relocation in such manner that the interests of the public, the department, and particularly the employees of the northern branch are both respected and advanced. The department's decision-making and legislative relations on the entire decentralization effort since 1961 appears to represent capriciousness more than sound management. In view of the testimony developed at the hearing, the committee believes there is room for distinct improvement in both its decision-making and legislative relations in this area.

SEPARATE COMMENT BY SENATOR JOHN G. SCHMITZ

Senator Schmitz disagrees with the statement found in this report under the heading of "Relocation Considerations," which reads: "The testimony presented at the hearing did not indicate a clear advantage for any one of the five cities proposed for a departmental office."

Senator Schmitz, who sat throughout the entire hearing, believes that the evidence establishes that Redding is the most advantageous site.

COMMENT BY SENATOR STAN PITTMAN ON THE REPORT OF "PROPOSED TRANSFER OF NORTHERN BRANCH OF THE DEPARTMENT OF WATER RESOURCES TO RED BLUFF," OF THE SENATE FACT FINDING COMMITTEE ON WATER RESOURCES

"I should like to take exception to the mention in the report, quote-- "However, Chico is on the eastern edge of the district."

"While it is not the intent of the committee to specifically name a particular site, I felt it necessary to point out that from the testimony presented, showing the current and future workload of the Northern Branch of the Department of Water Resources in terms of number of personnel and budget expenditures, it appeared obvious that Chico is centrally located."

"The City of Chico has more than met the other stated criteria of the department and has also offered the State of California a \$60,000 parcel of land—gratis—and/or immediate office space at an airport with scheduled as well as charter service available."

PROGRESS REPORT TO THE LEGISLATURE

1965 Regular Session

by the

SENATE PERMANENT FACT FINDING COMMITTEE ON WATER RESOURCES

Pursuant to Senate Rule 12.5

● SAN JOAQUIN VALLEY DRAIN

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OF THE STATE OF CALIFORNIA

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President of the Senate

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President pro Tempore

JOSEPH A. BEEK
Secretary of the Senate



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LETTER OF TRANSMITTAL

Senate Chamber, State Capitol
Sacramento, June 10, 1965

Honorable Glenn M. Anderson
President of the Senate,
and
Gentlemen of the Senate
Senate Chamber, Sacramento

MR. PRESIDENT AND GENTLEMEN OF THE SENATE:

The Senate Fact Finding Committee on Water Resources, as authorized by Section 12.5 of the Rules of the Senate, submits herewith a partial report on its interim activities.

Respectfully submitted,

JAMES A. COBEY, *Chairman*
CARL L. CHRISTENSEN
HUGH P. DONNELLY
JOHN F. MCCARTHY *
GEORGE MILLER, JR.†

EUGENE G. NISBET
STAN PITTMAN
JACK SCHRADER
HAROLD T. SEDGWICK
HOWARD WAY

* With reservations.

† I signed the letter of transmittal for this report on the San Joaquin Valley Drain only to assure its printing and public distribution. I *do not* agree with the conclusions and recommendations contained herein.



CONCLUSIONS

The San Joaquin Valley of California, one of the nation's most fertile and highly productive agricultural areas, is presently in danger of being seriously damaged through the accumulation of drainage water containing excessive amounts of dissolved salts. The introduction in the near future of additional irrigation water through federal and state water development projects will serve to complicate seriously and aggravate the present problem unless drainage facilities are provided in conjunction with such development. The immediate construction of adequate drainage facilities is imperative if the Valley's productivity is to be maintained.

Tentative agreement for immediate construction of such facilities has been reached between the U.S. Department of the Interior, Bureau of Reclamation, and the California State Department of Water Resources. These facilities would consist of a single, two-stage drain to be built by the state with substantial financial participation provided by the federal government through the Bureau of Reclamation. The two organizations are now in general accord on all details of the project.

The decision to build a single, joint drain eliminates the necessity of two drains—an interceptor drain required by the USBR under provisions of the federal San Luis Act of 1960, from Kettleman City to a point near Antioch Bridge, and a larger capacity master drain by the State Department of Water Resources, from a point near Bakersfield to the Antioch Bridge, authorized in the Burns-Porter Act of 1960. The routes to be traversed from Kettleman City to the north are, for all practical purposes, identical.

Legislative guarantees at both the federal and state levels against damage to San Francisco Bay and adjacent waters have been demanded by Bay area interests, since they fear that the agricultural waste water to be discharged from the proposed drain at Antioch will cause serious pollution damage to those receiving waters.

The initial appropriation of two million dollars for the joint drain has now been approved by Congress. Amendments, however, specify terms and conditions on the construction or operation of an interceptor drain.* The limitations specified in the budget bill will prevail for the duration of the fiscal year. However, its passage has served to commit the administration and the Congress to the joint drain.

* Amendments provide that the final point of discharge will not be determined until:
"1. Completion of the pollution study by the Department of Health, Education, and Welfare;

"2. Development of a plan to minimize any detrimental effect of the San Luis drainage water on San Francisco Bay;

"3. Agreement is reached between the State of California, subject to approval of the President, limiting the federal share of the cost of the drain to Antioch to not more than 60 percent thereof and if found necessary to extend the drain beyond Antioch, the federal share of such extension shall be determined on the basis of an acceptable apportionment of the additional costs between the federal government and the nonfederal entities who are to use these facilities; and,

"4. No funds shall be made available under this appropriation for the construction in Contra Costa County of any portion of an interceptor drain in connection with the San Luis unit which terminates at any point east of Port Chicago."

A construction agreement for the joint drain between the state and the federal government appears imminent inasmuch as the final stages of negotiation have been reached. On the other hand, no more than a start has been made in the development of a comprehensive plan to solve the bay area's pollution problems.

The evidence before this committee indicates that the discharge of the proposed joint drain into the bay area will probably, at the worst, be a relatively minor addition to the bay area's pollution problem and, at best, a negligible one. Furthermore, the bay area is presently receiving about two-thirds of the agricultural waste water from the Central Valley, and the initial discharge of the drain in quantity does not equal that of one oil refinery in the Richmond district.*

At the moment no more than *mere possibilities* of significant damage to the quality of the receiving waters appear to exist, and even at full capacity 20 years hence the discharge of the drain cannot now be considered as a probable major cause of pollution in the bay area.

Both the Department of Water Resources and the USBR, which have conducted intensive studies on all phases of the drain, deny that the receiving waters in the delta will be affected adversely by the drain. In fact, they have repeatedly asserted that the drain in its early years cannot damage such waters in any way, but concede the possibility that nutrients and perhaps pesticides might cause some damage when the volume of waste discharge increases substantially sometime after—but not before—1985. They have promised careful monitoring procedures from the start, both for the drain itself and for the waters into which it would discharge. They have also promised to support and participate in extension of the drain westward from the Antioch Bridge if significant pollution damage is found to be caused by the drain's waste waters.

It is generally conceded by all concerned that eventually it may be advisable for all bay area wastes to be discharged into the Pacific Ocean and that such action will probably be ultimately necessary regardless of the construction of the San Joaquin Valley Drain.

However, bay area interests, with support from representatives of the U.S. Department of Health, Education, and Welfare, still maintain that significant damage from an agricultural waste discharge at Antioch Bridge is a serious pollution threat, and object to the foregoing methods of safeguarding the bay waters proposed by the state and the USBR.

Instead, they urge adoption of a five-year interim solution to solve the admittedly serious problem of agriculturists in the lower San Joaquin Valley.†

Such a delay of approximately five years in drain construction, they contend, would allow time for a comprehensive study of the entire

* At this committee's hearing in Los Banos, October 8-9, 1964, Mr. Harry Anderson, Deputy Director of the Department of Fish and Game, testified that "it may be 10 years before the drain carries as much water into the bay system as now enters from the waste discharge of a single oil refinery."

Questioned on this point, Mr. Anderson referred it to Mr. Arthur Inerfield, Water Quality Specialist of the Department of Water Resources. Mr. Inerfield quoted a University of California report as stating that No. 41 Standard Oil Company of Richmond will discharge or has discharged 143 million gallons a day. See: "A Comprehensive Study of San Francisco Bay, 1961-62," University of California, SERL Report 63-3, April 1963, p. 70.

† Several interim solutions were suggested by the USBR in 1964, at the request of Congressmen and Department of the Interior officials, but were studied and declared unacceptable by the valley interests. See pages 16 and 17 of this report for summary of these plans.

bay-delta pollution problem. In such a study of the bay waters, they propose to include a study of the effects upon these waters of the San Joaquin Valley Drain. This, it is maintained, would prove the need of a terminus at least as far west as Port Chicago.

In considering this request for a five-year delay, it must be kept in mind that the San Luis Project, on the federal level, and the San Joaquin Valley Master Drain, on the state level, have already been authorized for several years and immediate initiation of construction of the joint drain is required in order to keep in production many thousands of acres of highly productive agricultural land in the San Joaquin Valley.

Despite the controversy over the drain, which at times has been extremely bitter, it is now apparent that the drain has actually served as a catalyst in the San Francisco Bay pollution situation. The fears caused by the imminence of its construction, heightened by some emotional exaggeration of its possible perils on the part of the bay area press, have served to focus the attention of the bay area residents on their own vast problem of waste disposal of which the proposed drain is a very small part.

In view of these circumstances and in view of the urgent and critical need for drainage facilities in certain areas of the San Joaquin Valley now and upon completion of the federal San Luis Project, in the committee's opinion, the wisest and soundest course for both state and federal governments would be to press forward with all possible speed in the immediate construction of the joint drain with appropriate safeguards for the delta receiving waters and also with the immediate initiation of comprehensive studies of the total bay-delta pollution problem.

This committee believes that the establishment of a San Joaquin Valley Drainage District to repay the Burns-Porter bond proceeds used by the state to defray its share of the cost of construction of the drain is premature at this time. The first stage of the drain can be immediately financed from Burns-Porter bond funds and by federal appropriations. The proposal by the Department of Water Resources for the creation of a repayment district has been presented only in broad general terms and has not provided the basic information essential for proper public consideration and understanding of the matter.

It is difficult for this committee to understand how the creation of such a district can be now considered when the department has not developed reliable maximum costs of the drain and has failed to define what portion of those maximum costs are nonreimbursable. It appears to us to be essential not only that the people of the San Joaquin Valley have a reliable maximum cost figure for the drain, but also that they be informed of the basis upon which the allocation is made to them of their portion of such maximum cost.

The acute need for drainage facilities is presently centered in the federal San Luis and Delta-Mendota Canal service areas, and will be solved by construction of the first stage of the joint drain. Drainage conditions elsewhere in the valley will not be significantly changed by the introduction of state water during the initial years. The latest construction cost estimate for the first stage drain (DWR Bulletin No. 127, January 1965) is \$49,000,000; of this, the federal government is ex-

pected to finance approximately 60 percent, leaving 40 percent to be funded by the state from Burns-Porter bond proceeds and from user charges.

In this connection, it is to be noted that the Governor's contracting principles, established to provide guidelines for water development under the Burns-Porter Act require in relevant part that the "construction of any transportation facility financed wholly or in part through the sale of bonds, will not be started unless water service contracts have been executed which will insure recovery of at least 75 percent of the cost of such facility." But this particular principle, properly read, does not apply to the San Joaquin Valley Drain as it is not a transportation facility *for water service* as such. Furthermore, the Legislature as a whole has never approved the Governor's contracting principles. It may well be that the federal contribution plus user charges may provide for the state the 75% of the cost of the first stage of the facility without the necessity of resorting at this time to the formation of a district and the assessment and collection of taxes by it.*

The committee nevertheless agrees completely with the Department of Water Resources that a San Joaquin Valley Drainage Repayment District eventually will be needed. However, in the committee's opinion, such need will not occur until the time is approaching for the construction of the second stage of the drain or it has been established that the drain's initial terminus *must* be moved westward from Antioch Bridge.

Finally, the formation of a repayment district within the valley at the present time is politically impossible.† The people of the valley generally are just not aware enough yet of the urgency, gravity and economic valley-wide implications of the necessity for the drain if the valley's agriculturally based economy is to survive and grow at a healthy rate. A lengthy and effective program of public education must take place before the people of the San Joaquin Valley will vote to form a taxing district for this purpose. An unsuccessful attempt at this time would set back the formation of such a district for years and might well jeopardize irreparably the prospect of its ultimate formation.

RECOMMENDATIONS

1. The San Joaquin Valley Drain should be constructed according to the existing schedule of the state and federal agencies involved, which designates the start of work on the first stage in 1966, to be in operation by mid-1970, when the first irrigation water is to be released from the federal San Luis Project.

2. This committee strongly urges that no San Joaquin Valley Drainage Repayment District be created except by popular vote in the

* The Legislative Analyst's report, discussed later, raises several questions as to how far the state can go in establishing user and beneficiary charges in view of the federal user charge pattern which already has been established in the federal San Luis Project and the other large federal service areas in the valley. The Bureau of Reclamation has included a charge of 50 cents per acre-foot in its water supply contract to finance the cost of the drainage system required by the federal San Luis Act. Additionally, the bureau is permitted to consider drainage costs as an irrigation feature which can be interest free and may receive assistance in the repayment of drainage costs from other project purposes.

† Recommendation No. 2 of this committee which immediately follows calls for formation of the district *only* by a valley-wide election.

area to be served by such a district. It is a vital necessity that public acceptance of the proposed repayment district be achieved before formation is attempted. In view of the fact that the primary need for drainage facilities is centered in the federal San Luis and Delta-Mendota Canal service areas, which will be serviced by the first stage of the joint drain, there appears to be little need to form a repayment district until such time as it becomes necessary to provide drainage on the state service area. Until such a necessity exists in fact, it will be difficult to convince the residents of the San Joaquin Valley generally that it is to their advantage to participate heavily in the repayment of drainage costs.

This emphasizes the absolute necessity of a long-range educational program before steps are taken to create a San Joaquin Valley Drainage Repayment District.

3. This committee is fully in support of the State Department of Water Resources and United States Bureau of Reclamation recommendation that the first stage drain be constructed to an initial terminal discharge point near the Antioch Bridge. The committee emphasizes the point that the *initial* terminus of the drain is to be considered *only* as an *interim* discharge point and in no way is to be construed as a decision upon the final location of the discharge point.

Legislation introduced at the 1965 Regular Session—Assembly Bill 2380 (Porter)—authorizes the start of a comprehensive study of bay-delta waste disposal. This is a program which, in this committee's opinion, is not only desirable but long overdue. Although the San Joaquin Valley Drain rightfully should be included in this study, its role is small in the vast array of factors which have contributed to the serious pollution in this immense area. In order to put the extent of this problem in proper perspective, it must be kept in mind that we are talking of the entire geographic area which drains through the Golden Gate, or some 40 percent of the total area of California.

The current federal budget act, which includes a \$2,000,000 appropriation for the federal Interceptor Drain, also contains limiting amendments, which have been previously mentioned, to provide safeguards and guarantees as desired by the Bay area interests. Such limitations apply for the duration of the 1965-66 fiscal year.

It is the belief of this committee that all essential safeguards would be provided in legislation similar to H.R. 5144 (Rep. George Miller), 89th Congress, 1st Session.* This bill calls for a monitoring program to be conducted essentially as proposed in this recommendation of the committee.

If such a monitoring program fails to solve the problem, further legislation can then be considered.

4. It is also recommended that the San Joaquin Valley Drain be used solely for the disposal of agricultural waste water until such time as it is demonstrated that the addition of other wastes to the waters of the drain will not have an adverse effect upon the delta receiving waters. At the present time no plans have been advanced either by the Bureau of Reclamation or the state to utilize the drain for exportation of municipal, industrial, or other wastes and, indeed, there is no apparent necessity for such disposal in the immediate future.

* Full text of H.R. 5144 appears in Appendix.

5. It is the responsibility of the users and beneficiaries of the San Joaquin Valley Drain to pay all the reimbursable costs of the drainage facilities as now planned. However, as previously mentioned, no repayment district should be formed until such time as the reimbursable and nonreimbursable costs have been adequately defined and the necessity for its immediate creation firmly established. In the event monitoring and surveillance program indicate significant pollution damage to the bay waters and establish the necessity of moving the discharge point westward, the valley users and beneficiaries should participate in the expense of such an extension according to the extent, if any, which the drain is shown to add to the pollution of the bay and delta waters beyond what existed without it, and in strict proportion to its contribution in waste to the total waste to be eliminated.

6. Department of Water Resources Bulletin No. 127 is only a "preliminary" report of the department's findings with respect to the San Joaquin Valley Drainage investigation. The report does *not* contain the detailed analyses required of all study items which were specified in Senate Concurrent Resolution No. 27.

Several of the specified areas of study for which the department was directed to prepare comprehensive reports were dealt with only superficially in Bulletin No. 127, and detailed reports have not been submitted. The need presently exists for additional analyses of the benefits which will accrue to the areas served by the San Joaquin Valley Drain and to the state as a whole as a result of project construction and as previously mentioned, the important matter of determining the reimbursable and nonreimbursable project costs is still unresolved. Logically, this particular matter should have been resolved long ago. Moreover, it also appears that additional consideration must be given to the possible ways and means of recovering the reimbursable costs of the project.

The department in Bulletin No. 127 stated that supplemental reports covering these subjects would be issued during 1965. However, such reports have not been forthcoming. The department should make every effort to complete these studies and submit the required reports as soon as possible as it is essential that all such data be made available for public scrutiny at the earliest possible date.

JUSTIFICATION FOR THE DRAIN

A state master drain was authorized as a part of the California Water Plan by the Burns-Porter Act of 1960, which specifically includes:

"(4) Facilities for removal of drainage water from the San Joaquin Valley." (Section 12934, Water Code.)

As early as 1956, San Joaquin Valley water users testified before Congress that a San Luis interceptor drain was essential to the agricultural areas affected by the federal San Luis Project. Authorization for the construction of such drainage facilities was included in Public Law 86-488, the San Luis authorizing act, which was approved by Congress in June 1960.

The Department of Water Resources initiated a continuing study of drainage problems in the San Joaquin Valley in 1957 as a result of studies of drainage problems and water quality degradation in the

valley by the Joint Committee on Water Resources of the California State Legislation. The committee hearing was held in Los Banos in October 1956 at the request of Senator James A. Cobey.

The department investigation, reported in Bulletin No. 127, issued in January 1965, fully supports the premise that a master drain is the best way to remove agricultural waste water from the San Joaquin Valley.

The department has concluded that, "The San Joaquin Master Drain is the most practicable means to protect the water supplies and agricultural soils of the valley. As a result of its investigation to date, the Department of Water Resources recommends:

"1. That the San Joaquin Master Drain be operated as a feature of the State Water Facilities; that it be constructed in stages; that the first stage, from Kettleman City to the discharge point near Antioch Bridge, be completed and in operation by 1970; and that later stages be constructed to extend the drain to meet the needs of contracts for drainage executed by the state, such stages to include an extension to the vicinity of Bakersfield, enlargement of the first stage to full capacity, and facilities to change the point of discharge, if such a change is found to be necessary.

"2. That the terminal capacity of the master drain, in its first stage, be 400 cubic feet per second, sufficient to serve the Bureau of Reclamation and others who will contract with the department for waste water disposal.

"3. That the beneficiaries of the master drain and all other dischargers of waste waters in the San Francisco Bay and the Central Valley drainage basins share equitably in the existing and future regional water quality control programs, which could include either additional treatment of all discharges or the export of waste waters or both.

"4. That a valleywide district, the proposed San Joaquin Valley Drainage District, be created to contract with the state for drainage service and for the repayment of the state reimbursable costs of construction, operation, maintenance and replacement of facilities needed to provide such service to the district.

"5. That the Department of Water Resources be directed and authorized to take the lead in planning a waste water disposal system to serve the entire San Francisco Bay region."

". . . There is no alternative to draining the San Joaquin Valley except its eventual ruin, and that a lot sooner than some might think," testified William E. Warne, Director of the State Department of Water Resources, at the Los Banos hearing conducted by this committee October 8 and 9, 1964.

He referred to examples of the havoc wrought in ancient civilizations because of lack of proper drainage, saying, "Many of the ancient irrigated lands, including Chaldea, Goshen, Israel, Egypt and the Salt River Valley in Arizona were once very fertile, but were abandoned for centuries because of the accumulation of salts . . . Many cases are on record in which lack of drainage in our modern world has caused abandonment of once highly productive lands.

"West Pakistan has salinity and waterlogging problems that arose in the last 20 to 40 years, and it is estimated that 30,000 acres of land are going out of production in that area each year . . . In our own State of California the farmers of the Imperial Valley did not consider drainage when water was diverted from the Colorado River shortly after 1900. Yet by mid-1962 about 9,300 miles of tile drain, serving 290,000 acres, had been installed to relieve the drainage problems of that area. In the intervening period, before drainage ditches were dug 40 years ago, families were bankrupted . . ."

OCCASION FOR THE PROBLEM

It was the federal San Luis Project, with its specific requirement for an interceptor drain, and the State Water Project requirement for facilities to remove drainage water from the San Joaquin Valley, which brought about the crisis in the valley drainage situation.

The service area of the federal portion of the joint San Luis Project, comprising roughly some 500,000 acres, largely in Fresno County, is immediately above 350,000 acres of highly developed croplands lying in the western trough of the valley.

One million acre feet of delta water will begin to be applied to these 500,000 acres in 1970, when the San Luis Project is completed. This will almost certainly cause the root zone of these 350,000 acres below the service area to become saturated with subsurface waters of dangerously high salt and boron content.

In the valley trough, farmers have built extensive drainage systems, but arrival of the tremendous volume of additional irrigation water to be provided in the federal service area of the San Luis Project will create problems on a larger scale than ever before.

Approximately 330 miles of tile drains now provide subsurface drainage for individual farms on the valley floor. Chief concentration of these drains is in western Fresno County between Mendota and Dos Palos. In addition, there are 750 miles of open ditch drains, many of which were originally built to handle storm waters but which are now used to transport agricultural drainage waters to natural stream courses.

Obviously, these individual efforts are limited in scope since they provide no way to take the agricultural waste waters out of the valley.

The department's Bulletin No. 127 points out: "The developing waste water disposal problem in the San Joaquin Valley transcends farm and district proportions . . . The discharge of collected drainage waters into irrigation canals or streams and their percolation into the ground water body relieves the field but not the valley. The once local waste water disposal problems, scattered, isolated, have grown as a cancer until they threaten areas throughout the length of the valley. Nothing less than a massive group effort will solve these waste water disposal problems."

All evidence indicates that the San Joaquin Valley must have its waste waters removed by drainage or other means in order to survive.

In the federal San Luis authorizing act, Congress required the Secretary of the Interior either (1) to secure satisfactory assurances that the State of California would provide a master drainage outlet and

disposal channel for the San Joaquin Valley which would adequately serve by connection therewith the drainage system for the San Luis unit; or (2) to provide for the construction of the San Luis Interceptor Drain to the delta, with this facility designed to meet only the more limited drainage requirements of the federal San Luis service area.

The California Department of Water Resources on June 21, 1961, advised the bureau that the state was not yet in a position to build the master drain authorized by the Burns-Porter Act. Thereupon, the Bureau of Reclamation made plans to proceed under the second alternative mentioned.

However, two years later, widespread opposition developed to the "separate drain" plan for federal and state projects. It was brought out repeatedly that the expense of an interceptor drain and a master drain built over virtually the same routes would be needlessly high and would present the threat of further dissecting the West side of the San Joaquin Valley by having two drains in the same area rather than a single drain large enough to handle the combined agricultural waste water load.

So vehement was the opposition to two parallel drains, that the Department of Water Resources reconsidered its position and expressed willingness to take over construction of a two-stage master drain with federal participation and in accordance with the USBR schedule established by the federal San Luis Act.

SECTIONAL DISPUTE

Meanwhile, a dispute between the bay area and the San Joaquin Valley arose—a controversy which at this time is still unresolved.

This dispute suddenly entered the spotlight when bay area governmental agencies and industrial interests, especially in Contra Costa County, became alarmed by the imminence of construction of the drain, fearing that this agricultural waste facility would cause serious damage to the water quality of the bay-delta area.

The proposed discharge point at Antioch Bridge was violently attacked, with suggestions made that the terminus be moved at least as far west as Port Chicago, and preferably into the ocean.

Here matters stood at the time of a March 4, 1964, meeting in Washington, D.C., called by Assistant Secretary of the Interior, Kenneth Holum.

In attendance were California congressmen; U.S. Department of the Interior officials; California State Department of Water Resources officials; State Senator James A. Cobey, as chairman of this committee; and representatives of interested organizations from Contra Costa and San Joaquin Valley counties.

Members of Congress attending the Washington meeting included John J. McFall, B. F. Sisk, John Baldwin, Harlan Hagen and Harold T. "Bizz" Johnson, as well as representatives from the offices of Senators Thomas H. Kuchel and Clair Engle. Robert J. Pafford, Jr., regional director, headed the Bureau of Reclamation delegation from Sacramento, and Director William E. Warne that of the State Department of Water Resources.

Assistant Secretary Holum presided and conflicting viewpoints on the major issues were presented in considerable detail.

BASIC PROBLEMS

Three basic problems existed at the time of the Washington meeting.

I. The question of a joint federal-state master drain, or two separate drains—one a federal drain of limited capacity to handle the immediate problems of the federal service area, as required by the San Luis Act, and the other, a state master drain covering more territory and involving, ultimately, greater capacity.

This was resolved to the general satisfaction of all concerned with a decision favoring a staged joint drain to be constructed by the state with federal financial participation.

II. The second problem concerned the location of the terminus of the drain. Both the USBR and the State Department of Water Resources—the two major agencies which had conducted full-scale investigations—favored a point near Antioch Bridge. Bay area interests, fearing contamination of the bay waters and their tributaries, advocated a discharge point farther west.

Assistant Secretary Holm, at the behest of congressmen concerned, asked Mr. Pafford to draw up possible interim solutions which might solve the San Joaquin Valley drainage problem temporarily while additional studies were conducted to satisfy the bay area interests.

Soon afterward (April 1964) the Bureau of Reclamation issued a report entitled "Alternative Solutions for Drainage, San Luis Unit, Central Valley Project, California." An addendum was issued in May 1964.

It was pointed out at the time that any interim plan could not be utilized without amendatory legislation of the San Luis Act, "prior to early 1965." It was also emphasized that such plans, if implemented, would not be effective beyond 1975 at the latest.

In these reports two dilution plans and two evaporation plans were proposed as possible temporary solutions on the basis outlined above. These suggestions, summarized briefly:

1. *First Dilution Plan.* This plan would consist of an interceptor drain of 25 cfs. capacity and a length of 82 miles to the San Joaquin River, with terminus below Sack Dam. A holding reservoir of 2,400 acre-feet capacity would be constructed in case of continuous dilution (plan 1-a) or 7,000 acre-feet with programmed flushing (plan 1-b). The net costs for five-year period were \$6,600,000 for plan 1-a and \$5,400,000 for plan 1-b.

2. *Salt Slough Dilution Plan.* This plan would convey drainage flows beyond the limits of the seriously affected areas and then store them for 11 months in a holding reservoir with 7,000 acre-feet capacity for subsequent release under programmed flushing. The cost estimates for this plan with three possible alternative capacities would be: \$7,620,000 with 25 cfs. capacity; \$29,660,000 with 400 cfs. capacity; \$31,680,000 with 1,100 cfs. capacity.

3. *Grasslands Evaporation.* This plan would convey drainage waters to an evaporating pond in the grasslands area for disposal by evaporation. The salts would be retained until the master drain is constructed, when they could be flushed out. The net cost for a five-year period is estimated to be \$2,900,000.

4. *Local Evaporation.* The service area drainage waters would be conveyed to evaporating ponds within the service area. Flushing would be handled in same manner as in the plan for grasslands evaporation. The net cost for a five-year period would be \$2,900,000.

As previously mentioned, bureau officials were lukewarm, to say the least, on these suggestions, which they never regarded as actual recommendations. All of the temporary solutions were declared unacceptable by the interests in the San Joaquin Valley concerned with the construction of adequate drainage facilities. However, such suggestions have been prominently mentioned by the San Francisco Bay interests as practical temporary solutions for the San Joaquin Valley pending completion of San Francisco Bay pollution studies.

III. Financing, including the definition of reimbursable and non-reimbursable items involved in the drain construction and the question of cost-sharing by direct and indirect beneficiaries, was the third problem area. Additionally, in the background of the financial picture was the matter of cost-sharing in case of an extremely expensive extension of the drain westward from Antioch.

This matter is still largely undetermined. The investigation by the Department of Water Resources reported in Bulletin No. 127 stresses the point that theirs is a continuing study, with 10 items to be considered during the next three fiscal years.*

LEGAL CONSIDERATIONS

There was a significant legal background to the status of the San Joaquin Drain which received considerable attention at the Washington meeting. Such considerations are still pertinent.

As noted earlier in this report, the San Luis Project Act as approved by Congress in 1960 included provision for construction of drainage facilities into the Delta.

The owners of agricultural lands in the San Joaquin Valley, late in 1962, became concerned because of information indicating the opening of bids on the San Luis Project with no provision for a drain, and hired legal counsel.

Mr. C. Ray Robinson of Merced was hired as counsel for this group, which included not only the large Central California Irrigation District, but also other organizations and individuals with a total of 200,000 acres of land. Mr. Robinson's activities in their behalf are summarized as follows:

The landowners claimed that failure to provide for a drain would constitute breach of faith on the part of the Department of the Interior. Consequently, Mr. Robinson sought an injunction to enforce "the plain language requirements of the act."

On December 20, 1962, a complaint for preliminary and permanent injunction was filed to restrain building of the unit until provision was made for a drain to the delta of the San Joaquin River.

In January 1963 depositions of USBR officials were taken which indicated that alternate routes for a drain were still being studied, "in-

* See Appendix for full context of this study. Also see Appendix for Department of Water Resources letter of transmittal, Bulletin No. 127, and full text of Senate Concurrent Resolution No. 27, Calif. Stats. 1963, calling for the drainage study.

cluding one to Monterey Bay . . . and that the bureau was investigating other possible means of disposal, including evaporative ponds."

An amicus curiae brief was filed by the State Department of Water Resources on January 20, 1963. The brief contended that delay in construction of the dam would be an economic threat to the areas served through proposed joint facilities. The key point of the legal action appeared to be interpretation of the language "has made provision for . . ." the drain.

A court order was issued July 15, 1963, by U.S. District Judge M. D. Crocker in Fresno, under which the plaintiff was denied immediate relief. However, the order contained language which left the matter open to further consideration by the court at a later date. The order stated, "*However, should it later appear that the defendants have not provided a drainage system as required by the act and that plaintiffs are threatened with injury, they may again ask this court for an injunction.*"

The Department of the Interior, considering itself bound by this court order, at once made plans to proceed with an interceptor drain.

Statements to this effect were made repeatedly by USBR representatives during 1964 discussions of the San Joaquin drainage problem. Only the state's decision to join with the bureau in making the drain a joint project prevented the USBR from handling the interceptor drain on its own. According to bureau spokesmen, this course of action would be taken under existing legislation, if final agreement on a contract between the two agencies should not be reached in time to maintain the existing schedule. However, such a possibility is now remote.

STAGED, JOINT DRAIN

No objection remained to the drain's construction on a joint basis, in two stages, after the Washington meeting and the two agencies concerned quickly reached general agreement.

The fundamental outline of the two stages follows:

1. *First stage:* From Kettleman City to Antioch, a distance of 188 miles, with a capacity of about 120 cubic feet per second at Kettleman City and 400 cfs. at the terminal end.

This would serve the federal service area, plus a portion of the Tulare lakebed area together with some of the land under the Delta-Mendota canal and would discharge the obligations of the USBR under the San Luis Act.

Estimates of both the department and the USBR show that a drain of this capacity would be fully adequate for the first 10 to 15 years after completion of the first stage in mid-1970. It is expected to carry not more than 10,000 acre feet of waste water per year during that period.

The total construction cost of the San Joaquin Valley Master Drain will be about \$92 million, according to Department of Water Resources Bulletin No. 127 of January 1965—a figure which has not been changed since that time.

The total project cost (worth, 1970) including construction, operation, maintenance, and replacement is about \$105 million. The cost of constructing the first stage of the project from Kettleman City to

Antioch will be about \$49 million, including \$6 million for storage and dilution facilities.

Benefits are estimated by the department as follows: Primary agricultural benefits, more than \$471 million (worth, 1970); estimated benefit by decrease in the cost of public services such as county roads and mosquito abatement, more than \$40 million (worth, 1970). The recreation and fish and wildlife benefits have not been completely evaluated as yet.

Before this route was agreed upon by the state and the USBR several alternate routes received careful consideration. According to Director Warne's testimony at the October 1964 Los Banos hearing, these included the following: (1) Transportation of the wastes to Cayucos Point in San Luis Obispo County; (2) to Monterey Bay; (3) to San Gregorio or Monterey Bay via Livermore and Santa Clara Valleys; (4) to the western delta area. All were rejected, primarily because of cost factors.*

Two other methods of disposal also were considered. These were: (1) Reclamation of agricultural wastes, which was found far too expensive to be practical; and (2) evaporation, whose limited and temporary nature was regarded as a major disadvantage in long-range planning to solve the valley problems.

2. *Second Stage:* The drain would be extended from Kettleman City southward to the vicinity of the Kern and Buena Vista lakebeds near Bakersfield, making the distance from the southern terminus to Antioch 286 miles.

The capacity of the drain would be gradually increased in accordance with drainage requirements. The tentative schedule is for expansion of capacity at Kettleman City to 270 cfs. and 900 cfs. at the Antioch Bridge discharge point. The capacity at the southern end would be 60 cfs.; however, this will not take place until sometime between 15 and 20 years after the first stage goes into operation. The operational date for this portion of the drain is as yet undetermined, but will be sometime after 1975.

Estimates place the maximum capacity at 603,200 acre-feet per year but capacity would not be reached before 1995 at the earliest. The programmed discharge will gradually taper off thereafter to approximately 440,800 acre-feet per year. However, these estimates are based upon information presently available. Conditions of full agricultural development in the San Joaquin Valley may be reached as early as the year 1990, or as late as 2050.

TERMINUS OF THE DRAIN

The designation of a point near the Antioch Bridge as the drain's discharge point aroused a storm of criticism in the bay area with many groups concerned at the possibility of substantial pollution.

Much of this alarm was and is not founded on fact. Objections in the metropolitan press revealed a complete lack of understanding of the type of waste discharge to be carried in an agricultural drain. Although spokesmen for the Department of Water Resources and the USBR made this clear at many meetings, the press as well as repre-

* See comparative cost table, Appendix.

sentatives of some bay area interests continued to charge that the drain would turn the bay into a "cesspool."

Edgar P. Price, San Luis liaison engineer for the USBR, when he testified before this committee submitted the following clarifying statement:

"... The simplest way to characterize the valley drain flow is as a mixture of ocean water and fresh water. In the early years it will be perhaps a mixture of one-fourth ocean water and three-fourths fresh water and in the ultimate years will be perhaps one-tenth ocean water and nine-tenths fresh water. We cannot conceive of this type of water harming the bay. Indeed, quite the contrary, we believe these waters will add to the outflow and help the bay to dispose of its own sewage effluent . . ."

No municipal, industrial, or oil field waste waters are included in the state or USBR plans. Such wastes do not require disposal from the valley at this time, nor are they expected to do so for years to come. The Cities of Fresno and Bakersfield, for example—two of the major local entities concerned—now treat and reuse their municipal waste for irrigation, and have accomplished this with a high degree of success.

As to the quality of municipal and industrial waste effluents throughout the valley, Director Warne has this to say: "... Generally speaking, these waste waters are of a quality after treatment that makes them suitable for reuse either directly as an irrigation supply or indirectly by percolation into the ground water basin . . . We do anticipate that eventually a master disposal system will be required for the municipal, industrial, and oil field wastes of the valley . . . but not for several decades."

State estimates of the quality of agricultural waste waters requiring disposal show that initially the waters will have a total dissolved solids concentration of approximately 6,500 parts per million, decreasing with time to approximately 2,500 parts per million. The waste waters will also contain nutrients, traces of pesticides, and other materials.*

As stated earlier in this report, the drain controversy has served to alert the bay area to its own vastly greater problem—the overall bay pollution situation. Authorities unanimously agree that a comprehensive plan for bay-delta waste disposal is long overdue. However, they do not agree on the extent to which, if any, the San Joaquin Valley Drain will aggravate the existing problem.

It is this committee's belief that the final choice of a drain terminus could well be postponed, but with construction of the drain to the Antioch Bridge discharge point utilized as an interim measure. All published studies by the Department of Water Resources and the USBR indicate clearly that the small quantity of agricultural waste water to be disposed of by the drain in its early years will not significantly harm the quality of the receiving waters, and, therefore, there is ample time to study the entire situation and make a final choice on the terminal point without postponing construction of the acutely needed drain.

Storage reservoirs for regulating the drain's flow are contemplated by the department—one in the Tulare lakebed area and another in the Dos Palos area with a definite decision on the latter site still to be made.

* For tabulation of chemical concentrations in waste waters, see Appendix.

Congressman Baldwin and most of the bay area interests opposed to immediate construction of the drain are on record as favoring one of the interim plans suggested by the USBR after the March 1964 meeting in Washington. These plans, which were described earlier, proposed several methods of dilution and ponding for such disposal.

Not only did the San Joaquin interests find all these proposals unacceptable, but the USBR regional officials themselves expressed belief that they were not desirable.

During this committee's hearing, Mr. Edgar P. Price, San Luis liaison engineer of the bureau, in response to questioning as to why the bureau now preferred immediate construction of the first phase of the joint drain in preference to the four alternative interim solutions which it proposed earlier, stated, in part:

"... The bureau, I think, has always preferred this interceptor drain or the first phase drain. The interim solution proposals came about when one of these meetings ... was held in Washington, D.C. ... The thought came up that it might be possible or desirable to amend the San Luis Act and produce and use an interim solution, and the Assistant Secretary of the Interior directed the Bureau of Reclamation to prepare a report on what interim solutions might be possible ... so the bureau did just that.

"It turned out a report on possibilities of using evaporation ponds in the service area, evaporation ponds located north of the service area and dilution, and submitting the economic comparisons and physical characteristics for the consideration of the people who were considering the advisability of amending the San Luis Act to adopt one of these interim solutions.

"The bureau never at that time proposed these solutions in the sense of recommending one of them. The bureau feels that there is a commitment to the people of the San Joaquin Valley that was arrived at in open democratic process, and it should be lived up to. The bureau further feels that if, for example, the dilution plan were adopted, there is not clear-cut indication of who would pay the costs associated—and these would be appreciable with the dilution plan ... When we computed costs there, we did this on the basis that there was surplus water available. This is not necessarily true. We now have demands ... for water service for more water than we have available in the San Luis on the long-term basis. If we apply the selling price of water as one of the costs of an interim solution dilution plan, the cost goes up.

"But another reason ... is this business of time ... It just does not seem to us as though within five years you can hope to have the way cleared for the kind of thing that is being talked about, which is a comprehensive waste disposal plan for everything tributary to the Golden Gate ... Our feeling about the ponding plans is just the same as the dilution plan with the exception of the cost ... There are other objections."

This committee also notes that there is no triggering device to assure a permanent valley drainage solution at the end of any of these interim plans. Such plans would adequately serve the needs of the San Joaquin Valley for a five-to-seven-year period at the most. This is a particularly important consideration.

OFFICIAL VIEWS

Department of Water Resources

Consistently a strong advocate of the vital necessity for drainage of the San Joaquin Valley now, Director William E. Warne of the Department of Water Resources has conducted extensive investigations of the valley's agricultural waste disposal problem, as directed by the Joint Legislative Committee on Water Problems' report to the Legislature in 1957.

Included in that committee report was the following statement: "The evidence presented to the committee . . . showed conclusively and without dissent that the drainage and degradation in water quality conditions in the San Joaquin Valley are now seriously impairing agricultural production, forcing changes in crop patterns, and generally adversely affecting the economy of the valley."

Regarding the effect of drain discharges upon the San Francisco Bay-delta waters, the department's studies, as did those of the USBR, substantiated the conclusion that the drain would not cause pollution of these waters to any significant degree.

In commenting on departmental pollution investigations, Director Warne stated:

"Our studies indicated that the drain waters will contain mineral salts, pesticides, and nutrients. Our studies of the effects of the drain, which are still going on, indicate that the mineral salts will not create problems if storage and dilution facilities are provided. Our present planning includes both types of facilities as part of the first stage of the drain.

"The studies also indicate that *the pesticides in the drain waters are not greater than those in the receiving waters.* (Emphasis added.) In general, we are finding pesticides in waters from agricultural sumps and drains in about the same concentration as exist in delta and bay waters and as in the waters of most rivers in the central portion of the state. The concentrations found are exceedingly small, and seldom exceed one-half part per billion . . . We believe that the nationwide pesticide problem will eventually be solved by the use of less persistent compounds."

Mr. Warne concedes, however, that nutrients pose a more serious problem. They stimulate algae growth in receiving waters and evidence from other areas indicates that luxuriant algae growth can cause unsuitable conditions for fish life. Describing state studies, including one of feasibility of treatment to remove nutrients from the drain waters, Mr. Warne expressed confidence that they will not cause "massive problems" in the receiving waters.

The department did not select Antioch Bridge as the initial discharge point without careful study of alternate routes by which the drain might convey the waste water out of the valley.

In Bulletin No. 127, it is pointed out that:

"The department has selected a point near Antioch Bridge as an initial terminus for the San Joaquin Master Drain. This terminus has been selected because it accomplishes all project purposes at the least cost and presents the greatest latitude and flexibility for possible future modifications. The department is confident that the drain can dis-

charge safely at Antioch Bridge, as an interim solution, for at least 10 years and probably longer. The use of this terminus is safe and sane. From this point the drain can be extended further into the bay system without wasteful expenditure of funds if and when it is found desirable to do so. The master drain can be integrated with the future overall waste disposal plan to serve the entire San Francisco Bay region if this becomes feasible."

With regard to the protection of delta and bay waters, the department's Bulletin No. 127 has this to say:

"The project will include a detention reservoir with sufficient capacity to store the entire annual waste water outflow from the San Joaquin Valley during the early years of project operation. The State of California will monitor discharges into the western delta and will determine their effects upon delta and bay waters. If delta water conditions are such that discharges from the master drain might prove detrimental, the detention reservoir would hold back the waste waters until those conditions changed to permit discharges. If necessary, waste waters that could not be stored would be diluted to a satisfactory concentration. Biological treatment could provide additional protection by removing nutrients, such as fertilizers. Many federal, state, and local agencies are concerned with the protection of the delta and bay waters."

Quoting again from Director Warne's remarks at this committee's hearing in Los Banos:

"I am sure no one . . . expects the San Joaquin Valley to saddle itself to carry another's load. The valley has real problems of its own. All of us will expect and demand that the valley does not merely hand its problems downstream to its neighbors."

The Resources Agency

Mr. Hugo Fisher, Resources Agency Administrator, under whose direction four major departments of the state operate (including the Department of Water Resources and that of Fish and Game) pointed out that the agency and its member departments "have firmly stated that they will take any and all steps necessary to maintain suitable water quality for the protection of beneficial uses of the bay and delta . . . To this end, the several departments within the agency are earnestly and cooperatively conducting studies of potential water quality problems associated with the San Joaquin Valley Master Drain. Collectively, it is intended that these studies will provide us with the knowledge necessary to avoid water quality degradation in the future both as to the delta and as to San Francisco Bay . . .

"The Resources Agency does not subscribe to solving a problem in one area by creating one somewhere else . . ."

On April 11, 1965, Mr. Fisher issued a set of interim water quality objectives for San Francisco Bay and the delta to govern units of the Resources Agency.*

His statement of that date reads as follows:

"All units of the agency will operate the waste discharge facilities under their control so as not to exceed the objectives at the points in the delta and bay where the various beneficial uses exist.

* Table of Interim Water Quality objectives attached to Resources Agency Order No. 18 appears in Appendix.

"Because negotiations are currently underway between federal, state, and local interests concerning salinity control and important water rights considerations in many parts of the delta, I will defer setting interim objectives for mineral constituents, salinity, and total dissolved solids (TDS) in those areas. However, when objectives for mineral constituents, salinity, and total dissolved solids have been agreed in those negotiations, they will be adopted as interim objectives to be adhered to by the organizations of this agency.

"The interim water quality objectives herein set forth are applicable only to operations of units within the Resources Agency of the State of California for the interim period preceding the establishment of permanent objectives by the State Water Quality Control Board. Should the state board or regional boards establish higher or lower standards during this period applicable to *all* waste discharges, this agency's water quality objectives will be adjusted accordingly.

"These objectives are not intended to specify *what* beneficial uses should be protected in any particular area. Specification of such beneficial uses will presumably be made by the State Water Quality Control Board and appropriate regional water pollution control boards on the basis of study and consultation with federal, state, and local interests. Until specific beneficial uses are established by the State Water Quality Control Board or by an appropriate regional board, these objectives are intended to protect all possible beneficial uses. The proposed interim water quality objectives are those I believe desirable to maintain beneficial uses *wherever* these uses are to be protected."

United States Bureau of Reclamation

This federal agency's views as to an interim terminus of the San Joaquin Valley Drain at Antioch Bridge correspond closely to those of the State Department of Water Resources.

Mr. Robert J. Pafford, Jr., regional director of the U.S. Bureau of Reclamation, and Mr. Edgar P. Price, San Luis liaison engineer for the bureau's Region 2, have expressed themselves even more emphatically in remarks of the same general tenor.

Mr. Price told this committee that while the bureau welcomes leadership of the Association of Bay Area Governments in development of a comprehensive plan for waste disposal, "We do not agree with ABAG on the desirability of delaying construction of a valley drain at this time."

Comprehensive plans often take many years, Mr. Price warned, in contrasting this course of action with solution of immediate problems.

"Under present conditions, some 3,400,000 acres drain through the delta and lower bays. There are today, a million and a quarter people living and working in the area above Suisun Bay and nearly 4,000,000 people in the nine bay area counties and the sewage disposal from most of these people now passes into and through San Francisco Bay. Consequently, we cannot see that a valley drain could possibly have any significant effect whatsoever on the waters of the bay for perhaps 15 to 25 years."

Citing figures which show the economic basis for designating the terminus for the drain at Antioch Bridge, Mr. Price said: "In round numbers we would save more than \$2 million per year in interest and

operating costs by going to Antioch Bridge . . . When we think of the money which would be saved if the master drain waters would be tolerated in the bay for 20 years, we can pay for the whole first stage of the drain. When we think that possibly the drainage waters can be tolerated in the bay indefinitely, which appears to us to be a reasonable possibility, the annual savings go on without limit.”*

Similarly, Mr. Jack B. Lindeman, a member of the Project Development Division of Region 2, USBR, told the State Water Quality Control Board on August 5, 1964:

“The effects of drainage water nutrients on the receiving waters cannot be predicted at this time. It may turn out to be either beneficial or detrimental . . . Pesticides present a serious problem throughout the nation and not one which can be appreciably affected by alternative methods of drainage disposal . . .

“There is no reliable evidence showing that early San Joaquin Valley Drain flows will significantly affect the waters of Suisun or San Francisco Bays.”

During questioning by Senator George Miller, Jr., on the subject of the drain's possible effects upon municipal and industrial water supplies in the Antioch area, Mr. Price stated, in part:

“. . . I am talking now about the 10 miles of reach, say, from Antioch Bridge to Pittsburg. Some months of the year they now take fresh water from there and use it for municipal and industrial purposes. In other portions of the year this water is too saline and they have to give up that use . . . As it now stands, on the average, they might be able to divert this water some six months of the year and the remaining six months they could not . . . I think that in the early years of the drain they will have to stop (taking the water out of the channel and switching to an alternative water supply) earlier because the drain operates. In other words, they will have to stop using the channel water sooner than they would if the drain weren't there, but I think this is a matter of a week's time, something on that order.”

U.S. Department of Health, Education and Welfare

Mr. Paul W. Eastman, program director, Water Supply and Pollution Control for the U.S. Department of Health, Education and Welfare, Public Health Service in San Francisco, has expressed a strongly dissenting viewpoint.

Future pollution might be caused by the drain discharge in the delta and San Francisco Bay system, particularly in the waters of the western delta, Suisun and San Pablo Bays, he claims.

He has pointed repeatedly to the expected tremendous increase in population of the bay and western delta area and to bay filling, which will reduce the assimilative capacity of bay waters. Additional factors to be considered are state and federal plans to transport water from northern California to the south. Such plans will significantly reduce the amount of water which presently goes out of the delta into the bay and thereby will reduce the existing capacity for dilution and flushing of pollutants.

Mr. Eastman emphasized hazards of nutrients and pesticides in delta and bay waters, pointing out that large concentrations of nutrients or

* For a comparison of costs for alternative routes for drain, see Appendix.

even an imbalance of nutrients could cause overproduction of undesirable aquatic plants, which would lower dissolved oxygen levels and damage fish life.

"Just how much additional nutrients (and in what proportions) can be added without damaging the aquatic environment is not known at this time," he told this committee.

Continuing, Mr. Eastman added: "The significance of the pesticide problem is another unknown at this time . . . It may well add a much greater threat to the aquatic and human environment than can currently be assessed . . ."

Mr. Eastman favored one of USBR's interim solutions for the valley agriculturists, contending that this would meet the federal service area's drainage needs and still postpone a decision on the final point of drain discharge for as much as five years. Such a delay would allow time for the completion of studies concerning San Francisco Bay pollution.

He recommended that a nine-point study program be undertaken, which he regards as necessary for a comprehensive drainage and pollution program for the entire bay area. It should be noted that such studies are now underway.

His testimony concluded:

"With regard to future programs of the Department of Health, Education, and Welfare, Public Health Service, the proposed Central Pacific Basins Water Pollution Control program is now scheduled to begin in July 1965 . . . This study tentatively is estimated to cost \$300,000 for the first of possibly seven years necessary to complete the job. A share of this project will be concerned with pollution problems of the San Joaquin Valley, the delta area, and the San Francisco Bay system you are facing today. We realize that such a small amount will not allow detailed analysis of every localized problem within the project area. The problems and necessary studies are such that all appropriate local, state and federal agencies must participate . . ."

Department of Fish and Game

The California Department of Fish and Game has no objection to routing the drain through the San Joaquin Valley with the discharge at Antioch Bridge, provided that water quality in the delta is not reduced to levels detrimental to fish and wildlife.

This department desires specific provision for waste treatment including the possibility of moving the drain as far seaward as may be necessary to maintain appropriate water quality, and asks specific commitments for surveillance and monitoring programs to facilitate the detection of potential problems and to allow correction long before damage can be done.

"Our present attitude on future water quality effects of drain water in the delta is one of cautious optimism," stated Harry Anderson, deputy director of the department.

The department notes that agricultural drain waters in the Central Valley are known to be of suitable quality to support sizeable fish and wildlife populations; that for perhaps 10 years after initial operation the volume of discharged water will remain "very low and highly controllable" and that "there should be no reason to believe that the people of the State of California will be less resolute (in providing

water quality protection) than municipalities or industries in meeting their own obligations.”

The California Department of Fish and Game has in recent years become quite concerned over the continual decrease of waterfowl habitat in the San Joaquin Valley—a decline which has been primarily due to agricultural development and the reclamation of vast wetland areas.

At the present time, there are approximately 204,000 acres of public and private lands within the San Joaquin Valley dedicated to some aspect of wildlife management. The vast majority of this land (some 172,000 acres) is owned and managed by private gun clubs within the valley. The remaining 32,000 acres are under the control of public agencies.

Obviously, the department would and should be concerned over any activity which would result in the loss of additional wetlands, whether they be publicly or privately owned, for in the preservation of such wetlands lies the fate of waterfowl in the San Joaquin Valley. While it has been recognized by fish and game authorities that some additional loss of wetlands will inevitably be the end result of drain construction, they have recommended that the drain be located in a manner which will minimize damage to public and private wetlands to the maximum extent possible. This suggestion has been accepted by the Department of Water Resources.

The additional factor of mitigation for actual damage by drain construction is also of concern to the department and the two agencies are working closely in this regard.

Logically, such considerations are essential if waterfowl populations, as they are known today, are to be perpetuated in the valley.

Department of Public Health

The State Department of Public Health has not assumed any role in the drain controversy. While departmental officials have participated in Resources Agency deliberations on this subject, they have not appeared during Senate or Assembly committee discussions.

Bay Area Disapproval

Chief among the spokesmen for bay area interests at the many meetings held during 1964 was Mr. Mel F. Nielsen, then a member of the Contra Costa County Board of Supervisors which serves as the ex officio governing board of the Contra Costa County Water Agency.

The Association of Bay Area Governments, which includes representatives from virtually all major San Francisco Bay area cities, reached similar conclusions, and joined in seeking a delay of San Joaquin Valley Drain construction in order to allow time for additional studies of bay pollution. Other organizations in the area have expressed themselves similarly.

Mr. Nielsen's views on the drain, presented in a detailed statement before the San Francisco Bay Regional Water Pollution Control Board on August 20, 1964, included the following:

He called the potential increase in toxicity, as well as salinity and nutrients, from the agricultural return drainage and sewage effluents discharging from the San Joaquin and Sacramento Valleys into the delta the “greatest present threat to the beneficial use of tidal waters east of Port Chicago.”

Pesticides, nutrients, and significant concentrations of dissolved salts, to be discharged from the interceptor drain and the master drain, were termed the major dangers.

Three resolutions concerning San Joaquin Valley drainage were passed by the Contra Costa County Board of Supervisors—on November 26, 1963; March 17, 1964; and April 14, 1964—all of which expressed strong objection to any discharge of an agricultural drain at the Antioch Bridge. The final resolution declared the monitoring program proposed by state and federal agencies to be "meaningless as a determinant of long-range effects." Belief was expressed that adoption of one of the interim plans proposed by the USBR would in no way adversely affect the agricultural interests in Fresno, Merced and Stanislaus Counties.

Such action, said the resolution, would provide time for "proper investigation and planning of the whole problem of collection, treatment, and disposal of wastes from the entire Central Valley, Sacramento-San Joaquin Delta, and the San Francisco Bay area."

The board further urged adoption of a comprehensive plan to handle the problems of this entire area, and demanded that the Sacramento-San Joaquin Delta "be eliminated as a place of discharge for San Joaquin Valley drainage."

The Association of Bay Area Governments (ABAG), representing 8 counties and 72 cities in the San Francisco Bay area, also is on record opposing construction of the drain as proposed "pending completion of adequate studies of and planning for the future consequences of the proposed discharges." It has asked implementation of an interim solution to solve the immediate problems of the San Joaquin Valley and urged state legislation giving regional water pollution control boards the same authority over state agencies as they had possessed with respect to cities, counties, and private organizations.

Legislation (AB 1092—Meyers) to accomplish this objective was adopted during the 1965 Regular Session and was supported by the Resources Agency and the Department of Water Resources. This legislation brought the state and its agencies under the waste water discharge requirements established by regional water quality central boards.

Another 1965 legislative measure (AJR 13, Meyers) memorialized the Congress of the United States to favorably consider legislation which would place controls, such as contained in S 560 and HR 982, over federal agencies disposing of wastes into waters of the United States. These measures would require federal agencies to discharge wastes only in compliance with standards established by the Secretary of Health, Education, and Welfare. Such standards would be established after consultation with appropriate state officials.

AJR 13 also includes a "resolved" clause noting that the State Legislature does not intend, by passage of this resolution, that the immediate construction of the San Luis drain be delayed in any way. This provision was added as an amendment offered by the chairman of this committee.

This committee does not object to elimination of governmental immunity from standards of waste disposal. Indeed, agricultural, as well as

industrial waste, should be carefully regulated in order to prevent pollution damage.

Regional Pollution Boards

On February 20, 1964, the Central Valley and San Francisco Bay Regional Water Pollution Control Boards passed separate but similar resolutions * prohibiting waste waters from the interceptor drain being discharged in the receiving waters of the bay area until "reasonable assurance" is given as to the absence of adverse effects from such discharge.

The San Francisco Regional Board's prohibition was applied to "the San Francisco Bay region;" the Central Valley Board specifically designated "the Antioch or Antioch Bridge area."

However, the State Attorney General's office then issued an opinion to the effect that prohibitions against drainage discharges by regional boards had no validity in the case of state and/or federal projects, or a combination of the two. (However, the passage of AB 1092, as noted, brought the state under such regulation.)

Mr. Grant Burton, chairman of the San Francisco Bay Board, appeared at this committee's October hearing and emphasized the importance of "satisfactory evidence and assurances" concerning the quality of the drain discharge. "To date no such evidence has been produced, nor have any valid assurances been forthcoming from any source in a position to make good on such assurances," Mr. Burton told this committee.

In the matter of assurances, bay area interests have often commented that "good intentions and promises" made by the Bureau of Reclamation and the State Department of Water Resources are "meaningless."

Metcalf and Eddy Report

An engineering report was made to the Contra Costa County Water Agency by Metcalf and Eddy, engineers of Boston, New York and Palo Alto, in October 1964, supporting the agency's objections to the location of the northern terminus of the drain.

The report concluded that a delay in drain construction was essential and cited several points to support this position. The report predicted that a serious deterioration in the quality of offshore waters in the bay area could be expected by 1975, with conditions gradually growing worse until 1995.

Additionally, it was pointed out that aquatic life and recreational use of the offshore waters could be seriously affected by the discharge of nutrients and pesticides from the drain, with nutrients being the greater danger.

The cumulative annual value of the recreational facilities of the region would amount to \$4 billion to residents of the state from now until the year 2020—one billion dollars of which represents the value to present and future residents of Contra Costa County. A loss in value of from 5 to 10 percent, or \$50 million to \$100 million, to residents of Contra Costa County is highly probable, the report asserts.

* Resolution No. 535 of the San Francisco Bay Regional Water Pollution Board and Resolution No. 64-25 of the Central Valley Regional Water Pollution Board appear in full in Appendix.

The assimilative capacity of the offshore waters is more than adequate to absorb the present BOD load of municipal and industrial wastes. However, the report contends that the nutrients in the drain will produce algae growths which would decrease the assimilative capacity so greatly that more intensive treatment of municipal and industrial wastes would be necessary.

"A conservative estimate of the cost of additional treatment required varies from \$1,500,000 per year in 1975 to \$2,300,000 per year in 1995 . . . Sometime shortly after the year 2000, complete treatment of municipal and industrial wastes . . . will be required in order to meet the assimilative capacity unless satisfactory and economical methods of reducing the effect of nutrients are developed in the meantime. This would hold true if the drain is not built, but with the drain, complete treatment will be required sooner. Unless methods of alleviating the effects of nutrients are developed, their effect on the assimilative capacity may establish an upper limit of industrial and municipal growth of Contra Costa County . . ." the report concludes.

Discharge of the drain at Antioch Bridge will cause deterioration of the quality of the offshore water, resulting in increased costs to industry amounting to \$19,800 in 1969 and increasing to \$472,000 per year by 1995, it is claimed.

Deterioration in the quality of offshore water will cause increased costs to the City of Antioch and to the Treated Water Division of the Contra Costa County Water District amounting to \$3,600 per year in 1969, and an estimated \$50,500 per year in 1995, the report continues.

Studies of nutrients by the state with the intention of eliminating them from the drain will accomplish little toward finding a solution, in the opinion of Metcalf and Eddy.

The Valley Interest

C. W. Bates, secretary-manager of the Central California Irrigation District, Los Banos, was chief spokesman for most of the valley interests at many meetings, consistently upholding the need for constructing the drainage facilities as planned with no delay in schedule.

He attacked opponents for "last minute" opposition to a plan already approved and authorized "after full discussion . . . Everyone affected by the San Luis Project, and State Water Project had more than ample opportunity to present their case during the five years of drafts and redrafts, hearings and rehearings on the San Luis Act . . . Eight years ago, the State of California was fully cognizant of the drainage problem . . ."

Mr. Bates differentiated strongly between the point of discharge required for the San Joaquin Valley agricultural waste waters and the point of discharge required for a multipurpose drain "capable of carrying off agricultural sewage from the eastern part of Contra Costa County and industrial waste water from the northern part of the county" as advocated in a Contra Costa County Water District resolution.

He quoted a Bureau of Reclamation statement, as follows: "Actually, the bay area faces a tremendous and rapidly growing problem of water pollution quite aside from any consideration of San Joaquin Valley drainage. . . . The extent of the participation (by the valley) would be

proportionate to the degree by which the valley drain waters aggravated the bay problem if, in fact, they aggravated it at all."

Halting or even delaying the joint drainage plan for the valley would mean, ultimately, two parallel drains through San Joaquin County and also through Contra Costa County, Mr. Bates warned.

He urged swift action in the preparation of a comprehensive plan for eliminating damaging pollution from the bay without an accompanying fight to prevent essential San Joaquin drain construction.

Mr. Warren R. Schoonover, consultant on soil and water resources, several times testified in behalf of the agricultural interests of the San Joaquin Valley.

In April 1965 he wrote a detailed analysis of the drain situation, which indicated that:

"In summary, one must logically conclude:

"1. That the drain is needed now to prevent irreparable damage to agriculture.

"2. The drainage problem will become acute directly following the application of water to the San Luis Project service area.

"3. The San Joaquin River is now and has been for decades, serving as a drain for agricultural lands. Twenty-five thousand to 30,000 acre-feet per year of drainage waters have entered the sloughs and the river between Temple Slough and Fremont Ford Bridge. The quantity of drainage will increase with the delivery of more irrigation water and the rising water table will damage thousands of acres of additional lands if the drain is not provided.

"4. The delta and bay now receive agricultural wastes in unregulated flows in the natural water courses. These wastes contain the same sort of constituents that will be carried in the drain. Some of these are carried now in excessive amounts because the sloughs and rivers receive surface water, silt, etc., while the drain will be limited to subsurface drainage. With a dilution factor of about 30 to 1 for a decade, it is not to be expected that the drain can have a measurable adverse effect on the waters of the delta and bay if discharged at Antioch in regulated flow.

"5. The drain will contain nutrients, particularly nitrogen and phosphates. These are now going into the delta and bay from other sources. It has not been shown that the drain will increase a nuisance which already exists.

"6. The drain will contain pesticide residues, but, according to hundreds of analyses, the concentrations are expected to be similar to those already found in the lower portions of the rivers and in the bay. Pesticides are found everywhere; they blow in the dust; they are used on farms, and in home gardens. They come into the rivers in surface runoff. They build up in the biocycle, causing a national problem which must have national attention. The drain itself will have no material influence on this pollution problem.

"7. The drain can be built with a discharge at Antioch Bridge without any significant contribution to delta and bay pollution for a decade at least. As volume builds up, it will become a small, and from a constituent standpoint, a simple component of a very large and very complex problem. The whole problem can be studied dur-

ing the decade of construction and of small flows. The drain can then be integrated into the ultimate solution for waste disposal in the entire basin. Thus, it becomes a practical and economical interim solution to a vital problem which exists now and will exist—drain or no drain.”

In his presentation, he emphasized the local drainage problem, which, he said, “is now serious in land being irrigated on the west side of the San Joaquin River in central California. The water table is now high on 20,000 acres of the San Luis Project service area. It is also high in some land being irrigated by local districts such as the Firebaugh Canal Company, Central California Irrigation District, Panoche Water District and others, largely as a result of new water supplies introduced onto higher elevation lands by the Delta Mendota Canal starting in 1951 without any provisions being made for the resultant drainage problem. . . . The situation will become worse rapidly on this area, as well as on new lands to be irrigated with the new water supply.”

San Joaquin County

San Joaquin County's attitude on the drain situation was presented at the Los Banos hearing by Mr. William Gianelli, consulting engineer for the San Joaquin County Flood Control and Water Conservation District, a countywide district governed by the board of supervisors of that county.

Great concern was expressed as to the disadvantages of dual drains, but with final agreement apparently attained on a single staged drain development, this particular objection was resolved.

The point of discharge was referred to in Mr. Gianelli's testimony thus: “. . . San Joaquin County comprises much of the area in the Sacramento-San Joaquin Delta, and we are interested in having the point of discharge of any proposed drain located far enough to the west to make certain that the tidal influences in the delta would not cause drainage effluents to adversely affect the county's delta interests. Accordingly, we would hope that this (Senate) committee would support studies such as those proposed by the Public Health Service which would go into the matter of the effect of drainage discharges into the receiving waters of the delta and bay areas.”

Repayment of reimbursable costs to the state for the drain is another matter of concern to San Joaquin County. Referring to a bill introduced in the 1961 legislative session proposing to extend the Sacramento-San Joaquin Drainage District, San Joaquin noted its opposition, and its wish for assurance of “1. The drainage facilities which might be constructed and which would be paid for by such an assessment; 2. Some assurance that cost for the drainage facilities would not be assessed merely against the people who had the problem, as opposed to the people who created the problem; 3. Whether or not local interests would have anything to say about the costs to be incurred.”

Mr. Gianelli also referred to certain areas along the lower reaches of the San Joaquin River, particularly in the vicinity of Mossdale, where water users have actually lost some crops because of poor water quality. “This area,” said Mr. Gianelli, “wishes to be assured that any solu-

tion is not assessed against it merely because it is faced with the problem."

FINANCING

The Department of Water Resources proposes the establishment of a valleywide drainage district as the major vehicle of financing costs of the drain.

This proposed district would include virtually the entire San Joaquin Valley Drainage Basin, including nine full counties and portions of several others, as shown on the map of the proposed district set forth on the page following page xi of Appendix A, Bulletin No. 127, of the Department of Water Resources, Preliminary Edition, January 1965.

Creation of the district would have been provided in AB 2506 (Garrigus) * of the 1965 Regular Session, which was sent to interim study.

This committee's recommendations, listed earlier, presented the view that formation of the district is not yet necessary because of the two-stage construction of the drain, with the first stage including substantial federal financial participation. It was also recommended that no drainage district be formed under any circumstances except by popular vote within the district. (Such an election was called for in AB 2506 (Garrigus).)

If ratified, the proposed district would be set up in nine divisions with the first board of directors to be appointed by the Governor. Thereafter, directors would be elected according to divisions and would have wide jurisdiction in setting up the exact repayment plan to be followed.

The Department of Water Resources favors levying fixed service charges upon the direct users of the drain in addition to ad valorem taxation of residents of the entire district. This, it is contended, would establish the broadest possible base for distributing repayment costs and would prevent an unduly heavy burden on the direct users alone. For the purposes of the act, indirect beneficiaries include those whose activities have caused the conditions necessitating the drainage of accumulated salts.

Consideration has been given to the possibility of participation by the entire state in the repayment of reimbursable costs of the drain. However, it was concluded that the benefits could not be considered as being statewide in scope but are confined to the valley drainage basin.

In the first phase of drain construction, the federal government's share will be approximately 60 percent. There are additional nonreimbursables which have not been fully analyzed, including recreational benefits and those for the enhancement of fish and wildlife. These factors will certainly serve to reduce the total costs of the state. Furthermore, the state portion of such nonreimbursables, which are those incurred for recreation and enhancement of fish and wildlife, should be paid from the State General Fund in accordance with present policy and practice since such expenditures are for the general welfare.

The federal government has established fixed charges for removing drainage from the federal service area at 50 cents per acre-foot, which immediately brings up this point: Can the state charge more—an action which at this time seems inevitable if the policy of reimbursable costs

* For full text of AB 2506, see Appendix.

is to be fully carried out—and gain acceptance? Additionally, farmers in the service area, who already have signed contracts with the bureau, will not readily accept any additional charges or taxes.

This viewpoint received considerable support in the report of Don Benedict, principal administrative analyst of the legislative analyst's office, which he presented to this committee at its October hearing.

Mr. Benedict noted that there were no demands for drainage projects in the valley comparable to those for projects to supply water "... except from the landowners who already have a drainage problem ... No similar facility has ever been planned before, and, therefore, the problems confronting the Department of Water Resources have been unusually difficult in both a technical sense and with respect to repayment.

"... Introduction of state water will not drastically change present operations during initial years ... The department has not included drainage services in its water sales contracts and, as a result, will have to negotiate separate contracts for drainage services after the landowners have already paid what some consider to be too much for a water supply. The Bureau of Reclamation, however, is not confronted with this problem since it has included 50 cents per acre-foot in its water supply contract to repay the costs of its drainage system. In addition the bureau has greater flexibility than the department in its repayment structure, since drainage is generally considered to be an irrigation feature and, therefore, can be interest-free and perhaps even receive some repayment assistance from other project purposes."

The cost of installing drainage lines on individual farms will be "very high," said Mr. Benedict. "... it is likely that many acres in the valley would not economically justify this expenditure for drainage lines and that some owners of lands now being profitably farmed might not be able to incur these additional costs."

The analyst suggested reconsideration of fundamental decisions to the effect that the Bureau of Reclamation might construct the first stage of the drain and the state the subsequent stages. This, he says, "would eliminate the need for the department to make a substantial investment at this time," as well as what might be premature decisions on repayment policy.

Since contractual negotiations between the bureau and the state have advanced rapidly, such a partial reversal of roles would not seem practicable at the present time. However, Mr. Benedict's views reinforce the idea that there is no basis for immediate establishment of a drainage district or other repayment plan.

Friant Water Users

The opinion that formation of a master district is premature, since no overall San Joaquin Valley drainage problem now exists, was also advanced by the Friant Water Users Association.

This organization is composed of long-term contractors from the Friant unit of the Central Valley Project serving 800,000 acres of irrigated lands in Madera, Fresno, Tulare, and Kern Counties.

Mr. James F. Sorensen, secretary of the association, expressed the view that some of the lands concerned may never have a drainage problem, "or, if they were to have drainage needs, they would be in-

cluded in a future Central Valley Project drainage program." He called for a "cautious approach" to any overall financing or assessment arrangement.

However, like the other valley interests, the Friant spokesman urged that there should be no delay in the construction of the initial phases of the drain.

District Problem Summarized

For all practical purposes, we will be dealing only with the first stage of the drain for many years to come. When the second stage of the drain becomes imminent, perhaps in 1985-1990, there will be a more general need which, in view of the benefits to be gained, may well bring about a willingness to finance the reimbursable costs of the project.

In any event, the second stage, with its greater area and greater capacity, is far in the future.

This committee, however, fully agrees that a drainage district along the lines of that proposed in AB 2506 is an eventual necessity. It believes, also, that a thorough and concerted effort must be made to convince the valley agriculturalists that this step is, in the long run, inevitable. Only by such an educational campaign will it be possible to obtain a favorable vote for the organization of a drainage district when it becomes necessary.

The committee recognizes that by far the larger part of the drain's cost must be paid for by beneficiaries in the San Joaquin Valley. Except for the incidental recreational enhancement and the indirect benefits derived from continued agricultural prosperity of the valley, the major hinterland of the state's two chief metropolitan areas, there appear at this time to be no statewide interests to be served by the drain.

Another factor which could conceivably expedite the necessity for a master drainage district is the possibility of a serious pollution problem at the planned point of the drain's discharge. If future investigations prove that pollution would occur at the Antioch Bridge, immediate action on formation of such a district might have to be launched.

Extension of the drain westward in Contra Costa County would be an expensive undertaking, since it would pass through some of the most valuable industrial land in that county. As yet, no one has proposed any definite division of costs of such a program. Logically, the valley's share of such costs should depend upon the amount of pollution damage inflicted on the receiving waters by the waste waters of the agricultural drain, over the above what would have occurred without it from all other sources.

BAY WASTE DISPOSAL

Strange as it seems, the disagreement on the point of discharge for the San Joaquin Valley Drain actually had much to do with bringing about full realization of the much greater pollution problems facing the bay-delta area.

The start of a comprehensive plan for waste disposal affecting this extremely large area was given by AB 2380 (Porter) during the 1965 Regular Session of the Legislature. This bill established the means by

which the entire bay pollution problem may be studied on a comprehensive basis.

The study is to be directed by the State Water Quality Control Board with municipal, industrial, and agricultural water supplies, fish and wildlife, recreation, and navigation to be considered. A steering committee and a technical coordinating committee have been established to assist the Water Quality Board. Reports are required in 1966, 1967, and 1969, with the last report to provide full guidelines for the systematic development of a comprehensive pollution control program, including cost estimates.

A total of \$170,000—\$100,000 from the state general fund and \$70,000 from federal sources—was made available to implement the first year's study.

This committee supports such a comprehensive pollution study, with the single reservation that it should not be pointedly directed against the drain. Amendments to AB 2380 brought about the desired result and prevented the drain from appearing as "whipping boy" for the overall pollution situation which faces the bay area.

In commenting on the comprehensive study of waste disposal, when he appeared before the State Water Commission on January 8, 1965, in San Francisco, as requested by that body, Department Director Warne noted considerable improvement in the condition of the bay waters over the past decade but was critical of moves to halt planning and construction of the valley drain. He pointed out that approximately 700,000,000 gallons of sewage and industrial waste were discharged from the surrounding areas into the bay system daily in 1960, with this quantity expected to more than double by 1990.

"By contrast," said the director, "The San Joaquin Master Drain will discharge 58,000,000 gallons per day when it commences operation in 1970, increasing to 350 million gallons per day by 1990."

Director Warne at the time of his appearance before the Water Commission estimated the cost of the comprehensive studies at \$100,000 for the first year—the exact amount appropriated from state funds by AB 2380 in its final form. He originally proposed that his department conduct the study. However, AB 2380 gave that responsibility, instead, to the State Water Quality Control Board, which will proceed to carry out the study as called for in the legislation.

Another legislative measure, not connected with the valley drain, but one which is highly important to the bay's future, was SB 309 (McAteer), to create a San Francisco Bay Conservation Commission charged with the responsibility of regulating filling and preparing a master plan for shoreline development. Piecemeal, unregulated filling of the bay over many decades has created a "terrible problem" in the words of the bill's author, and the establishment of a 27-member commission in September 1965 should do much to protect the public interest. The new commission will submit a master plan of dredging and filling operations to the 1967 Legislature.

The need for this step is emphasized by the fact that 70 percent of the bay is only six feet deep, or less, at the present time. Action to control bay filling, experts agree, is late in coming, but still soon enough to bring about a tremendous improvement in the situation.

APPENDICES



APPENDIX A

89th Congress

1st Session

H. R. 5144

IN THE HOUSE OF REPRESENTATIVES
FEBRUARY 18, 1965

MR. MILLER introduced the following bill; which was referred to
the Committee on Public Works

A BILL

To amend the Federal Water Pollution Control Act to require certain studies of the pollution of the San Francisco Bay and adjacent waters, and to prohibit the operation of any interceptor drain so as to pollute such waters.

1 *Be it enacted by the Senate and House of Representatives*
2 *of the United States of America in Congress assembled, That*
3 *section 4 of the Federal Water Pollution Control Act (33*
4 *U.S.C. 466c) is hereby amended by adding at the end thereof*
5 *the following new subsection:*

6 “(g) The Secretary of Health, Education, and Welfare
7 and the Secretary of the Interior, in cooperation with the State
8 of California, shall jointly conduct a continuing investigation
9 and study of the causes, control, and prevention of water pol-
10 lution (including possible future pollution), in the waters of
11 the San Francisco Bay, the San Pablo Bay, the Suisun Bay,
12 the waters of the Sacramento-San Joaquin Delta, and any
13 channels lying between those bodies of water.”

14 SEC. 2. Section 9 of the Federal Water Pollution Control
15 Act (33 U.S.C. 466h) is hereby amended by inserting “(a)”
16 after “SEC. 9” and by inserting at the end of such section the
17 following:

18 “(b) No interceptor drain financed, in whole or in part,
19 by any department, bureau, agency, or instrumentality of the
20 United States for the purpose of carrying waste or drainage
21 water from the service area of any reclamation project, con-

1 structed in whole or in part by the Secretary of the Interior
2 within the State of California, to a termination point in the
3 San Francisco Bay, the San Pablo Bay, the Suisun Bay, the
4 waters of the Sacramento-San Joaquin Delta, or any channels
5 lying between those bodies of water, shall be operated so as to
6 discharge waters which are harmful or deleterious to the re-
7 ceiving waters. The Secretary of the Interior and the Secre-
8 tary of Health, Education, and Welfare, in cooperation with
9 the State of California, shall conduct a continuing monitoring
10 system to observe and measure the effect of the discharge of
11 such interceptor drainage on the receiving waters. Should the
12 Secretary of Health, Education, and Welfare, in consultation
13 with the Secretary of the Interior and the Governor of the
14 State of California, at any time determine, as the result of
15 such monitoring, that the discharge of such drainage water
16 would be harmful or deleterious to the receiving waters for
17 domestic, industrial, irrigation, fish and wildlife, recreation or
18 other beneficial uses, he shall order the halting of the opera-
19 tion of, and the discharge into such receiving waters of such
20 drainage water from, said interceptor drain. The Secretary of
21 the Interior thereupon shall cease such operation and dis-
22 charge for the aforementioned purpose and shall either relo-
23 cate the discharge point of said drain or take other measures
24 which eliminate such harmful or deleterious effects before re-
25 suming such operation and discharge. If any such interceptor
26 drain is to be constructed or operated by the State of Califor-
27 nia, the Secretary of the Interior shall before expending any
28 Federal funds for such drain, require such State to agree to
29 be subject to the same terms and conditions with respect to
30 such construction or operation as are imposed on the Secre-
31 tary by this subsection."

APPENDIX B

DEPARTMENT OF WATER RESOURCES

BULLETIN No. 127 JANUARY 1965

A Continuing Investigation

The San Joaquin Valley drainage investigation is not completed. During the next three fiscal years the Department of Water Resources must consider in further detail each of the items listed in this section. Further, the department will issue supplemental reports in 1965 to cover items 1 and 2 below, which Senate Concurrent Resolution No. 27, 1963 General Session (Calif. Stats. Res. Ch. 119, p. 4892), has specified for thorough and exhaustive study. The department will:

1) Complete the determination of the recreation, fish, and wildlife benefits—national, statewide, and local—and complete the evaluation of secondary benefits to accrue from the project.

2) Determine that portion of the costs of the multiple-purpose project which should be nonreimbursable—such as the costs assignable for use of project facilities and waters for wildlife, fisheries, and recreation—and the portion of reimbursable costs to be shared by the federal government.

3) Complete plans for the final alignment of the first stage of the master drain from Kettleman City to Antioch, the most efficient design and specifications for its construction and the precise method of its operation.

4) Determine the best use of the master drain and its water for the management of wildlife areas, the establishment of sport fisheries, and the encouragement of recreation; and specific ways to preserve waterfowl wetland habitat that might indirectly be affected by the drain.

5) Determine the economic justification of evaporation facilities to provide for local disposal of waste waters in isolated areas, either permanently or until such time as they may be served by the master drain.

6) Determine feasibility of valley entities joining in a comprehensive plan for the disposal of waste waters from the valley and the San Francisco Bay region by way of a yet-unplanned regional disposal system.

In giving further consideration to the subject of water quality, the department will:

7) Continue studies of the potential nutrient and pesticide content and general quality of waste waters to be discharged into the master drain.

- 8) Study the need for and ways of removing nutrients from waste waters in the drain.
- 9) Cooperate in monitoring water conditions in the San Francisco Bay and western delta both before and after the master drain begins operating.
- 10) Determine the probable effect of waste water discharges from the master drain upon the San Francisco Bay and waters of the western delta and cooperate in the development of quality standards to which such discharges should adhere.

APPENDIX C
(LETTER OF TRANSMITTAL—Bulletin No. 127)

State of California—Resources Agency

William E. Warne, *Director*

DEPARTMENT OF WATER RESOURCES

P.O. Box 388
Sacramento

December 9, 1964

Honorable Edmund G. Brown, *Governor*
and Members of the Legislature
of the State of California

GENTLEMEN :

Bulletin No. 127, "The San Joaquin Valley Drainage Investigation," reports on a Department of Water Resources investigation of drainage problems in the San Joaquin Valley. The investigation was initiated in 1957 as a result of studies of drainage problems and water quality degradation in the San Joaquin Valley by the Joint Legislative Committee on Water Problems.

The bulletin recommends construction of the San Joaquin Master Drain in stages from the vicinity of Bakersfield to Antioch Bridge. The first stage would consist of the reach from Kettleman City to Antioch Bridge, including storage and dilution facilities, and would be operational in 1970.

The presentation of this bulletin complies with the request of the 1963 session of the California Legislature as stated in Senate Concurrent Resolution No. 27 (see facing page). All items contained in the resolution are discussed; however, some portions of items f, g, and h require further analysis. Additional analyses of benefits to accrue from the project (item f), of that portion of the costs of the multiple-purpose project which should be nonreimbursable (item g), and of the portion of the reimbursable costs to be shared by the federal government (item h) will be presented in supplemental reports during 1965.

The Department of Water Resources finds that waste water disposal problems exist in the valley today and will spread and intensify in the future. The disposal of salts from soils in the plant root zone and from waters of the valley is necessary if the productivity of the valley is to be maintained or increased to higher levels.

The most feasible means of disposing of these salts is by the removal of the agricultural waste waters from the valley. The most practicable method of removal is a master drain extending from near Bakersfield to the San Joaquin River at Antioch Bridge in Contra Costa County.

The terminus of the master drain at Antioch Bridge has been selected because it accomplishes all project purposes for the least cost and presents the greatest latitude and flexibility for possible future modifications. The department is confident that the drain can discharge safely at Antioch Bridge, as an interim solution, for at least 10 years and probably longer. If necessary, the terminus could be extended westward.

This bulletin will be followed, during 1965, by technical appendices covering detailed aspects of the investigation.

Sincerely yours,
/s/ WILLIAM E. WARNE
Director

APPENDIX D

(SENATE CONCURRENT RESOLUTION No. 27)

CALIFORNIA STATUTES OF 1963

Volume II. Page 4892

Resolution Chapter 119

Resolved by the Senate of the State of California, the Assembly thereof concurring. That the Department of Water Resources is urged to complete its San Joaquin Valley Drainage Investigation at the earliest possible time; and be it further

Resolved, That the Department of Water Resources is requested to prepare a comprehensive report on the facilities for the removal of drainage water from the San Joaquin Valley, which facilities comprise a part of the State Water Facilities, and to report thereon to the Legislature not later than the fifth legislative day of the 1965 Regular Session; and be it further

Resolved, That in preparing such report, the department shall thoroughly and exhaustively study the following matters:

(a) The purposes for which the drainage facilities, or alternatives thereto, should be built, including such purposes as the disposal of degraded irrigation water, oilfield wastes, and municipal and industrial wastes;

(b) Ways and means of effectively coordinating the responsibilities of the United States Secretary of Interior with respect to drainage facilities to be provided under Public Law 86-488 with the state's responsibility to provide facilities for removal of drainage water from the San Joaquin Valley as provided in the Burns-Porter Act; and ways and means of coordinating the responsibility of the state and federal agencies pursuant to the Federal Water Pollution Control Act as amended by Public Law 87-88;

(c) Alternative routing of drainage facilities and alternatives to the disposal of waste water other than through drainage facilities, such as reclamation, evaporation, or the removal of harmful constituents;

(d) The nature of the drainage facilities and alternatives proposed, if any, including preliminary design, staging of construction, recommended capacities, and alternate termini proposed, if any;

(e) The costs involved, including adequate allowances for escalation and all other contingencies, taking into account whatever staging or construction is proposed; and what portion of such costs should be nonreimbursable;

(f) The benefits to accrue from the project, both statewide and local;

(g) The engineering feasibility, the economic justification, and the financial feasibility of the project ;

(h) Ways and means of fairly and equitably recovering the costs of the project, in whole or in part, from the direct and indirect statewide and local beneficiaries of the project and from those contributing to the conditions requiring the removal of waste water, including the creation of an overall drainage district for such purpose ;
and be it further

Resolved, That the Department of Water Resources is further requested, in the course of the preparation of the comprehensive report called for herein, to carry out the directives contained in Assembly Concurrent Resolution 92, Resolution Chapter 214 of the 1961 session, and Sections 12230 to 12233 of the Water Code; and be it further

Resolved, That the Secretary of the Senate transmit a copy of this resolution to the Director of the Department of Water Resources.

APPENDIX E

COSTS OF ALTERNATE TRANSPORTATION PLANS

(In millions of dollars)

Alignment ^a	Costs ^b			
	Capital	Operation, maintenance, general expense	Power	Total
Alternatives ^c				
Cayucos	318	54	162	534
Monterey	149	24	62	235
Santa Clara ^d	430	53	143	626
San Gregorio ^d	408	59	388	855
San Joaquin Master Drain ^e Antioch	81.3 ^f	20.0 ^g	0.3	104.6
Costs of westward extensions ^h				
Chippis Island	29	3	5	37
Middle Point	40	4	6	50
Middle Point ⁱ	58	6	6	70
Martinez	63	7	8	78
Martinez ⁱ	92	10	8	110
Rodeo	102	10	17	129
Rodeo ⁱ	140	14	23	177

^a All facilities carry agricultural waste waters from the San Joaquin Valley.

^b Present worth to January, 1970, 4% interest, 100-year project life.

^c Construction of alternatives is staged on the valley floor and is not staged elsewhere.

^d A drain following this alignment also would carry municipal and industrial waste waters from Livermore and Santa Clara Valleys.

^e Construction of the San Joaquin Master Drain and its westward extensions is staged.

^f Includes costs of dilution facilities, a regulating and a detention reservoir.

^g Includes costs of a surveillance program.

^h Additional costs to those of a San Joaquin Master Drain terminating at Antioch.

ⁱ Includes municipal and industrial waste waters from northern Contra Costa County.

APPENDIX F

Chemical Concentrations in Waste Water ^a at the San Joaquin Master Drain Terminus

(Estimated parts per million)

Constituents	Concentrations	
	Initial	After 50 years operation
<i>Salts</i>		
Calcium	330	120
Magnesium	180	40
Sodium	1,600	720
Potassium	20	10
Carbonate	0	0
Bicarbonate	180	110
Sulfate	3,100	650
Chloride	1,200	900
Boron	10	3
Total dissolved solids	6,500	2,500
<i>Nutrients</i>		
Total nitrogen	21	21
Total phosphate	0.15	0.15
<i>Pesticides</i>	0.001	0.001
<i>Others</i>		
Phenolic material	0.001	0.001
Grease and oil	0.5	0.5

^a Agricultural waste water only.

Export.....	As per applicable contract and/or agreement	As per applicable contract and/or agreement	None	None visible	400 ppm ¹	5 ppm	6.5-8.5	Coliform mpn 5,000 >20% time; fecal coliform mpn 200 median	Plankton 1 ppm, filtrate 1 ppb	Total nitrogen 3.0 ppm PO ₄ -0.5 ppm	No ³ bloom	100	*	As per applicable contract
Scenic enjoyment			None							Total nitrogen 3.0 ppm, PO ₄ -0.5 ppm	No ³ bloom			

* Means that numbers are to be added.

¹ The objectives indicated above shall not apply to areas subject to salinity intrusion from the bay nor to waterways within the delta where the inchannel quality is a subject of current negotiations.

² The standard for "Total Nitrogen" is intended to serve as a measure of the potential for algal growth and as a control on the development of an algal bloom (see note 3). The dry weight of algae divided by 13.3 gives the approximate quantity of nitrogen which has been incorporated into the living cell material. The assumption (supported by studies) is made that 50-60 ppm of algae on a dry weight basis will produce a green color in water. The number used, 3 ppm (N—in all

its forms), appears to be considerably on the safe side since this concentration creates a maximum potential growth of about only 40 ppm assuming that all the other growth factors are present and assuming further that the conversion of nitrogen into cell material is 100% efficient, which it decidedly is not. This objective is to be applied to water having a temperature of 60° F or more. Higher concentrations will be set for lower temperatures when information is available.

³ An algal bloom is defined as that quantity of growth which produces an undesirable effect. The purpose of the nitrogen objective is to prevent an algal bloom. Further study may well show that the nitrogen objective specified above should be modified either up or down.

APPENDIX H

STATE OF CALIFORNIA REGIONAL WATER POLLUTION CONTROL BOARD SAN FRANCISCO BAY REGION

RESOLUTION No. 535

Prescribing requirements as to the nature of waste discharge by Department of the Interior, Bureau of Reclamation from proposed San Luis interceptor drain discharging into tidal waters of the state at Pittsburg or Port Chicago, Contra Costa County.

- I. WHEREAS, The Department of the Interior, Bureau of Reclamation, hereinafter referred to as the discharger, has, in a letter dated November 19, 1963, requested "any discharge recommendations which the San Francisco Bay Regional Water Pollution Control Board desires to make for the San Luis interceptor drain discharging at Pittsburg or Port Chicago"; and
- II. WHEREAS, the discharger has also requested corresponding recommendations from the Central Valley Regional Water Pollution Control Board for an alternate discharge point at Antioch Bridge, Contra Costa County; and
- III. WHEREAS, the discharger did, in his letter of November 19, 1963, give information relative to the anticipated volume of waste flow, quality of the waste in terms of total dissolved solids and location of the proposed drains and discharge points; and
- IV. WHEREAS, this regional board has received and considered copies of the following correspondence addressed to the Central Valley Regional Water Pollution Control Board in response to that board's request for comments and suggestions for the formulation of waste discharge requirements for the three alternate discharge points:
 - A. Letter from Department of the Interior, Fish and Wildlife Service, dated November 19, 1963;
 - B. Letter from Department of Health, Education and Welfare, Public Health Service, dated November 20, 1963;
 - C. Letter from Contra Costa County Health Department, dated November 29, 1963;
 - D. Memorandum from State Department of Fish and Game, dated December 4, 1963;
 - E. Letter from W. J. O'Connell and Associates, dated December 3, 1963;
 - F. Memorandum from State Department of Water Resources, dated December 24, 1963; and

- V. WHEREAS, this regional board received reports relative to the proposed discharges from its chairman and its executive officer at its regular meeting on December 19, 1963; and
- VI. WHEREAS, a committee of the whole of this regional board met with a committee of the Central Valley Regional Water Pollution Control Board on January 9, 1964, and received further reports relative to this matter from the staffs of the boards and from other interested parties present; now
- VII. *Therefore be it resolved*, that this regional board finds that there is serious doubt about the effects that the proposed waste discharges would have upon the beneficial uses of the receiving waters within the San Francisco Bay Region which are now being protected or which will be protected in the future by this Regional Board;
- VIII. *Be it further resolved*, that pursuant to Sections 13054 and 13054.3, California Water Code, this regional board prohibits the proposed waste discharges in the San Francisco Bay region until the discharger has submitted evidence and assurances satisfactory to this board that the proposed discharges will not adversely and unreasonably affect the receiving waters for any of the beneficial uses which are now being protected or which will be protected by this board;
- IX. *Be it further resolved*, that the staff of the board is directed to prepare recommendations relative to the beneficial water uses to be protected and the receiving water conditions needed to protect said uses; to present these recommendations to the board at the earliest practicable date, and to present progress reports to the board at each regular meeting until said recommendations are finalized.

GRANT BURTON
Chairman

February 20, 1964

I, John B. Harrison, hereby certify the foregoing is a true and correct copy of Resolution No. 535, as adopted by the Regional Water Pollution Control Board of Region No. 2, at its regular meeting on February 20, 1964.

JOHN B. HARRISON
Executive Officer
Regional Water Pollution
Control Board No. 2

APPENDIX I
RESOLUTION
WASTE DISCHARGE REQUIREMENTS

San Luis Interceptor Drain
Antioch Bridge Area

Contra Costa County

Resolution No. 64-25

Adopted: 2/20/64

WHEREAS, the United States Department of the Interior, Bureau of Reclamation (hereinafter referred to as "USBR" has requested discharge recommendations from the Central Valley Regional Water Pollution Control Board (hereinafter called the "Board") for an agricultural drain to empty into the San Joaquin River in the vicinity of Antioch Bridge; and,

WHEREAS, corresponding recommendations have been requested of the San Francisco Bay Regional Water Pollution Control Board for alternate discharge points at Pittsburg or Port Chicago; and,

WHEREAS, the USBR has described drainage flows as follows:

"We expect ultimately that this drain will discharge 240,000 acre feet of water annually at a maximum rate of 400 cfs. During the first 10 years, flows of 10,000 acre feet annually are expected, increasing uniformly from the 10th to the 25th year. The quality of flows in the interceptor drain is expected to be 7,000 parts per million total dissolved solids initially and 3,000 parts per million total dissolved solids ultimately. These flows would originate primarily in the agricultural areas of the San Luis Unit service area, but part of them would originate on adjacent agricultural areas in Tulare Lake Basin and another part on the agricultural areas between San Luis Unit and the Delta."

WHEREAS, potential waste materials include mineral salts, pesticides, and plant nutrient materials; and,

WHEREAS, various agencies have informed this office that such materials could, in sufficient quantity, and depending upon receiving water conditions, cause undesirable changes in the water quality of this river reach; and

WHEREAS, committees from the Board and the San Francisco Bay Regional Water Pollution Control Board met on 9 January 1964, to review the several facets of the drainage discharge; and,

WHEREAS, the waters of the San Joaquin River, in the reach from Antioch Point upstream to Lights 23 and 24, are used for municipal and

domestic water, irrigation, industrial process and cooling water supply, recreation, navigation, for the support of fish and wildlife resources, and for waste disposal; and,

WHEREAS, this reach of the San Joaquin River is surrounded by expanding industrial and residential communities, and all existing uses of these waters are being developed to the maximum extent; and,

WHEREAS, these waters support a resident game fish population; and the entire run of Central Valley salmon, steelhead, striped bass, and other species must pass through this area in their migrations; and,

WHEREAS, the net outflow of San Joaquin River water through this area varies from a maximum during the winter and spring when storm run-off is high and consumptive use is low, to a negative or upstream flow when consumptive use is high and stream flow is low; and,

WHEREAS, salinity of these waters increases above domestic and industrial tolerances at times of low flow due to sea water intrusion; whereas the high net outflow required to repel sea water provides considerable dilution for waste waters into this reach; and,

WHEREAS, salinity of the San Joaquin River waters in this reach, during the normal low outflow period, is governed by releases of water from upstream control projects; and is further related to downstream diversions; and,

WHEREAS, "Conditions to be Maintained" in this reach are established in Resolution No. 64-24, adopted by the Board on 20 February 1964; and,

WHEREAS, it is the intent of the Central Valley Regional Water Pollution Control Board to protect the quality of the waters of the San Joaquin River for the existing beneficial uses; and,

WHEREAS, the Board finds that the limited data provided to date do not:

- A. Adequately define the nature of the discharge;
- B. Adequately depict the impact on receiving waters; and,
- C. Do not demonstrate the ability or intent of USBR to regulate or treat such wastes such that desired receiving water quality is maintained; therefore be it

RESOLVED, that pursuant to Section 13054.3 of Division 7, California Water Code, the discharge of San Luis Interceptor Drain wastes is prohibited in the Antioch or Antioch Bridge Area of the San Joaquin River; and be it further

RESOLVED, that such prohibition may be rescinded by the Board upon a showing by USBR that discharge quantities and concentrations are controllable, through treatment and regulation (such as continuing studies may indicate) such that reasonable assurance and evidence is

given that provisions of the Board's Resolution No. 64-24 (Conditions to be Maintained in San Joaquin River) will not be exceeded as a result of this discharge.

/s/ DR. A. FRANK BREWER
Chairman

(SEAL)

ATTEST

/s/ JOSEPH S. GORLINSKI
Executive Officer

Revised 2/20/64

APPENDIX J

CALIFORNIA LEGISLATURE—1965 REGULAR (GENERAL) SESSION

ASSEMBLY BILL

No. 2506

Introduced by Assemblymen Garrigus and Williamson

April 15, 1965

REFERRED TO COMMITTEE ON WATER

An act to amend Section 8501 of, and to add Chapter 6.5 (commencing with Section 8900) to Part 4 of Division 5 of the Water Code, relating to the San Joaquin-San Luis Waste Way.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 8501 of the Water Code is amended
- 2 to read:
- 3 8501. The boundaries of the district are set forth and de-
- 4 scribed in Chapter 170, Statutes and Amendments to the
- 5 Codes, California, of 1913, and the description is hereby in-
- 6 corporated herein by reference as there set out, *except that*

LEGISLATIVE COUNSEL'S DIGEST

AB 2506, as introduced, Garrigus (Water). Sacramento-San Joaquin Drainage District.

Amends Sec. 8501, adds Ch. 6.5 (commencing with Sec. 8900), Pt. 4, Div. 5, Wat.C.

Modifies the description of the Sacramento-San Joaquin Drainage District.

Authorizes Reclamation Board, in name of district, to contract with Department of Water Resources under California Water Resources Development Bond Act, after an election so authorizing, re construction, operation and maintenance of any drainage facilities authorized to be constructed under bond act. Also authorizes board to contract with United States in connection with the construction and operation of drainage facilities for a designated area. Provides that the district shall have the powers, rights, and privileges possessed by irrigation districts in order to carry out these powers.

Authorizes the establishment of assessment zones and subzones in district after an election for purpose of levying and collecting assessments on land and improvements found by board to be specially benefited by any activity of board, and prescribes procedure re establishment thereof, levying of assessments therein, and dissolution thereof.

1 *the boundaries of the district are extended to include that area*
2 *within the boundaries designated on the map of the proposed*
3 *district set forth on the page following page xi of Appendix A*
4 *to Bulletin No. 127 of the Department of Water Resources,*
5 *Preliminary Edition, January, 1965.*

6 SEC. 2. Chapter 6.5 (commencing with Section 8900) is
7 added to Part 4 of Division 5 of said code, to read:

8

9

CHAPTER 6.5. ASSESSMENT ZONES

10

11

Article 1. Drainage Facilities

12

13

14 8900. The board may, in the name of the drainage district,
15 contract with the department under the California Water Re-
16 sources Development Bond Act (Chapter 8 (commencing with
17 Section 12930), Part 6, Division 6, of this code) in connection
18 with the construction, operation, and maintenance of any
19 drainage facilities, including facilities for drainage of return
20 flow, authorized to be constructed under Section 12934(d)(4)
21 of said bond act, and may also contract with the United States
22 in connection with the construction, operation, and mainte-
23 nance of any drainage facilities for the area lying southerly
24 of a line joining the southeast corner of section 16, township
25 2 south, range 5 east and the northeast corner of section 24,
26 township 2 north, range 6 east. Such contracts shall include
27 provisions limiting the payment of the costs of operation and
28 maintenance of such facilities, and the repayment of the capi-
29 tal costs of such facilities, to payment from assessments levied
30 within zones or subzones created pursuant to this chapter.

31 Prior to entering into such a contract or contracts, the board
32 shall establish the area which is proposed to be included in
33 zones or subzones for such purposes and shall call and hold
34 an election in that part of the drainage district to submit to
35 the owners of tracts of land therein the proposition of whether
36 such contract or contracts should be executed and the proposed
37 zones or subzones established.

38 The election shall be called and conducted and results de-
39 termined, insofar as practicable, in the same manner as a bond
40 election pursuant to Chapter 5 (commencing with Section
41 9330), Part 5 of this division.

42 If a majority of votes cast at such election are in favor of
43 the proposition the board may proceed with the negotiation of
44 such contract or contracts and may proceed with the estab-
45 lishment of the proposed zones or subzones in the manner pro-
46 vided in this chapter.

47 8901. To carry out Section 8900, the district has all powers,
48 rights, and privileges possessed by irrigation districts and
49 may exercise these powers, rights, and privileges in the same
50 manner as irrigation districts as provided in the Irrigation
51 District Federal Cooperation Law (commencing with Section
23175).

Article 2. Establishment of Zones

8902. The board may, pursuant to this chapter, establish zones and subzones within the drainage district for the purpose of levying and collecting assessments upon land therein found by the board to be specially benefited by any activity within the jurisdiction of the board under the provisions of Section 8900 or which contributes to the condition for which the activity is being undertaken.

As used in this chapter, "land" includes improvements, and "activity" includes any construction, operation, maintenance or other work which the board is authorized to undertake pursuant to Section 8900 and any payments required under any contract with the department thereunder.

As used in this chapter "zone benefited" or "benefit" includes but is not limited to, land which contributes to the condition for which the activity is being undertaken.

8903. Whenever the board proposes to establish a zone or zones, it shall prepare a description of the proposed boundaries together with a map thereof for each zone to be formed. For the purpose of preparing these boundaries and this map, the board shall make such investigations as may be necessary and may utilize any and all books, maps, or other relevant records, whether or not on file in the offices of the board or department or any other office or agency of the state. All officers or agencies of the state shall render whatever assistance may be required to facilitate the work of the board pursuant to the provisions of this chapter.

8904. Any zone may be divided into subzones when it is determined by the investigation that the benefit to the land in the area is not uniform throughout the zone.

8905. If a zone is divided into subzones, the subzones shall be given a numerical designation starting with Subzone 1 which shall be the subzone which receives the greatest proportional benefit. This benefit shall be expressed as 100 percent and the benefits received by the other subzones shall be expressed in terms of relatively smaller percentages as such benefits compare with those received by Subzone 1. The map of the proposed boundaries of the zone shall also show the boundaries of the subzones, if any, therein and the percentages of benefits to each such subzone. The amount to be collected from each subzone of a zone shall be determined by the following formula: the assessed valuation of the land within the subzone, multiplied by the percentage of benefit for that subzone, multiplied by the total amount to be collected in the zone; divided by the sum of the various products obtained by multiplying the assessed valuation of each subzone in the zone by its corresponding percentage of benefit.

8906. Upon completion of the said description and map, the board shall schedule a hearing to be held either at some convenient place within the proposed boundaries of the zone

1 or at Sacramento, whichever appears to the board to be more
2 convenient for all interested parties.

3 8907. Notice of the hearing shall be given by publication
4 in at least one newspaper of general circulation within the
5 proposed boundaries of the zone for at least once a week for
6 two successive weeks, or if there is no such newspaper pub-
7 lished within the said boundaries then in the county seat of
8 the county or counties in which the zone is located.

9 8908. The notice shall state the time and place of hearing,
10 that the purpose of the hearing is to establish the boundaries
11 of the zone benefited by the proposed activity, and the location
12 of the place or places where the map showing the proposed
13 boundaries as determined by the board may be inspected by
14 any interested person. The notice shall include a description
15 of the zone, which may be brief and in general terms.

16 8909. At the hearing any owner of land within the pro-
17 posed boundaries of the zone or other interested person may
18 offer, and the board shall receive, any relevant evidence or
19 testimony relating to the establishment of the boundaries of
20 the zone, the subzones therein, or the benefits to be received
21 by the proposed activity. Any such owner or interested person
22 may object to the inclusion of land within the zone or any
23 subzone therein or may request the inclusion of any other land
24 within the zone or a change in the boundaries or percentage
25 of benefits of any subzone.

26 8910. Land lying without the exterior boundaries of the
27 proposed zone as shown on the map prepared by the board
28 shall not be included within the zone unless at the hearing the
29 owner thereof consents or the owner is given notice and an
30 opportunity to object to such inclusion and to be heard thereon.

31 8911. When any such additional land is proposed to be
32 included and the owner's consent is not given, the hearing
33 shall be adjourned to a specified time and place.

34 8912. Notice of such adjourned hearing, where additional
35 land is to be included, and the purpose thereof shall be given
36 by publication of notice at least once a week for two successive
37 weeks in a newspaper of general circulation in the county in
38 which the land, or the greater portion of the land, sought to be
39 included is situated, or, in lieu of such publication, by service
40 by registered mail upon the owner of such land as determined
41 by the last equalized assessment roll in accordance with which
42 such land was assessed.

43 8913. Upon the final conclusion of such hearing the board
44 shall establish the boundaries of the zone and of the subzones
45 therein and the percentages of benefits of the respective sub-
46 zones, in such manner that all of the lands benefited by the
47 activity will be included in the zone and that all land within
48 the area will be classified in proportion to the benefits received
49 by it.

8914. Land benefited by more than one activity may be included within as many zones as there are activities by which it is benefited.

8915. The establishment of a zone pursuant to this chapter shall be evidenced by an order or resolution of the board creating such zone. The order or resolution shall describe the boundaries of the zone and of the subzones and the percentage of benefits for each subzone, if any, and each such zone shall be given a name, which may include a number, by which the zone shall be known and designated. Such name shall be as brief as circumstances permit.

8916. The order or resolution determining and establishing the boundaries of a zone shall be filed for record in the office of the county recorder of each county within which any portion of the zone is located. Thereupon the determination and establishment of such zone shall be complete.

Article 3. Dissolution of Zones

8917. The board may dissolve any zone established pursuant to this chapter, after a hearing, if it finds and determines that the land in the zone is no longer specially benefited by the activity for which it was established and that there is no outstanding indebtedness for the payment of which the lands therein are subject to assessment.

Article 4. Modification of Zones

8918. The boundaries of any established zone or subzones therein, the description of the activity for which the zone is established, and the determination of relative benefits within any subzone may be modified by the board.

8919. The board shall conduct such modification proceedings as near as may be in the manner provided in this chapter for the formation of zones, and may make such modification if in its discretion and judgment the best interests of the State and the zones affected will be served thereby.

Article 5. Assessments

8920. The land within each subzone, and the land within each zone, if no subzones are established therein, shall be conclusively presumed to be benefited by the activity in accordance with the assessed valuation of the land and shall be subject to assessment as provided in this article.

8921. Each zone is a district within which assessments are collected according to the value of the land therein, and the provisions of Chapter 8 (commencing with Section 54900), Part 1, Division 2, Title 5 of the Government Code shall be complied with.

1 8922. The board shall, prior to the first day of April of
2 each year, estimate the amount of money necessary for the
3 activity during the ensuing fiscal year and during the current
4 fiscal year where no assessment has been levied or collected for
5 the current fiscal year.

6 8923. Following the first day of April of each year, the
7 board shall hold a hearing at Sacramento on the matter of
8 fixing the estimates and assessments for all zones and subzones.

9 8924. Notice of the hearing shall be given by publication
10 in at least one newspaper of general circulation in each zone
11 affected for at least once a week for two successive weeks, or
12 if there is no such newspaper published within the said bound-
13 aries then in the county seat of the county or counties in which
14 the zone is located.

15 8925. The notice shall set the time and place of the hearing
16 which shall be held not less than 10 days following the com-
17 pletion of publication as to all zones, and shall state that the
18 purpose of the hearing is to confirm or modify or revise the
19 program of activity to be performed in the zones for which
20 estimates have been made pursuant to Section 8920, and to
21 determine the necessity for such activity and the amount of
22 the estimates therefor.

23 8926. At the hearing any owner of land in any zone af-
24 fected, or other interested person, may offer, and the board
25 shall receive, any relevant evidence or testimony concerning
26 the proposed program of activity relating to any such zone, the
27 necessity for such activity, or the estimate of the cost thereof.

28 8927. Upon the final conclusion of such hearing the board
29 shall fix the amount of the estimate for each such zone for all
30 purposes of the assessments provided for in this article.

31 8928. If any zone or subzone lies within more than one
32 county, the board shall divide the amount of the estimate in
33 the proportion of the assessed valuation of the land in the zone
34 or subzone lying in each county. The assessed valuation shall
35 be determined on the basis of the last equalized assessment roll
36 of the respective counties.

37 8929. The board shall certify to the auditor and board of
38 supervisors of each county in which each zone, or part thereof,
39 lies, the amount required, in order to pay the estimate for the
40 ensuing fiscal year or the current fiscal year where no assess-
41 ment has been levied or collected for the current fiscal year,
42 to be levied in each zone, and if the zone is divided into sub-
43 zones, the amount required to be levied for such purposes in
44 each subzone.

45 8930. The board of supervisors of each county in which
46 there lies a zone or any portion thereof shall annually, and at
47 the time of levying county taxes, levy on the land within the
48 county and within the zone, or if subzones are established,
49 within each subzone, and ad valorem assessment sufficient to
50 raise the amount or amounts certified by the board.

1 8931. Each assessment shall be identified by the name and
2 number, if any, of the zone, and by the number of the subzone,
3 if a subzone is involved.

4 8932. The board of supervisors shall determine a rate of
5 assessment sufficient to cover the amount of the estimate for
6 each zone or subzone, making reasonable allowance for antici-
7 pated delinquencies. If a fraction of a cent occurs in a valua-
8 tion of one hundred dollars (\$100), it shall be taken as a full
9 cent. The assessment shall be computed and entered upon the
10 assessment roll by the auditor.

11 8933. Assessments levied pursuant to this article shall be
12 collected at the same time and in the same manner as county
13 taxes. So far as applicable, all provisions of law relating to
14 the equalization, levy, payment, and collection of county taxes
15 shall apply to such assessments and all provisions of law relat-
16 ing to the duties of county officers in relation to county taxes
17 shall apply to such assessments, except as otherwise expressly
18 provided by this chapter, so far as the same are or may be
19 made applicable.

20 8934. All money raised by such assessments shall be ac-
21 counted for separately as to each zone and subzone. All such
22 money shall be transmitted by January 1st and July 1st of
23 each year to the board and shall be deposited by it in the State
24 Treasury to the credit of special zone accounts which shall be
25 established in the Sacramento and San Joaquin Drainage Dis-
26 trict Fund. The money in such accounts shall be available to
27 the board for expenditure for the activity for which the zone
28 was established and from which the money in the account was
29 derived.

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REPORT TO THE
JOINT LEGISLATIVE BUDGET COMMITTEE
STATE OF CALIFORNIA

**FIVE-YEAR
STATE BUILDING PROGRAM**

July 1, 1965–June 30, 1970

Prepared by the
DEPARTMENT OF FINANCE, STATE OF CALIFORNIA
(Pursuant to Senate Resolution No. 15, 1954 First Extraordinary Session)
(Sixth Revised Report)



Published by the
SENATE
OF THE STATE OF CALIFORNIA

GLENN M. ANDERSON
President of the Senate

HUGH M. BURNS
President pro Tempore

JOSEPH A. BEEK
Secretary

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LETTER OF TRANSMITTAL

March 15, 1965

HON. GEORGE MILLER, JR., *Chairman*,
and Members, Joint Legislative Budget Committee
State Capitol, Sacramento

Gentlemen :

Since the end of World War II, California's population has very nearly doubled—from 9.5 million in 1945 to 18.8 million in 1965. More than any other single factor, population growth determines the scope and nature of the state's building program.

This increase, plus projected future increases, combined with the accumulated need to modernize and replace existing older facilities, has required a building program of a magnitude unmatched by any other state. With California's population expected to rise to almost 21.2 million by July of 1969, a continued high level of investment in facilities for education, mental health, and rehabilitation will be necessary to maintain existing standards of service.

Through the use of accumulated reserves, current revenues, and bond proceeds, the state now has modern, efficient facilities for programs in the fields mentioned above. As California's population continues to increase, however, the building investment necessary to adequately meet this growth must be maintained. So that the requirements thus generated can be met in a timely and orderly way, the state has planned its building program within a moving five-year framework which is regularly reevaluated and extended so that future building needs may be properly coordinated, financial requirements studied, and an appropriate balance between obligations and resources maintained.

This report, the Sixth Revision of the Five-year State Building Program, has been prepared in accordance with the principles enumerated above. All projects have been classified into one of two categories:

(1) Minimum basic facilities, including related auxiliary services, needed to provide the capacity to meet the needs generated by forecast population. In the absence of changes in existing law or revision of generally accepted concepts and principles, these projects are deemed to be obligatory. Only through such drastic actions as limiting enrollments at the colleges and the university or reducing the level of care of the mentally ill and mentally retarded could the mandatory classification of these projects be modified. In terms of dollar cost, laboratories, classrooms, ward buildings, and custodial housing constitute the predominant share of projects in this category.

Also included within this grouping is the cost of state assistance for the construction of public junior college facilities. Although the estimated expenditures during 1965-66 for this purpose are reported under Local Assistance in the Governor's Budget, these costs are included in this report because of the close, interdependent relationship among the

junior colleges, the state colleges, and the university in the construction requirements for higher education.

(2) Facilities to provide for the necessary, continued improvement in the capabilities and effectiveness of agencies of the state. In part, these projects will serve to further progress in areas already recognized by the Legislature and in part to permit the extension of some programs into new areas. As a general rule, projects in this grouping are those which will be beneficial on a long-range basis.

Although projects in this category merit inclusion in the program and full consideration, these projects do involve questions of policy which can be resolved only by further study and consideration. Appropriate methods of financing, relative interprogram priorities, the impact on future operational costs, and alternative means of achieving the desired ends are some of the issues yet to be resolved. Such projects are designated by footnote "a" on amounts in the schedules of projects.

The recommendations and conclusions contained in this report are predicated on the following basic assumptions.

1. The population of the state will continue to increase at the rate of approximately 600,000 persons per year.
2. No major change in economic conditions or policies will occur.
3. The policy of maintaining high standards in state institutions and services, consistent with the need for all practicable economies, will be continued.

This report excludes certain capital improvement programs which are distinct from the general five-year state building program and are financed primarily from special sources. These are:

1. State highway program.
2. Parks and recreation acquisition and development program.
3. California water facilities program.
4. The State Fair and Exposition and district fairs which are subject to special financing arrangements.
5. Wildlife conservation program.

Construction and improvement projects estimated to cost less than \$50,000 have also been excluded from programs of the several state agencies. These minor projects are related to ongoing operational programs and should, therefore, be programed on an annual basis and financed entirely from current revenues.

Respectfully submitted,



Director of Finance

POPULATION FORECASTS

California's population is expected to reach 18,815,000 by July 1, 1965, an increase of 45 percent over the 13,004,000 present 10 years earlier. Current forecasts show that the next 10 years will bring an even greater numerical gain. The state's population is projected at 24,909,000 by 1975.

A comparison of the rates of growth of the various age groups with that of the population as a whole is shown in Table 2. The decline in birth rates in evidence since 1957 will result in a growth rate in the younger age group which is less than that of the population as a whole. The number under age 18 is expected to increase from approximately 5,519,000 on July 1, 1960, to 7,500,000 on the corresponding date in 1970 and to 9,201,000 by mid-1980.

The sharp increase in births experienced after World War II is now being reflected in a corresponding increase in the rate of new entrants into the "productive" 18- to 49-year age group. For the next few years, this shift will be experienced predominantly at the younger end of this span, the years during which opportunities for higher education are most in demand. As this population wave progresses more completely into the working ages, the benefits of its contribution to the labor force may be anticipated.

During the remainder of the current decade, the rate of increase in the population 65 years and over is expected to remain below that of the population as a whole. The increasing development of retirement attractions in the state and the "aging" of the population of the nation and of the state will alter these relative rates of increase after 1970. There were 1,368,000 Californians 65 and over in 1960; this number will increase to 1,841,000 in 1970 and to 2,443,000 in 1980.

Underlying the new projections are the usual assumptions of basic stability, the absence of war or large-scale catastrophe and maintenance of the economic growth at rates which have enabled us to adjust to rapid population increase in the past. More specifically, the following assumptions form a basis for the projections.

- (a) The nation's economy will show only minor fluctuations. Growth of the western market should produce a level of economic activity in California capable of sustaining an annual net civilian migration of at least 325,000.
- (b) California's role in the national defense effort and aerospace production will continue to be an important one but a change in its relative importance is occurring. Approximately 325,000 members of the armed forces will serve at California installations or aboard ships stationed in California ports.
- (c) The crude rate of natural increase (the excess of births over deaths) will decline slightly from the substantial levels of the past few years. As in the past, migrants to the state will be responsible for the major share of population growth until about 1975.

POPULATION FORECASTS—Continued

The following tables summarize recent trends in California's population and attempt to show what lies ahead.

Table 1. CALIFORNIA'S POPULATION, 1950-1980

<i>Census:</i>	<i>Total</i>	<i>Civilian</i>
April 1, 1950	10,586,223	10,412,988
April 1, 1960	15,717,204	15,416,889
<i>Estimated and Projected:</i>		
July 1, 1960	15,863,000	15,567,000
July 1, 1961	16,453,000	16,163,000
July 1, 1962	17,044,000	16,737,000
July 1, 1963	17,670,000	17,349,000
July 1, 1964	18,234,000	17,912,000
July 1, 1965	18,815,000	18,492,000
July 1, 1966	19,389,000	19,065,000
July 1, 1970	21,787,000	21,462,000
July 1, 1975	24,909,000	24,584,000
July 1, 1980	28,205,000	27,880,000

Table 2. CALIFORNIA'S TOTAL POPULATION BY BROAD AGE GROUPS, 1960-1980

<i>Year</i>	<i>Age</i>				
	<i>Under 18</i>	<i>18-49</i>	<i>50-64</i>	<i>65+</i>	<i>All ages</i>
July 1, 1960	5,519,000	6,820,000	2,146,000	1,368,000	15,863,000
July 1, 1965	6,624,000	8,047,000	2,543,000	1,601,000	18,815,000
Increase	1,105,000	1,217,000	397,000	233,000	2,952,000
Percent	20.0	17.8	18.5	17.0	18.6
July 1, 1970	7,500,000	9,472,000	2,974,000	1,841,000	21,787,000
Increase	876,000	1,425,000	431,000	240,000	2,972,000
Percent	13.2	17.7	16.9	15.9	15.1
July 1, 1975	8,308,000	10,993,000	3,497,000	2,111,000	24,909,000
Increase	808,000	1,521,000	523,000	270,000	3,122,000
Percent	10.8	16.3	17.6	14.7	14.3
July 1, 1980	9,201,000	12,673,000	3,888,000	2,443,000	28,205,000
Increase	893,000	1,680,000	391,000	332,000	3,296,000
Percent	10.7	15.3	11.2	15.7	13.2
Increase 1960-1980					
Number	3,682,000	5,843,000	1,742,000	1,075,000	12,342,000
Percent	65.7	85.5	81.2	78.6	77.8

Table 3. ESTIMATED COMPONENTS OF CHANGE IN CALIFORNIA'S CIVILIAN POPULATION, 1950-1974

<i>Year (July 1)</i>	<i>Civilian population</i>	<i>Net change</i>	<i>Net migration</i>	<i>Natural increase</i>	<i>Loss to military</i>
1950	10,472,000				
1951	10,754,000	282,000	268,000	149,000	-135,000
1952	11,194,000	440,000	284,000	163,000	-7,000
1953	11,681,000	487,000	307,000	181,000	-1,000
1954	12,177,000	496,000	289,000	195,000	+12,000
1955	12,698,000	521,000	273,000	193,000	+25,000
1956	13,247,000	549,000	364,000	208,000	+7,000
1957	13,848,000	601,000	388,000	221,000	-8,000
1958	14,410,000	562,000	325,000	226,000	+11,000
1959	14,964,000	554,000	329,000	224,000	+1,000
1960	15,567,000	603,000	368,000	231,000	+4,000
1961	16,163,000	596,000	346,000	244,000	+6,000
1962	16,737,000	574,000	354,000	211,000	-20,000
1963	17,349,000	612,000	368,000	235,000	+9,000
1964*	17,912,000	563,000	360,000	232,000	-29,000
1965*	18,492,000	580,000	345,000	235,000	
1966*	19,065,000	573,000	333,000	240,000	
1967*	19,652,000	587,000	333,000	254,000	

POPULATION FORECASTS—Continued

Table 3. ESTIMATED COMPONENTS OF CHANGE IN CALIFORNIA'S CIVILIAN
POPULATION, 1950-1974—Continued

<i>Year (July 1)</i>	<i>Civilian population</i>	<i>Net change</i>	<i>Net migration</i>	<i>Natural increase</i>	<i>Loss to military</i>
1968*-----	20,248,000	596,000	332,000	264,000	-----
1969*-----	20,852,000	604,000	331,000	273,000	-----
1970*-----	21,462,000	610,000	330,000	280,000	-----
1971*-----	22,074,000	612,000	325,000	287,000	-----
1972*-----	22,693,000	619,000	325,000	294,000	-----
1973*-----	23,317,000	624,000	325,000	299,000	-----
1974*-----	23,947,000	630,000	325,000	305,000	-----
1975*-----	24,584,000	637,000	325,000	312,000	-----

----- Tentative and subject to revision in the light of work now in progress.
SOURCE: Department of Finance, Financial and Population Research Section.

SCHEDULE 1

SUMMARY OF FORECAST POPULATION GROWTH AFFECTING CAPITAL OUTLAY NEEDS FOR EDUCATION AND INSTITUTIONS
FOR CARE, TREATMENT, AND CUSTODY

	<i>Estimated</i>					<i>Projected</i>				
	1964-65	1965-66	1966-67	1967-68	1968-69	1969-70				
EDUCATION										
University of California ^a (fall enrollment)	82,252	85,371	86,842	89,631	91,999	95,025				
California College of Medicine	495	495	495	495	495	495				
State colleges ^b	122,580	117,429	127,050	135,330	141,850	147,910				
Maritime Academy (fall enrollment) ^b	236	236	250	250	250	250				
Total enrollment, higher education	175,164	203,125	214,288	225,307	234,150	243,281				
Special schools (average enrollment)	1,241	1,253	1,253	1,253	1,253	1,338				
MENTAL HYGIENE										
Hospital patients (June 30)										
Mentally ill	29,545	27,470	27,580	27,400	27,900	27,000				
Mentally retarded	14,165	13,969	13,960	13,960	13,673	14,817				
Neuropsychiatric institutes	238	251	254	254	314	453				
CORRECTIONS										
Adult institution population	29,630	28,460	29,623	29,919	31,390	32,540				
Youth school population	5,262	5,377	6,720	7,620	7,919	8,277				
VETERANS AFFAIRS										
Veterans' home—residence population (June 30)	1,730	1,750	1,750	1,850	1,925	1,975				

^a Includes Hastings College of the Law^b Based on full-time equivalent (15 units) enrollment of regular students, excluding students in physical education and military science.

SCHEDULE 2

SUMMARY OF MAJOR CAPITAL OUTLAY PROJECTS AND RELATED FACILITIES ESSENTIAL TO SATISFY CAPACITY NEEDS FOR THE FIVE-YEAR PERIOD JULY 1, 1965 TO JUNE 30, 1970

(State Funds)

(From current revenues and borrowings)

<i>Programs Directly Related to Population</i>	1965-66	1966-67	1967-68	1968-69	1969-70	Totals
EDUCATION						
University of California ^a	\$55,025,000	\$86,349,000	\$70,457,925	\$40,499,922	\$34,137,700	\$286,499,547
State colleges	50,029,050	63,534,830	41,880,800	57,045,450	31,770,800	244,275,930
Maritime Academy		190,000				190,000
Junior college construction assistance	10,000,000					10,000,000 ^b
MENTAL HYGIENE						
Hospitals	4,474,630	36,175,888	27,146,500	7,379,100	14,714,500	89,890,618
CORRECTIONS						
Adult facilities	1,562,000	23,838,250	24,368,300	18,783,000	19,797,000	88,348,550
Youth Authority schools	3,938,095	31,791,751	3,764,380	7,058,566	7,112,480	53,685,472
VETERANS' AFFAIRS						
The Veterans' Home		243,000			198,600	441,600
OTHER PROGRAMS						
Department of General Services	34,383,160	542,300	950,000	30,000		35,905,460
Department of Agriculture	226,000	210,000	100,000		335,000	871,000
Department of Employment	470,000	15,000	630,000	20,000	350,000	1,485,000
Department of Public Health	985,000	5,675,000				6,660,000
Department of Calif. Highway Patrol	901,780	555,000	1,379,000	525,000	690,000	4,050,780
Department of Motor Vehicles	3,159,880	2,310,000	1,453,000	720,000	1,121,000	8,765,880
Department of Prof. and Voc. Standards	177,840					177,840
Department of Conservation	3,019,625	3,478,146	3,464,872	2,162,716	2,323,927	14,449,286
Project Planning	750,000	750,000	750,000	750,000	750,000	3,750,000
Grand totals	\$169,122,000	\$255,723,165	\$176,326,977	\$134,973,754	\$113,301,007	\$849,446,963

^a Includes Hastings College of the Law.

^b Subject to formulation and approval of a plan of state participation and method of determining priorities by the Legislature.

SCHEDULE 3

**SUMMARY OF MAJOR CAPITAL OUTLAY PROJECTS REQUIRING FURTHER CONSIDERATION AS TO RELATIVE URGENCY, TIMING,
OR METHOD OF FINANCING FOR FIVE-YEAR PERIOD JULY 1, 1965 TO JUNE 30, 1970**

<i>Programs</i>	<i>1965-66</i>	<i>1966-67</i>	<i>1967-68</i>	<i>1968-69</i>	<i>1969-70</i>	<i>Totals</i>
EDUCATION						
University of California ^a	—	\$5,124,000	\$22,082,700	\$17,946,300	\$24,587,300	\$89,740,300
California College of Medicine	—	150,000	5,000,000	1,600,000	—	6,650,000
State colleges	—	5,078,400	8,233,500	12,447,500	17,496,500	43,085,900
Maritime Academy	—	—	100,000	1,000,000	325,000	1,425,000
Department of Education	—	334,067	1,003,276	313,000	507,000	2,176,243
MENTAL HYGIENE						
Hospitals	—	7,450,000	5,028,400	6,039,500	6,030,000	25,747,900
CORRECTIONS						
Adult facilities	—	2,853,000	342,200	4,352,500	942,750	8,490,450
Youth Authority schools	—	—	—	235,000	70,400	305,400
VETERANS' AFFAIRS						
The Veterans' Home	—	724,300	314,825	136,600	—	1,175,725
OTHER PROGRAMS						
Department of General Services	—	6,913,109	1,950,000	23,285,000	3,950,000	36,098,109
Department of Agriculture	—	—	—	160,000	—	160,000
Department of Conservation	—	—	80,000	1,974,182	1,974,182	4,028,364
Grand totals	—	<u>\$28,624,776</u>	<u>\$45,494,901</u>	<u>\$69,031,582</u>	<u>\$56,513,132</u>	<u>\$199,664,391</u>

^a Includes Hastings College of the Law.

HIGHER EDUCATION

During December, 1964 the Coordinating Council for Higher Education¹ published the study "California's Needs for Additional Centers of Public Higher Education." This study made the following recommendations:

(1) The council advise the Legislature that it should authorize in 1965 a California state college in Kern County.

(2) The council on November 24, 1964, adopted the following policy:

Where the council finds there is a definite ultimate need for a campus, acquisition of sites in advance of authorization to start a campus may be justified in carefully restricted circumstances, as found by the council, such as where land may not subsequently be available without excessive cost or where there may be special opportunity to obtain the land.

In conjunction with the above stated policy, current data show that:

(a) A "definite ultimate need" exists for new California state colleges to serve students in the following areas, listed alphabetically: Contra Costa County, the San Mateo County-Santa Clara County area, and in Ventura County in a location to serve students from both the cities of Ventura and Oxnard as well as from cities in northern Los Angeles County. It appears at this time that authorization for the establishment of one of these three campuses may be recommended by the Coordinating Council to the Legislature prior to 1969 and the second and third campuses in 1969 or thereafter.

(b) A "definite ultimate need" exists for a university campus in the Los Angeles area (the counties of Los Angeles, Ventura, San Bernardino, Riverside and Orange) and for one in the San Francisco Bay metropolitan area (the counties of San Francisco, Marin, Solano, Sonoma, Napa, Contra Costa, Alameda, Santa Clara and San Mateo). It appears at this time authorization for the establishment of one of these campuses may be recommended by the Coordinating Council to the Legislature in 1969 and recommendation for the second campus approximately in 1975.

(3) The council further advise the Legislature that sites for institutions of public higher education should be acquired in advance of legislative authorization of the institutions through use of the following procedures:

(a) Advance acquisition of sites for a state college located in Contra Costa County, for a state college located to serve students from San Mateo and Santa Clara Counties, and for a state college located to serve students from Ventura County and Los Angeles County will be justified in each instance where the Trustees of the California State Colleges present evidence, and the council finds that "carefully restricted circumstances" warrant it, "such as where land may not subsequently be available without excessive cost or

¹ Approved by the council on November 24, 1964.

where there may be special opportunity to obtain the land," and upon such findings the council will recommend appropriations for the acquisition of such sites.

(b) Advance acquisition of sites for a University of California campus in either the Los Angeles or San Francisco Bay area would be justified when the Regents of the University present evidence and the council finds that "carefully restricted circumstances" warrant it, "such as where land may not subsequently be available without excessive cost or where there may be special opportunity to obtain the land," and upon such findings the council will recommend appropriations for the acquisition of such sites.

(4) And the council further advise the Legislature not later than 1969 and each five years thereafter until all needs have been met, it will conduct a statewide survey of the then existing needs for additional centers of public higher education and the need for advanced acquisition of sites.

(5) And the council further advise the Legislature to expedite the inclusion of all areas of the state within junior college districts.

(6) In the light of the request of the University of California, the council indicate that it will consider a staff report on the need for specialized programs such as graduate agriculture and graduate health science programs in the San Joaquin Valley at its December 15 [1964] meeting or at such subsequent meeting as the data may be available.

No provision has been made in this five-year program for either a new state college in Kern County or for the advance acquisition of sites because at this time the Legislature has not had an opportunity to establish such a college or express itself on the advance acquisition of future college sites.

Auxiliary Enterprise Facilities:

The Master Plan For Higher Education made recommendations in relation to noninstructional costs; "Although the survey team endorses tuition-free education, nevertheless, it believes that students should assume greater responsibility for financing their education by paying fees sufficient to cover the operating costs of services not directly related to instruction. Such services would include laboratory fees, health, intercollegiate athletics, and student activities. Moreover, the team believes that ancillary services such as housing, feeding, and parking should be entirely self-supporting."

As a result of these recommendations the staff of the Coordinating Council presented a report to the council entitled Financing of Additional Auxiliary Enterprise Facilities on state college and university campuses. These recommendations were accepted by the Coordinating Council in September 1963 and this program has been prepared considering the recommendations of the Coordinating Council. While the actions reflected in this five-year building program do not match in exact degree all the recommendations of the Coordinating Council, we believe it represents the substance of the recommendations and is another step forward in achieving the goals of the Master Plan. The recommendations are as follows:

Auxiliary Enterprise Facilities—(Continued)

Residence Halls, Dining Facilities, and Student Unions

It is recommended that:

1. "The Trustees of the California State Colleges and the Regents of the University of California be commended upon and supported in their plans to finance residence halls and student unions on a full self-supporting basis and to further reduce the state subsidy for construction of residential dining facilities."
2. "The Trustees of the California State Colleges and the Regents of the University of California adopt as a goal the financing of all future dining facilities on a fully self-supporting basis as soon as possible and, in any event, earlier than the conclusion of the 1964-69 building program."

This building program makes no provision for any of these facilities with the exception of dining facilities. It is the policy of the Department of Finance in the preparation of this five-year building program and the 1965-66 Governor's Budget to provide an initial complement of dining facilities on new campuses. The profits from such facilities would thereafter be devoted to any replacement or expansion necessitated by expanding student enrollments. The initial allowance of dining or cafeteria facilities could be utilized in conjunction with a residence hall program or a dining commons; however, the allowance once made for either of these purposes will not be repeated.

Parking Facilities

It is recommended that:

"The authority for all parking operations and financing thereof be assigned to the Trustees of the California State Colleges, that the assignment include the responsibility to finance all future parking construction and operation expenditures out of parking fee receipts, and that the assignment be accomplished in an orderly manner in keeping with the following considerations:

- A. Parking facilities be excluded from any future general state obligation bond issue for the financing of higher education facilities.
- B. A uniform definition of types of operating expense be charged to all parking operations to be developed.
- C. Any net loss in parking fee reimbursements to the college support budget be offset by equivalent increases in the General Fund support appropriation."

At the present time the operating portion of the parking program of the University of California is carried on entirely from nonstate funds. The state does, however, provide initial increments of parking facilities on new campuses of the university. Subsequent facilities for parking are then constructed from receipts from the operation of the pro-

Auxiliary Enterprise Facilities—(Continued)

gram. By way of comparison, the parking program of the California state colleges has been supported from bond proceeds, however, offsetting receipts received in their support appropriations from the charging of parking fees offset this expenditure. It has been the practice to estimate the receipts from parking within the California state college system and then subtract the operating costs of the year under consideration and budget the balance of this money from bond funds for necessary parking programs. The Department of Finance is essentially in agreement with the Coordinating Council in relation to the operation of parking programs and would support legislation in the 1965 General Session which would place the parking program of the state colleges on the same basis as State College Housing Facilities, thereby providing the trustees with the latitude necessary to operate their parking program and at the same time providing information to the Legislature by the inclusion of the program within the Governor's Budget. No parking program for the State College Trustees has been shown in this five-year building program because of the lack of a fund source pending legislative determination of the program's status.

Student Health Buildings and Intercollegiate Athletic Facilities

It is recommended that:

"Both segments now explore the feasibility of including amortization and interest payments for the construction of health service buildings and facilities used primarily for intercollegiate athletic purposes within those costs to be covered by the incidental and materials fee income and that such deliberations be completed in time for any positive decision to be reflected in any future General Fund obligation bond issue by excluding such physical facilities."

All student health facilities where specific construction is required have been excluded from this program, and only instructional athletic facilities have been provided.

Revenue Bond Financing Prospects

It is recommended: "That the Trustees of the California State Colleges and the Regents of the University of California make definite measures to attract private investor purchases of revenue bonds for all types of auxiliary enterprise facilities."

Higher Education Facilities Act of 1963:

As a result of legislation enacted by the 88th Congress, federal funds will be available to all three segments of higher education in California for support of construction of facilities housing instruction and research in the academic disciplines of natural or physical sciences, mathematics, modern foreign languages and engineering, and for libraries. A total of \$1,195,000,000 for grants and loans has been provided by the act and appropriated by Congress.

Higher Education Facilities Act of 1963—(Continued)

The legislation, enacted as Public Law 88-204, consists of four titles which provide for:

- I. \$690 million for grants to undergraduate institutions and public community colleges and technical schools;
- II. a five-year program with \$145 million authorized for grants to establish and improve institutions devoted to graduate instruction;
- III. an authorization of \$360 million for a five-year program of loans for construction of academic facilities; and
- IV. general provisions outlining the methods of administration of the act.

While the Title I grant program is authorized for five years, the appropriation authorization extends for three years at \$230 million per year. The allotment of these funds among the several states is determined as follows: Twenty-two percent of the appropriation is based upon a state's relative per capita income and number of high school graduates; this allotment may be used only for public community colleges and public technical institutes. The remaining 78 percent will be allotted one-half on the basis of the relative number of students enrolled in grades 9 through 12 in the state and one-half on the basis of the relative number of students enrolled in institutions of higher education in the state. By such a formula it has been determined by the Federal Office of Education that California's share of this \$230 million for fiscal year 1964-65 would amount to \$3,770,269 for public community colleges and public technical institutes and \$19,877,204 for other undergraduate institutions, a total of \$23,647,473.

To be eligible to receive grants under this title each state must designate a commission to develop and administer a plan for distribution of federal moneys within that state. The Coordinating Council for Higher Education has been named by Chapter 94, Statutes of 1964, as the body to carry out this function for California. Under the requirements of the act, the council has the responsibility for developing a plan for California's participation in this grant program including recommendation of:

1. relative priorities of eligible projects for construction of academic facilities submitted by institutions of higher education in the state and;
2. the federal share of the development cost of each such project under basic criteria set forth by the Commissioner of Education.

The council has the further responsibility of allocating funds granted to California under the auspices of this act once the plan has been approved. The cost of administration is to be paid out of funds provided for by the act. A total of \$3 million per year is authorized for this purpose, of which \$120,000 has been allocated to California.

The state plan referred to above was developed by council staff during 1964, approved by the council on November 24, 1964 and received federal approval December 28, 1964. Applications under

Higher Education Facilities Act of 1963—(Continued)

Title I are being accumulated by the Council and rated with the first statewide priority list for the four-year institutions to be issued at the end of March, 1965 and the public community colleges during April of 1965.

The grant program for graduate institutions authorizes \$145 million over three years. Applications for moneys under this program will be considered by the Commissioner of Education with the assistance of an advisory committee created specifically to consult on the administration of the program.

Under the loan program for construction of academic facilities, \$120 million per year for three years has been authorized with not more than 12.5 percent of the total loan appropriation going to any one state in any given fiscal year. Federal loan participation may not amount to more than 75 percent of a project.

At the present time there are no plans to participate in the Federal Loan Program under Title III.

Health Professions Educational Assistance Act of 1963:

This legislation, Public Law 88-129, provides for a three-year program of federal grants to assist in constructing facilities on a nationwide basis for the training of physicians, pharmacists, optometrists, podiatrists, nurses or public health personnel. Also provided are federal grants to assist in the replacement or rehabilitation of such facilities.

Subject to later appropriation of funds, this act authorized, over a three-year period:

1. \$35 million for construction of new dental facilities;
2. \$105 million for construction of new facilities for the rest of the professions indicated above; and
3. \$35 million for use in rehabilitation of existing facilities.

The Surgeon General is authorized under the act to review requests for grants with the assistance of an advisory council set up specifically by the act for this purpose. Where grants are sought for projects which will increase the training capacity of the institution, up to two-thirds of the cost may be borne by federal funds. If there is to be no resultant increase in capacity the matching is reduced to 50 percent federal grant participation. An exception to these degrees of federal participation exists for facilities to be constructed for training public health personnel. Federal grants for such facilities may be as much as 75 percent of project cost.

By February, 1965, the University had received grants of \$9,000,000 under this program. Therefore, with a general indication of the size of grants which may be forthcoming, federal participation has been applied to potential recipients in the five-year program. For eligible

Health Professions Educational Assistance Act of 1963—(Continued)

projects it is assumed that the federal grant will average 60 percent of project cost. This funding ratio has been arrived at in light of the fact that while it is presently impossible to predict the precise amount of the federal appropriation that will be allotted to California, experience to date provides a relatively valid base upon which to estimate. The assumed funding split reflects some eligible projects receiving two-thirds federal support, and others receiving proportionately less or no federal support. There has been no reflection of possible federal grants for state college or junior college projects under PL 88-129 due to a lack of eligible projects in the building programs of those segments at this time.

UNIVERSITY OF CALIFORNIA

The University of California is a statewide educational institution responsible for university level instruction including primary responsibility for state-supported academic research and instruction relating to the professions. The existing facilities of the university consist of five general campuses located at Berkeley, Davis, Los Angeles, Riverside and Santa Barbara; two medical centers located at San Francisco and Los Angeles; a graduate school of science and engineering at San Diego; two research centers located at Mount Hamilton (astronomy) and San Diego (oceanography); 10 agricultural field stations aggregating 10,836 acres and 3 departmental experimental areas containing 13,270 acres, and farm advisors' offices in 52 counties.

New facilities under construction consist of three general campuses located at San Diego, Santa Cruz, and Irvine (Orange County); and one medical center to be located at San Diego.

Two campuses of the university have been designated by the regents as having primary responsibility for carrying on programs of instruction and research in the various fields of agriculture; they are Davis in northern California and Riverside in southern California. Hastings College of the Law in San Francisco and the California College of Medicine in Los Angeles are also affiliated with the university.

SUMMARY OF PROPOSED PROJECTS

A total of \$649,648,075 is included in this five-year building program for major construction projects for the University of California composed of \$136,239,847 from bond proceeds or the General Fund and \$293,408,228 from other funds. Of the state funds, a total of \$69,740,300 represents projects which are not yet resolved as to timing and/or method of financing. The types of projects included in the five-year program are summarized in Table III below together with the source of funding:

TABLE III. UNIVERSITY OF CALIFORNIA—TABULATION OF PROJECTS BY CATEGORY

	<i>State Funds</i>		<i>Nonstate funds^b</i>	<i>Total expenditures</i>	<i>Percentage</i>
	<i>Proposed</i>	<i>Policy unresolved^a</i>			
Instruction and departmental research	\$212,682,100	\$49,743,300	\$95,145,950	\$357,571,350	55.0
Land acquisition	3,398,100	1,721,000	—	5,119,100	0.8
Administration and service	18,133,000	6,244,700	52,298,200	76,675,900	11.8
Organized research	11,736,300	8,839,500	37,005,078	55,580,878	8.6
Utilities and site development	35,117,247	3,191,800	1,961,400	40,270,447	6.2
Residence halls and dining commons	—	—	105,425,700	105,425,700	16.2
Planning	5,432,800	—	3,571,900	9,004,700	1.4
Totals	\$289,499,547	\$69,740,300	\$293,408,228	\$649,648,075	100

^a Projects requiring further policy considerations as to relative urgency, timing or method of financing.

^b To be financed from Federal or other nonstate funds.

Instruction and Research:

This includes projects of which the majority is for classrooms, laboratories or research facilities for the teaching staff and graduate students.

Projects include \$74 million for physical sciences, \$52 million for the life sciences, \$39 million for the social sciences, and \$34 million for the humanities.

Also included are \$110 million for expansion of the existing medical schools at Los Angeles and San Francisco and for new medical schools at San Diego and Davis. This program will provide for an increase of more than 1,400 students in the medical schools between 1966-67 and 1971-72.

In addition, projects totaling \$27 million for new libraries and additions to existing libraries are provided.

Projects in support of the extension program total \$8 million. These units are either proposed for nonstate funding or are subject to further policy consideration. Also included in the five-year program is \$9.8 million for physical education facilities most of which are also subject to further policy consideration.

Land Acquisition:

Purchases of land will provide the necessary sites for enrollment growth at Santa Barbara to 15,000 students. At San Francisco provision is made for expansion of instruction and research programs and at other campuses for residence halls and administration facilities.

Administration and Service:

This includes administration buildings and service facilities such as student health centers, student activity, maintenance, storage, and parking.

For administration buildings, approximately \$14 million is proposed from state funds. Also proposed is \$3,275,000 of nonstate funds for student health centers. The state currently supplies new university campuses with an initial increment of parking for which funds are budgeted under site development. Later increments of parking facilities are to be built from the operating revenues of the parking program. \$23.8 million is planned for this purpose during the five-year program.

Also included in the program is \$6.7 million for maintenance facilities and corporation yards.

Organized Research:

Included are facilities for research directed toward advancing the understanding of the natural world and the interpretation of human history and of the great creations of human insight and imagination. The five-year program includes facilities for research in the following fields: agriculture, \$8.5 million; medicine, \$12.7 million; the life sciences, \$14.8 million; and the physical sciences, \$18.4 million. Also included are \$1,795,700 in state funds for the development of agricultural field stations.

Utilities and Site Development:

Included are provisions for heating plants, utility lines, erosion protection, and roads. A total of \$10 million or 6.2 percent of the five-year program is required for this purpose.

Residence Halls and Dining Commons:

Residence halls are proposed to provide student housing on the new campuses and on existing campuses where such facilities are lacking. The program is now supported primarily from nonstate sources. State funds are limited to providing an initial increment of dining facilities on a campus either in the form of a central dining commons or in connection with individual residence halls. University planning goals will provide residential capacities for 25 percent of the student enrollments in densely populated areas and up to 50 percent for those campuses located in less densely populated areas.

DIVERSION

In the Master Plan for Higher Education, adopted by the 1960 Legislature, certain recommendations appeared regarding the methods of selection and retention of students. The following recommendations affected university policy:

1. "In order to raise materially standards for admission to the lower division, the state colleges select first-time freshmen from the top one-third (33 $\frac{1}{3}$ %) and the university from the top one-eighth (12 $\frac{1}{2}$ %) of all graduates of California public high schools."
2. "For both the state colleges and the university, freshmen admissions through special procedures outside the basic requirements of recommending units of high school work and/or aptitude tests (such as specials and exceptions to the rule) be limited to 2 percent of all freshmen admissions in each system for a given year. Furthermore, that all 'limited' students be required to meet regular admission standards."
3. "'The University of California emphasizes policies leading to the reduction of lower division enrollments in relation to those of the upper and graduate divisions, and that state colleges pursue policies which will have a similar effect'. The percentage of graduates in the lower division of both the state colleges and the university to be gradually decreased 10 percentage points below that existing in 1960 (estimated to be 51 percent in both segments) by 1975. It is further recommended that the determination of the means by which this recommendation can best be carried out is the responsibility of the governing boards."

A footnote to recommendation 3 above stated in addition that: "It is estimated that this recommendation would result in the transfer of some 10,000 lower division students to the junior colleges by 1975. It is expected that recommendations to select state college students from the upper 31 percent of all public high school

Diversion—(Continued)

graduates and the university from the upper 12½ percent, together with the recommendation that all 'limited' students be required to meet regular admission requirements, will make up another 10,000."

Since the initiation of the master plan in 1960, the Regents of the University of California have taken steps to comply with the recommendations outlined above by revision of their admission standards. These new standards were put into effect in the fall of 1962, thereby limiting the students who could in theory be admitted to the university to the upper 12½ percent. The university has made little progress, however, since 1960 in meeting the proposed goal of a 40 : 60 ratio of lower division to upper division enrollment by 1975. The enrollment of lower division has in fact shown a relative increase since 1960, rising from 49 percent of undergraduate enrollment to 51.1 percent of that total by the fall of 1964.

The recommendations of the master plan relative to diversion were reaffirmed by the Coordinating Council for Higher Education in December 1963. The University is currently working on procedures whereby the recommended lower division-upper division relationship may be achieved. As a result, the proposed 5-year plant expansion program of the university is based upon enrollment estimates which reflect accomplishment of this goal.

YEAR-ROUND OPERATION

A further recommendation of the Master Plan for Higher Education was made in relation to plant utilization as follows:

"In order to provide calendar arrangements that will both fit the public school year and permit fuller use of the state's higher education facilities:

Every public higher educational institution and private institutions as able offer academic programs in the summer months on unit value equivalent to one-quarter of a year, one-half or three quarters of a semester. State funds be provided for the state colleges and the University of California to offer the full summer period academic programs on one or more of the patterns indicated above for regular degree and credential candidates who have met basic admission requirements. The coordinating agency (or a continuing committee which it might create) study during 1960 the relative merits of three semester and four-quarter plans for year-round use of the physical plants of both public and private institutions; and on the basis of that study, recommend a calendar for higher education in California."

Considering the recommendation above the Coordinating Council for Higher Education on June 25, 1963, expressed itself as definitely in

Year-round Operation—(Continued)

favor of a greater utilization of all higher education facilities and personnel through enhanced year-round operations and ordered a study of this matter. After the receipt and review of the study the council on January 28, 1964, adopted the following resolution:

“The Coordinating Council for Higher Education resolves:

1. That the Coordinating Council reaffirms its desire that the Regents of the University of California and the trustees of the California State Colleges proceed with the year-round operations, either campus-by-campus or systemwide as feasible and as needed to meet student demands with the optimum use of existing buildings and facilities.
2. That the Coordinating Council considers the quarter system to be the best method of achieving year-round operations and that the final calendars adopted by the University of California and the California State Colleges be sufficiently articulated to provide ease of transfer from junior colleges and the high schools.
3. That the Regents of the University of California and the Trustees of the California State Colleges develop a tentative schedule for achieving year-round operations, on selected or all campuses and colleges; and such a schedule and statement of reason supporting it be transmitted to the Coordinating Council for its information and comment as appropriate.
4. That since two years of advance lead time are required to place year-round operations into effect, and consequently that if year-round operations are to begin in 1966-67 at selected campuses and colleges, it is necessary for the 1964 Legislature to declare its intent to support year-round operations at the full level of quality.
5. That the Coordinating Council, on behalf of the University of California and the California state colleges, seek to determine the intent of the Legislature with respect to financing year-round operations at the 1964 session of the Legislature.
6. That each segment determine whether it will augment the summer quarter at campuses on full four-quarter operations by the addition of special summer school offerings designed primarily for teachers and other special groups.
7. That the junior colleges, the State Department of Education, the State Board of Education, and the Legislature cooperate in bringing about the necessary statutory modifications to permit junior colleges to change their academic calendars should they determine that to be desirable.
8. That in the light of recommendation 1 above, each junior college governing board appraise the recommendation's impact upon the transfer of its students, articulation with other segments of education, and other related matters; and on that basis determine the advisability of conversion to a four-quarter calendar.
9. That the governing authorities of such private colleges and universities in the state as now operate on calendars different from that recommended above be invited to consider the advantages that

Funding From Nonstate Sources—(Continued)

might accrue to their institutions if they were on the same academic calendar as public segments.

10. That not later than five years after the first campus of the University of California and the state colleges have a full four-quarter plan in operation the council carefully review the operation of such plan for the purpose of such modifications of those recommendations as may be appropriate, this review to pay particular attention to the degree to which balance enrollments among the quarters has been achieved."

Since the above recommendations, the regents have approved the use of a quarter system at San Diego, Santa Cruz, and Irvine in 1965-66. All other campuses will convert to the same system the following year. The regents have also indicated that one or more campuses will begin year-round operation (full operation of four quarters) in 1966-67. No specific campuses have been named although it is contemplated that such scheduling will begin in 1966-67 at Berkeley, 1967-68 at Los Angeles and, possibly, Santa Barbara with Davis and Riverside utilizing four quarters when their enrollments reach 10,000 (if suitable air-conditioning is provided in buildings at these campuses during the summer quarter).

The proposed five-year building program is based upon the assumption that the above timing will be realized for the most part. The University has estimated that by 1970-71 year-round operation in this manner would produce \$37.3 million in capital outlay savings and \$55.0 million by 1975-76. While such estimates are highly theoretical, it is certain that very significant savings are to be gained by such a calendar.

Year-round operation will not mean less expensive operation in the short run, however, as more students will be on campus in a year, more courses will be offered, more teachers and other staff will be needed, and the wear on many facilities will be greater than at present. It is already apparent that having greater numbers on campus in a year will require augmenting present faculty offices, laboratories, and other facilities; how much has not yet been determined. Moreover, experience at other universities indicates that summer enrollments cannot be expected to equal those in other terms. Studies by the University and the Co-ordinating Council for Higher Education have indicated, however, that added operating costs in the short run will be more than offset by the long-run economies in plant expansion due to the greater utilization possible under year-round use. The 1965-70 capital outlay program reflects such savings inasmuch as plant requirements are reduced as enrollment is spread over the entire year rather than two or three terms. In addition, added plant capacity is gained by using existing buildings during an additional three months of the year.

FUNDING FROM NONSTATE SOURCES

Nonstate funds are generally used by the University for the purpose of establishing facilities designed for organized research, student housing, and parking. The majority of nonstate funds projected in the five-year program are derived from the federal government.

Funding From Nonstate Source—(Continued)

During 1963 the 88th Congress passed two acts which will have an impact on the five-year university capital outlay program. These acts are Public Law 88-129, Health Professions Educational Assistance Act of 1963, and Public Law 88-204, Higher Education Facilities Act of 1963. Both of these acts authorize federal funds to assist the various states in providing physical facilities to meet the needs of the nation's youth who aspire to a higher education.

Public Law 88-204 provides federal support for construction of facilities housing the academic disciplines of natural or physical sciences, mathematics, modern foreign languages, engineering and libraries. The act provides for grants to undergraduate institutions and public community colleges and technical schools; a grant program for facilities devoted to graduate instruction; and a program of federal loans for the construction of academic facilities.

Public Law 88-129 provides for federal grants to assist in constructing facilities for the training of physicians, pharmacists, optometrists, podiatrists, nurses, or public health personnel. Also provided are grants to assist in the replacement or rehabilitation of such facilities.

Funds to fulfill both authorizations were appropriated by Congress during 1964. A number of grants to the University have been approved under PL 88-129 and federal funds have been applied in the 1965-66 budget to these medical facilities. In other cases of proposals for facilities at the medical centers where there is reasonable assurance that federal participation will be realized, estimated grant funds have been deducted from total project cost leaving the estimated state participation as proposed for appropriation.

No federal participation under PL 88-204 has been reflected in the five-year estimate due to the impossibility, at this time, of determining which projects may receive such assistance and what the funding amounts might total.

More detailed descriptions of the programs authorized by PL 88-204 and PL 88-129 and the assumptions used in determining future federal participation in eligible projects are presented above.

As in past years, various federal agencies such as the National Institutes of Health, National Science Foundation, National Aeronautics and Space Administration, and Atomic Energy Commission will grant funds to the university for the construction of facilities devoted to specific research endeavors. Very often, the state participates in such facilities by providing matching funds to cover related instructional areas which may be appropriately located adjacent to the research units. Several such proposals are included in the 1965-70 building program.

The development of adequate student housing and parking at the University is accomplished through the use of revenue bonds although initial increments of both types of facility have been funded in the past from state sources.

An additional, though smaller, source of funds to be used in the 1965-70 period for university construction will be that of gifts. It is planned that a significant portion of these areas planned for student accommodations (as opposed to instruction) in the residential colleges at Santa Cruz will be funded in this manner.

NEW UNIVERSITY CAMPUSES AND FACILITIES

As the result of a request by the California State Legislature in 1955 the Joint Staff of the Liaison Committee of the State Board of Education and the Regents of the University of California were assigned two responsibilities with respect to the future needs for expanding publicly supported higher education in California. They were:

- (1) To develop a priority list for areas of the State inadequately served by junior colleges, state colleges, and campuses of the University of California;
- (2) To show the effect which the establishment of new institutions would have on existing institutions.

The liaison committee's report, titled "A Study of the Needs for Additional Centers of Public Higher Education in California," published in 1957, divided the State into service areas and indicated the enrollment potential for each area in order of magnitude. From this report the regents of the university in 1957 selected the three service areas offering the greatest enrollment potential, which were not served by university facilities, and requested three new university campuses in the selected service areas. The Legislature appropriated \$800,000 for acquisition of sites for the three new campuses. Subsequently site studies were undertaken and new general campuses were established at San Diego, Santa Cruz, and Irvine. The Legislature in 1960 appropriated an additional \$3,000,000 for campus planning and development so that the campuses might be able to meet the potential enrollments of 1,000 FTE students at San Diego and Irvine and 600 students at Santa Cruz.

Both Santa Cruz and Irvine will open in the fall of 1965. At Santa Cruz 600 students are expected at the opening, while at Irvine 1,300 students are expected to be on hand. San Diego opened with 181 undergraduate and 379 graduate students on the general campus in the fall of 1964. Also at San Diego, it is now planned that the first medical class will be accepted in the fall of 1968.

The five-year program provides \$108,168,347 in state funds to continue the funding for initial and subsequent operation of the new campuses at Santa Cruz, Irvine, and the San Diego medical and general campuses. This expenditure, approximately 30 percent of the total five-year program funded from state sources, will provide instructional and related facilities for a capacity of 13,030 FTE students at these institutions by 1971-72.

In 1963, the State Legislature designated the California College of Medicine, formerly a private school, as a medical department of the University of California. The 1964-65 Governor's Budget provides planning money for a new basic science unit on that campus. While a total five-year building program has not yet been developed for the college, planning for the first building is described in this report.

The development of the new campuses and continued expansion of the existing campuses, as proposed in this five-year building program,

New University Campuses and Facilities—(Continued)

will provide the physical facilities which will enable the University of California to meet enrollment increases unprecedented in the history of the institution while at the same time accomplishing the tasks set forth for it in the "Master Plan for Higher Education in California 1960-1975," with the same high level of accomplishment that the citizens of California have come to expect from their university.

Table IV, reproduced below, shows the distribution by campus of the funds requested for the five-year capital outlay program.

Table IV
UNIVERSITY OF CALIFORNIA—RECAPITULATION OF FIVE-YEAR
CAPITAL OUTLAY PROGRAM BY CAMPUS¹

	<i>State funds</i>		<i>Nonstate funds</i>	<i>Total expenditures</i>
	<i>Proposed</i>	<i>Policy unresolved²</i>		
Berkeley	\$17,184,700	\$15,286,600	\$21,362,850	\$53,734,150
Davis	41,650,600	2,155,500	28,435,700	72,241,800
Davis Medical	19,730,400	—	18,764,000	38,494,400
Irvine	32,973,447	4,596,800	24,515,000	62,085,247
Los Angeles	24,814,800	14,653,300	27,468,700	66,936,800
Los Angeles— Health Sciences	6,972,800	1,004,500	21,602,900	29,580,200
Riverside	26,614,900	3,847,100	11,303,950	41,765,950
San Diego	22,177,700	2,286,900	25,514,378	49,978,978
San Diego Medical	12,800,300	1,610,800	16,088,500	33,500,200
San Francisco	9,870,000	4,121,400	27,567,750	41,559,150
Santa Barbara	36,015,800	5,119,700	32,113,400	73,248,900
Santa Cruz	25,649,900	3,071,900	21,703,200	50,425,000
Statewide	8,502,100 ³	8,985,800	17,067,900	34,555,800
Subtotals	\$284,958,047	\$69,740,300	\$293,408,228	\$648,106,575
Hastings	1,541,500 ³	—	—	1,541,500
Totals, All Campuses	\$286,499,547	\$69,740,300	\$293,408,228	\$649,648,075

¹ Includes field stations for agricultural research.

² The timing and method of financing for these projects are unresolved. Projects of this nature are designated by footnote "a" in the five-year program.

³ These figures are combined in the listing of statewide projects totaling \$10,043,600.

ENROLLMENT PROJECTIONS AND PLANT CAPACITIES

The five-year building program for the University is based upon an estimated increase of 12,588 full-time equivalent students (FTE) between the 1966-67 academic year and 1971-72. This is an increase of 15.5 percent from the 81,247 FTE estimated to be enrolled in 1966-67 to 93,825 FTE estimated for 1971-72.

Full-time equivalent enrollment of undergraduate students is based on dividing the aggregate number of student credit hours in the actual past year by a standard unit load for the students of the university. A ratio of FTE to regular enrollment is developed for the actual past year. This ratio is then projected against future regular enrollment to arrive at projected FTE. Graduate students are computed on a head-count basis.

The enrollment projection reflects several operating policies to be put into effect in the university system during the five-year span covered

Enrollment Projections and Plant Capacities—(Continued)

by this program. The first policy is the limiting of enrollment at Berkeley and Los Angeles to 27,500 regular students. This policy stems from a recommendation of the Master Plan for Higher Education in 1960 and is embodied in the current university master plans for both of these campuses. A second policy, reflected in the projected enrollments for the five-year building program, is a gradual relative reduction of lower division enrollment as a percentage of total undergraduate enrollment so that by 1975 the former will constitute 40 percent of the latter. The background of this policy is discussed more fully above. The estimates on which the building program is based reflect also the Master Plan recommendation that the university tighten its admission requirements so that only the top 12.5 percent scholastically of high school graduates in the state, rather than the top 15 percent, be eligible for admission. This policy was implemented by the university in 1962.

The enrollment projections are also based on the assumption that a portion of those students diverted from Berkeley and Los Angeles will enroll at another institution within the university system and that a portion will go outside the system. Under the move toward reducing the lower division enrollment percentage to 40 percent of total undergraduate enrollment, a portion of those students initially excluded from admission by this policy would reappear in the university system in subsequent years as transfers thereby reducing slightly the absolute effect of this type of diversion.

The effect of year-round operation is also incorporated in the projections in accordance with the schedule discussed above. It is assumed that a certain portion of the students will accelerate (that is, attend each quarter, thus completing their work in less than four years) while others will attend the university in the traditional manner, utilizing three months of the year for nonacademic pursuits. Such assumptions must of necessity be somewhat arbitrary due to the lack of experience from which to draw.

For purposes of meeting physical plant requirements, the capital outlay budget for the university is developed on the average annual enrollment (an average of fall and spring enrollment or the three-quarter average when the university switches to the quarter system) base in a manner similar to the operating budget. Average annual enrollment more appropriately indicates plant need than does the fall enrollment since the latter would overstate space needs over the long run while the former base provides for improved utilization in the fall (heavy enrollment) session counterbalanced by some excess capacity (light enrollments) during other sessions of the year for an average closely approximating long run need.

Determination of the needed capacity to house the increase in students is based upon a total standard floor area required for the direct and indirect instruction of the student: classrooms and seminars, class laboratories, research and office space for graduate students and faculty, and the necessary supporting space. This standard varies between level of student and between academic discipline. For example, graduate students in the natural sciences require more space than do

Enrollment Projections and Plant Capacities—(Continued)

undergraduate students in the social sciences due to the greater use by the former of laboratories housing more and larger pieces of equipment.

The space standards in use at the present time are based upon the utilization rates developed by the "Restudy of the Needs of California in Higher Education" prepared by the Liaison Committee of the Regents of the University of California and the State Board of Education, and published in 1955. The Coordinating Council for Higher Education is currently studying physical plant utilization in all three segments with the intention of examining the utilization of existing facilities, and developing appropriate standards which could be used in determining the future capital outlay needs of the institutions of higher education in California.

The standard space areas per student have been applied to the projected increase of student enrollment to arrive at a yearly space need on each campus. This need is then compared to the existing capacity and projects are placed in the five-year program with the intent of providing physical plant sufficient to meet the calculated campus need for the aggregate as well as the individual disciplines and specialized laboratories.

The needed capacities are calculated only for that space associated with student instruction and related departmental research. The standards do not include space for medical facilities or organized research activities. The need for such facilities is determined on the basis of considerations applicable to the particular program areas involved. Table V provides a summary of projected enrollments and their relationship to the physical plant capacity which will be provided by the building projects proposed in the five-year program.

It may be noted that slightly more than 100 percent of the needed capacity (instructional load) is provided by the program by 1971-72. This situation results primarily because of two factors. As noted above, graduate instruction requires more plant support than undergraduate instruction. Over the five years included in this program there will be a gradual relative increase in graduate and upper division enrollment accompanied by a relative decline in the lower division. More space per full time equivalent student will thus be required in 1971-72 than was required in 1963-64. As a result, plant capacity based upon the 1963-64 enrollment mix (the basis for this five-year program) is overstated and actual capacity will not turn out to be 100 percent of need in the latter years of the program. This will be especially true at the Berkeley and Los Angeles campuses. In addition, the greatest growth will occur at the smaller campuses. In these cases it is imperative that the entire estimated need be planned for due to the inflexible nature of the plant on a small campus where there may be relatively little non-capacity area and a few very large buildings. This concept was developed in detail in the physical plant standards proposed in the Restudy. It often occurs that capacity for more than 100 percent of enrollment is provided at a smaller campus for a period of time since to exclude any one building might leave that campus far below its required need.

Table V

COMPARISON OF PROJECTED AVERAGE ANNUAL FULL-TIME EQUIVALENT ENROLLMENT¹ BY CAMPUS AND THE CAPACITY
TO BE PROVIDED BY PROJECTS IN THE FIVE-YEAR PROGRAM

Budget Year Target Year ²	1965-66 1967-68		1966-67 1968-69		1967-68 1969-70		1968-69 1970-71		1969-70 1971-72	
	Enrollment	Capacity	Enrollment	Capacity	Enrollment	Capacity	Enrollment	Capacity	Enrollment	Capacity
Berkeley	25,527	25,011	25,103	25,704	25,006	25,712	25,467	25,742	25,459	25,742
Los Angeles	25,241	20,481	23,981	22,311	23,536	22,652	23,809	22,652	23,616	22,652
Davis	8,240	7,164	8,709	8,506	9,188	8,542	9,676	8,828	10,769	10,431
Riverside	5,512	4,770	6,168	5,437	6,528	6,751	6,676	6,751	7,168	6,553
Santa Barbara	9,732	8,474	10,146	10,643	10,081	11,494	10,096	11,186	10,212	11,186
San Diego General	2,464	2,509	2,733	3,113	3,276	4,035	3,936	4,035	4,316	4,529
Santa Cruz	1,542	1,329	2,025	2,059	2,597	3,320	2,767	3,400	3,100	3,400
Irvine	2,208	1,769	2,692	2,527	3,183	3,298	3,667	4,684	4,250	4,684
Scripps	145	145	153	153	160	160	167	167	175	175
S.F. Medical Center	2,225	2,225	2,300	2,300	2,408	2,408	2,458	2,458	2,493	2,493
L.A. Center for Health Sciences	1,385	1,385	1,545	1,545	1,685	1,685	1,765	1,765	1,850	1,850
San Diego Medical	-	-	137	137	213	213	315	315	417	417
Total	84,221	75,262	85,692	84,435	88,431	90,210	90,799	91,983	93,825	94,412
Hastings College of Law	1,150	1,150	1,200	1,200	1,200	1,200	1,200	1,200	1,200	1,200
TOTALS	85,371	76,412	86,892	85,635	89,631	91,410	91,999	93,183	95,025	95,612

¹ Excluding military science and physical education.

² This table is based upon the assumption that a building is available for occupancy two years after construction funds are appropriated.

³ Existing and funded, including 1961-65 appropriations.

1965-70 MAJOR CAPITAL IMPROVEMENT PROGRAM, CAMPUS EXCERPTS—MAY 15, 1964

Berkeley

Priority	Project	1965-66	1966-67	1967-68	1968-69	1969-70
4	Chemistry unit 2 Equipment	\$700,000				
9	Law complex—Law building addition, Earl Warren Legal Center, and law students housing Construction	800,000 ^b 200,000 ^b	\$103,000			
10	Moses Hall alterations Equipment	37,100				
16	Agriculture Hall alterations Construction	433,000 ^b 22,500 ^b				
	Equipment	43,900				
26	Biological marine laboratory Construction	470,000 ^b 175,000 ^b				
58	Life science building alterations, step 1 Construction	230,200 ^b 23,000 ^b				
71	Undergraduate library Working drawings Construction	112,000	3,704,300	\$344,000		
75	Land acquisition, 1965-66 Equipment	75,000				
78	Mathematical science building Construction					
84	General campus improvements Working drawings			5,147,000 ^c	537,000	
85	Storm drainage system development, step 2 Working drawings Construction	12,500 278,000		13,200 ^c 290,000 ^c		

102	Management science laboratory, Barrows Hall			
104	Equipment	318,750 ^b		
	Molecular biology buildings		80,000 ^a	
	Working drawings		186,600 ^b	
	Construction			2,461,000 ^a
	Equipment			5,743,700 ^b
	Equipment			8370,700 ^a
121	Campus surface parking			865,000 ^b
	Working drawings	5,700 ^b		
	Construction	120,500 ^b		
124	Parking structure A—Hearst and Seismic			
125	Construction	1,002,200 ^b		
	Tennis courts on top of parking structure A			
	Working drawings	13,000 ^b		
	Construction	265,700 ^b		
128	Engineering materials laboratory addition			
	Equipment		620,000	
129	Utilities, 1966-67			
	Working drawings		23,500	
	Construction		610,200	
138	Storm drainage system development, step 3			
	Working drawings		11,700	
	Construction		261,100	
173	Union Field replacement—block 1886			
	Working drawings			8,200
	Construction			177,900
174	Land acquisition, 1966-67			
			125,000 ^c	
			800,000	

^a Projects requiring further policy consideration as to relative urgency, timing or method of financing.

^b To be financed from federal or other nonstate funds.

^c Projects may be subsequently proposed for amendment into the 1965-66 Budget Act subject to the development of adequate financing.

1965-70 MAJOR CAPITAL IMPROVEMENT PROGRAM, CAMPUS EXCERPTS—MAY 15, 1964—Continued

Priority	Berkeley—Continued Project	1965-70			
		1965-66	1966-67	1967-68	1968-69 1969-70
181	Botany plant growth laboratory Working drawings Construction Equipment	----- ----- ----- -----	----- ----- ----- -----	15,700 366,200 39,200	----- ----- ----- -----
187	Entomology and genetics facilities—Oxford Tract Working drawings Construction Equipment	----- ----- ----- -----	70,100 ^a ----- ----- -----	1,965,400 ^a	196,000 ^a
188	Naval biological laboratory, step 1 Working drawings Construction	----- ----- -----	106,300 ^b ----- -----	3,094,600 ^b	----- ----- -----
191	General campus improvements, 1967-68 Working drawings Construction	----- ----- -----	----- ----- -----	12,800 291,000	----- ----- -----
206	Residence hall unit 4—S40 students—block TSS1 Working drawings Construction Equipment	----- ----- ----- -----	145,000 ^b 4,404,200 ^b ----- -----	421,000 ^b	----- ----- ----- -----
220	Utilities, 1967-68 Working drawings Construction	----- ----- -----	----- ----- -----	5,000 104,600	----- ----- -----
233	Wheeler Hall alterations Working drawings Construction Equipment	----- ----- ----- -----	----- ----- ----- -----	11,600 190,600 17,000	----- ----- ----- -----
234	Life science building alterations Working drawings Construction Working drawings Construction Equipment	----- ----- ----- ----- ----- -----	----- ----- ----- ----- ----- -----	14,500 265,800 14,500 ^b 265,800 ^b	----- ----- ----- ----- ----- -----
					37,500 37,500 ^b

1965-70 MAJOR CAPITAL IMPROVEMENT PROGRAM, CAMPUS EXCERPTS—MAY 15, 1964—Continued

Berkeley—Continued		1965-66	1966-67	1967-68	1968-69	1969-70
Priority	Project					
325	Hearst Gymnasium, expansion of north wing					
	Working drawings					
	Construction				40,300 ^a	
	Equipment				1,099,700 ^a	55,800 ^a
327	Land acquisition, 1968-69				200,000 ^a	
336	Health sciences buildings					
	Working drawings					159,200
394	Richmond Field Station development, step 3, 1967-68					
	Working drawings					29,700
	Construction					514,800
423	Parking structure II—230 cars—Hearst and La Jolla					
	Working drawings					32,800 ^b
	Construction					677,900 ^b
Totals, Berkeley		\$5,368,050	\$16,701,200	\$18,333,000	\$8,436,100	\$4,895,800
State funds						
	Proposed	1,358,500	11,709,000	3,053,000	468,500	682,700
	Policy unresolved ^a		150,100	4,372,000	7,065,100	3,499,400
Total, state funds		\$1,258,500	\$11,859,100	\$7,625,000	\$7,533,600	\$4,185,100
Nonstate funds ^b		4,109,550	4,842,100	10,698,000	902,500	710,700
TOTAL, FIVE-YEAR PROGRAM						
State funds						\$53,734,150
Proposed						17,184,700
Policy unresolved ^a						15,286,600
Totals, state funds						\$32,471,300
Nonstate funds ^b						21,262,850

Davis—General

1	Humanities building Equipment	8200,000	
6	Administration building Equipment	200,000	
29	Supplemental irrigation water supply system to campus		
	Working drawings	67,700	
32	Construction	1,020,100	
	Utilities, 1965-66		
40	Working drawings—construction	668,000	
	Heating plant addition		
	Working drawings	57,700	
	Construction		81,590,000
41	Campus road development, 1965-66		
	Working drawings		
	Construction	322,300	43,000
45	Physical science unit 1 alterations		686,000
	Working drawings		
	Construction	299,000	62,000
49	Biological sciences unit 3		
	Equipment		
	Construction	3,350,400	723,000
51	Library expansion, step 2		
	Equipment		
	Construction	2,685,800	
59	Facility for study on the biology of large animals unit 1		268,600
	Working drawings	17,500	
	Construction	419,000	
	Equipment	56,800	
	Construction	500,000	^b

^a Projects requiring further policy consideration as to relative urgency, timing or method of financing.

^b To be financed from federal or other nonstate funds.

1965-70 MAJOR CAPITAL IMPROVEMENT PROGRAM, CAMPUS EXCERPTS—MAY 15, 1964—Continued

Priority	Davis—General—Continued Project	1965-66				1968-69		1969-70
		1965-66	1966-67	1967-68	1968-69	1969-70	1969-70	
72	General campus development							
	Construction		135,000 c					
79.5	Purchase of relocatable buildings		100,000					
83	Irrigation water distribution system on campus		376,600 e					
	Construction		870,000					
88	School of Law building							
	Working drawings	79,200						
	Construction		2,238,900					
	Equipment			8206,000				
89	Relocation of horticulture greenhouse range to clear site for classroom and office unit 3							
	Working drawings	14,000						
	Construction	391,000						
	Equipment		35,000					
90	Classroom and office unit 3							
	Working drawings	100,300						
	Construction		2,891,700					
	Equipment			305,000				
94	Relocation of agricultural field facilities to clear sites for new buildings							
	Working drawings	18,000						
	Construction	432,800						
99	Student health building addition							
	Working drawings	12,700 b						
	Construction	286,200 b						
	Equipment	25,000 b						
114	Residence hall unit 7B—800 students							
	Working drawings	135,500 b						
	Construction	4,060,600 b						
	Equipment		423,800 b					

127	Engineering building			
	Equipment		840,000	
135	Utilities, 1966-67			
	Working drawings		19,300	
	Construction		471,300	
156	Horticultural sciences building addition			
	Working drawings		21,900	
	Construction		554,900	
	Equipment			110,000
158	Biological sciences unit 4			
	Working drawings		128,000	
	Construction			3,810,800
	Equipment			
175	Agronomy seed processing facility			\$775,000
	Working drawings		12,700 ^a	
	Construction		286,800 ^a	
	Equipment		30,000 ^a	
179	Floriculture greenhouses and headhouses			
	Working drawings			16,400
	Construction			385,700
	Equipment			40,000
203	Residence hall unit 8A—800 students			
	Working drawings		138,000 ^b	
	Construction		4,149,400 ^b	
	Equipment			446,400 ^b
225	Utilities, 1967-68			
	Working drawings			13,400
	Construction			306,300
241	Physical sciences unit 3			
	Working drawings			135,000
	Construction			
	Equipment			
				4,040,600
				\$760,000

^a Projects requiring further policy consideration as to relative urgency, timing or method of financing.

^b To be financed from federal or other nonstate funds.

^c Projects may be subsequently proposed for amendment into the 1965-66 Budget Act subject to the development of adequate financing.

304	Food science and technology office and laboratory and pilot plant	Working drawings	-----	-----	20,400
		Construction	-----	-----	557,400
		Working drawings	-----	-----	19,800 ^b
		Construction	-----	-----	540,300 ^b
		Equipment	-----	-----	-----
		Equipment	-----	-----	112,400
310	Physical sciences unit 4—chemistry addition	Working drawings	-----	-----	112,400 ^b
		Construction	-----	-----	45,000
		Equipment	-----	-----	1,233,500
		Equipment	-----	-----	250,000
313	Engineering unit 2	Working drawings	-----	-----	94,000
		Construction	-----	-----	2,691,000
329	Facility for study on the biology of large animals—unit 2	Working drawings	-----	-----	18,000 ^a
		Construction	-----	-----	433,200 ^a
		Construction	-----	-----	100,000 ^b
		Equipment	-----	-----	56,500
335	General services unit 2—fire and police	Working drawings	-----	-----	14,100
		Construction	-----	-----	324,100
		Equipment	-----	-----	30,000
339	General campus development, 1963-69	Working drawings	-----	-----	4,600 ^a
		Construction	-----	-----	96,600 ^a
345	Residence hall unit 9A—800 students	Working drawings	-----	-----	138,000 ^b
		Construction	-----	-----	4,149,400 ^b
		Equipment	-----	-----	446,400 ^b

^a Projects requiring further policy consideration as to relative urgency, timing or method of financing.

^b To be financed from federal or other nonstate funds.

1965-70 MAJOR CAPITAL IMPROVEMENT PROGRAM, CAMPUS EXCERPTS—MAY 15, 1964—Continued

Davis—General—Continued		1965-66	1966-67	1967-68	1968-69	1969-70
Priority	Project					
362	Utilities, 1969-70 Working drawings	—	—	—	—	12,800
365	Construction Roadhouse Hall alterations related to classroom and office unit 4, office	—	—	—	—	290,000
	Working drawings	—	—	—	—	27,300 a
366	Construction Haring Hall alterations—related to veterinary medical facility unit 2	—	—	—	—	452,100 a
	Working drawings	—	—	—	—	19,600
	Construction	—	—	—	—	335,700
	Equipment	—	—	—	—	37,900
369	Physical sciences unit 1 alterations for social sciences and psychology	—	—	—	—	—
	Working drawings	—	—	—	—	20,100
	Construction	—	—	—	—	344,300
	Equipment	—	—	—	—	53,000
375	Classroom and office unit 4—office unit	—	—	—	—	56,200
	Working drawings	—	—	—	—	74,400
379	Biological sciences unit 5	—	—	—	—	—
	Working drawings	—	—	—	—	87,900 a
388	Gymnasium and outdoor field facilities	—	—	—	—	—
	Working drawings	—	—	—	—	3,700 a
395	Agronomy storage building	—	—	—	—	76,500 a
	Working drawings	—	—	—	—	—
	Construction	—	—	—	—	9,200 a
396	Land development, F-1, F-2, and F-3	—	—	—	—	201,300 a
	Working drawings	—	—	—	—	—
	Construction	—	—	—	—	—
398	Plant growth research laboratories, step 3	—	—	—	—	15,500 a
	Working drawings	—	—	—	—	362,000 a
	Construction	—	—	—	—	40,000 a
	Equipment	—	—	—	—	—

1965-70 MAJOR CAPITAL IMPROVEMENT PROGRAM, CAMPUS EXCERPTS—MAY 15, 1964—Continued

Priority	Davis—Medical—Continued Project	1965-69				1969-70	
		1965-66	1966-67	1967-68	1968-69	1969-70	
168	Veterinary medical facilities unit 2						
	Working drawings			\$441,800	\$4,290,200		\$975,000
	Construction						
	Equipment			141,800 ^b			
	Working drawings				4,290,200 ^b		975,000 ^b
169	Basic medical sciences unit 1						
	Construction						
	Equipment						
	Working drawings		121,000				
	Construction			3,717,000			896,000
308	Veterinary medical facilities unit 3						
	Working drawings		181,000 ^b				1,344,000 ^b
	Construction						
	Equipment						
	Working drawings						141,800
	Construction						4,290,200 ^b
	Equipment						
	Working drawings						
	Construction						
	Equipment						
Totals, Davis Medical		\$7,972,000	\$1,310,800	\$9,516,600	\$11,104,000	\$10,530,400	
State funds							
Proposed		4,382,000	895,800	2,858,800	5,338,000	5,265,200	
Total state funds		\$4,382,000	\$895,800	\$2,858,800	\$5,338,000	\$5,265,200	
Nonstate funds ^b		1,590,000	415,000	5,717,800	5,776,000	5,265,200	
TOTAL, FIVE-YEAR PROGRAM						\$38,494,400	
State funds							
Proposed						19,730,400	
Total state funds						\$19,730,400	
Nonstate funds ^b						18,764,000	

Irvine			
33	Utilities and site development, 1965-66		
	Construction	\$1,084,000	
	Equipment		\$331,400 ^c
68	Physical sciences unit 1		
	Working drawings	200,500	
	Construction		6,569,700
	Equipment		500,000
89.1	Additional equipment		
106	Greenhouse and headhouse unit 1		\$1,000,000
	Working drawings		8,400
	Construction		182,800
	Equipment		38,700
111	Residential apartments, step 1—100 units		
	Working drawings	44,700 ^b	
	Construction	1,222,600 ^b	
	Equipment		52,200 ^b
116	Residence hall unit 2—400 students—with dining commons for 1,000		
	Working drawings	90,400 ^b	
	Construction	2,581,400 ^b	
	Equipment		285,000 ^b
119	Residential apartments, step 2—150 units		
	Working drawings	58,600 ^b	
	Construction	1,623,400 ^b	
	Equipment		90,000 ^b
131	Central plant unit 2		
	Working drawings		23,000
	Construction		593,900
	Equipment		
132	Utilities and site development, 1966-67		10,000
	Working drawings		52,800
	Construction		1,457,000

^b To be financed from federal or other mandate funds.

^c Projects may be subsequently proposed for amendment into the 1965-66 Budget Act subject to the development of adequate financing.

1965-70 MAJOR CAPITAL IMPROVEMENT PROGRAM, CAMPUS EXCERPTS—MAY 15, 1964—Continued

Irvine—Continued		1965-66	1966-67	1967-68	1968-69	1969-70
Priority	Project					
151	Fine arts unit 1					
	Working drawings		106,600			
	Construction			3,103,200	\$326,000	
	Equipment					
154	Engineering unit 1					
	Working drawings		115,400			
	Construction			3,390,400	442,800	
	Equipment					
170	Library unit 2					
	Working drawings		74,100			
	Construction			2,083,600	204,000	
	Equipment					
171	Outdoor physical education and athletic facilities, step 1, 1966-67					
	Working drawings		16,800 ^a			
	Construction		396,100 ^a			
	Equipment		30,000 ^a			
199	Residence hall unit 3—200 students					
	Working drawings		31,500 ^b			
	Construction		853,500 ^b	100,000 ^b		
	Equipment					
200	Residential apartments, step 3—125 units					
	Working drawings		49,200 ^b			
	Construction		1,352,300 ^b			
	Equipment			75,000 ^b		
219	Sewage disposal contract, 1967-68					
	Construction			312,525		
221	Utilities and site development, 1967-68					
	Working drawings			41,600		
	Construction			1,138,500		

231	Natural science unit 1—alterations, phase 1				
	Working drawings			17,400	
	Construction			294,000	
	Equipment				411,200
240	Social sciences unit 1—including education and graduate school of administration				
	Working drawings			119,600	
	Construction				
	Equipment				3,525,000
278	Residence hall unit 4—400 students—with dining commons for 800				\$370,000
	Working drawings			84,600 ^b	
	Construction			2,406,900 ^b	
	Equipment				268,000 ^b
280	Residential apartments, step 4—70 units				
	Working drawings			28,000 ^b	
	Construction			756,600 ^b	
	Equipment				42,000 ^b
290	Sewage disposal contract, 1968-69				
	Construction			44,922	
292	Utilities and site development, 1968-69				
	Working drawings			41,600	
	Construction			1,138,500	
306	Mathematical sciences unit 1				
	Working drawings				95,000
321	Basic medical sciences unit 1				
	Working drawings			121,000 ^a	
	Construction				3,717,000 ^a
	Working drawings			181,000 ^b	
	Construction				5,576,000 ^b

^a Projects requiring further policy consideration as to relative urgency, timing or method of financing.

^b To be financed from federal or other nonstate funds.

1965-70 MAJOR CAPITAL IMPROVEMENT PROGRAM, CAMPUS EXCERPTS—MAY 15, 1964—Continued

Irvine—Continued		1965-66	1966-67	1967-68	1968-69	1969-70
Priority	Project					
321	Outdoor physical education and athletic facilities, step 2					
	Working drawings				12,700 ^a	
	Construction				280,000 ^a	
	Equipment				17,000 ^a	
341	Administration building unit 1					
	Working drawings				79,100	
	Construction					2,236,000
343	Cafeteria alterations					
	Working drawings				11,300 ^b	
	Construction				185,100 ^b	
	Equipment				20,000 ^b	
348	Residential apartments, step 5—185 units					
	Working drawings				71,400 ^b	
	Construction				2,003,500 ^b	111,000 ^b
	Equipment					
356	Sewage disposal contract, 1969-70					120,000
	Construction					
358	Utilities and site development, 1969-70					
	Working drawings					19,300
	Construction					471,300
364	Natural science unit 1, alterations, phase 2					
	Working drawings					14,800
	Construction					246,800
	Equipment					231,000
377	Biological sciences unit 2					
	Working drawings					78,000
401	Campus center unit 1					
	Working drawings					38,500 ^b
	Construction					1,049,100 ^b

411	Residence hall unit 5—400 students					61,600 ^b
	Working drawings					1,709,100 ^b
416	Residential apartments, step 6—125 units					49,200 ^b
	Working drawings					1,352,300 ^b
	Construction					\$17,555,000
	Totals, Irvine	\$13,230,400	\$14,961,925	\$9,432,922		
	<i>State funds</i>					
	<i>Proposed</i>	1,284,500	11,510,825	6,213,122		3,891,200
	<i>Policy unresolved^a</i>			442,900		3,717,600
	<i>Total state funds</i>					\$7,608,200
	<i>Nonstate funds^b</i>	\$1,284,500	\$11,510,825	\$6,650,022		9,946,800
		5,621,100	3,451,100	2,783,900		\$62,082,247
	TOTAL, FIVE-YEAR PROGRAM					
	<i>State funds</i>					
	<i>Proposed</i>					32,973,447
	<i>Policy unresolved^a</i>					4,700,500
	<i>Total state funds</i>					\$37,673,947
	<i>Nonstate funds^b</i>					24,515,000
	Los Angeles—General					
17	Law addition			\$221,000		
	Equipment					
20	Space science building	\$200,000				
	Equipment					
21	Administration addition	155,500				
	Equipment					
22	Art unit 2	299,000				
	Equipment					
44	Franz Hall addition, step 2					
	Construction	4,100,000		895,000		
	Equipment					

^a Projects requiring further policy consideration as to relative urgency, timing or method of financing.

^b To be financed from federal or other nonstate funds.

1965-70 MAJOR CAPITAL IMPROVEMENT PROGRAM, CAMPUS EXCERPTS—MAY 15, 1964—Continued

Los Angeles—General—Continued		Project				
Priority		1965-66	1966-67	1967-68	1968-69	1969-70
64	Administration building alterations					
	Working drawings	25,000				
	Construction		410,100			
76	Theater arts unit 2					
	Construction	2,580,600	426,400			
77	Equipment _____					
	Mathematical sciences addition					
	Construction		4,153,000 ^a	\$442,900		
	Equipment					
93	North campus library unit 2					
	Working drawings	95,600				
	Construction		2,747,600	240,000		
	Equipment					
109	Faculty center addition					
	Working drawings	4,000 ^b				
	Construction	84,000 ^b				
118	Residence hall unit 5—824 students					
	Equipment		285,000 ^b			
	Working drawings	146,300 ^b				
	Construction	4,442,600 ^b				
122	Parking structure H—2,800 cars—south of university activities memorial center					
	Working drawings	169,300 ^b				
	Construction	5,299,100 ^b				
144	Main library alterations, step 2					
	Working drawings		35,000			
	Construction		674,600			
	Equipment			166,000		
146	Dickson art center alterations					
	Working drawings					20,300
	Construction					349,600
	Equipment					20,000

148	Chemistry-geology building alterations, step 2			
	Working drawings			
	Construction	5,800		
	Equipment	91,300		
		25,000		
161	Engineering unit 4			
	Working drawings	128,600		
	Construction		3,829,900	\$773,000
	Equipment			
192	Royce Hall auditorium facilities alterations			
	Working drawings			
	Construction		20,500	
			354,400	
193	Service yard expansion, step 2			
	Working drawings			
	Construction		20,800	
	Equipment		519,100	
				50,000
197	Student union addition			
	Working drawings			
	Construction	24,400 ^b		
	Equipment	642,900 ^b		
			50,000 ^b	
215	Parking structure E—1,600 cars—east of chemistry-geology buildings			
	Working drawings			
	Construction	106,300 ^b		
		3,082,800 ^b		
230	Westwood Plaza site development, 1967-68			
	Working drawings			
	Construction		11,000 ^a	
			244,700 ^a	
235	Old public health building alterations			
	Working drawings			
	Construction		16,900	
	Equipment		284,700	
			40,000	
236	Kinsey Hall alterations—physics			
	Working drawings			
	Construction		15,200	
	Equipment		354,400	
			28,000	

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1965-70 MAJOR CAPITAL IMPROVEMENT PROGRAM, CAMPUS EXCERPTS—MAY 15, 1964—Continued

Los Angeles—General—Continued
Project

<i>Priority</i>		1965-66	1966-67	1967-68	1968-69	1969-70
245	Moore Hall addition Working drawings Construction Equipment	—	—	89,600 a	2,557,000 a	\$280,000 a
247	Life sciences unit 3 Working drawings Construction Construction Equipment	—	—	121,200 a 121,200 b	4,258,200 a 4,258,200 b	—
272	West campus site development, 1967-68 Working drawings Construction	—	—	13,100 a 298,500 a	—	943,000 b
273	University Drive and Law Court site development, 1966-67 Working drawings Construction	—	—	11,000 a 258,800 a	—	—
274	Central Mall, 1966-67 Working drawings Construction	—	—	11,900 a 258,800 a	—	—
283	Residence hall unit 6—824 students Working drawings Construction Equipment	—	—	162,100 b 5,053,500 b	330,000 b	—
316	Schoenberg Hall addition—music Working drawings Construction	—	—	—	83,300 a	2,364,900 a
318	Humanities unit 2 Working drawings Construction	—	—	—	99,400 a	2,582,400 a
338	West campus site development, 1968-69 Working drawings Construction	—	—	—	11,000 a 258,800 a	—

1965-70 MAJOR CAPITAL IMPROVEMENT PROGRAM, CAMPUS EXCERPTS—MAY 15, 1964—Continued

Los Angeles—Health Sciences				
<i>Priority</i>	<i>Project</i>	<i>1965-66</i>	<i>1966-67</i>	<i>1967-68</i>
2	School of dentistry unit			
	Equipment	\$600,000		
5	Basic sciences unit 2A			
	Equipment	500,000		
	Equipment		\$1,031,000	
12	Hospital and clinics unit 2B, step 1—Jules Stein Eye Institute			
	Equipment	124,000		
	Construction	1,736,000 ^b		
	Equipment	449,500 ^b		
25	Student health service expansion			
	Equipment	70,500 ^b		
55	Hospital and clinics unit 2B, step 2			
	Construction	4,860,700 ^b		
	Equipment		1,033,000	
	Equipment	671,000 ^b		
62	Basic sciences unit 1—alternations			
	Working drawings	69,500		
	Construction		1,359,800	
81	School of public health building			
	Construction	1,764,100		
	Working drawings— construction	2,831,000 ^b		
	Equipment		158,000	
	Equipment		237,000 ^b	
103	Reed Neurological Research Center			
	Working drawings	72,700 ^b		
	Construction	2,042,500 ^b		
	Equipment		350,000 ^b	
105	Acquisition of land for laundry			
	Land acquisition		260,000 ^c	
142	Hospital and clinics unit 1—alternations, step 1			
	Working drawings		4,800 ^a	
	Construction		75,800 ^a	

194	Laundry facility					
	Working drawings				55,600 ^b	
	Construction				1,537,800 ^b	
	Equipment					\$650,000 ^b
216	Parking structure 4-1—1,200 cars—south of medical center					
	Working drawings					
	Construction				118,900 ^b	
	Hospital and clinics unit 1—alterations, step 2				3,505,000 ^b	
	Working drawings					
	Construction					45,400 ^a
237	Old laundry building alterations					878,500 ^a
	Working drawings					4,400
	Construction					69,000
422	Parking structures 4-2—800 cars					
	Working drawings					
	Construction					
						\$82,200 ^b
						2,332,500 ^b
	Totals, Los Angeles Center for Health Sciences					\$2,414,700
	State funds					
	Proposed	\$15,791,500		\$9,726,700		\$1,647,300
	Policy unresolved ^a	3,057,600		3,841,800		73,400
				80,600		923,900
	Totals, state funds					
	Nonstate funds ^b	\$3,057,600		\$3,922,400		\$997,300
		12,733,900		5,804,300		650,000
	TOTAL, FIVE-YEAR PROGRAM					\$29,580,200
	State funds					
	Proposed					
	Policy unresolved ^a					
						6,972,800
						1,004,500
	Totals, state funds					\$7,977,300
	Nonstate funds ^b					21,602,900

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^b To be financed from federal or other nonstate funds.

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1965-70 MAJOR CAPITAL IMPROVEMENT PROGRAM, CAMPUS EXCERPTS—MAY 15, 1964—Continued

Riverside							
Priority	Project	1965-66	1966-67	1967-68	1968-69	1969-70	
44	Physical sciences unit 4 Equipment	\$530,000					
48	Working drawings, construction and equipment	681,750 ^b	\$295,000				
30	Classroom and office unit 1 Equipment						
30	Utilities, 1965-66 Construction	414,700					
35	Central heating and refrigeration plant unit 2 Working drawings	23,000					
47	Construction	501,300					
47	Life sciences unit 2 Construction	3,179,000					
57	Equipment		543,000				
57	Agricultural sciences building Working drawings	567,000 ^b					
60	Equipment	25,000 ^b	620,000				
60	Alterations to physical sciences building Working drawings	11,200					
60	Construction	183,200					
67	Equipment		100,000				
67	Library unit 3 Working drawings	132,400					
70	Construction		3,954,100	\$415,000			
70	Equipment						
70	Humanities unit 2 Working drawings		81,000				
70	Construction			2,290,400			
139	Equipment						\$241,000
139	Site development, 1965-66						
140	Working drawings		13,200 ^a				
140	Construction		301,200 ^a				
140	Utility pipe trench						
140	Working drawings		21,400				
140	Construction		536,300				

147	Horticulture and soils buildings alteration				
	Working drawings				
	Construction				
	Equipment				31,300
					585,100
					65,000
162	Mathematics unit 1				
	Working drawings				
	Construction		94,200		
	Equipment				
					2,705,800
172	Physical education unit 2				
	Working drawings				
	Construction		58,400 ^a		
	Equipment				
					2,384,900 ^a
					234,000 ^a
182	Dry lands research facility, step 1				
	Working drawings				
	Construction		60,600 ^b		
	Equipment		1,682,500 ^b		
					476,000 ^b
184	Citrus research center air conditioning				
	Working drawings				
	Construction		9,300 ^a		
	Equipment		149,300 ^a		
					8,300
					178,700
					13,000
198	Residence hall unit 5—422 students				
	Working drawings				
	Construction		78,800 ^b		
	Equipment		2,226,500 ^b		
					189,000 ^b
227	Utilities and site development, 1957-68				
	Working drawings		5,400		
	Construction				11,200
	Equipment				250,000
228	Refrigeration unit 6				
	Working drawings				6,100 ^a
	Construction				130,400 ^a

^a Projects requiring further policy consideration as to relative urgency, timing or method of financing.

^b To be financed from Federal or other nonstate funds.

1965-70 MAJOR CAPITAL IMPROVEMENT PROGRAM, CAMPUS EXCERPTS—MAY 15, 1964—Continued

Riverside—Continued

Priority	Project	1965-66	1966-67	1967-68	1968-69	1969-70
246	Welsher Hall addition					
	Working drawings			77,100		
	Construction			34,900 ^b		
	Equipment				2,174,100	
	Equipment				948,400 ^b	\$450,000
	Equipment					77,000 ^b
257	Glasshouses and headhouses Nos. 21, 22, 23, 24					
	Working drawings			23,600		
	Construction			307,700		
	Equipment			26,000		
258	Filters and coolers for glasshouses, step 2					
	Working drawings			8,200 ^a		
	Construction			177,800 ^a		
260	Glasshouses and headhouses Nos. 1A and 3A					
	Working drawings			12,400		
	Construction			278,600		
	Equipment			25,900		
265	Student health service unit 2					
	Working drawings			10,800 ^b		
	Construction			240,000 ^b		
	Equipment			42,000 ^b		
269	Corporation yard, step 3				20,000	
	Working drawings				491,400	
	Construction					40,000
297	Refrigeration unit 7					
	Working drawings				6,200 ^a	
	Construction				130,800 ^a	
305	Social sciences unit 2					
	Working drawings					73,800
317	Physical sciences unit 5					
	Working drawings					109,100

319	Administration unit 2—including school of administration	Working drawings Construction	----- -----	84,400 -----	2,403,200
346	Air-condition Aberdeen and Inverness Halls	Working drawings Construction	----- -----	18,200 ^b 308,800 ^b	-----
360	Utilities and site development, 1969-70	Working drawings Construction	----- -----	----- -----	12,000 270,000
361	Boiler addition unit 5	Working drawings Construction	----- -----	----- -----	11,000 243,700
380	Life sciences unit 3	Working drawings Construction	----- -----	----- -----	73,200 -----
383	Entomology annex addition	Working drawings Construction	----- -----	----- -----	18,800 510,700
385	School of engineering unit 1	Working drawings Construction	----- -----	----- -----	18,800 ^b 510,700 ^b
397	Glasshouse and headhouse No. 25	Working drawings Construction	----- -----	----- -----	154,800 -----
403	Commissary	Working drawings Construction	----- -----	----- -----	8,600 ^a 186,200 ^a
		Equipment	-----	-----	42,500 ^a
		Working drawings Construction	----- -----	----- -----	22,400 ^b 571,800 ^b

^a Projects requiring further policy consideration as to relative urgency, timing or method of financing.

^b To be financed from federal or other nonstate funds.

1965-70 MAJOR CAPITAL IMPROVEMENT PROGRAM, CAMPUS EXCERPTS—MAY 15, 1964—Continued

Priority	Project	1965-69				1969-70	
		1965-66	1966-67	1967-68	1968-69	1969-70	
412	Riverside—Continued						
	Residence hall built 6,446 students—with common facilities for 800 students						\$85,700 ^b
	Working drawings						2,457,300 ^b
	Construction						
	Totals, Riverside						\$8,331,300
	State funds						
	Proposed	\$4,349,150	\$10,830,200	\$10,939,300	\$5,316,000		4,370,300
	Policy unresolved ^a	7,085,400	6,250,400	7,239,200	3,669,600		2,377,300
	Totals, state funds	\$5,065,400	\$6,784,800	\$9,246,600	\$4,040,600		\$4,607,600
	Unallocated funds ^b	1,363,750	4,048,400	932,700	1,275,400		3,723,700
TOTAL, FIVE-YEAR PROGRAM							\$41,765,950
	State funds						
	Proposed						26,614,900
	Policy unresolved ^a						3,847,400
	Totals, state funds						\$30,462,000
	Unallocated funds ^b						11,303,950
San Diego—General							
3	First college—building E						
	Equipment	\$355,000					
13	First college—building F						
	Equipment	250,000	\$436,000				
24	First college—building D						
	Equipment	382,000 ^b					
28	First college—complete areas in buildings B and C for changed occupancy						
	Construction	200,000					
36	Building renovation, Camp Matthews						
	Working drawings—construction—equipment	164,200					
	Construction		200,000 ^c				

37	Utilities and site development, general campus and SIO, 1965-66	246,600	
69	Working drawings—construction Second college—building 2A	125,000	3,181,500
92	Construction Equipment Physical education building and playing fields		\$661,000
100	Working drawings Equipment Construction Relocation of La Jolla Shores Drive	62,300	1,735,600
101	Working drawings—construction Working drawings Construction	104,700 4,800 ^b 104,900 ^b	96,300
110	SIO—ship operating base, Point Loma Working drawings—construction Residential apartments, step 2—200 units	1,005,578 ^b	
115	Equipment Working drawings Construction Residence hall unit 2—400 students—without dining facilities		50,000 ^b
123	Working drawings Construction Parking—general campus, 1965-66—450 cars	64,000 ^b 1,781,430 ^b	124,000 ^b
123	Working drawings—construction Working drawings Construction		72,500 ^a
123	Utilities and site development, general campus and SIO, 1966-67	1,700 ^b 35,000 ^b	
	Working drawings Construction		23,000 592,900

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1965-70 MAJOR CAPITAL IMPROVEMENT PROGRAM, CAMPUS EXCERPTS—MAY 15, 1964—Continued

Priority	San Diego—General—Continued Project	1965-66	1966-67	1967-68	1968-69	1969-70
134	Addition to central utilities building A, step 1 Working drawings		23,600			
	Construction		615,000			
149	First college—complete areas in building B for changed occupancy, step 2					
	Construction		200,000			
157	University library building—including temporary classrooms and offices					
	Working drawings		139,800			
	Construction			4,216,000		
	Equipment				442,000	
180	SIO—physical oceanography, shops and working collections building, step 1					
	Working drawings		28,600			
	Equipment			139,000		
	Construction			789,800		
	Equipment			139,000		
	Working drawings		28,600 ^b			
	Construction		789,800 ^b			
196	General services and cafeteria building, step 2					
	Working drawings			15,700		
	Construction			429,400		
	Equipment			2,000		
	Working drawings		27,700 ^b			
	Construction		758,500 ^b			
	Equipment			83,000 ^b		
201	Residence hall unit 3—500 students					
	Working drawings		78,100 ^b			
	Equipment			179,000 ^b		
	Construction		2,205,500 ^b			

202	Second college—general services and cafeteria building, step 1	Working drawings	-----	44,600 ^b	125,000 ^b	
	Equipment	-----	-----	-----	-----	
	Construction	-----	-----	1,219,200 ^b	-----	
217	Parking, SIO, 1966-67	Working drawings	-----	5,600 ^b	-----	
	Construction	-----	-----	118,700 ^b	-----	
218	Parking, general campus, 1966-67—450 cars	Working drawings	-----	5,000 ^b	-----	
	Construction	-----	-----	105,100 ^b	-----	
223	Utilities and site development, general campus, 1967-68	Working drawings	-----	-----	44,200	
	Construction	-----	-----	-----	1,207,800	
224	Second college—utilities and site development, step 1	Working drawings	-----	-----	25,200	
	Construction	-----	-----	-----	671,700	
242	Second college—building 2B	Working drawings	-----	-----	-----	\$140,000
	Construction	-----	-----	-----	-----	
248	Marine biology instruction and research building	Working drawings	-----	-----	28,900 ^a	
	Equipment	-----	-----	-----	-----	
	Construction	-----	-----	-----	801,300 ^a	277,000 ^a
	Equipment	-----	-----	-----	-----	
	P	-----	-----	-----	13,800 ^b	277,000 ^b
	Working drawings	-----	-----	-----	28,900 ^b	
	Construction	-----	-----	-----	801,300 ^b	
259	SIO—laboratory unit 4	Working drawings	-----	-----	28,900 ^a	
	Equipment	-----	-----	-----	-----	
	Construction	-----	-----	-----	801,300 ^a	277,000 ^a
	Equipment	-----	-----	-----	-----	
	P	-----	-----	-----	13,800 ^b	277,000 ^b
	Working drawings	-----	-----	-----	28,900 ^b	
	Construction	-----	-----	-----	801,300 ^b	

^a Projects requiring further policy consideration as to relative urgency, timing or method of financing.

^b To be financed from federal or other nonstate funds.

1955-70 MAJOR CAPITAL IMPROVEMENT PROGRAM, CAMPUS EXCERPTS—MAY 15, 1964—Continued

San Diego--General--Continued		1965-66	1966-67	1967-68	1968-69	1969-70
<i>Priority</i>	<i>Project</i>					
261	Materials research institute building					
	Working drawings			65,500 ^b	1,830,100 ^b	713,000 ^b
279	Residential apartments, step 4—200 units					
	Working drawings			79,000 ^b	50,000 ^b	
	Equipment					
286	Parking, general campus, 1967-68—450 cars			2,223,200 ^b		
	Working drawings			5,000 ^b		
293	Construction			105,100 ^b		
	Addition to central utilities building A, step 2					
	Working drawings				28,100	
	Construction				758,500	
303	Second college—building 2C					106,300
	Working drawings					
311	Second college—building 2D					106,300
	Working drawings					
332	Physical oceanography, shops, and working collections building, step 2					
	Working drawings				28,600	
	Equipment					
	Construction				789,800	
	Equipment					
	Working drawings				28,600 ^b	
	Construction				789,800 ^b	
340	Administration buildings					
	Working drawings				71,600	
	Construction					2,013,100
347	Residence hall unit 4—500 students—without dining facilities					
	Working drawings				78,100 ^b	
	Equipment					
	Construction				2,205,500 ^b	179,000 ^b

1965-70 MAJOR CAPITAL IMPROVEMENT PROGRAM, CAMPUS EXCERPTS—MAY 15, 1964—Continued

San Diego—Medical

<i>Priority</i>	<i>Project</i>	<i>1965-66</i>	<i>1966-67</i>	<i>1967-68</i>	<i>1968-69</i>	<i>1969-70</i>
58	Utilities and site development related to basic science building					
	Working drawings	\$18,000				
	Construction		\$281,400			
63	Remodel existing facilities at county hospital site					
	Working drawings and construction	284,800	100,000			
	Equipment					
80	Basic science building					
	Construction	6,640,000	1,125,000			
	Equipment					
	Construction	4,000,000 ^b	800,000 ^b			
	Equipment					
163	Clinical science buildings					
	Working drawings					
	Construction		52,400	\$1,566,800	\$342,000	
	Equipment					
	Working drawings					
	Construction		78,700 ^b	2,350,200 ^b	513,000 ^b	
	Equipment					
164	Utilities and site development related to clinical sciences building					
	Working drawings					
	Construction		20,800	519,100		
176	University Hospital—250 beds—and outpatient clinics building					
	Working drawings					
	Construction		94,000 ^a	3,253,300 ^a	422,400 ^a	
	Equipment					
	Working drawings					
	Construction		141,000 ^b		4,880,000 ^b	633,600 ^b
	Equipment					

177	Animal farm				
	Working drawings	-----	12,000 ^a	-----	
	Construction	-----	284,300 ^a	-----	
229	Equipment	-----	20,000 ^a	-----	
	Utilities and site development related to University Hospital	-----		-----	
	Working drawings	-----	20,300 ^a	-----	
	Construction	-----	503,900 ^a	-----	
250	San Diego County General Hospital—addition for outpatient clinics and clinical sciences	-----		-----	
	Working drawings	-----	45,700	-----	1,339,100
	Construction	-----		-----	
	Equipment	-----		-----	\$165,200
	Working drawings	-----	68,600 ^b	-----	
	Construction	-----		-----	2,005,700 ^b
	Equipment	-----		-----	
289	Parking, medical center area, 1967-68—500 cars	-----		-----	247,800 ^b
	Working drawings	-----		-----	
	Construction	-----	5,500 ^b	-----	
		-----	116,800 ^b	-----	
355	Parking, medical center area, 1968-69—500 cars	-----		-----	
	Working drawings	-----		-----	5,500 ^b
	(construction)	-----		-----	116,800 ^b

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^b To be financed from federal or other nonstate funds.

1965-70 MAJOR CAPITAL IMPROVEMENT PROGRAM, CAMPUS EXCERPTS—MAY 15, 1964—Continued

San Diego—Medical—Continued

Priority	Project	1965-66	1966-67	1967-68	1968-69	1969-70
425	Parking, medical center area, 1969-70—500 cars					
	Working drawings					5,500 ^b
	Construction					116,800 ^b
	Totals, San Diego Medical	\$10,943,400	\$2,310,200	\$13,330,200	\$5,381,100	\$535,300
	State funds					
	Proposed	6,943,400	1,879,600	2,131,600	1,681,100	165,200
	Policy unresolved ^a		410,900	3,777,500	422,400	
	Totals, state funds	\$6,943,400	\$2,290,500	\$5,909,100	\$2,103,500	\$165,200
	Nonstate funds	4,000,000	1,019,700	7,421,100	3,277,600	370,100
	TOTAL, FIVE-YEAR PROGRAM					\$33,500,200
	State funds					
	Proposed					12,800,900
	Policy unresolved ^a					4,610,800
	Total state funds					\$17,411,700
	Nonstate funds ^b					16,088,500

53	Surge unit 1		
	Working drawings and construction	180,500 ^b	
	Equipment	18,500 ^b	
54	Medical sciences building alterations		
	Working drawings, construction, and equipment	248,900	
	Working drawings	4,100 ^b	
	Construction	68,400 ^b	
	Equipment	15,000 ^b	
56	Health sciences instruction and research unit 1, including 8 unfinished floors		
	Equipment	1,300,000 ^b	
73	Parking structure under clinics expansion		
	Working drawings	86,800 ^b	
	Construction	2,552,600 ^b	
	Equipment	5,000 ^b	
74	Land acquisition, 1965-66		370,000 ^c
95	Francis I. Proctor Building alterations		
	Working drawings	12,000 ^b	
	Construction	195,950 ^b	
	Equipment	32,000 ^b	
96	Interior completion of 3 floors of health sciences instruction and research unit 1, step 2		
	Working drawings	12,300	
	Construction	332,900	
	Equipment	665,800 ^b	
		70,300	
		140,500 ^b	
		2,000,000	
98	Langley Porter Clinic		
137	Utilities expansion—west side of campus		
	Working drawings	7,300	
	Construction	156,200	
141	Campus access road, step 2		
	Working drawings	8,100	
	Construction	176,000	

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^b To be financed from federal or other nonstate funds.

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San Francisco—Medical—Continued

<i>Priority</i>	<i>Project</i>	<i>1965-66</i>	<i>1966-67</i>	<i>1967-68</i>	<i>1968-69</i>	<i>1969-70</i>
145	San Francisco General Hospital alterations—related to 128-student medical class					
	Working drawings		6,100 ^a			
	Construction		6,100 ^b			
	Equipment		99,900 ^a			
			99,900 ^b			
			10,000 ^a			
			10,000 ^b			
165	Unit for pharmacy graduate teaching program—interior completion of 1 floor of HSNR unit 1					
	Working drawings		4,200			
	Construction		8,400 ^b			
	Equipment		95,700			
			191,400 ^b			
			20,000			
			40,000 ^b			
167	Addition to H. C. Moffitt Hospital					
	Working drawings		87,000 ^a	3,490,800 ^a	500,000 ^a	
	Construction		174,000 ^b	6,381,600 ^b	1,000,000 ^b	
	Equipment					
183	Institute on Human Disabilities Building					
	Working drawings		63,700 ^b			
	Construction		1,773,900 ^b	232,000 ^b		
	Equipment					
238	UC Clinics Building alterations, step 1—related to School of Dentistry expansion					
	Working drawings			26,900		
	Construction			26,900 ^b		
	Equipment			521,800		
				521,800 ^b		
					300,000	
					300,000 ^b	

253	Land acquisition, 1967-68	-----	-----	200,000	-----
296	Heating plant No. 2	-----	-----	-----	34,600
	Working drawings	-----	-----	-----	938,900
	Construction	-----	-----	-----	-----
	Equipment	-----	-----	-----	-----
301	Medical sciences building alterations	-----	-----	-----	-----
	Working drawings	-----	-----	-----	10,900 ^a
	Construction	-----	-----	-----	177,700 ^a
	Equipment	-----	-----	-----	39,000 ^a
320	Genetics unit—interior completion of 1 floor of HSI&R unit 1	-----	-----	-----	-----
	Working drawings	-----	-----	-----	4,300
	Construction	-----	-----	-----	8,600 ^b
	Equipment	-----	-----	-----	97,600
		-----	-----	-----	195,200 ^b
		-----	-----	-----	21,000
		-----	-----	-----	42,000 ^b
		-----	-----	-----	420,000
326	Land acquisition, 1968-69	-----	-----	-----	22,300
330	Medical research building addition, step 3	-----	-----	-----	22,300 ^b
	Working drawings	-----	-----	-----	609,100
	Construction	-----	-----	-----	609,100 ^b
	Equipment	-----	-----	-----	-----
		-----	-----	-----	128,000
		-----	-----	-----	128,000 ^b
331	Cardiovascular Research Institute expansion	-----	-----	-----	-----
	Working drawings	-----	-----	-----	20,800 ^b
	Construction	-----	-----	-----	519,100 ^b
	Equipment	-----	-----	-----	-----
370	UC Hospital alterations	-----	-----	-----	-----
	Working drawings	-----	-----	-----	41,800
	Construction	-----	-----	-----	72,100 ^b
		-----	-----	-----	837,600
		-----	-----	-----	1,442,500 ^b

^a Projects requiring further policy consideration as to relative urgency, timing or method of financing.

^b To be financed from federal or other nonstate funds.

1965-70 MAJOR CAPITAL IMPROVEMENT PROGRAM, CAMPUS EXCERPTS—MAY 15, 1964—Continued

San Francisco—Medical—Continued

<i>Priority</i>	<i>Project</i>	<i>1965-66</i>	<i>1966-67</i>	<i>1967-68</i>	<i>1968-69</i>	<i>1969-70</i>
371	H. C. Moffitt Hospital alterations Working drawings Construction	—	—	—	—	25,800 461,400
372	Old Langley Porter alterations— school of nursing Working drawings Construction	—	—	—	—	12,900 12,900 ^b 230,700 230,700 ^b
373	Old Langley Porter alterations— neurological institute Working drawings Construction	—	—	—	—	25,800 ^b 461,400 ^b
374	UC Clinics Building and Medical Sciences Building alterations, step 2—related to School of Dentistry expansion Working drawings Construction	—	—	—	—	8,400 8,400 ^b 141,400 141,400 ^b 200,000
391	Land acquisition, 1969-70	—	—	—	—	—
404	Parnassus Avenue campus development Working drawings Construction	—	—	—	—	34,900 ^b 948,400 ^b
406	Campus auditorium and Millberry Union expansion Working drawings Construction	—	—	—	—	32,600 ^b 16,300 ^b 897,800 ^b 448,900 ^b
414	Residential apartments, step 2—90 units Working drawings Construction	—	—	—	—	48,500 ^b 1,334,300 ^b

419	Community house					5,700 ^b
	Working drawings					119,600 ^b
	Construction					10,000 ^b
	Equipment					
	Totals, San Francisco Medical Campus					
	State funds	\$8,631,050	\$7,342,600	\$11,101,800	\$5,892,500	\$8,591,200
	Proposed	260,800	4,321,700	748,700	2,447,800	2,091,000
	Policy unresolved ^a		203,000	3,190,800	727,600	
	Totals state funds	\$860,800	\$4,524,700	\$3,939,500	\$3,175,400	\$2,091,000
	Nonstate funds ^b	8,370,250	2,817,900	7,162,300	2,717,100	6,500,200
	TOTAL, FIVE-YEAR PROGRAM					\$41,559,150
	State funds					9,870,000
	Proposed					4,421,400
	Policy unresolved ^a					
	Totals state funds					\$13,991,400
	Nonstate funds ^b					27,567,750

Santa Barbara

8	Chemistry building					
	Equipment	\$505,000				
23	Equipment for natural sciences					
	Equipment	100,000				
27	Cyclotron building					
	Equipment	1,000,000 ^b				
34	Utilities and site development, 1965-66					
	Working drawings—construction	934,300				
	Construction		\$72,000 ^c			
43	Land acquisition for general campus expansion—					
	89 acres	448,100				

^a Projects requiring further policy consideration as to relative urgency, timing or method of financing.

^b To be financed from federal or other nonstate funds.

^c Projects may be subsequently proposed for amendment into the 1965-66 Budget Act subject to the development of adequate financing.

1965-70 MAJOR CAPITAL IMPROVEMENT PROGRAM, CAMPUS EXCERPTS—MAY 15, 1964—Continued

Santa Barbara—Continued					
<i>Priority</i>	<i>Project</i>	1965-66	1966-67	1967-68	1968-69
46	Classroom and office unit 3				1969-70
	Construction	4,023,800			
	Equipment		430,000		
	Construction		60,000 ^c		
50	Library unit 3				
	Construction	3,619,500			
	Equipment		380,900		
61	Physical sciences building alterations				
	Working drawings—construction—equipment	113,000			
66	Classroom and office unit 4				
	Working drawings	121,900			
	Construction		3,695,800		
	Equipment			8,379,000	
69.1	Biological sciences unit 2— including vivarium and environmental stress institute				
	Working drawings		152,400	4,674,600	\$980,000
	Construction				
	Equipment				
69.2	Physics unit 1				
	Working drawings				
	Construction			4,167,900	875,000
	Equipment				
79.5	Purchase of relocatable buildings				
87	Music unit 2				
	Working drawings	71,200			
	Construction		1,995,800		
	Equipment			207,000	
112	Residence hall unit 6—800 students—with dining commons for 800—San Rafael Hall				
	Working drawings	124,100 ^b			
	Construction	4,330,800 ^b			
	Equipment		265,000 ^b		

113	Residence hall unit—800 students—with dining commons for 1,200—Santa Ynez Hall, step 1			
	Working drawings	160,200 ^b		
	Construction	4,949,000 ^b		
	Equipment	---	269,000 ^b	
117	Commissary			
	Working drawings	24,400 ^b		
	Construction	643,800 ^b		
	Equipment	---	70,000 ^b	
126	Engineering building			
	Equipment	---	696,000	
136	Utilities and site development, 1966-67			
	Working drawings	---	27,400	
	Construction	---	740,500	
166	Campus communications center			
	Working drawings	---	31,900	
	Construction	---	864,900	
	Equipment	---	---	228,000
189	Fire station			
	Working drawings	---	---	6,900
	Construction	---	---	148,700
	Equipment	---	---	11,000
190	Student health service building			
	Working drawings	---	51,700 ^b	
	Construction	---	1,427,600 ^b	
	Equipment	---	---	170,000 ^b
204	Residence hall unit—400 students—Santa Ynez Hall, Step 2			
	Working drawings	---	56,500 ^b	
	Construction	---	1,563,500 ^b	
	Equipment	---	---	98,000 ^b
208	Residence hall unit—400 students—with dining commons for 1,200—San Marcos Hall, step 1			
	Working drawings	---	115,000 ^b	
	Construction	---	3,369,100 ^b	
	Equipment	---	---	171,000 ^b

^b To be financed from federal or other nonstate funds.

^c Projects may be subsequently proposed for amendment into the 1965-66 Budget Act subject to the development of adequate financing.

1965-70 MAJOR CAPITAL IMPROVEMENT PROGRAM, CAMPUS EXCERPTS—MAY 15, 1964—Continued

<i>Santa Barbara</i> —Continued		1965-66	1966-67	1967-68	1968-69	1969-70
<i>Priority</i>	<i>Project</i>					
226	Utilities and site development, 1967-68 Working drawings Construction			20,300 502,900		
252	Tennis courts and playing fields Working drawings Construction				14,200 325,900	
270	University Center unit 2 Working drawings Construction Equipment			159,400 ^b	4,924,200 ^b	\$500,000 ^b
282	Residential apartments, step 2—100 units Working drawings Construction			41,400 ^b 1,132,800 ^b		
284	Equipment Residence hall unit—400 students— San Marcos Hall, step 2 Working drawings Construction				6,000 ^b	
295	Equipment Utilities and site development, 1968-69 Working drawings Construction			56,500 ^b 1,563,500 ^b	98,000 ^b	
307	Home economics building—including child care and home management laboratories Working drawings				30,700 835,500	
314	Engineering unit 2 Working drawings					71,800 ^a
322	Sciences-engineering branch library Working drawings Construction					113,600 65,700 1,835,000

323	Physical education unit 2				84,600 ^a	
	Working drawings	-----	-----	-----	-----	
	Construction	-----	-----	-----	-----	2,399,000 ^a
334	Corporation yard					
	Working drawings	-----	-----	-----	-----	36,100
	Construction	-----	-----	-----	-----	981,700
	Equipment	-----	-----	-----	-----	
367	Main library alterations					103,000
	Working drawings	-----	-----	-----	-----	
	Construction	-----	-----	-----	-----	8,500
	Equipment	-----	-----	-----	-----	137,300
	Construction	-----	-----	-----	-----	15,000
378	Chemistry unit 2					
	Working drawings	-----	-----	-----	-----	65,300 ^a
	Construction	-----	-----	-----	-----	1,823,400 ^a
382	Music unit 3					
	Working drawings	-----	-----	-----	-----	46,200 ^a
390	Military science building					
	Working drawings	-----	-----	-----	-----	20,900 ^a
	Construction	-----	-----	-----	-----	521,000 ^a
392	Land acquisition, growing area for biological sciences					
400	Administration unit 2					20,000 ^a
	Working drawings	-----	-----	-----	-----	
407	Auditorium					67,500 ^a
	Working drawings	-----	-----	-----	-----	
	Construction	-----	-----	-----	-----	76,800 ^b
409	Museum					2,166,500 ^b
	Working drawings	-----	-----	-----	-----	
	Construction	-----	-----	-----	-----	32,300 ^b
		-----	-----	-----	-----	875,300 ^b

^a Projects requiring further policy consideration as to relative urgency, timing or method of financing.

^b To be financed from federal or other nonstate funds.

1965-70 MAJOR CAPITAL IMPROVEMENT PROGRAM, CAMPUS EXCERPTS—MAY 15, 1964—Continued

Santa Barbara—Continued					
<i>Priority</i>	<i>Project</i>	<i>1965-66</i>	<i>1966-67</i>	<i>1967-68</i>	<i>1968-69</i>
418	Residence hall unit—400 students— San Marcos hall, step 3				
	Working drawings				
	Construction				
	Totals, Santa Barbara	\$21,171,100	\$16,562,900	\$13,738,900	\$9,257,600
	State funds				
	Proposed	9,936,800	9,375,500	10,346,300	4,144,800
	Policy unresolved ^a				84,600
	Totals, state funds	\$9,936,800	\$9,375,500	\$10,346,300	\$4,229,400
	Nonstate funds ^b	11,234,300	7,187,400	3,392,600	5,028,200
	TOTAL, FIVE-YEAR PROGRAM				
	State funds				\$73,248,900
	Proposed				36,045,800
	Policy unresolved ^a				5,119,700
	Totals, state funds				\$44,135,500
	Nonstate funds ^b				32,113,400

56,500 ^b
1,563,500 ^b

Santa Cruz

14	University Library unit 1		
	Equipment		\$239,000
15	College No. 1—400 resident students		
	Equipment		110,000
19	College No. 2—450 resident students		
	Equipment		103,000
	Working drawings and construction		2,206,300 ^b
	Equipment		200,000 ^b
	Working drawings and construction		590,000 ^b
	Equipment		60,000 ^b
31	Utilities and site development, 1965-66		
	Working drawings and construction		574,600
39	Working drawings and construction		95,000 ^b
	Central heating plant		
48	Construction and equipment		765,300
	College No. 3—350 resident students		
	Construction		375,600
	Equipment		\$43,000
	Working drawings and construction		2,682,000 ^b
	Equipment		268,000 ^b
	Working drawings and construction		533,000 ^b
	Equipment		53,000 ^b
65	Fine arts and television unit 1		
	Working drawings		49,400
	Construction		
	Equipment		1,360,000
80.2	Additional equipment		287,000
91	Natural sciences unit 2		250,000
	Working drawings		
	Construction		83,600
	Equipment		
			2,372,500
			\$499,000

^a Projects requiring further policy consideration as to relative urgency, timing or method of financing.

^b To be financed from federal or other nonstate funds.

1965-70 MAJOR CAPITAL IMPROVEMENT PROGRAM, CAMPUS EXCERPTS—MAY 15, 1964—Continued

Santa Cruz—Continued		Project				
Priority	Complete areas in existing buildings for changed occupancy	1965-66	1966-67	1967-68	1968-69	1969-70
97	Working drawings Construction Equipment	-----	-----	3,900 61,200 10,000		
130	Utilities and site development, 1966-67 Working drawings Construction	-----	39,600 1,080,500			
143	Alterations to existing facilities Working drawings Construction Equipment	-----	-----	3,900 61,200 10,000		
152	Fine arts building Working drawings Construction Equipment	-----	59,500	1,652,100	\$174,000	
153	Engineering unit 1 Working drawings Construction Equipment	-----	67,300 1,880,600	396,000		
155	Social sciences unit 1 Working drawings Construction Equipment	-----	84,200	2,387,600	251,000	
205	College No. 4—400 students Working drawings Construction Equipment Working drawings Construction Equipment Working drawings Construction Equipment	-----	21,600 81,200 ^b 18,300 ^b	543,000 2,296,000 ^b 537,000 ^b	57,000 242,000 ^b 56,000 ^b	

1965-70 MAJOR CAPITAL IMPROVEMENT PROGRAM, CAMPUS EXCERPTS—MAY 15, 1964—Continued

Santa Cruz—Continued		1965-66	1966-67	1967-68	1968-69	1969-70
Priority	Project					
291	Utilities and site development, 1968-69					
	Working drawings				48,300	
	Construction				1,328,600	
299	Alterations to existing facilities, 1968-69					
	Working drawings				3,900 ^a	
	Construction				61,200 ^a	
300	Equipment					10,000 ^a
	Education psychology unit 1					
	Working drawings					124,400
312	Natural resources unit 1					
	Working drawings				49,900	
	Construction					1,372,200
328	Institute No. 1					
	Working drawings				19,800 ^b	
	Construction				487,600 ^b	
	Equipment					103,000 ^b
336	Receiving-storage unit 1					
	Working drawings				23,200	
	Construction				599,600	
	Equipment					63,000
342	Administration unit 1					
	Working drawings				75,800	
	Construction					2,138,000
344	College No. 6—450 resident students					
	Working drawings				21,600 ^a	
	Construction					543,000 ^a
	Working drawings				81,200 ^b	
	Construction					2,296,000 ^b
	Working drawings				18,900 ^b	
	Construction					555,100 ^b
357	Utilities and site development, 1969-70					
	Working drawings					41,600
	Construction					1,138,500

1965-70 MAJOR CAPITAL IMPROVEMENT PROGRAM, CAMPUS EXCERPTS—MAY 15, 1964—Continued

Agricultural Field Stations

Priority

Project

	1965-66	1966-67	1967-68	1968-69	1969-70
107	Kearney horticultural field station development, step 3				
	Working drawings				
	Construction	\$6,600			
	Equipment	141,200			
186	Lindcove field station development, step 2				
	Working drawings				
	Construction		\$11,200		
	Equipment		250,400		
262	Sierra foothill range field station development, step 2				
	Working drawings		45,000		
	Construction		7,700		
	Equipment		164,600		
263	Kearney horticultural field station—acquire and develop 35 acres				
	Working drawings		15,000		
	Construction			\$3,900	
333	South coast field station—acquire and develop 200 acres				
	Working drawings			81,700	
	Construction			24,900	
399	Westside field station—acquire and develop 320 acres				
	Working drawings			663,100	
	Construction				\$15,500
					361,000

University Extension

120	Peninsula center, Sunnyvale	\$18,600 ^b
	Working drawings	450,400 ^b
	Construction	48,000 ^b
	Equipment	

210	Administration building near Los Angeles campus	Working drawings	-----	-----	-----	-----
		Construction	-----	-----	\$66,600 ^a	-----
		Equipment	-----	-----	-----	-----
43.5	Land acquisition for downtown Los Angeles center	-----	-----	-----	-----	\$1,859,200 ^a
212	Rehabilitate Woods Hall annex, San Francisco center	-----	-----	-----	-----	-----
		Working drawings	-----	-----	-----	-----
		Construction	-----	-----	11,000 ^a	-----
		Equipment	-----	-----	180,300 ^a	-----
213	Land acquisition for theater facility, Los Angeles	-----	-----	-----	17,200 ^a	-----
214	Land acquisition, Sacramento center	-----	-----	-----	170,000 ^a	-----
285	Sacramento center	Working drawings	-----	-----	101,000 ^a	-----
		Construction	-----	-----	-----	12,000 ^b
		Equipment	-----	-----	-----	279,800 ^b
349	Downtown Los Angeles center	Working drawings	-----	-----	-----	27,100 ^b
		Construction	-----	-----	-----	-----
350	Theater, Los Angeles	Working drawings	-----	-----	-----	133,100 ^a
		Construction	-----	-----	-----	-----
		Equipment	-----	-----	-----	-----
351	Conference center, Berkeley	Working drawings	-----	-----	-----	44,700 ^b
		Construction	-----	-----	-----	1,227,000 ^b
		Equipment	-----	-----	-----	-----
		Working drawings	-----	-----	-----	127,000 ^b
		Construction	-----	-----	-----	-----
352	Conference center, Los Angeles	Working drawings	-----	-----	100,800 ^b	-----
		Construction	-----	-----	-----	2,915,800 ^b
		Equipment	-----	-----	-----	-----
353	Center for health sciences, San Francisco	Working drawings	-----	-----	135,200 ^b	-----
		Construction	-----	-----	-----	4,050,200 ^b
		Equipment	-----	-----	-----	-----
		Working drawings	-----	-----	97,500 ^b	-----
		Construction	-----	-----	-----	2,811,800 ^b

^a Projects requiring further policy consideration as to relative urgency, timing or method of financing.

^b To be financed from federal or other nonstate funds.

1965-70 MAJOR CAPITAL IMPROVEMENT PROGRAM, CAMPUS EXCERPTS—MAY 15, 1964—Continued

Statewide Projects						
Priority	Project	1965-66	1966-67	1967-68	1968-69	1969-70
86	Land for Hastings addition		300,000 ^c			
108	Agricultural extension service regional office and laboratory building, San Joaquin Valley		9,600 ^a			
	Working drawings		261,100 ^a			
	Construction		35,300 ^a			
150	Equipment		49,200			
	Working drawings			1,352,300		
	Construction				140,000	
195	Equipment					
	Move U.C. printing department from Berkeley campus to Richmond service and storage facility					
	Working drawings		98,600 ^a			
	Construction		772,400 ^a	38,800 ^a		
207	Equipment					
	Combined structure—living, dining, and recreation facilities					
	Working drawings		24,400 ^b			
	Construction		613,800 ^b	70,000 ^b		
264	Equipment					
	Agricultural administration building, Davis					
	Working drawings			23,900		
	Construction			623,600	60,000	
337	Equipment					
	Alterations to Richmond service and storage facility					
	Working drawings				15,100	
	Construction				251,400	
420	University Hall parking structure addition—184 cars					
	Working drawings					16,700 ^b
	Construction					395,200 ^b
	Preliminary plans and general planning studies	1,050,000	959,600	1,413,400	979,800	1,000,000
		1,583,400 ^b	717,600 ^b	626,400 ^b	644,500 ^b	
	Totals, statewide	\$3,150,400	\$5,749,000	\$6,870,400	\$4,658,200	\$15,663,300

State funds					
Proposed	1,050,000	1,460,100	3,937,400	2,219,900	1,376,500
Policy unresolved ^a		2,903,100	1,918,000	188,600	3,976,100
Total state funds	\$1,050,000	\$4,363,200	\$5,855,400	\$2,408,500	\$5,352,600
Nonstate funds ^b	2,100,400	1,385,800	1,015,300	2,249,700	10,316,700
TOTAL, STATEWIDE FIVE-YEAR PROGRAM					
State funds					
Proposed					
Policy unresolved ^a					
Total state funds					
Nonstate funds ^b					
Total—University	\$133,271,428	\$136,728,200	\$153,555,025	\$99,339,622	\$126,753,200
State funds					
Proposed	55,025,000	86,399,000	70,437,925	40,499,922	34,137,700
Policy unresolved ^a		5,124,000	22,082,700	17,946,300	24,587,300
Total state funds	\$55,025,000	\$91,523,000	\$92,520,625	\$58,446,222	\$58,725,000
Nonstate funds ^b	78,246,428	45,205,200	61,035,000	40,893,400	68,028,200
TOTAL, FIVE-YEAR PROGRAM					
State funds					
Proposed					
Policy unresolved ^a					
Total state funds					
Nonstate funds ^b					
Total					
State funds					
Proposed					
Policy unresolved ^a					
Total state funds					
Nonstate funds ^b					
Total					

^a Projects requiring further policy consideration as to relative urgency, timing or method of financing.

^b To be financed from federal or other nonstate funds.

^c Projects may be subsequently proposed for amendment into the 1965-66 Budget Act subject to the development of adequate financing.

CALIFORNIA COLLEGE OF MEDICINE

The California College of Medicine trains qualified students in the essential skills of the basic sciences and clinical medicine leading to the conferment by the college of the degree Doctor of Medicine. The college is located adjacent to the Los Angeles County Hospital in that city and makes use of the hospital's facilities for the necessary clinical training during the latter part of the medical student's instructional program.

Formerly known as the College of Osteopathic Physicians and Surgeons, the institution changed its corporate name to the California College of Medicine in 1961 and was accredited as a medical school in February 1962. In 1963, the State Legislature designated the college as a medical department of the University of California effective January 1, 1965 by Chapter 1933, Statutes of 1963.

The basic sciences project in the five-year program for the college represents the most urgent of those needs for facilities to insure that the college obtains permanent accreditation and to provide for further expansion of the student body from the existing 96 student-class. The basic sciences unit will replace outmoded facilities currently in use at the college and provide for part of the mentioned expansion.

Further projects are contemplated to increase the instructional potential of the college during the period covered by the five-year program. Planning for these projects, however, has not progressed sufficiently that the projects, along with valid cost estimates, could be included as part of this five-year program.

**CALIFORNIA COLLEGE OF MEDICINE—SCHEDULE OF MAJOR PROJECTS
FOR CAPITAL OUTLAY PROGRAM**

<i>Priority</i>	<i>Project</i>	<i>1965-66</i>	<i>1966-67</i>	<i>1967-68</i>	<i>1968-69</i>	<i>1969-70</i>
1	Basic Sciences Building	-----	-----	-----	-----	-----
	Working Drawings	-----	\$150,000 ^a	-----	-----	-----
	Construction	-----	-----	\$5,000,000 ^a	-----	-----
	Equipment	-----	-----	-----	\$1,500,000 ^a	-----
	Annual Totals, policy unresolved ^a	-----	\$150,000	\$5,000,000	\$1,500,000	-----
	TOTAL, FIVE-YEAR PROGRAM, policy unresolved^a	-----	-----	-----	-----	\$6,650,000

^a Projects requiring further policy consideration as to relative urgency, timing or method of financing.

STATE COLLEGES

Currently there are 17 state colleges operating on 18 campuses (State Polytechnic College has two campuses, one located in San Luis Obispo and the second in the City of Pomona) with two new colleges recently established. The 1965-66 Governor's Budget includes funds for opening one of these colleges and continues the planning staff for the other.

To administer this great educational complex the Board of Trustees of the California State Colleges was created by Chapter 49, Statutes of 1960, First Extraordinary Session. One of the major functions of this board and its administrative staff is the planning to accommodate the increasing numbers of students in an orderly fashion. This five-year capital outlay program for the California state colleges totals \$287,361,830, of which \$244,275,930 is proposed and \$43,085,900 is deferred for reasons noted in the detailed project listing.

The state college program is summarized by category of facility required in Table VI below:

TABLE VI
TABULATION OF PROGRAM BY CATEGORY

<i>Category</i>	<i>State funds</i>		<i>State funds</i>	
	<i>Proposed</i>	<i>Percent-age</i>	<i>Policy unresoloved ^a</i>	<i>Total expenditures</i>
Project planning -----	\$3,361,950	1.4	\$883,500	\$4,245,450
Land acquisition—opportunity purchase -----	1,000,000	.4	--	1,000,000
Land acquisition -----	10,655,000	4.4	3,500,000	14,155,000
Site development -----	17,603,000	7.2	3,121,500	20,724,500
Equipment -----	28,828,700	11.8	1,182,000	30,010,700
Instructional facilities:				
General classroom buildings ---	19,913,900	8.2	5,683,100	25,597,000
Physical education buildings ---	9,610,500	3.9	6,434,500	16,045,000
Music-speech-drama buildings --	12,321,400	5.0	1,988,300	14,309,700
Engineering buildings -----	7,126,000	2.9	2,762,000	9,888,000
Science buildings -----	33,693,000	13.8	6,822,500	40,515,500
Other facilities -----	25,658,000	10.5	6,844,500	32,502,500
Auxiliary facilities:				
Library buildings -----	58,341,000	23.9	175,000	58,516,000
Administration buildings -----	4,974,000	2.0	3,089,000	8,063,000
Boiler plants and corporation yards -----	2,771,400	1.1	500,000	3,271,400
Air conditioning -----	5,824,080	2.4	100,000	5,924,080
Cafeteria buildings -----	2,594,000	1.1	--	2,594,000
Total all funds -----	\$244,275,930	100.0	\$43,085,900	\$287,361,830

^a Projects requiring further policy considerations as to relative urgency, timing or method of financing.

TABLE VII
COMPARISON OF PROJECTED ANNUAL FULL-TIME EQUIVALENT ENROLLMENTS OF REGULAR STUDENTS ATTENDING 8-5 O'CLOCK WITH
EXISTING AND FUNDED CAPACITIES OF STATE COLLEGE CAMPUSES AND THE CAPACITY THAT WILL BE PROVIDED BY THE
PROJECTS IN THE FIVE-YEAR PROGRAM

College	Budget year	1965-66		1966-67		1967-68		1968-69		1969-70	
		Enroll- ment	Capacity	Enroll- ment	Capacity	Enroll- ment	Capacity	Enroll- ment	Capacity	Enroll- ment	Capacity
Chico.....	1966-67	4,530	4,180	4,840	4,180	5,100	5,180	5,310	5,180	5,490	5,680
Fresno.....	1966-67	6,780	6,712	7,000	6,712	7,180	6,946	7,330	7,061	7,440	7,114
Fullerton.....	1966-67	4,530	4,236	5,100	5,772	5,080	5,846	6,200	5,366	6,740	6,366
Hayward.....	1966-67	4,790	5,507	5,500	5,557	6,240	6,298	6,700	6,372	7,200	7,024
Humboldt.....	1966-67	2,590	2,508	2,700	2,806	2,890	2,806	2,980	2,897	3,060	2,953
Long Beach.....	1966-67	11,500	11,500	12,000	11,970	13,050	13,005	13,620	13,005	14,160	13,615
Los Angeles ¹	1966-67	11,420	12,016	11,590	12,016	12,370	12,016	12,860	13,422	13,400	13,501
Palos Verdes.....	1966-67	810	789	1,440	1,786	2,210	2,307	3,040	2,966	3,600	3,951
Sacramento.....	1966-67	5,843	6,426	6,630	6,626	7,085	6,526	7,380	6,526	7,620	8,326
San Bernardino.....	1966-67	525	1,319	1,840	1,309	2,240	2,928	2,960	2,928	3,380	3,781
San Diego.....	1966-67	11,151	11,575	13,070	12,675	13,570	13,675	13,960	14,425	14,340	14,425
San Fernando.....	1966-67	9,682	9,682	8,690	9,682	9,220	9,682	9,610	9,682	10,000	10,257
San Francisco ²	1966-67	10,098	10,665	11,320	10,665	11,740	11,665	11,960	13,265	15,060	13,265
San Jose.....	1966-67	12,640	14,345	13,630	14,768	15,410	13,625	15,750	14,894	16,070	16,194
Sonoma.....	1966-67	2,041	2,041	1,700	2,165	1,970	2,165	2,180	2,465	2,400	2,465
Stanislaus.....	1966-67	1,611	1,011	1,030	1,045	1,340	1,264	1,640	1,264	1,920	1,564
California State Polytechnic: San Luis Obispo.....	1966-67	7,950	6,836	8,380	7,356	8,750	7,376	9,030	8,206	9,320	8,206
Kellogg-Voorhis.....	1966-67	5,900	5,639	5,640	5,739	6,010	5,779	6,310	6,206	6,650	6,947
Totals.....	1966-67	117,420	117,047	127,030	123,809	135,330	129,079	141,850	136,871	147,910	145,734

¹ Effect of year round operation reflected in increased capacity. Actual capacity is shown in parentheses below the compared capacity.

² Enrollment projections for this college exceed capacity due to master plan limitation of 13,000 students (PTE). Projects needed to reach projected enrollment have been deferred pending adoption of new master plan limit by Trustees of the California State Colleges.

The great problem facing the state colleges in the future is one of numbers. In 1964-65 the full-time equivalents (FTE) 8 a.m. to 5 p.m. students totals 92,580. By fall of 1971, capacity will be needed for 147,910 students (FTE), an increase of 55,330 students (FTE) or 59.8 percent. This capital outlay program is designed to meet that volume of students as shown in Table VII. Projects either in existence or funded for construction will produce a capacity of 111,183 students in the fall of 1966. Those projects included in the 1965-66 Governor's Budget for construction are scheduled to produce a total capacity of 117,047 for a student body of 117,420 students (FTE) in the fall of 1967.

A summary of the proposed projects by college is included in Table VIII. A brief description of each category is included in the material following.

TABLE VIII
CALIFORNIA STATE COLLEGES—RECAPITULATION OF FIVE-YEAR
CAPITAL OUTLAY PROGRAM BY CAMPUS

	<i>State funds</i>		<i>Total expenditures</i>
	<i>Proposed</i>	<i>Policy unresolved ^a</i>	
Trustees of the California State Colleges -----	\$4,361,950	\$883,500	\$5,245,450
Chico State College -----	7,065,430	1,467,000	8,532,430
Fresno State College -----	7,274,600	280,000	7,554,600
State College at Fullerton -----	15,983,000	70,000	16,053,000
State College at Hayward -----	12,753,500	100,000	12,853,500
Humboldt State College -----	7,579,000	1,342,000	8,921,000
State College at Long Beach -----	14,594,000	698,500	15,292,500
State College at Los Angeles -----	19,881,200	9,920,500	29,801,700
State College at Palos Verdes -----	23,934,300	627,500	24,561,800
Sacramento State College -----	8,736,900	780,500	9,517,400
State College at San Bernardino -----	18,273,800	100,000	18,373,800
San Diego State College -----	20,570,700	6,193,600	26,764,300
San Fernando Valley State College -----	3,607,450	235,000	3,842,450
San Francisco State College -----	21,336,800	11,530,800	32,867,600
San Jose State College -----	31,748,500	350,000	32,098,500
Sonoma State College -----	7,916,300	4,864,000	12,780,300
Stanislaus State College -----	3,504,000	649,000	4,153,000
California State Polytechnic College			
Kellogg-Voorhis Campus -----	6,637,500	2,994,000	9,631,500
San Luis Obispo Campus -----	8,517,000	--	8,517,000
Total, all campuses -----	\$244,275,930	\$43,085,900	\$287,361,830

The rapid growth of the college population has resulted in the establishment of six new state colleges since 1957. Thirty-four percent of the five-year capital outlay program, amounting to \$82,364,900, will be needed to continue the development of the initial instructional facilities at these colleges, which will be generally of the multiple-purpose type. Construction of specialized facilities at these new colleges, as well as many of the older colleges, will depend largely upon the needs of the areas served by the college and the curriculum studies now being made by the staff of the Board of Trustees. The following breakdown by category includes all proposed funds.

^a Projects requiring further policy consideration as to relative urgency, timing or method of financing.

STATE COLLEGES

Project planning ----- \$3,361,950

These funds will provide the preliminary plans and special studies necessary to bring the projects outlined in this five-year program to the working drawing stage. The funds will be allocated and expended by the Trustees of the California State Colleges on a project basis.

Land acquisition ----- \$11,655,000

These projects include land acquisition for Chico, Humboldt, Los Angeles, San Diego, San Jose, and Sonoma. The projects are needed to provide sites for the future building requirements of the state colleges. Land acquisition is included only when it has been determined that it will be necessary for the building program. A total of \$1,000,000 is included in the total for opportunity land purchases by the Trustees of the California State Colleges in those areas of the state where the Coordinating Council for Higher Education and the Legislature have recommended and/or authorized establishment of new state colleges.

Site development ----- \$17,603,000

These projects include utilities and land development projects which are necessary for the campuses to function efficiently. Projects are included for all the state colleges. On the older campuses many of these projects are necessary to develop new vehicle and pedestrian traffic patterns to handle increased enrollments.

Equipment ----- \$28,828,700

These projects include equipment for the various types of instructional buildings and auxiliary facilities such as administration buildings and corporation yards. Where applicable, equipment is phased over a two- or three-year period.

General classroom buildings ----- \$19,913,900

These facilities consist of general classrooms, multiple-purpose rooms, and some highly specialized facilities which do not fit into the other categories listed here. This group of projects also includes faculty office buildings when such facilities are combined with general classroom buildings.

Physical education facilities ----- \$9,610,500

These projects, including gymnasiums, outdoor physical education areas (including all-purpose fields, tennis courts and pools), are included in the instructional program. Gymnasium seating up to 5,000 seats at any one institution is provided.

Music-speech-drama buildings ----- \$12,321,400

These projects include the classrooms and auxiliary areas necessary for the music-speech-drama curricula. In addition, a number of the projects include little theaters of 500-seat capacity and the necessary production facilities.

Engineering buildings ----- \$7,126,000

These projects are for the construction of facilities, primarily laboratories, for instruction in the engineering and industrial arts curricula.

Science buildings ----- \$33,693,000

A number of science building projects are included to serve the increasing enrollments in the science fields. In many cases these buildings are used initially for other instructional purposes and as the enrollments of the college grow, these facilities are remodeled for science laboratory use. The cost of such remodeling is minimized by installing in science buildings at the outset all the utilities and other services that will be needed when the facility is used entirely for science instruction.

Other instructional facilities ----- \$25,658,000

These projects represent highly specialized facilities many of which are provided only once on each campus. The volume of the projects reflects the colleges efforts to specialize in subject matter disciplines and develop the kinds of facilities needed to support expanded graduate programs pursuant to the Master Plan for High Education.

Libraries ----- \$58,341,000

The expanding state college libraries require these projects to provide sufficient seating and stack areas to meet the requirements of the enrollments that are estimated in relation to the college's master plan enrollment. A number of the projects provide classroom space as an interim use of the building until the space is needed for library purposes.

Administration buildings ----- \$4,974,000

Administration buildings are planned to house the administrative staff that will be employed at the time of the completion of the project. In addition, classrooms are interspersed within the building to serve initially as instructional facilities and will later be remodeled for the expanded administrative functions as the enrollment of the college increases.

Boiler plants and corporation yards ----- \$2,771,400

These projects serve the entire campus and provide a central maintenance and storage shop for various maintenance activities. In most cases, new boiler plants are constructed to accommodate more equipment than is needed to serve the first buildings on a campus. As more buildings are constructed, additional equipment can be installed without the delay and cost of adding to the existing building.

Air-conditioning ----- \$5,824,080

These projects are included for most of the colleges and are designed to air-condition both instructional and noninstructional buildings so as to increase the utilization of these facilities during the months of extremely high temperatures. Where possible, and within funds available, it is desirable to air-condition as many instruction, library and administrative facilities as possible in those geographical areas where the high temperatures cause extreme discomfort and loss of efficiency.

Cafeterias

\$2,594,000

Cafeteria projects are included in this program where justified on the basis of the increased enrollments. A cafeteria serving full-meal menus is provided on each of the state college campuses. In addition there are snackbar operations, and in some cases, vending machine operations. This category does not include those cafeterias necessary for the operation of the residence halls. Except for the initial dining facility on each state college campus, cafeterias are built from nonstate funds.

BASIC FACTORS AFFECTING CAPITAL OUTLAY***Objectives of State Colleges***

As defined in the Education Code Section 22606, the primary function of the state colleges is the provision for instruction for undergraduate students, and for graduate students through the master degree in the liberal arts and sciences, and in applied fields and certain professions, including teaching. Agricultural programs are provided at State Polytechnic, Chico State, and Fresno State Colleges. The code also provides that doctoral degrees may be awarded jointly with the University of California and that faculty research is authorized to the extent that it is consistent with the primary function of the state colleges and the facilities provided for that function.

Enrollment

Enrollment trends have been developed from cumulative statistical data which indicate the progression experience of students from high schools to the colleges and through the collegiate-level grades. The data include a compilation of numbers of students by college or university area. The construction of facilities at each college is related to the proportionate distribution (or "mix") of the enrollment by division level (lower, upper and graduate).

The enrollment figures used in projecting the five-year construction program reflect diversion of lower division students as proposed by the "Master Plan for Higher Education in California."

Adjustments for the impact of new colleges have been made at those existing colleges which seem most likely to be affected by the proximity of the presently authorized new institutions. Where colleges are approaching their master planning limits (see Table IX below), the projections are adjusted to reflect this limit. This affects the estimates for the state college located at San Francisco.

TABLE IX
MASTER PLANNED ENROLLMENT LIMITS FOR CAPITAL OUTLAY PURPOSES
OF THE CALIFORNIA STATE COLLEGES

<i>State colleges</i>	<i>FTE enrollment limit</i>
Chico State College	6,000
Fresno State College	20,000
State College at Fullerton	20,000
State College at Hayward	15,000
Humboldt State College	5,000
State College at Long Beach	20,000
State College at Los Angeles	16,800
State College at Palos Verdes	16,000
Sacramento State College	20,000
State College at San Bernardino	20,000
San Diego State College	20,000
San Fernando Valley State College	20,000
San Francisco State College	13,000
San Jose State College	17,000
Sonoma State College	12,000
Stanislaus State College	12,000
State Polytechnic College:	
Kellogg-Voorhis Campus	20,000
San Luis Obispo Campus	12,000

Full-time equivalent enrollment of regular students (FTE) is used in determining the need for capacity in instructional facilities. The full-time equivalent enrollment of regular students is determined by dividing by 15 the aggregate number of credit units earned by students taking more than six units. Regular individual enrollment, which is the total number of individuals enrolled for more than six units, is used in determining the need for cafeteria seating. Office capacity is based on needs developed by the application of existing staffing criteria to the various enrollment bases.

Diversion:

On December 18, 1959, the State Board of Education, then the governing board for the California State Colleges, approved the recommendations regarding diversion included in the report entitled, "A Master Plan For Higher Education In California, 1960-1975." Among the recommendations approved were a number which had to do with the selection and the retention of students; and they are as follows:

1. "In order to raise materially standards for admission to the lower division, the state colleges select first-time freshmen from the top one-third (33 $\frac{1}{3}$ %) and the university from the top one-eighth (12 $\frac{1}{2}$ %) of all graduates of California public high schools."
2. "For both the state colleges and the university, freshmen admissions through special procedures outside the basic requirements of recommending units of high school work and/or aptitude tests (such as specials and exceptions to the rule) be limited to 2 percent of all freshmen admissions in each system for a given year. Furthermore, that all 'limited' students be required to meet regular admission standards."
3. "'The University of California emphasize policies leading to the reduction of lower division enrollments in relation to those of the

Diversion—(Continued)

upper and graduate divisions, and that state colleges pursue policies which will have a similar effect'. The percentage of graduates in the lower division of both the state colleges and the university to be gradually decreased 10 percentage points below that existing in 1960 (estimated to be 51 percent in both segments) by 1975. It is further recommended that the determination of the means by which this recommendation can best be carried out is the responsibility of the governing boards."

A footnote to recommendation 3 above stated in addition that: "It is estimated that this recommendation would result in the transfer of some 40,000 lower division students to the junior colleges by 1975. It is expected that recommendations to select state college students from the upper 33 percent of all public high school graduates and the university from the upper 12½ percent, together with the recommendation that all 'limited' students be required to meet regular admission requirements, will make up another 10,000."

Since the initiation of the master plan in 1960, the Trustees of the California State Colleges approved a partial revision of their admission standards in 1963 and in January of 1965 adopted the final phase of their revised admission standards which should meet the master plan limitation of drawing from the upper 33½ percent of all public high school graduates in California.

The diversion of students which was to be brought about by the establishment of a 60-40 relationship between upper and lower division by 1975 has made relatively little progress to date. Since 1960, lower division enrollment as a percentage of the total undergraduate enrollment has been reduced less than two percent. Thus, it appears that little diversion of students has been accomplished since agreement to the master plan recommendations in 1960.

Because of this situation in December 1963 the staff of the Coordinating Council for Higher Education submitted a report to the Council which made the following recommendations:

- (1) "With the advice and assistance of the council, the governing boards of the University of California and the California state colleges should adopt as a goal an undergraduate distribution percentage ratio of 40 percent lower division to 60 percent upper division in the four-year colleges to be achieved by 1975."
- (2) "Diversion procedures should be developed by the University of California and the California state colleges with the advice and assistance of the Committee on Student Admissions, Retention, and Transfer and the council staff so that the 50,000 student goal of the master plan can be achieved by 1975 taking into account the diversion possible in achieving the 40-60 relationship between lower division and upper division enrollments."

Diversion—(Continued)

- (3) "An intermediate goal of 46-54 percent distribution of undergraduate students can be achieved by both segments by the fall of 1969 and the resultant diversion should be reflected in the 1964-67 state appropriations for capital outlay for the California state colleges and the University of California."

The recommendations noted above were adopted by the Coordinating Council in December 1963. As a result of these recommendations this five-year building program has been developed considering the diversion principles which have been set forth above. The enrollment projections included in Table VII reflect the trustees estimate of the effect of diversion principles in the state colleges. It is anticipated that the annual adjustment which will be achieved in moving toward the 60-40 goal in 1975 will amount to between one-half and one percentage point per fiscal period.

Full-Year Operation:

Pursuant to the recommendations of the Coordinating Council for Higher Education the Trustees of the California State Colleges have adopted policies which will lead ultimately to placing all the colleges on year round operation. The first two colleges to attempt year round operation will be the California State Colleges at Hayward and Los Angeles. The college at Hayward will begin operation in the summer of 1965 and Los Angeles in the summer of 1967. Funds to initiate these programs are included in the 1965-66 Governor's Budget.

The effect of year round operation on the colleges' five-year building program has been shown in Table VII. The principal effect has been to lessen the need for additional new facilities. This has been expressed in this program by the deferral of projects and the reduction in size of those that remain. In this way it is anticipated that the state will realize significant savings in the capital outlay program.

The calculation of the effect of year-round operation was based on the assumption that a certain portion of the students will accelerate (that is, attend each quarter thus completing their work in less than four years) while others will attend the colleges in the traditional manner, utilizing three months of the year for nonacademic pursuits. Such assumptions must of necessity be somewhat arbitrary due to the lack of experience from which to draw.

STATE COLLEGES—SCHEDULE OF MAJOR PROJECTS FOR CAPITAL OUTLAY PROGRAM

Trustees of the California State Colleges

<i>Priority</i>	<i>Project</i>	<i>1965-66</i>	<i>1966-67</i>	<i>1967-68</i>	<i>1968-69</i>	<i>1969-70</i>
1	Preliminary plan proposed	\$5,223,850	\$8,550,950	\$23,083,700	\$563,950	\$515,700
1a	Preliminary plans decided	100,000	50,500 ^a	234,700 ^a	589,500 ^a	100,000
2	Special studies		100,000	100,000	100,000	
900a	Land acquisition—opportunity and special policies		250,000	250,000	250,000	250,000
	Total funds of the California State Colleges	\$5,223,850	\$8,601,450	\$23,318,400	\$1,443,450	\$825,700
	State funds					
	<i>Proposed</i>	923,850	909,070	748,500	853,950	923,700
	<i>Policy unresolved^a</i>		50,500	234,500	539,500	
	Total state funds	\$923,850	\$969,570	\$983,000	\$1,443,450	\$925,700
	TOTAL FIVE-YEAR PROGRAM				\$5,245,150	
	<i>State funds</i>					
	<i>Proposed</i>					4,361,950
	<i>Policy unresolved^a</i>					883,500

^a Projects requiring further policy considerations as to relative urgency, timing or method of financing.

Chico State College

9

Engineering building

\$175,000

Equipment—phase I

Equipment—phase II

Equipment—phase III

Equipment—phase IV

\$100,000

49,000

37

Demolished applied arts building

for 90 students (FTE)

Working drawings

\$8,000

Construction

Equipment

Site acquisition (Science Building)

Farm buildings—phase III

Construction

Equipment

150,000

75,000

250,000^a50,000^a

63

Air condition education-

psychology building

Construction

77,430^c

Music drama building

Equipment

500,000

119

Life science building with

capacity for 1,000 students

(FTE)

Working drawings

Construction

Equipment

91,000

2,500,000

137

Modify business-social science

building

Construction

60,000

\$8,274,000

^a Projects requiring further policy consideration as to relative urgency, timing or method of financing.^c Projects may be subsequently proposed for amendment into the 1965-66 Budget Act subject to the development of adequate financing.

STATE COLLEGES—SCHEDULE OF MAJOR PROJECTS FOR CAPITAL OUTLAY PROGRAM—Continued

Chico State College—Continued		<i>Project</i>				
<i>Priority</i>		1965-66	1966-67	1967-68	1968-69	1969-70
138	Farm buildings—phase IV Construction		250,000 ^a			
139	Farm site development Equipment		322,000 ^a	50,000 ^b		
144	Air-condition science building Construction		150,000			
157	Site development (utilities) Construction		565,000			
178	Corporation yard Construction		200,000	17,500		
189	Classroom office building with capacity for 500 students (FTE) Working drawings				822,500	500,000
203	Air-condition science music- speech building Construction					
217	Industrial arts agriculture building with capacity for 140 students (FTE) Working drawings			150,000		
239	Construction				22,500 ^a	500,000 ^b
267	Administration faculty office Site acquisition (humanities)					200,000

291 Physical science addition with
capacity for 75 students (FTE)
Working drawings

					22,500 ^a
Totals, Chico State College					
State funds	\$432,000	\$3,065,430	\$2,942,500	\$45,000	\$2,047,500
Proposed	432,000	2,243,430	2,842,500	22,500	1,525,000
Policy unresolved ^a		822,000	100,000	22,500	522,500
Total state funds	\$432,000	\$3,065,430	\$2,942,500	\$45,000	\$2,047,500
TOTAL FIVE-YEAR PROGRAM					
State funds					\$8,532,430
Proposed					7,065,430
Policy unresolved ^a					1,467,000

Fresno State College

39	Administration-faculty office building Construction	\$1,463,000			
79	Equipment		\$115,000		
66	Construction	150,000			
67	Air-condition science building Construction		123,000 ^c		
67	Air-condition industrial arts building Construction		150,000 ^c		
128	Art building with capacity for 234 students (FTE) Working drawings		60,000	\$1,000,000	
146	Construction				\$110,000
146	Equipment				
146	Air-condition agriculture classroom				
146	Construction		125,000		

^a Projects requiring further policy consideration as to relative urgency, timing or method of financing.

^c Projects may be subsequently proposed for amendment into the 1965-66 Budget Act subject to the development of adequate financing.

STATE COLLEGES—SCHEDULE OF MAJOR PROJECTS FOR CAPITAL OUTLAY PROGRAM—Continued

Fresno State College—Continued						
Priority	Project	1965-66	1966-67	1967-68	1968-69	1969-70
147	Air-condition science classroom Construction	—	200,000	—	—	—
158	Site development (utilities) Construction	—	100,000	—	—	—
168	Remodel administration/faculty office building Construction	—	125,000	—	—	—
136	Life science addition with capacity for 115 students (FTE) Working drawings	—	—	45,000	1,000,000	\$225,000
	Construction	—	—	—	—	—
	Equipment	—	—	—	—	—
205	Air-condition music building Construction	—	—	75,000	—	—
216	Site development (streets) Construction	—	—	250,000	—	—
245	Engineering addition with capacity for 53 students (FTE) Working drawings	—	—	—	80,000	1,800,000
	Construction	—	—	—	—	—
272	Science humanities building with capacity for 2,000 students (FTE) Working drawings	—	—	—	—	180,000 ^a
	Construction	—	—	—	—	—
301	Air-condition physical education classroom Construction	—	—	—	—	75,000

STATE COLLEGES—SCHEDULE OF MAJOR PROJECTS FOR CAPITAL OUTLAY PROGRAM—Continued

State College at Fullerton—Continued		Project				
Priority		1965-66	1966-67	1967-68	1968-69	1969-70
91	Cafeteria					
	Construction					
	Equipment	1,459,000		\$150,000		
127	Art building with capacity for 252 students (FTE)			78,000		
	Working drawings					
	Construction				2,172,000	
136	Conversion of science building classrooms to laboratories with reduction in capacity of 582 students (FTE)					
	Construction—phase II		150,000			
156	Site development (1966)		700,000			
	Construction					
169	Boiler plant addition		21,000			
	Working drawings			580,000		
	Construction					
197	Conversion of science building classrooms to laboratories with capacity for 74 students (FTE)					
	Construction—phase III			100,000		
215	Site development (1967)			300,000		
	Construction					
235	Classroom-administration building with capacity for 1,000 students (FTE)				175,000	
	Working drawings					
	Construction					\$4,825,000
252	Conversion of science building classrooms to laboratories with reduction in capacity of 100 students (FTE)					
	Construction—phase IV				100,000	
253	Remodel Library					
	Construction				60,000	
	Equipment					20,000
256	Outdoor physical education facilities—phase III					
	Construction				100,000	
	Equipment					10,000

262	Site development (1968)					
280	Construction Education classroom building with capacity for 1,000 students (FTE)				200,000	
292	Working drawings Conversion of science building classrooms to laboratories with capacity for 74 students (FTE)					70,000 ^a
305	Working drawings Site development (1969)					14,000
	Working drawings					10,000
	Totals, State College at Fullerton					
	<i>State funds</i>	\$3,018,000	\$3,871,000	\$1,208,000	\$3,007,000	\$4,949,000
	<i>Proposed</i>	3,018,000	3,871,000	1,208,000	3,007,000	4,879,000
	<i>Policy unresolved^a</i>					70,000
	<i>Total state funds</i>	\$3,018,000	\$3,871,000	\$1,208,000	\$3,007,000	\$4,949,000
	TOTAL, FIVE-YEAR PROGRAM					\$16,053,000
	<i>State funds</i>					
	<i>Proposed</i>					15,983,000
	<i>Policy unresolved^a</i>					70,000

State College at Hayward

4	Music classroom building Construction—phase II	\$120,000				
	Equipment	110,000				
28	(Classroom—office building capacity for 1,990 students (FTE)					
	Construction	3,300,000				
	Equipment				\$150,000	
40	Swimming pool					
	Construction	190,000				
	Equipment		\$10,000			

^a Projects requiring further policy consideration as to relative urgency, timing or method of financing.

STATE COLLEGES—SCHEDULE OF MAJOR PROJECTS FOR CAPITAL OUTLAY PROGRAM—Continued

State College at Hayward—Continued		1965-66	1964-67	1967-68	1968-69	1969-70
<i>Priority</i>	<i>Project</i>					
77	Site development—phase V	350,000				
	Construction—phase A		600,000			
99	Construction—phase B					
	Physical education facility		150,000			
	Equipment					
100	Cafeteria		120,000			
	Equipment					
123	Library-audiovisual-administration building with capacity for 250 students (FTE)			200,000	\$5,000,000	
	Working drawings					
	Construction					
126	Speech and drama building with capacity for 283 students (FTE)					
	Working drawings			73,500	2,215,000	
	Construction					
271	Corporation yard—phase II				150,000	
	Construction					
	Equipment					
278	Classroom building No. 2 with capacity for 1,000 students (FTE)					\$15,000
	Working drawings					100,000 ^a
	Totals, State College at Hayward	\$4,070,000	\$880,000	\$123,500	\$7,365,000	\$115,000
	State funds					
	Proposed	4,070,000	880,000	123,500	7,365,000	15,000
	Policy unresolved ^a					100,000
	Total state funds	\$4,070,000	\$880,000	\$123,500	\$7,365,000	\$115,000
TOTAL, FIVE-YEAR PROGRAM						
	State funds					\$12,853,500
	Proposed					\$12,753,500
	Policy unresolved ^a					100,000

Humboldt State College

37	Art-music addition with capacity for 132 students (FTE)	Construction ----- Equipment -----	\$1,214,000 -----	\$150,000 -----	
53	Biological science addition with capacity for 238 students (FTE)	Working drawings ----- Construction ----- Equipment -----	65,000 -----	1,300,000 ----- \$350,000 -----	
85	Site acquisition	Phase I ----- Phase II ----- Phase III ----- Phase IV -----	300,000 -----	600,000 ^a -----	300,000 ^a ----- \$300,000 ^a -----
141	Remodel women's gymnasium	Working drawings ----- Construction ----- Equipment -----		60,000 -----	1,000,000 ----- 58,000 -----
142	Outdoor physical education facility	Working drawings ----- Construction ----- Equipment -----		27,000 -----	700,000 ----- 13,000 -----
195	Forestry building addition with capacity for 91 students (FTE)	Construction ----- Equipment -----			500,000 ----- \$70,000 -----
198	Library—audiovisual addition	Working drawings ----- Construction ----- Equipment -----		26,000 -----	750,000 ----- 75,000 -----
202	Fieldhouse expansion	Construction ----- Equipment -----		135,000 ^a -----	7,000 ^a -----

^a Projects requiring further policy consideration as to relative urgency, timing or method of financing.

STATE COLLEGES—SCHEDULE OF MAJOR PROJECTS FOR CAPITAL OUTLAY PROGRAM—Continued

Humboldt State College—Continued		1965-66	1966-67	1967-68	1968-69	1969-70
Priority	Project					
222	Site development (roads) Construction			200,000		
243	Wildlife building addition with capacity for 56 students (FTE) Working drawings				21,000	600,000
313	Remodel Founder's Hall Construction					100,000
	Totals, Humboldt State College	\$1,579,000	\$2,137,000	\$2,711,000	\$1,649,000	\$845,000
	State funds					
	Proposed	1,579,000	1,537,000	2,276,000	1,342,000	845,000
	Policy unresolved ^a		600,000	435,000	307,000	
	Totals, state funds	\$1,579,000	\$2,137,000	\$2,711,000	\$1,649,000	\$845,000
TOTAL, FIVE-YEAR PROGRAM						
	State funds					
	Proposed					\$8,921,000
	Policy unresolved ^a					
State College at Long Beach						
13	Industrial arts building No. 2 Equipment	\$100,000				
23	Physical education facility Equipment	40,000				
51	Engineering building No. 2, with capacity for 460 students (FTE) Working drawings	161,000				
	Construction		\$2,750,000			
	Equipment					
82	Faculty office building No. 2 ventilation improvement Construction				\$750,000	
						75,000

101	Language-arts and faculty office building with capacity for 106 students (FTE) Equipment	280,000			
118	Psychology building with capacity for 1,035 students (FTE) Working drawings	76,000			
	Construction		2,187,500		\$600,000
	Equipment				
122	Nursing building with capacity for 555 students (FTE) Working drawings			20,000 ^a	
	Construction				473,500 ^a
	Equipment				
124	Library addition Working drawings	122,500			
	Construction		3,500,000		500,000
	Equipment				
166	Site development (main entrance) Construction	67,000			
177	Corporation yard addition Construction	238,000			
191	Home economics addition with capacity for 198 students (FTE) Working drawings				
	Construction			25,000	
192	Radio-TV building with capacity for 190 students (FTE) Working drawings				530,000
	Construction				
221	Site development (State College Drive) Construction			39,000	
241	Music building addition with capacity for 172 students (FTE) Working drawings		75,000		
	Construction				25,000
					712,000

^a Projects requiring further policy consideration as to relative urgency, timing or method of financing.

STATE COLLEGES—SCHEDULE OF MAJOR PROJECTS FOR CAPITAL OUTLAY PROGRAM—Continued

State College at Long Beach—Continued					
<i>Priority</i>	<i>Project</i>	<i>1965-66</i>	<i>1966-67</i>	<i>1967-68</i>	<i>1968-69</i>
269	Administration building addition Working drawings Construction				1968-69 600,000
276	General classroom and faculty office building with capacity for 1,000 students (FTE)				53,000 ^a
282	Working drawings Science building No. 4 with capacity for 250 students (FTE)				105,000 ^a
	Working drawings				
	Totals, State College at Long Beach	\$376,000	\$3,533,500	\$6,532,500	\$1,683,500
	<i>State funds</i>				
	<i>Proposed</i>	376,000	3,533,500	6,512,500	1,210,000
	<i>Policy unresolved^a</i>			20,000	473,500
	<i>Totals, state funds</i>	\$376,000	\$3,533,500	\$6,532,500	\$1,683,500
TOTAL, FIVE-YEAR PROGRAM					
	<i>State funds</i>				\$15,292,500
	<i>Proposed</i>				14,594,000
	<i>Policy unresolved^a</i>				698,500
State College at Los Angeles					
8	Engineering building Equipment—phase I Equipment—phase II Equipment—phase III	340,000	550,000	571,000	
36	Library addition with capacity for 551 students (FTE) Construction Equipment—phase I Equipment—phase II	6,379,000		640,000	320,000

59	Science addition with capacity for 15 students (PTE)			
	Construction	300,000		
	Equipment		59,000	
80	Site development (access, Barnett)			
	Construction	640,000		
88	Site acquisition	2,165,000		
74	Air-condition classroom No. 1			
	Construction		384,100 ^c	
121	Science building No. 2 with capacity for 800 students (PTE)			
	Working drawings			187,500 ^a
	Construction			
135	Remodel classroom building No. 1 with reduction in capacity of 180 students (PTE)			
	Working drawings			
	Construction	11,500		317,500
	Equipment			50,000
148	Air-condition classroom No. 2			
	Construction—phase II		276,000	
152	Air-condition engineering building			
	Construction		241,000	
153	Air-condition science building			
	Construction		260,000	
159	Site development (west arterial)			
	Working drawings		45,000	
	Construction		2,200,000	1,295,000
172	Site acquisition (Berridge Road)			
179	Administration building			
	Equipment			167,000
180	Classroom building No. 2			
	Equipment			400,000
207	Air-condition fine arts building			
	Construction			150,000
208	Air-condition music building			
	Construction			150,000

^a Projects pending further policy consideration as to relative urgency, timing or method of financing.

^c Projects may be subsequently proposed for amendment into the 1965-66 Budget Act subject to the development of adequate financing.

State College at Palos Verdes

* Temporary buildings with capacity for 789 students (FTE)

	Construction	\$1,338,600		
	Equipment—phase I	127,200		
98	Equipment—phase II			
*	Site development—phase I	\$98,000		
	Construction	1,300,000		
50	Social science building with capacity for 972 students (FTE)			
	Working drawings	100,000		
	Construction		\$1,996,000	
	Equipment			\$200,000
60	Physical education fieldhouse with capacity for 25 students (FTE)			
	Construction	487,500 ^a		
	Equipment		30,000 ^a	
63	Outdoor physical education facilities			
	Construction	344,500		
	Equipment		30,000	
98	Initial building			
	Equipment	231,500		
112	Science building with capacity for 521 students (FTE)			
	Working drawings	88,000		
	Construction			
	Equipment—phase I			200,000
	Equipment—phase II			
113	Library—classroom administration building with capacity for 659 students			750,000
	Working drawings	147,000		
	Construction			
	Equipment—phase I			5,145,500
				50,000

^a Projects requiring further policy consideration as to relative urgency, timing or method of financing.

* No priority number due to prior year scheduling of project.

STATE COLLEGES—SCHEDULE OF MAJOR PROJECTS FOR CAPITAL OUTLAY PROGRAM—Continued

State College at Palos Verdes—Continued		1965-66	1966-67	1967-68	1968-69	1969-70
Priority	Project					
524	Site development—phase II Construction		700,000			
542	Site development—phase III Construction			212,000		
566	Humana fine arts building Working drawings Construction				240,000	6,617,000
571	Corporation yard Construction				220,000	15,000
597	Equipment Physical education facilities Working drawings					110,000 ^a
	Totals, State College at Palos Verdes	83,000,800	8,745,500	82,238,000	85,865,500	87,742,000
	State funds	6,000,800	3,238,000	3,238,000	5,865,500	7,633,000
	Proposed		587,500	30,000		440,000
	Funding unreserved					
	Totals, state funds	83,000,800	8,745,500	82,268,000	85,865,500	87,742,000
	TOTAL, FIVE-YEAR PROGRAM					824,561,800
	State funds					23,934,300
	Proposed					621,500
	Funding unreserved					
Sacramento State College						
3	Science building with capacity for 583 students (FTE)	8900,000				
	Construction	138,600	8750,000			
	Equipment—phase I					
	Equipment—phase II					
45	Additional boiler and utilities Construction					

92	Site development (roads) Construction	55,000		
69	Air-condition art addition Construction		80,800 ^c	
70	Air-condition life science building Construction		75,000 ^c	
104	Music building Equipment		400,000	
117	Social science classroom No. 2 with capacity for 1,500 students (PFE) Working drawings Construction		52,500 ^a	\$500,000 ^a
131	Remodel science wings with capacity for 113 stu- dents (PFE) Construction		300,000	
134	Remodel speed-ramp building with a reduction in capacity of 18 students (PFE) Construction		300,000	
143	Outdoor physical education lockers Construction		75,000 ^a	
145	Air-condition social science building Construction		250,000	
170	Site development (Science Quad.) Construction		60,000	
184	Library building Working drawings Construction	122,500		
204	Equipment Equipment			\$350,000
224	Air-condition Douglas Hall Construction	200,000		
224	Site development Construction	55,000		
230	Air-condition education building Construction			75,000

^a Projects requiring further policy consideration as to relative urgency, timing or method of financing.

^c Projects may be subsequently proposed for amendment into the 1965-66 Budget Act subject to the development of adequate financing.

STATE COLLEGES—SCHEDULE OF MAJOR PROJECTS FOR CAPITAL OUTLAY PROGRAM—Continued

Sacramento State College—Continued						
<i>Priority</i>	<i>Project</i>	<i>1965-66</i>	<i>1966-67</i>	<i>1967-68</i>	<i>1968-69</i>	<i>1969-70</i>
264	Site development— (roads)					
275	Construction Remodel library with capacity for 1,800 students (FTE)				75,000	
290	Construction Engineering building with capacity for 140 students (FTE)					500,000
303	Working drawings Air-condition engineering building					53,000 ^a
309	Construction Site development (South Campus)					100,000
	Construction					100,000
	Totals, Sacramento State College	\$1,443,600	\$2,343,200	\$877,500	\$3,750,000	\$1,103,000
	<i>State funds</i>					
	<i>Proposed</i>	1,443,600	2,215,800	377,500	3,650,000	1,050,000
	<i>Policy unresolved ^a</i>		127,500	500,000	100,000	53,000
	<i>Total state funds</i>	\$1,443,600	\$2,343,300	\$877,500	\$3,750,000	\$1,103,000
	TOTAL, FIVE-YEAR PROGRAM					<u>\$9,517,400</u>
	<i>State funds</i>					
	<i>Proposed</i>					8,736,900
	<i>Policy unresolved ^a</i>					780,500

State College at San Bernardino

6	Temporary buildings with capacity for 525 students (FTE)	
	Equipment—phase II	\$200,000
	Equipment—phase III	
17	Outdoor physical education facility	
	Equipment	13,800

32	Physical science classroom building with capacity for 254 students (FTE) Construction Equipment—phase I Equipment—phase II
32	Physical science classroom building with capacity for 560 students (FTE) Construction Equipment—phase I Equipment—phase II
41	Physical education facility (gymnasium) Construction Equipment
47	Central heating and air-conditioning facilities Construction Equipment
61	Physical education facility—swimming pool Construction Equipment
75	Site development—phase II Construction
116	Library-Audiovisual—Administration building with capacity for 1559 students (FTE) Working drawings Construction Equipment
155	Site development (1965) Construction
174	Cafeteria Working drawings Construction Equipment

^a Projects requiring further policy consideration as to relative urgency, timing or method of financing.

STATE COLLEGES—SCHEDULE OF MAJOR PROJECTS FOR CAPITAL OUTLAY PROGRAM—Continued

State College at San Bernardino—Continued

Priority	Project	1965-66	1966-67	1967-68	1968-69	1969-70
145	Corporation yard Construction Equipment	—	125,000	25,000	—	—
145	Music speech/drama building with capacity for 873 students (FTE) Working drawings Construction	—	—	140,000	22,800,000	—
213	Site development (1967) Construction	—	—	500,000	—	—
257	On-floor physical education facility—phase II Construction Equipment	—	—	—	200,000	10,000
288	Biological science building No. II with capacity for 150 students (FTE) Working drawings	—	—	—	—	50,000 ^a
289	Physical science building No. II with capacity for 200 students (FTE) Working drawings	—	—	—	—	50,000 ^a
	Totals, State College at San Bernardino	\$5,653,800	\$1,315,000	\$6,665,000	\$4,100,000	\$610,000
	State funds	—	—	—	—	—
	Proposed	5,653,800	1,315,000	6,665,000	4,100,000	510,000
	Policy unresolved ^a	—	—	—	—	100,000
	Total state funds	\$5,653,800	\$1,315,000	\$6,665,000	\$4,100,000	\$610,000
	TOTAL, FIVE YEAR PROGRAM					\$18,373,800
	State funds	—	—	—	—	—
	Proposed	—	—	—	—	18,273,800
	Policy unresolved ^a	—	—	—	—	100,000

San Diego State College

20 Engineering and applied science building
Equipment—phase II

\$300,000

25	Business administration and mathematics building Equipment	108,000		
35	Music classroom building with capacity for 424 students (FTE) Construction	2,508,200		\$400,000
	Equipment	375,000		
86	Site acquisition			
93	Site development (1965)			
	Working drawings	285,700		
105	Speech-drama building			
	Equipment		\$385,000	
111	Library-classroom building with capacity for 2,100 students (FTE) Construction		7,797,000	\$750,000
	Equipment			
125	Art classroom with capacity for 389 students (FTE) Working drawings		118,000 a	
	Construction			
	Equipment			
129	Classroom building—(off-campus center) with capacity for 200 students (FTE) Construction			\$324,000 a
	Equipment			
133	Classroom remodeling (speech) Construction		775,600 a	
	Equipment			78,000 a
173	Site acquisition (administration building)		215,000	
186	Library conversion—classroom with capacity for 750 students (FTE) Working drawings		400,000	35,000
	Construction			
	Equipment			62,000
200	Building modernization—phase I Construction			1,708,000
	Equipment			
218	Site development—utilities 1967 Construction			250,000
	Equipment			125,000

a Projects requiring further policy consideration as to relative urgency, timing or method of financing.

STATE COLLEGES—SCHEDULE OF MAJOR PROJECTS FOR CAPITAL OUTLAY PROGRAM—Continued

San Diego State College—Continued

<i>Priority</i>	<i>Project</i>	<i>1965-66</i>	<i>1966-67</i>	<i>1967-68</i>	<i>1968-69</i>	<i>1969-70</i>
223	Site development 1967 Construction			300,000 450,000		
227	Site acquisition—(physical education)					
229	Administration building Working drawings			93,000		
	Construction				2,577,000	
244	Remodel science building with capacity for 84 students (FTE)					
	Construction				200,000 a	
246	Remodel music for speech					
	Construction				162,000	
248	Physical education building with capacity for 60 students (FTE)					
	Working drawings					
	Construction				52,000 a	
253	Outdoor physical education facility					1,425,000 a
	Construction				225,000	
258	Building modernization—phase II					
	Construction				150,000	
284	Science building with capacity for 300 students (FTE)					
	Working drawings					75,000
285	Remodel administration building with capacity for 300 students (FTE)					
	Working drawings					20,000
295	Remodel life science laboratories with capacity for 33 students (FTE)					
	Construction					255,000
307	Site development (utilities 1969)					
	Construction					125,000

311	Site development—1969 Construction	-----	-----	-----	-----	325,000
	TOTAL, San Diego State College State funds	\$3,576,700	\$9,690,600	\$5,014,000	\$5,834,000	\$2,649,000
	Proposed	3,576,700	8,797,000	1,715,000	5,582,000	900,000
	Policy unresolved a	—	893,600	3,299,000	252,000	1,749,000
	Total state funds	\$3,576,700	\$9,690,600	\$5,014,000	\$5,834,000	\$2,649,000
	TOTAL, FIVE-YEAR PROGRAM State funds	-----	-----	-----	-----	\$26,764,300
	Proposed	-----	-----	-----	-----	20,570,700
	Policy unresolved a	-----	-----	-----	-----	6,193,600

San Fernando Valley State College

21	Engineering building Equipment—phase II	\$300,000				
97	Equipment—phase III Site development—campus entrance Construction		\$400,000			
72	Air-condition science building Construction	270,000				
73	Air-condition fine arts building Construction		252,050 ^c			
110	Science building Equipment—phase I Equipment—phase II		175,400 ^c			
150	Air-condition music building Construction		400,000			\$400,000
151	Air-condition classroom No. 1—unit 4 Construction		100,000			
163	Site development (drainage) Construction		70,000			
			200,000			

^a Projects requiring further policy consideration as to relative urgency, timing or method of financing.

^c Projects may be subsequently proposed for amendment into the 1965-66 Budget Act subject to the development of adequate financing.

STATE COLLEGES—SCHEDULE OF MAJOR PROJECTS FOR CAPITAL OUTLAY PROGRAM—Continued

San Fernando Valley State College—Continued

Priority	Project	1965-66	1966-67	1967-68	1968-69	1969-70
201	Outdoor physical education facility Construction			\$250,000		
206	Air-condition speech drama building Construction			75,000		
219	Site development Construction			200,000		
274	Mathematics philosophy with capacity for 1,920 students (FTE) Working drawings					60,000 a
287	Library No. 2 Working drawings					175,000 a
293	Classroom building with capacity for 675 students (FTE) Construction					300,000
294	Physical education addition with capacity for 300 students (FTE) Working drawings					45,000
304	Air-condition education classrooms Construction					150,000
314	Corporation yard Working drawings					20,000
Totals, San Fernando Valley State College		\$570,000	\$1,597,450	\$525,000		\$1,150,000
State funds						
Proposed		570,000	1,597,450	525,000		915,000
Policy unresolved a						235,000
Total state funds		\$570,000	\$1,597,450	\$525,000		\$1,150,000
TOTAL, FIVE-YEAR PROGRAM						\$3,842,450
State funds						
Proposed						3,607,450
Policy unresolved a						235,000

San Francisco State College

30 Life science building with capacity for 567 students (FTE)

\$6,525,000

\$1,000,000

\$1,000,000

55 Library addition

110,000

\$2,963,000

500,000

19 Music speech addition with capacity for 300 students (FTE)

228,300 ^a

1,300,000 ^a

87 Site acquisition

110,000

3,000,000

\$1,000,000

140 Complete music speech building

280,000

500,000

500,000 ^a

161 Site development (access and utilities)

162 Site development (new land)

181 Classroom office building with capacity for 1,600 students (FTE)

Working drawings

Construction

228 Site acquisition (downtown)

Administration building

Working drawings

Construction

Equipment

128,800

1,000,000 ^a

3,680,000

42,000 ^a

1,200,000 ^a

120,000 ^a

^a Projects requiring further policy consideration as to relative urgency, timing or method of financing.

STATE COLLEGES—SCHEDULE OF MAJOR PROJECTS FOR CAPITAL OUTLAY PROGRAM—Continued

San Francisco State College—Continued

Project

Priority

	1965-66	1966-67	1967-68	1968-69	1969-70
233 Corporation yard Construction			500,000 ^a		
234 Equipment Classroom building with capacity for 1,267 students (FTE)				50,000 ^a	
240 Working drawings Construction				157,000 ^a	4,276,000 ^a
Physical education classrooms with capacity for 200 students (FTE)					
240 Working drawings Construction				52,500 ^a	1,500,000 ^a
250 Arts and industries building Construction				300,000	
296 Remodel education building with reduction in ca- pacity of 300 students (FTE)					17,500 ^a
299 Working drawings Downtown building					87,500 ^a
300 Working drawings Music-speech-heating and ventilation improvement					150,000
306 Construction Site development Construction					500,000 ^a
Totals, San Francisco State College	\$6,635,000	\$5,881,300	\$5,670,800	\$7,029,500	\$7,651,000
State funds					
Proposed	6,635,000	3,853,000	4,128,800	5,570,000	1,150,000
Policy unresolved ^a		2,028,300	1,542,000	1,459,500	6,501,000
Total state funds	\$6,635,000	\$5,881,300	\$5,670,800	\$7,029,500	\$7,651,000
TOTAL FIVE-YEAR PROGRAM					\$32,867,600
State funds					
Proposed					21,336,800
Policy unresolved ^a					11,530,800

31	Classroom building No. 2 with capacity for 1,735 students (FTE)	Construction	\$3,563,000	-----	\$300,000	-----
		Equipment	-----	-----	-----	-----
44	Rehabilitate various buildings	Construction	291,000	-----	-----	-----
83	Corporation yard—phase I	Construction	246,800	-----	-----	-----
71	Air-condition music building	Construction	-----	-----	-----	-----
93	Site development (7th Street)	Construction	-----	-----	-----	-----
		Equipment—phase I	-----	-----	-----	-----
106	Science building No. 2—phase I	Construction	-----	-----	-----	-----
		Equipment—phase II	-----	-----	-----	-----
114	Science building No. 2—phase II with capacity for 423 students (FTE)	Construction	-----	-----	-----	-----
		Equipment—phase I	-----	-----	-----	-----
		Equipment—phase II	-----	-----	-----	-----
149	Air-condition education building	Construction	-----	-----	-----	-----
171	Site acquisition—1966	Construction	-----	-----	-----	-----
176	Corporation yard II	Construction	-----	-----	-----	-----
		Equipment	-----	-----	-----	-----
182	Science building No. 3	Working drawings	-----	-----	-----	-----
		Construction	-----	-----	-----	-----
183	Library	Working drawings	-----	-----	-----	-----
		Constructions	-----	-----	-----	-----
		Equipment	-----	-----	-----	-----
199	Remodel Centennial Hall—phase I with reduction in capacity of 500 students (FTE)	Construction	-----	-----	-----	-----
		Equipment	-----	-----	-----	-----

^a Projects requiring further policy consideration as to relative urgency, timing or method of financing.

^c Projects may be subsequently proposed for amendment into the 1965-66 Budget Act subject to the development of adequate financing.

STATE COLLEGES--SCHEDULE OF MAJOR PROJECTS FOR CAPITAL OUTLAY PROGRAM--Continued

San Jose State College--Continued		1965-66	1966-67	1967-68	1968-69	1969-70
Priority	Project					
209	Air-condition engineering offices Construction			75,000		
210	Air-condition art building Construction			135,000		
225	Demolish home economics building with reduction in capacity of 613 students (FTE)			100,000		
	Construction			250,000 ^a		
231	Purchase bookstore					
233	Remodel old library with capacity of 1,700 students (FTE)				18,000	500,000
	Working drawings					
	Construction				84,000	
254	Physical education facility Working drawings					2,400,000
	Construction					
259	Air-condition science II--phase I Construction				124,000	
273	Classroom building No. 3 with capacity for 1,550 students (FTE)					100,000 ^a
	Working drawings					
298	Remodel Centennial Hall--phase II with reduction in capacity of 500 students (FTE)					
	Construction					250,000
Totals, San Jose State College		\$4,400,800	\$10,398,700	\$2,298,000	\$11,251,000	\$4,050,000
State funds						
Proposed		4,400,800	10,398,700	2,048,000	11,251,000	3,950,000
Policy unresolved ^a				250,000		100,000
Total state funds		\$4,400,800	\$10,398,700	\$2,298,000	\$11,251,000	\$4,050,000
TOTAL, FIVE-YEAR PROGRAM						\$32,008,500
State funds						
Proposed						31,748,500
Policy unresolved ^a						350,000

Sonoma State College

7	Initial complement of equipment—phase IV	\$100,000		
11	Classroom building No. 1			
	Equipment, phase I	70,000		
	Equipment, phase II		\$462,800	
	Equipment, phase III			\$200,000
18	Boiler plant			
	Equipment	7,500		
54	Library			
	Working drawings	45,500	1,410,000	
	Construction			
	Equipment			282,000
76	Site development, phase IV			
	Construction	737,500		
89	Site acquisition, entry road	30,000		
10	Science building with capacity for 564 students (FTE)			
	Equipment, phase I		100,000	
	Equipment, phase II			450,000
	Equipment, phase III			
	Equipment, phase IV			\$200,000
42	Physical education facilities with capacity for 74 students (FTE)			
	Construction			
	Equipment		1,900,000	200,000
107	Music-classroom building with capacity for 346 students (FTE)			
	Equipment, phase I		140,000	
	Equipment, phase II			60,000
108	Cafeteria			
	Equipment		80,000	
109	Outdoor physical education facility, phase II			
	Equipment		20,000	

* Projects requiring further policy consideration as to relative urgency, timing or method of financing.

STATE COLLEGES—SCHEDULE OF MAJOR PROJECTS FOR CAPITAL OUTLAY PROGRAM—Continued

Sonoma State College—Continued

Priority	Project	1965-66	1966-67	1967-68	1968-69	1969-70
115	Physical education facility—pool Working drawings					10,000 ^a
132	Speech-drama building with capacity for 30 students (FTE) Working drawings		60,000 ^a			
	Construction			1,700,000 ^a	340,000 ^a	
	Equipment					
160	Site development, phase V Construction		340,000			
190	Remodel classroom No. 1 with capacity for 300 students (FTE) Working drawings			11,000	300,000	30,000
	Construction					
193	Art building with capacity for 150 students (FTE) Working drawings			42,000 ^a	1,200,000 ^a	120,000 ^a
	Construction					
	Equipment					
217	Site development, Phase VI Construction			190,000	300,000	
263	Site development, phase VII Construction				42,000 ^a	1,200,000 ^a
268	Administration building Working drawings					150,000 ^a
	Construction					
283	Physical science building with capacity for 400 students (FTE)					

321	Site acquisition, entry road					50,000
	Totals, Sonoma State College	\$990,500	\$4,512,800	\$3,075,000	\$2,442,000	\$1,760,000
	State funds:					
	Proposed	990,500	4,452,800	1,933,000	860,000	280,000
	Policy unresolved ^a		60,000	1,142,000	1,582,000	1,480,000
	Total state funds	\$990,500	\$4,512,800	\$3,075,000	\$2,442,000	\$1,760,000
	TOTAL, FIVE-YEAR PROGRAM					\$12,780,300
	State funds:					
	Proposed					7,916,300
	Policy unresolved ^a					4,864,000
	Stanislaus State College					
14	Outdoor physical education facility					
	Equipment	\$9,000				
43	Physical education facility—fieldhouse with capacity for 43 students (FTE)					
	Construction	500,000	\$50,000			
	Equipment					
81	Site development—utilities					
	Construction	400,000				
84	Corporation yard					
	Construction	150,000	20,000			
	Equipment					
130	Performing arts complex with capacity for 200 students (FTE)					
	Working drawings				\$36,000	
	Construction					\$1,024,000
	Equipment					
232	Administration building			\$20,000 ^a		
	Working drawings				585,000 ^a	
	Construction					44,000 ^a
	Equipment					

^a Projects requiring further policy consideration as to relative urgency, timing or method of financing.

STATE COLLEGES—SCHEDULE OF MAJOR PROJECTS FOR CAPITAL OUTLAY PROGRAM—Continued

Stanislaus State College—Continued						
Priority	Project	1965-66	1966-67	1967-68	1968-69	1969-70
239	Science building with capacity for 219 students (FTE)					
	Working drawings		45,000	1,270,000		
	Construction					
	Totals, Stanislaus State College	\$1,059,000	\$115,000	\$1,290,000	\$621,000	\$1,068,000
	State funds:					
	Proposed	1,059,000	115,000	1,270,000	36,000	1,024,000
	Policy unresolved *			20,000	585,000	44,000
	Total state funds	\$1,059,000	\$115,000	\$1,290,000	\$621,000	\$1,068,000
	TOTAL, FIVE-YEAR PROGRAM					\$4,153,000
	State funds:					
	Proposed					3,504,000
	Policy unresolved *					649,000
California State Polytechnic College: Kellogg-Voorhis Campus						
22	Engineering addition	\$390,000				
	Equipment, phase I		\$180,000			
	Equipment, phase II					
48	Library-classroom building	90,000				
	Working drawings		3,800,000			
	Construction					
	Equipment					
58	Remodel and equip science building classrooms with reduction in capacity of 261 students (FTE)	210,000				
94	Site development	150,000				
	Construction					
68	Air-condition agriculture classroom building					
	Construction		95,000 ^e			
102	Physical education facility with capacity for 120 students (FTE)					
	Equipment		150,000			

STATE COLLEGES—SCHEDULE OF MAJOR PROJECTS FOR CAPITAL OUTLAY PROGRAM—Continued

California State Polytechnic College: San Luis Obispo Campus

<i>Priority</i>	<i>Project</i>	<i>1965-66</i>	<i>1966-67</i>	<i>1967-68</i>	<i>1968-69</i>	<i>1969-70</i>
52	Engineering—mathematics building with capacity for 175 students (FTE) Working drawings Construction Equipment	\$8,000	\$1,250,000	\$200,000		
62	Remodel physical education facility (Crandell gymnasium) with capacity for 45 students (FTE) Working drawings Construction Equipment	25,000	750,000	25,000		
95	Site development Construction	247,000				
12	Biological science building Equipment		400,000			
164	Site development—1966 Construction		400,000			
167	Heating and ventilation systems Construction		400,000			
187	Education and business building with capacity for 750 students (FTE) Working drawings Construction Equipment			30,000	\$870,000	\$50,000
188	Library Working drawings Construction Equipment			35,000	1,000,000	200,000
194	Engineering south with capacity for 100 students (FTE) Working drawings Construction Equipment			35,000	1,000,000	400,000

220	Site development—1967					
	Construction				500,000	
265	Site development—1968					
	Construction					600,000
279	Classroom building No. 3 with capacity for 1,000 students (PTE)					
	Working drawings					50,000
	Totals, California State Polytechnic College: San Luis Obispo Campus					
	State funds	\$322,000	\$3,200,000	\$825,000	\$3,470,000	\$700,000
	Proposed	322,000	3,200,000	825,000	3,470,000	700,000
	Policy unresolved ^a					
	Total state funds	\$322,000	\$3,200,000	\$825,000	\$3,470,000	\$700,000
						\$8,517,000
	TOTAL, FIVE-YEAR PROGRAM					
	State funds					
	Proposed					
	Policy unresolved ^a					
	GRAND TOTALS, ALL CAMPUSES	\$50,029,050	\$68,628,230	\$50,274,300	\$69,162,950	\$49,267,300
	State Funds:					
	Proposed	50,029,050	63,549,830	41,889,800	57,045,450	31,770,800
	Deferred ^a		5,078,400	8,393,500	12,117,500	17,496,500
	Totals, State Funds	\$50,029,050	\$68,628,230	\$50,274,300	\$69,162,950	\$49,267,300
	Nonstate Funds ^b					
	GRAND TOTAL, FIVE-YEAR PROGRAM					
	State Funds:					
	Proposed					
	Deferred ^a					
	Totals, State Funds					
						\$287,361,830

^a Projects requiring further policy consideration as to relative urgency, timing or method of financing.

^b To be financed from federal or other nonstate funds.

MARITIME ACADEMY

The Maritime Academy trains qualified men to become officers in the merchant marine and for commissions in the United States Naval Reserve. The school receives policy direction from a board of governors whose members are appointed by the Governor, and administrative supervision from the Department of Education. The present capacity of the school is 250 students. During the three-year course of instruction, students earn a bachelor of science degree with a specialization in either the deck or the engineering field.

Four projects are proposed to correct deficiencies in the educational program or in the physical plant of the academy. A corporation yard is included to correct deficiencies in the maintenance of the facilities. An assembly hall is included, as the present facilities are not adequate for general school lectures and meetings. A planetarium is included to provide a teaching station and training area for celestial navigation and astronomy. Finally, a nuclear simulator is included to prepare students in the operation of nuclear powered ships.

MARITIME ACADEMY—SCHEDULE OF MAJOR PROJECTS FOR CAPITAL OUTLAY PROGRAM

Priority	Project	1965-66	1966-67	1967-68	1968-69	1969-70
1	Construct corporation yard	-----	\$190,000	-----	-----	-----
2	Construct assembly hall	-----	-----	-----	-----	-----
	Working drawings	-----	-----	\$80,000 ^a	\$750,000 ^a	\$75,000 ^a
	Construction	-----	-----	-----	-----	-----
	Equipment	-----	-----	-----	-----	-----
3	Construct planetarium for celestial navigation and astronomy	-----	-----	-----	-----	-----
	Working drawings	-----	-----	20,000 ^a	230,000 ^a	-----
	Construction and equipment	-----	-----	-----	-----	-----
4	Construct nuclear reactor simulator	-----	-----	-----	20,000 ^a	250,000 ^a
	Working drawings	-----	-----	-----	-----	-----
	Construction and equipment	-----	-----	-----	-----	-----
	Totals, Maritime Academy	-----	\$190,000	\$100,000	\$1,000,000	\$325,000
	Proposed	-----	190,000	100,000	1,000,000	325,000
	Policy unresolved ^a	-----	-----	-----	-----	-----
TOTAL, FIVE-YEAR PROGRAM		-----	-----	-----	-----	-----
	Proposed	-----	-----	-----	-----	\$1,015,000
	Policy unresolved ^a	-----	-----	-----	-----	190,000
		-----	-----	-----	-----	1,425,000

^a Projects requiring further policy consideration as to relative urgency, timing or method of financing.

DEPARTMENT OF EDUCATION

The department administers the following residential schools for physically handicapped children :

School for the Blind

School for Cerebral Palsied Children, Northern California

School for Cerebral Palsied Children, Southern California

School for the Deaf, Berkeley

School for the Deaf, Riverside

These schools offer special education, diagnosis and treatment for children ranging from preschool age through high school.

Four projects are included to expand the educational program or to correct deficiencies in the physical plants of the schools. The first unit of a new school for physically handicapped deaf is proposed on the grounds of the School for the Deaf, Riverside. This unit is proposed to provide diagnosis, treatment and educational opportunities for deaf children who are multihandicapped. A project is included to expand the vocational training facilities at the School for the Deaf, Berkeley. Two projects are included to improve the assembly and meeting facilities at the two deaf schools.

DEPARTMENT OF EDUCATION—SCHEDULE OF MAJOR PROJECTS FOR CAPITAL OUTLAY PROGRAM

<i>Priority</i>	<i>Project</i>	1965-66	1966-67	1967-68	1968-69	1969-70
1	School for the Deaf, Riverside: First unit of new school for multiple handicapped children					
	Working drawings		80,400 ^a	1,589,270 ^a	75,000 ^a	
	Construction					
	Equipment					
2	School for the Deaf, Berkeley: Construct addition to Vocational Training Building					
	Working drawings		12,300 ^a			
	Construction and equipment		242,267 ^a			
3	School for the Deaf, Berkeley: Enlarge and renovate primary assembly hall to a multipurpose unit					
	Working drawings			14,000 ^a	218,000 ^a	
	Construction and equipment					
4	School for the Deaf, Riverside: Construct assembly hall					
	Working drawings				22,000 ^a	
	Construction and equipment					507,000 ^a
	Annual Totals, policy unresolved ^a		\$334,967	\$1,603,276	\$315,000	\$507,000
	TOTAL, FIVE-YEAR PROGRAM, policy unresolved ^a					\$2,760,243

^a Projects requiring further policy consideration as to relative urgency, timing or method of financing.

PUBLIC JUNIOR COLLEGE PROGRAM

The public junior colleges of California were first recognized as a part of public higher education by Chapter 49, Statutes of 1960, First Extraordinary Session (Donahoe Act). Under this act, the junior colleges were assigned the function of instruction through, but not beyond, the 14th grade in the fields of standard collegiate courses and vocational or technical training.

In recognition of the growth needs of the junior colleges in meeting their obligations under the Master Plan for Higher Education, the Legislature established a temporary program for junior college tax relief for capital outlay purposes through Chapter 1006, Statutes of 1961, which appropriated \$5,000,000 for this purpose, a similar amount was approved in the 1962-63 Governor's Budget. These tax relief grants were utilized for:

- (a) Payment of interest and redemption of outstanding bonds issued for junior college purposes or for loans from the County School Service Fund for capital outlay purposes.
- (b) Purchase or improvement of junior college sites or the planning or construction for junior college buildings on a matching basis not to exceed 1 part state funds for 4 parts district funds.

Since the 1961 tax relief program offered no permanent solution to the shared responsibility of the state and junior college districts in meeting the expanded role of these schools under the Master Plan for Higher Education, funds were included for junior college construction in the State Construction Program Fund bond program approved in November of 1962.

The Legislature in 1963 enacted the Junior College Facility Construction Law to meet the interim needs of the junior colleges until a permanent program of state assistance could be developed. The Legislature also appropriated \$20 million from the bond fund to be distributed under the Junior College Facility Construction Law providing for state and local participation on the average of one dollar of state funds to two of local for the construction of necessary educational facilities. Ten million dollars of this appropriation will be available to finance the program needs in the 1965-66 fiscal year.

An additional fifty million dollars for junior college construction assistance was included in the state bond issue for capital outlay approved at the November 1964 election.

The Junior College Facility Construction Law also included a provision for a study to develop a continuing program of state assistance for junior college capital outlay taking into account the need, effort, and ability of the various junior colleges. This study has been completed and the report has been submitted by the Department of Education to the 1965 Regular Session of the Legislature.

This report estimates the cost of needed junior college facilities for the 10-year period 1965-1975 and further recommends that the state share equally in the cost of the new facilities. The level of state participation and the method of determining priorities must still be acceptably resolved and will be matters for policy consideration by the Legislature. The projections of junior college construction needs are as follows:

<i>Budget year</i>	<i>Building occupancy date</i>	<i>Total cost of construction</i>
—	1966-67	\$76,106,000
1965-66	1967-68	50,245,000
1966-67	1968-69	25,600,000
1967-68	1969-70	58,495,000
1968-69	1970-71	77,192,000
1969-70	1971-72	74,247,000
1970-71	1972-73	81,506,000
1971-72	1973-74	41,683,000
1972-73	1974-75	103,293,000
1973-74	1975-76	81,535,000
Total		\$669,902,000
Average per year		\$66,990,000

JUNIOR COLLEGE CONSTRUCTION ASSISTANCE

Priority	Project	1965-66	1966-67	1967-68	1968-69	1969-70
1	Junior college construction assistance	\$10,000,000	1	1	1	1
	Annual Totals	\$10,000,000				
	TOTAL, FIVE-YEAR PROGRAM					\$10,000,000

1 Subject to formulation and approval of a plan of state participation and method of determining priorities by the legislature.

DEPARTMENT OF MENTAL HYGIENE

Major Construction Program Statement

1965-66-1969-70

This department administers: (1) state hospitals for the treatment and care of mentally ill, mentally retarded, and other persons suffering from mental disorders; (2) outpatient clinics for early diagnosis and treatment of mental illness; (3) day hospitals for treating mentally ill patients during the day while permitting them to return to their homes and family for the night; (4) research in cause and treatment of mental disorders; and (5) regulation of private institutions for mental cases and program for public education and development of improved Mental Hygiene facilities. It can care for 34,000 patients in general psychiatric hospitals; 13,000 in hospitals for the retarded; 4,400 in outpatient clinics and day treatment centers and 17,300 patients on indefinite leave. Patients on indefinite leave are supervised by the Bureau of Social Work, which has some 13,800 patients on home leave, 300 on work leave and 3,200 in family care.

The department is authorized to operate the following facilities:

RESIDENT INSTITUTIONS

Mentally ill

Agnews State Hospital
Atascadero State Hospital
Camarillo State Hospital
DeWitt State Hospital
Mendocino State Hospital
Metropolitan State Hospital
Modesto State Hospital
Napa State Hospital
Patton State Hospital
Stockton State Hospital

Mentally retarded

DeWitt State Hospital
Fairview State Hospital
Modesto State Hospital
Pacific State Hospital
Porterville State Hospital
Sonoma State Hospital

RESEARCH, TEACHING AND CLINIC FACILITIES

Langley Porter Neuropsychiatric Institute in San Francisco
Neuropsychiatric Institute at UCLA

INTRODUCTION

Program Summary

This five-year building construction program of the Department of Mental Hygiene reflects the department's desire to upgrade its existing facilities and to provide additional specialized facilities in keeping with the attack on the problem of mental retardation and mental illness being made in the areas of diagnosis, treatment, training, research, rehabilitation and prevention.

This program proposes a total expenditure of \$122,277,518 for new construction, remodeling and modernization and replacement of existing facilities. Maximum effort has been made to obtain nonstate funds in those projects which qualify for federal participation.

This will provide for specialized treatment units for the mentally retarded, two all-purpose mental health centers, four medical centers for the mentally retarded, the replacement of Langley Porter Neuropsychiatric Institute, a mental retardation unit addition to the Neuro-

psychiatric Institute at U.C.L.A., various ancillary structures for hospital operation improvement and projects to transform existing deactivated wards to other programed uses.

Program Analysis

Additional construction of specialized facilities for the mentally retarded will provide additional beds. A study is currently being made to decrease the capacity of the mentally ill and mentally retarded hospitals by replacing some bed areas with facilities for treatment program improvement.

The four 500-bed medical centers for the mentally retarded are located geographically to limit the driving time for patient service and visiting to two hours from most locations.

This department recognizes and places special emphasis on diagnosis, research, training and education in the fields of mental retardation, mental illness, addiction and problems of the young and aged.

It is proposed to replace the present Langley Porter Neuropsychiatric Institute with a larger, more comprehensive institute to be located adjacent to the University of California Hospital, San Francisco. The program calls for increasing the existing 105-bed capacity to 244-bed capacity.

The proposed 60-bed capacity mental retardation addition to the Neuropsychiatric Institute at U.C.L.A. will provide facilities to accommodate the training of 128 medical students, an increase of 56 over the present 72, and a corresponding increase in training of students of other allied professions.

These two institutes, one in northern California and the other in southern California, will help to meet the department's need for trained professional people as well as the university's need for training facilities in the psychiatric field.

The mental health units planned for construction at both Modesto and DeWitt State Hospitals will be facilities designed to meet the population needs of the area served. A master plan study to be completed in 1965-66 fiscal year of the department's ward capacity needs and structure remodeling will serve as the base for the deactivation and demolition of the existing Army-type, temporary units.

Plans to provide alternates to state institutional residential care of the mentally retarded are currently being studied which may eventually reduce the capacity of the mentally retarded hospitals.

A survey to determine our future remodeling program is presently being conducted.

Summary

On June 30, 1964, all facilities of the Department of Mental Hygiene had a capacity of 47,301. The proposed program will reduce the capacity to 46,452 by June 30, 1970.

RECAPITULATION OF PROGRAM BY CATEGORY

	<i>Amount</i>	<i>Percent of total</i>
Patient capacity		
Construction to replace existing capacity -----	\$21,227,000	17.4
Ward remodeling and air conditioning -----	14,277,018	11.7
Utilities, services, feeding and ancillary facilities -----	8,160,000	6.7
Chapels, schools, canteens, auditoriums, therapy and recreational facilities -----	10,918,400	8.9
Professional in-service training and research facilities -----	2,106,000	1.7
Institute facilities -----	26,889,100	22.0
Mental Retardation centers -----	38,700,000	31.6
Total -----	\$122,277,518	100.0
State funds -----	115,638,518	
Nonstate funds -----	6,639,000	

DEPARTMENT OF MENTAL HYGIENE—SUMMARY OF POPULATION AND CAPACITIES AT END OF YEAR (JUNE 30th)

<i>Facilities</i>	<i>1965-66</i>	<i>1966-67</i>	<i>1967-68</i>	<i>1968-69</i>	<i>1969-70</i>
Total population, all facilities -----	41,284	41,094	40,914	41,187	42,270
Total capacity, all institutions -----	47,227	47,051	44,879 *	45,219	46,452
Excess population, over capacity -----	—5,943	—5,957	—3,965	—4,032	—4,182
Hospitals for the Mentally Ill:					
Total population -----	27,770	27,580	27,400	27,200	27,000
Decrease over preceding year -----	1,775	190	180	200	200
Total capacity -----	33,626	33,626	31,454	31,193	31,143
Capacity by Facility:					
Agnews State Hospital -----	4,125	4,125	4,125	4,137	4,133
Atascadero State Hospital -----	1,500	1,500	1,500	1,500	1,500
Camarillo State Hospital -----	5,983	5,983	5,776 *	5,674	5,535
DeWitt State Hospital -----	1,150	1,150	950 *	950	750
Mendocino State Hospital -----	2,102	2,102	2,043 *	2,031	2,031
Metropolitan State Hospital ---	3,725	3,725	3,660 *	3,660	3,641
Modesto State Hospital -----	2,369	2,369	1,185 *	1,185	1,497
Napa State Hospital -----	5,037	5,037	4,988 *	4,885	4,885
Patton State Hospital -----	3,947	3,947	3,539 *	3,539	3,539
Stockton State Hospital -----	3,688	3,688	3,688	3,632	3,632
Hospitals for the Mentally Retarded:					
Total population -----	13,269	13,260	13,260	13,673	14,817
Increase over preceding year -----	155	—	—	413	1,144
Total capacity -----	13,308	13,132	13,132	13,673	14,817
Additional capacity needed -----	—	129	128	—	—
Capacity by Facility:					
DeWitt State Hospital -----	1,100	1,100	1,100	1,100	1,100
Fairview State Hospital -----	2,622	2,622	2,622	2,561	2,621
Pacific State Hospital -----	2,888	2,870	2,870	2,972	3,016
Patton State Hospital -----	532	532	532	532	532
Porterville State Hospital -----	2,511	2,511	2,511	2,511	2,551
Sonoma State Hospital -----	3,655	3,497	3,497	3,497	3,497
Medical Center Retardation					
Unit I -----	—	—	—	500	500
Medical Center Retardation					
Unit II -----	—	—	—	—	500
Medical Center Retardation					
Unit III -----	—	—	—	—	500

* Capacities reflect differences from 1965-66 capital outlay presentation due to the availability of subsequent information.

DEPARTMENT OF MENTAL HYGIENE—SUMMARY OF POPULATION AND
CAPACITIES AT END OF YEAR (JUNE 30th)—Continued

<i>Facilities</i>	1965-66	1966-67	1967-68	1968-69	1969-70
Neuropsychiatric Institutes:					
Total population	254	254	254	314	453
Increase over preceding year	16	-	-	+60	+139
Total capacity -----	293	293	293	353	492
Capacity by Institute:					
Langley Porter Neuropsychiatric Institute -----	105	105	105	105	244
Neuropsychiatric Institute at U.C.L.A. -----	188	188	188	248	248

DEPARTMENT OF MENTAL HYGIENE—SCHEDULE OF MAJOR PROJECTS FOR CAPITAL OUTLAY PROGRAM

Priority

Project

1969-70

1968-69

1967-68

1966-67

1965-66

Agnes State Hospital

12 Remodel and rehabilitate ward nos. 1, 3, 5 and 7

(Construction) \$650,000

Equipment 10,000

23 Rehabilitation therapy building (east area)

(Construction) \$1,100,000 a

41 Auditorium (east area)

(Construction) 250,000

Equipment 23,000

58 Commissary warehouse (west area)

(Construction) \$275,000

Equipment 10,000

23A Rehab therapy building (east area)

Equipment 40,000

75 Recreation therapy facility (east area)

(Construction) 60,000

83 Professional and in-service training center—remodel

existing building (east area)

(Construction) 100,000

Equipment 2,500

88 Administration building addition (east area)

(Construction) 59,100

76 Recreational therapy facility (west area)

(Construction) 60,000

94 Remodel buildings 205, 206, 207 for industrial shops

(west area)

(Construction) 115,700

Equipment 17,000

a Projects requiring further policy consideration as to relative urgency, timing or method of financing.

DEPARTMENT OF MENTAL HYGIENE—SCHEDULE OF MAJOR PROJECTS FOR CAPITAL OUTLAY PROGRAM—Continued

Priority	Project	1965-66	1966-67	1967-68	1968-69	1969-70
Agnews State Hospital—Continued						
85	Canteen (east area) Construction Equipment	-----	-----	100,000 a 20,000 a		
49	Remodel and rehabilitate wards 2, 4, 6, 8 (west area) phase II Construction Equipment	-----	-----	650,000 10,000		
112	Maintenance shops (west area) Construction Equipment	-----	-----	-----	\$300,000 7,000	
117	Maintenance shops, warehouse and carpents (east area), phase II Construction Equipment	-----	-----	-----	90,000 4,000	
99	Remodel and rehabilitate wards (west area) 18-20, 23-25 Construction Equipment	-----	-----	-----	500,000 10,000	
108	Connecting road east and west areas, land acquisition and construction Construction	-----	-----	-----	250,000	
128	Air-condition wards 44-46, and 31-33 Construction	-----	-----	-----		\$200,000

Atascadero State Hospital

2	Rehabilitation therapy unit			
3	Equipment		\$12,000	
	Visiting area			
	Equipment		4,000	
15	Convert existing rehab therapy unit to dining rooms —phase II			
	Construction			
	Equipment		375,000	
24	Air-condition wards, acute, medical, bedridden, in- firm and chronic locked wards		25,000	
	Construction			
37	Education and training annex			\$200,000
	Construction			
	Equipment			100,000
27	Additions and alterations to administration building			10,000
	Construction			
	Equipment			90,000
109	Chapel and security corridor extension			12,500
	Construction			
	Equipment			
				\$250,000 ^a
				10,000 ^a

^a Projects requiring further policy consideration as to relative urgency, timing or method of financing.

DEPARTMENT OF MENTAL HYGIENE—SCHEDULE OF MAJOR PROJECTS FOR CAPITAL OUTLAY PROGRAM—Continued

1969-70

1968-69

1967-68

1966-67

1965-66

Priority

Project

Camarillo State Hospital

1	Alterations to R and T unit				
	Equipment	\$25,000			
10	Remodel and modernize wards 7, 7A				
	Construction	530,310			
		7,500			
19	Remodel and modernize units M, M-I and N into adolescent treatment center				
	Construction	\$600,000 ^c			
	Equipment	10,000 ^c			
25	Professional and inservice training center and class rooms—convert existing building in unit 5				
	Construction	100,000			
		25,000			
	Equipment				
77	Convert former laundry to maintenance shop and post office				
	Construction	\$75,000			
	Equipment	10,000			
98	Remodel and modernize wards 8 and 8A				
	Construction	\$550,000			
	Equipment	7,500			

DeWitt State Hospital

11	Remodel 10 wards—mentally ill, phase I				
	Construction	\$400,000			
	Equipment	10,000			
57	Remodel 10 wards for mentally ill and mentally retarded				
	Construction	\$500,000 ^a			
	Equipment				
102	Air-condition wards 110, 109, 111, 108, 116, 309				
	Construction	\$12,500 ^a			
		200,000			

103	Mental health center, preliminary plans and working drawings	-----	-----	-----	200,000 ^a
103A	Mental health center, phase I Construction	-----	-----	-----	-----
Mendocino State Hospital					
7	Additional alterations ward F—phase IV Construction	-----	\$206,700	-----	-----
22	Remodel and modernize ward I Equipment	-----	15,020	-----	-----
40	Remodel ward G into administration building annex Construction	-----	-----	\$200,000	-----
84	Remodel ward S for in-service training center Equipment	-----	-----	7,000	-----
48	Remodel existing areas for rehabilitation facilities on wards 5, 6, 1, 2, 3, 4, A, B, C, 14, 15, 7, and F Construction	-----	-----	100,000	-----
52	Air-condition ward F Equipment	-----	-----	-----	\$150,000
100	Remodel and modernize ward K Construction	-----	-----	-----	5,000
101	Air-condition existing wards, A, B, C Equipment	-----	-----	-----	-----
110	Construct research center—convert existing facility Construction	-----	-----	-----	100,000
	Construction (federal)	-----	-----	-----	20,000
	Equipment (federal)	-----	-----	-----	75,000
113	Construct maintenance shops and warehouse Construction	-----	-----	-----	75,000 ^b
	Equipment	-----	-----	-----	20,000 ^b
		-----	-----	-----	20,000 ^b
		-----	-----	-----	400,000
		-----	-----	-----	50,000

^a Projects requiring further policy consideration as to relative urgency, timing or method of financing.

^b To be financed from federal or other nonstate funds.

^c Projects may be subsequently proposed for amendment into the 1965-66 Budget Act subject to the development of adequate financing.

DEPARTMENT OF MENTAL HYGIENE—SCHEDULE OF MAJOR PROJECTS FOR CAPITAL OUTLAY PROGRAM—Continued

Mendocino State Hospital—Continued

<i>Priority</i>	<i>Project</i>	1965-66	1966-67	1967-68	1968-69	1969-70
119	Remodel and modernize ward H					
	Construction	-----	-----	-----	-----	-----
	Equipment	-----	-----	-----	-----	\$200,000 7,000
121	Air-condition existing wards					
	Ward D—Construction	-----	-----	-----	-----	-----
	Ward 7—Construction	-----	-----	-----	-----	200,000 200,000
131	Construct chapel					
	Construction	-----	-----	-----	-----	400,000 40,000
	Equipment	-----	-----	-----	-----	-----

Metropolitan State Hospital

8	Remodeling and modernization of ward 301 into wards 301A and 301B	\$250,000 15,000				
	Construction	-----				
	Equipment	-----				
28	Remodel old R and T building into education and in-service training center		\$450,000 68,000			
	Construction	-----				
	Equipment	-----				
29	Remodel old food service building for rehabilitation center					
	Construction	-----	125,000			
	Construction (federal)	-----	125,000 ^b			
	Equipment	-----	12,500			
	Equipment (federal)	-----	12,500 ^b			
51	Aftercare and day treatment service facility			\$250,000 ^a 17,000 ^a		
	Construction	-----				
	Equipment	-----				
47	Air-condition 200-bed geriatric unit			160,000		
	Construction	-----				
97	Remodel and modernize wards 205-207					
	Construction	-----				\$340,100
	Equipment	-----				6,000

111	Maintenance shops—final phase				
116	Chapel	Construction	-----	-----	400,000 ^a
		Construction	-----	-----	
		Equipment	-----	-----	425,000
122	Remodel and modernize wards 210-212	Construction	-----	-----	40,000
		Construction	-----	-----	
		Equipment	-----	-----	\$325,000
123	Remodel and modernize wards 201-203	Construction	-----	-----	6,000
		Construction	-----	-----	
		Equipment	-----	-----	325,000
124	Remodel and modernize wards 213-215	Construction	-----	-----	6,000
		Construction	-----	-----	
		Equipment	-----	-----	325,000
127	Air-condition ward 302	Construction	-----	-----	6,000
		Construction	-----	-----	
		Equipment	-----	-----	200,000
133	Construct auditorium	Construction	-----	-----	400,000
		Construction	-----	-----	
		Equipment	-----	-----	25,000
Modesto State Hospital					
36	Mental health center, phase I	Construction	-----	\$6,000,000 ^a	
		Construction	-----	-----	\$185,000 ^a
		Equipment	-----	-----	
107	Administrative and medical facility, phase II	Working drawings	-----	-----	
		Construction	-----	-----	\$100,000 ^a
129	Food service center—laundry and utilities connection to City of Modesto sewer system, phase III	Working drawings	-----	-----	
		Working drawings	-----	-----	\$2,000,000 ^a
		Working drawings	-----	-----	
		Working drawings	-----	-----	\$160,000 ^a

^a Projects requiring further policy consideration as to relative urgency, timing or method of financing.

^b To be financed from federal and other nonstate funds.

DEPARTMENT OF MENTAL HYGIENE—SCHEDULE OF MAJOR PROJECTS FOR CAPITAL OUTLAY PROGRAM—Continued

Priority	Project	1965-66	1967-68	1968-69	1969-70
Napa State Hospital					
29	Remodel ward R for patients' service center Construction				
	Equipment	\$245,000 ^e			
21	Air-condition medical and surgical wards A-3, A-4, A-9 and A-10	20,000 ^e			
	Construction	200,000			
30	Remodel and modernize S unit—I of IV Construction	485,000			
	Equipment	20,000			
70	Construct auditorium Working drawings		\$50,000		
	Construction			\$500,000	\$20,000
	Equipment				
87	Extend main storeroom for engineers supplies Construction		120,000		
	Equipment		5,000		
96	Remodel and modernize T units—phase I of V Construction			100,000	
	Equipment			5,000	
138	Extend maintenance shop compound—phase I of III Construction				100,000
	Equipment				10,000
125	Remodel and modernize S unit—phase II of IV Construction				485,000
	Equipment				20,000
Patton State Hospital					
17	Air-condition ward 16 Construction			\$189,450 ^e	
31	Inservice training center—remodel existing ward F Construction			150,000	
	Equipment			7,500	

26	Aftercare and convalescent leave facility—remodel existing ward S	Construction	-----	125,000 ^a	
		Equipment	-----	30,000 ^a	
32	Chapel—remodel existing facilities	Construction	-----	325,000	
		Equipment	-----	35,000	
91	Recreational outdoor facility	Construction	-----		\$90,000
		Equipment	-----		5,000
92	Auditorium	Construction	-----		600,000
		Equipment	-----		20,000
56	Replace boiler	Construction	-----		200,000
69	Juvenile school facility (convert existing ward)	Construction	-----		375,000 ^a
		Equipment	-----		25,000 ^a
93	Industrial shops—furniture, shoe and tailor (convert existing facilities)	Construction	-----		225,000 ^a
		Equipment	-----		25,000 ^a
115	Canteen (convert existing facilities)	Construction	-----		\$240,000 ^a
		Equipment	-----		20,000 ^a
130	Rehabilitation therapies building—remodel existing auditorium	Construction	-----		
		Construction (federal)	-----		\$62,500
		Equipment	-----		62,500 ^b
		Equipment (federal)	-----		10,000
		Equipment	-----		10,000 ^b
139	Maintenance warehousing building	Construction	-----		200,000
		Equipment	-----		10,000

^a Projects requiring further policy consideration as to relative urgency, timing or method of financing.

^b To be financed from federal and other nonstate funds.

^c Projects may be subsequently proposed for amendment into the 1965-66 Budget Act subject to the development of adequate financing

DEPARTMENT OF MENTAL HYGIENE—SCHEDULE OF MAJOR PROJECTS FOR CAPITAL OUTLAY PROGRAM—Continued

1969-70

1968-69

1967-68

1966-67

1965-66

Project

Priority

Stockton State Hospital

4	New south area food service unit					
	Equipment	\$85,000				
9	Improve and modernize food distribution system, phase I of 4 (south area)					
	Construction	150,000				
18	Air-condition cottage F (south area)					
	Construction		\$200,000 *			
46	Construct new patient dining rooms, north area		928,600			
	Construction					
38	Improvements to cottage E		60,338			
	Construction					
95	Air-condition ward 12 (north area)					
	Construction			\$200,000		
64	Improve and modernize food distribution system all areas, phase II of IV					
	Construction					
	Equipment			100,000		
53	Modernize surgical suite			50,000		
	Construction and equipment					
89	Convert cottage #3 (north area) to canteen, library and patient activity center			295,000		
	Construction					
	Equipment			150,000		
90	Modernize or replace north area food service unit			15,000		
	Construction					
	Equipment			475,000		
114	Convert south area food service unit to chapel, canteen and patient activity center			35,000		
	Construction					
	Equipment					
	Air-condition Cottage E dayrooms					
	Construction					
					\$400,000	
					60,000	
						50,000

120	Air-condition Cottage 1 Construction	-----	-----	-----	75,000
Fairview State Hospital					
33	Wards for hyperactive retarded children (convert existing facilities)	-----	-----	-----	-----
	Construction	-----	\$150,000	-----	-----
	Equipment	-----	5,000	-----	-----
71	Chapel	-----	-----	-----	-----
	Construction	-----	-----	\$425,000	-----
	Equipment	-----	-----	40,000	-----
54	Intensive treatment unit for the severely handicapped	-----	-----	-----	-----
	Working drawings	-----	-----	100,000 ^a	-----
	Construction	-----	-----	-----	\$1,500,000 ^a
	Equipment	-----	-----	-----	175,000 ^a
55	Communicable disease ward (convert existing facilities)	-----	-----	-----	-----
	Construction	-----	-----	130,000	-----
118	Training, research and after-care facility	-----	-----	-----	-----
	Construction	-----	-----	-----	125,000
	Construction (federal)	-----	-----	-----	125,000 ^b
	Equipment	-----	-----	-----	12,500
135	Ventilate and air-condition three acute infirm wards D, E, F	-----	-----	-----	12,500 ^b
	Construction	-----	-----	-----	-----
140	Air-condition receiving and treatment building	-----	-----	-----	\$150,000
	Construction	-----	-----	-----	400,000

^a Projects requiring further policy consideration as to relative urgency, timing or method of financing.

^b To be financed from federal or other nonstate funds.

^c Projects may be subsequently proposed for amendment into the 1965-66 Budget Act subject to the development of adequate financing.

DEPARTMENT OF MENTAL HYGIENE—SCHEDULE OF MAJOR PROJECTS FOR CAPITAL OUTLAY PROGRAM—Continued

Priority	Project	1965-66	1966-67	1967-68	1968-69	1969-70
Pacific State Hospital						
13	Remodel and modernize wards 16, 17 Construction	\$609,000				
6	Equipment Replace boiler	5,000				
34	Construction Develop and remodel existing space in R and T acute hospital	113,000				
35	Construction Equipment Acute treatment unit for physically handicapped Working drawings	\$330,000 17,000			\$3,000,000 ^a	
59	Construction Equipment Communicable disease ward					\$187,000 ^a
72	Equipment New food service building Construction			252,000 17,500		
73	Construction Equipment Administration building addition			1,500,000		100,000
81	Construction Equipment Replace reservoir			275,000 20,000		
60	Construction Remodel and modernize wards 18 and 19			135,000		
80	Construction Equipment Air-condition wards 22 and 5			400,000 30,000		
66	Construction Six additional classrooms Construction Equipment			200,000		
				225,000 ^a 16,400 ^a		

DEPARTMENT OF MENTAL HYGIENE—SCHEDULE OF MAJOR PROJECTS FOR CAPITAL OUTLAY PROGRAM—Continued

Porterville State Hospital—Continued

Priority	Project	1965-66	1966-67	1967-68	1968-69	1969-70
78	Training, research and aftercare facility					
	Construction			125,000		
	Construction (federal)			125,000 b		
	Equipment			11,500		
	Equipment (federal)			11,500 b		
79	Residential ward prototype—convert existing facility					
	Construction			150,000		
	Equipment			30,000		
68	Rehabilitation therapies and recreational building					
	Construction			150,000		
	Construction (federal)			150,000 b		
	Equipment			7,500		
	Equipment (federal)			7,500 b		
82	Canteen, beauty and barber shop—convert existing facilities					
	Construction			150,000 a		
	Equipment			20,000 a		
106	Security ward (52 beds)—convert existing facility					
	Construction				\$150,000	
	Equipment				30,000	

Sonoma State Hospital

39	Professional and inservice training center					
	Feasibility study and preliminary plans		\$10,000			
	Construction			\$200,000 a		
	Equipment			20,000 a		
62	Rehabilitation therapies services building—convert existing facility					
	Construction			150,000		
	Construction (federal)			150,000 b		
	Equipment			22,500		
	Equipment (federal)			22,500 b		

DEPARTMENT OF MENTAL HYGIENE—SCHEDULE OF MAJOR PROJECTS FOR CAPITAL OUTLAY PROGRAM—Continued

Priority	Project	1965-66	1966-67	1967-68	1968-69	1969-70
Langley Porter Neuropsychiatric Institute						
16	New multistory institute					
	Preliminary plans and working drawings	\$614,000				
	Construction		\$17,000,000			
	Construction (Federal)		2,000,000 ^b			
	Construction		(2,000,000) ¹			
	Equipment					\$750,000
Neuropsychiatric Institute—U.C.L.A.						
14	Mental retardation unit					
	Preliminary plans and working drawings	\$195,100				
	Construction and equipment		\$2,600,000			
	Construction and equipment (Federal)		3,750,000 ^b			
ANNUAL TOTALS, NEUROPSYCHIATRIC INSTITUTES						
	State funds, proposed	\$809,100	\$27,350,000			\$750,000
	Nonstate funds ^b	809,100	19,600,000			750,000
			5,750,000			
TOTAL FIVE-YEAR PROGRAM						
	State funds, proposed					\$26,889,100
	Nonstate funds ^b					21,159,100
						5,780,000
Mental Retardation Centers						
43	San Francisco (peninsula location)					
	Medical center for Mental Retardation Unit I					
	Working drawings and construction					
	Equipment		\$9,450,000		\$300,000	
44	Los Angeles area					
	Medical center for Mental Retardation Unit II					
	Working drawings		450,000			
	Construction				9,000,000	
	Equipment					\$300,000

45	San Diego area Medical center for Mental Retardation Unit III				
	Working drawings	450,000	9,000,000		
	Construction			300,000	
	Equipment				
67	Central Valley area Medical center for Mental Retardation Unit IV			450,000	
	Working drawings				\$9,000,000
	Construction				
	ANNUAL TOTALS, MENTAL RETARDATION CENTERS	\$10,350,000	\$18,300,000	\$1,050,000	\$9,000,000
	State funds				
	Proposed	10,350,000	18,300,000	1,050,000	9,000,000
	Total State funds	\$10,350,000	\$18,300,000	\$1,050,000	\$9,000,000
	TOTAL FIVE-YEAR PROGRAM				\$38,700,000
	Proposed				38,700,000

^b To be financed from federal or other nonstate funds.

^c This cost is shown in the projects of the San Francisco Medical Campus of the University of California under the title "Langley Porter Clinic."

GRAND TOTAL, FIVE-YEAR PROGRAM—

ALL FACILITIES

State funds					
Proposed	\$4,174,630	\$40,403,388	\$33,241,400	\$13,621,100	\$21,447,000
Policy unresolved ^a	4,174,630	36,175,888	27,146,500	7,379,100	14,711,500
		7,430,000	5,628,466	6,909,500	6,660,000
Total state funds					
Nonstate funds ^b	\$4,174,630	\$43,625,888	\$32,574,500	\$13,388,600	\$21,374,500
		5,307,500	166,500	232,500	72,500

GRAND TOTAL, FIVE-YEAR PROGRAM—

ALL FACILITIES

State funds					
Proposed					\$122,277,518
Policy unresolved ^a					
					89,890,618
					25,747,900
Total state funds					
Nonstate funds ^b					\$115,638,518
					6,639,000

^a Projects requiring further policy consideration, as to relative urgency, timing or method of financing.^b To be financed from federal or other nonstate funds.

DEPARTMENT OF MENTAL HYGIENE—RECAPITULATION OF FIVE-YEAR
CAPITAL OUTLAY PROGRAM

<i>Hospital</i>	<i>Amount</i>
Agnews State Hospital	\$4,913,300
Atascadero State Hospital	1,088,500
Camarillo State Hospital	1,950,310
DeWitt State Hospital	5,422,500
Mendocino State Hospital	3,097,720
Metropolitan State Hospital	4,314,100
Modesto State Hospital	8,445,000
Napa State Hospital	2,385,000
Patton State Hospital	3,041,950
Stockton State Hospital	3,328,938
Fairview State Hospital	3,350,000
Pacific State Hospital	8,907,000
Porterville State Hospital	1,739,100
Sonoma State Hospital	4,705,000
Langley Porter Neuropsychiatric Institute	20,364,000
Neuropsychiatric Institute at U.C.L.A.	6,525,100
Mental Retardation Centers	38,700,000
Total	<u>\$122,277,518</u>

HOSPITALS FOR THE MENTALLY ILL—SUMMARY OF CAPACITIES, FIVE-YEAR (1965-66—1969-70) BUILDING PROGRAM

Hospital and project	Capacities 6-30-64	Funded prior to 1964-65	Funding year beds added or deleted		Year beds are deleted or come into use				
			New	Remodeling	1965-66	1966-67	1967-68	1968-69	1969-70
Agnews -----	4,125	63-64							
Remodel wards 2, 21				65-66					
Remodel wards 1, 3, 5, 7				67-68				-12	
Remodel wards 2, 4, 6, 8				68-69					-4
Remodel wards 18, 20, 23, 25									
Total Agnews	4,125				4,125	4,125	4,125	4,137	4,133
Atascadero -----	1,500								
Total Atascadero	1,500				1,500	1,500	1,500	1,500	1,500
Camarillo -----	6,091	-108 (63-64)							
Remodel wards 3, 3A							-125		
Remodel wards M, M 1 and N				66-67			-84		
Remodel wards 7, 7A				65-66					
Professional and inservice training center				66-67					
Remodel wards 8, 8A								-102	
Total Camarillo	6,091				6,083	5,983	5,776	5,674	5,535
De Witt -----	1,150								
Remodel ten wards				65-66			-200		
Remodel existing wards				67-68					-200
Mental health center (240 beds)				68-69					
Total DeWitt	1,150				1,150	1,150	950	950	750

HOSPITALS FOR THE MENTALLY RETARDED—SUMMARY OF CAPACITIES, FIVE-YEAR
(1965-66-1969-70) BUILDING PROGRAM

Hospital and project	Capacities 6-30-64	Funded prior to 1964-65	Funding year beds added or deleted		Year beds are deleted or come into use				
			New	Remodeling	1965-66	1966-67	1967-68	1968-69	1969-70
Fairview	2,022								
Remodel wards 33-83 to hyperactive retarded children's unit				66-67				-38	
Remodel unit D north half (C.D. ward)				67-68				-23	+60
Intensive treatment unit			67-68						
Total Fairview	2,022				2,622	2,622	2,622	2,561	2,621
Pacific	2,888								
Remodel wards 16, 17				65-66		-18		+110	+44
Acute treatment unit			66-67						
Communicable disease ward			67-68						
Remodel wards 18, 19				67-68				-8	
Hyperactive retarded children ward				68-69					
Total Pacific	2,888				2,888	2,870	2,870	2,972	3,016
Porterville	2,511								
Residential ward			67-68						+40
Security ward			68-69						
Wards for hyperactive retarded children			69-70						
Total Porterville	2,511				2,511	2,511	2,511	2,511	2,551

INSTITUTES—SUMMARY OF CAPACITIES, THE FIVE-YEAR (1965-66—1969-70) BUILDING PROGRAM

Institute and project	Capacities 6-30-64	Funded prior to 1964-65	Funding year beds added or deleted		Year beds are deleted or come into use				
			New	Remodeling	1965-66	1966-67	1967-68	1968-69	1969-70
Langley Porter Neuropsychiatric Institute									
New multi-story institute (244 beds)			(66-67) + 244						+ 139
Transfer present institute to U.C., when new institute is complete									
Total Langley Porter NPI	105				105	105	105	105	244
Neuropsychiatric Institute—U.C.L.A.									
Mental retardation unit			(66-67)					+60	
Total NPI-UCLA	188				188	188	188	248	248
Total Institutes	293								492

MENTAL RETARDATION CENTERS—SUMMARY OF CAPACITIES, FIVE-YEAR (1965-66—1969-70) BUILDING PROGRAM

Mental retardation centers	Capacities 6-30-64	Funded prior to 1964-65	Funding year beds added or deleted		Year beds are deleted or come into use				
			New	Remodeling	1965-66	1966-67	1967-68	1968-69	1969-70
San Francisco (peninsula location)									
Medical center for mental retardation—unit I			66-67					+ 500	
Los Angeles area									
Medical center for mental retardation—unit II			67-68						+ 500
San Diego area									
Medical center for mental retardation—unit III			67-68						+ 500
Central Valley area									
Medical center for mental retardation—unit IV			69-70						
Total Mental Health Centers								500	1,500

DEPARTMENT OF CORRECTIONS

The Department of Corrections is responsible for the administration of the state's correctional system for adults convicted of felonies and the nonfelon narcotic addict program. It also houses and treats Youth Authority wards who have been determined by the Youth Authority as being best treated in an adult institution.

As a part of the correctional program, the department operates 14 major institutions and 41 camps which are distributed throughout the state. These institutions and camps comprise a diversified correctional system with facilities to provide varying degrees of custodial control and provisions for emphasis on special or general treatment programs. The heterogeneity of those committed to the department make it necessary to provide for diversified programs.

Custodial requirements range from maximum-close to minimum security facilities. Programs include academic and vocational education, group counseling, medical and psychiatric treatment, religious and recreational activities. Constructive work programs are provided by factories, maintenance and culinary sections, farms, and forestry and road camps. A program for the rehabilitation of nonfelon narcotic addicts is provided at the Rehabilitation Center.

The following institutions are currently operated by the department:

1. California Conservation Center near Susanville.
2. Sierra Conservation Center near Jamestown (to be opened June 1965).
3. Southern Conservation Center near Chino.
4. Correctional Institution near Tehachapi.
5. Correctional Training Facility at Soledad.
6. Deuel Vocational Institution near Tracy.
7. State Prison at Folsom.
8. Institution for Men near Chino.
9. Medical Facility near Vacaville.
10. Mens Colony—East Facility at Los Padres.
11. Mens Colony—West Facility at Los Padres.
12. Rehabilitation Center near Corona.
13. State Prison at San Quentin.
14. Institution for Women near Corona.

PROGRAM SUMMARY

When the Department of Corrections was created in 1944 there were three prisons for adult males and one for adult females. Prison population totaled 6,000 inmates. The tremendous increase in California population during the succeeding years has resulted in a corresponding increase in the prison population.

The estimated population increase for this department for the period 1965-70 is 5,880, an average increase of 1,176 inmates per year. To provide for increased population during this period the construction program proposes capacity increases at the Correctional Training Facility at Soledad, the Correctional Institution at Tehachapi, Institution for Men, Chino, and the Reception Guidance Centers at Chino and Vacaville. The program also proposes the construction of a Special

Security Facility and a Medical Correctional Institution to be activated during this five-year period. The Special Security Facility is planned for construction on the Medical Facility site at Vacaville. The Medical Correctional Institution will be located on a site in southern California with master planning to activate an Industrial Training Unit in 1971 and a Correctional Training Unit in 1972 to form a Correctional Center Complex with central facilities for economy. The department also proposes to increase the industrial and program facilities when the capacity of existing institutions are increased. This will provide programs and work assignments to eliminate idleness caused by a larger population.

TABULATION OF PROJECTS BY CATEGORY

<i>Category</i>	<i>Amount</i>	<i>Percent of total</i>
Inmate capacity		
New institutions or living units-----	\$81,474,800	84.1
Replacement -----	2,467,600	2.5
Replacement and rehabilitation-----	5,967,500	6.2
Training and treatment facilities-----	3,110,800	3.2
Industrial facilities -----	2,125,050	2.2
Utilities and services-----	970,750	1.1
Auxiliary service buildings-----	722,500	0.7
Totals-----	\$96,839,000	100.0

BASIC FACTORS AFFECTING CAPITAL OUTLAY

Population assumptions continue to assume economic and employment conditions will remain at reasonably high levels; criminal law penalties and dispositions of convicted defendants by superior courts will not be changed materially to affect prison population trends; the Department of Corrections will be providing facilities in 1970 for about one-third of the superior court committed male Youth Authority wards; and a progressive rehabilitation and parole system will be continued.

Population Projections

To provide adequate assurance that state facilities are not overconstructed, this program assumes a factor of overcrowding. Depending on the need and type of facility constructed throughout the five-year period, this overcrowding factor will be adjusted to actual experience by annual review and revision. The estimated population figures are shown in the table, "Summary of Population and Capacities at End of Year (June 30th)."

INSTITUTIONAL PROGRAM

Approximately 25-30 percent of the persons convicted of a crime for which they could be sent to prison are actually committed to the Department of Corrections. Those committed to state institutions represent the most serious behavior and rehabilitative problems.

When a prisoner is committed to the Director of Corrections, he goes first to one of the department's reception-guidance centers. At the reception-guidance center a detailed classification study of the prisoner is made to formulate a program which will best accomplish the in-

dividual inmate's rehabilitation. From the reception-guidance center the inmate is transferred to an appropriate institution.

The institutions and camps under the control of the department comprise a diversified correctional system with facilities having varying degrees of custodial control of inmates and provision for special and general programs of training and treatment for different types of prisoner groups. Accordingly, maximum-close, medium, and minimum security facilities have been established in which the various work programs and training are conducted.

The California Conservation Center near Susanville is a medium-minimum security institution which receives, trains, and transfers inmates to the various conservation camps for work in the state's conservation program. This institution is the staging, training and supply center for the overall conservation program in the northeastern area of the state.

The Sierra Conservation Center near Jamestown, which will open in June 1965, is a medium-minimum security institution similar to the center at Susanville. It will function in the same way for camps located in central California.

The Southern Conservation Center at Chino is a medium-minimum security institution which functions for the southern area of the state as the center at Susanville does for the northeastern area.

The Correctional Institution at Tehachapi is a medium-minimum security institution which provides industrial, vocational, academic and other training. Group counseling and community living programs are stressed.

The Correctional Training Facility at Soledad is a medium-minimum security institution with agricultural operations, vocational training and forestry camps. The north unit with 600 Youth Authority wards and 600 young adult felon offenders strongly stresses academic and vocational training, as well as intensive efforts toward resocialization of these youths.

The Deuel Vocational Institution near Tracy is a medium security institution which provides industrial, vocational and other training, guidance and reformatory help for young men too mature to be benefited by the juvenile correctional schools and too immature in crime for confinement in prisons. Inmates include both Youth Authority wards and Department of Corrections inmates. A 300-bed reception and guidance center cares primarily for Youth Authority wards committed by criminal courts.

The State Prison at Folsom is a maximum security prison which houses inmates serving long sentences and those who are habitual criminals, recidivists, or severe disciplinary problems.

The Institution for Men at Chino is a minimum security facility primarily for inmates with high parole success potentials. Academic and vocational education, community living, and other new treatment programs are stressed. A reception-guidance center is operated by this institution.

The Medical Facility near Vacaville is the psychiatric, diagnostic and treatment center of the department. It confines and treats adult male felons who are mentally ill or who have severe emotional or personality

INSTITUTIONAL PROGRAM—(Continued)

disorders. (These include psychotics, psychopaths, sex offenders, and homosexuals.) A reception-guidance center is also operated by this institution.

The Mens Colony at Los Padres is composed of two units. The West Facility is a minimum security institution that houses older and chronically infirm inmates. The East Facility, activated in 1961, is a medium security institution with four segregated units, each with a program designed for the occupants.

The Rehabilitation Center near Corona is utilized to house nonfelon narcotic addicts. The program for the nonfelon addicts consists of treatment through intensive counseling, vocational and academic work projects, intensive physical conditioning, and research into the cause, effect and cure of addiction.

The State Prison at San Quentin is the oldest and largest prison in the state's correctional system. It is operated as a close-medium security institution with extensive industrial and educational facilities, and because of its overpopulation retains all classifications and age groups of prisoners. An extensive program of highway and forestry camps is operated by the San Quentin institution.

The Institution for Women at Corona is a medium security prison and is the only correctional institution in the State which receives women and houses all custody classifications. It has a reception-guidance center in addition to the regular institutional custody and treatment programs.

Forestry camps are operated by conservation centers in conjunction with the Division of Forestry and U.S. Forest Service for conservation and development of the state's forests and parks.

Capacities and Standards

The type of prisoner committed to the department governs the type of major construction project to provide institutional capacities. Maximum-close security prisons are walled institutions where the majority of prisoners are housed in cells and employed within the walls, and are so guarded and restricted as to minimize the danger of escape. Medium security prisons are not walled—a wire chain-link fence sufficing for boundary restrictions. Most prisoners are housed in outside cells, in cell buildings or dormitories and employment may be inside or outside the enclosure. Personal supervision is emphasized for prevention of escapes. Minimum security prisoners are not under lock. They feature work outdoors or elsewhere under supervision of correctional officers and foremen.

The department believes that prisons with a capacity beyond 1200 are cumbersome and as a result the facilities are less efficient in attaining treatment goals. This thinking is shared by those responsible for leadership in the field of penology.

In the past, population pressures and financial considerations have made necessary a compromise between the cost advantages of a large prison and the safety and rehabilitative value of a small one. This has resulted in the limitation of such facilities as the Correctional Training

Facility and Mens Colony East to 3,000 capacity or under. This capacity limitation recognizes that peak loads will cause the inmate count to go higher.

The facilities proposed in this five-year program are limited to 1,200 capacity generally composed of two units of 600 each.

DEPARTMENT OF CORRECTIONS—SUMMARY OF POPULATION AND CAPACITIES

<i>Institution</i>	<i>Estimated June 30, 1966</i>	<i>Estimated June 30, 1967</i>	<i>Estimated June 30, 1968</i>	<i>Estimated June 30, 1969</i>	<i>Estimated June 30, 1970</i>
Total population	28,460	29,623	29,919	31,390	32,540
Total capacity	26,015	26,939	27,213	28,834	28,892
Population in excess of capacity	2,445	2,684	2,706	2,556	3,648

Men's Institutions

Capacities by institution

California Conservation Center and camps	2,746	2,606	2,606	2,606	2,606
Sierra Conservation Center and camps	1,646	1,866	1,866	1,866	1,866
Southern Conservation Center and camps	1,180	1,180	1,180	1,180	1,180
Correctional Institution at Tehachapi	380	1,224	1,224	1,224	1,224
Correctional Training Facility	3,047	3,047	3,207	3,231	3,289
Deuel Vocational Institution	1,515	1,515	1,515	1,515	1,515
State Prison at Folsom	2,019	2,019	2,019	2,019	2,019
Institution for Men	1,535	1,535	1,649	1,892	1,892
Medical Facility	2,035	2,035	2,035	3,389	3,389
Men's Colony—					
East Facility	2,470	2,470	2,470	2,470	2,470
Men's Colony—					
West Facility and camp	1,350	1,350	1,350	1,350	1,350
Rehabilitation Center	1,900	1,900	1,900	1,900	1,900
State Prison at San Quentin	2,821	2,821	2,821	2,821	2,821
Total male capacity	24,644	25,568	25,842	27,463	27,521
Total male population	27,255	28,313	28,544	29,925	30,990
Excess male population	2,611	2,745	2,702	2,462	3,469

Women's Institutions

Capacities by institution

Institution for Women	971	971	971	971	971
Rehabilitation Center	400	400	400	400	400
Total female capacity	1,371	1,371	1,371	1,371	1,371
Total female population	1,205	1,310	1,375	1,465	1,550
Excess female population	—166	—61	4	94	179

DEPARTMENT OF CORRECTIONS—SCHEDULE OF MAJOR PROJECTS FOR CAPITAL OUTLAY PROGRAM

Priority	Project	1965-66	1966-67	1967-68	1968-69	1969-70
California Conservation Center						
4	Emergency electrical power system Construction	\$145,000				
2	North Coast Branch Center Equipment	73,000				
20	Microwave system Construction		\$103,000 a			
Correctional Institution at Tehachapi						
11	Addition and new unit Equipment		1,000,000			
Correctional Training Facility						
Replacement and addition—South Facility—368 capacity						
16	Construction		493,000 c	\$252,000	\$227,000	\$237,000 (est. 1969)
30	Equipment			20,000	30,000	
Addition to food service facilities—North Facility						
19	Construction					
31	Equipment		80,000			
Dayrooms—North Facility						
41	Construction			10,000		
47	Equipment			235,000		
Employees' activity building						
25	Construction					
45	Equipment				16,000	
Deuel Vocational Institution						
Addition to dairy						
7	Construction	264,000			300,000 a	7,500 a

a Projects requiring further policy consideration as to relative urgency, timing or method of financing.

c Projects may be subsequently proposed for amendment into the 1965-66 Budget Act subject to the development of adequate financing.

DEPARTMENT OF CORRECTIONS—SCHEDULE OF MAJOR PROJECTS FOR CAPITAL OUTLAY PROGRAM—Continued

Devel Vocational Institution—Continued		Project			
Priority		1965-66	1966-67	1967-68	1968-69
			92,000 ¹		1969-70
17	Metal plating building Construction			142,200 ^a	
42	Industries office building Construction				
61	Industrial building Construction				600,000 ^a
(6)	New adjustment center Construction				1,300,000
State Prison at Folsom					
15	Educational activities building Construction		1,950,000 ^a	150,000 ^a	
36	Equipment				
18	Metal fabrication factory Construction		640,850 ¹		
23	Addition to canteen Construction			156,000 ¹	
Institution for Men					
9	Inmate dining room Remodel	120,000			
14	Replace barracks buildings—203 capacity Construction		494,000	494,000	80,000
29	Equipment			80,000	
39	Addition to guidance center—154 capacity Construction			1,051,800	145,000 ^a
43	Equipment				
50	Employees' activity building Construction				200,000 ^a
58	Equipment				
Medical Facility					
3	Special security facility—1,200 capacity Project planning	330,000			
12	Construction		18,000,000		7,500 ^a

44	Equipment	-----	-----	-----	1,800,000
24	Addition to guidance center—154 capacity	-----	-----	-----	-----
32	Construction	-----	-----	-----	-----
	Equipment	-----	-----	175,000	-----
Mens Colony—East Facility					
	Addition to industrial warehouse	-----	-----	-----	-----
22	Construction	-----	-----	230,000 ¹	-----
52	In-service training building	-----	-----	-----	-----
	Construction	-----	-----	-----	200,000 ^a
53	Equipment	-----	-----	-----	7,500 ^a
Southern California Correctional Center					
	Medical correctional institution—1,200 capacity	-----	-----	-----	-----
8	Project planning	-----	-----	-----	-----
13	Working drawings	-----	-----	-----	-----
37	Construction	-----	-----	450,000	-----
54	Equipment	-----	-----	-----	1,900,000
	Industrial training facility—1,200 capacity	-----	-----	-----	-----
38	Working drawings	-----	-----	-----	-----
48	Construction	-----	-----	600,000	-----
	Correctional training unit—1,200 capacity	-----	-----	-----	16,000,000
49	Working drawings	-----	-----	-----	-----
56	Construction	-----	-----	-----	600,000
	-----	-----	-----	-----	16,000,000
State Prison at San Quentin					
	Inmate activity building	-----	-----	-----	-----
1	Equipment	-----	-----	50,000	-----
	Food service refrigeration building	-----	-----	-----	-----
5	Construction	-----	-----	265,000	-----
10	Equipment	-----	-----	-----	20,000
	Salt water service lines	-----	-----	-----	-----
6	Restoration	-----	-----	165,000	-----

^a Projects requiring further policy consideration as to relative urgency, timing or method of financing.

¹ Projects contingent upon expansion and funding policies for new and expanded prison industries.

DEPARTMENT OF CORRECTIONS—SCHEDULE OF MAJOR PROJECTS FOR CAPITAL OUTLAY PROGRAM—Continued

State Prison of San Quentin—Continued		Project				
Priority		1965-66	1966-67	1967-68	1968-69	1969-70
27	Addition to laundry Construction	—	200,000	—	—	—
28	Older building Construction	—	800,000 ^a	—	—	—
33	Equipment Ventilated and maintenance shops Construction	—	—	70,000 ^a	—	—
40	Equipment Construction	—	—	140,500	30,000	—
46	Education, board-hold, and clothing building Construction	—	—	—	—	—
51	Equipment Construction	—	—	—	3,000,000 ^a	120,000 ^a
55	Access service road Construction	—	—	—	—	207,750 ^a
59	—	—	—	—	—	—
Institution for Women						
26	Medical clinic building Construction	—	300,000	—	—	—
34	Equipment Chapel	—	—	25,000	—	—
21	Construction Equipment	—	407,900	—	—	—
33	—	—	—	27,000	—	—
New Women's Institution						
57	Site acquisition	—	—	—	—	500,000
Annual totals						
Proposed		1,502,000	26,691,250	24,710,500	23,135,500	29,739,750
Policy unresolved ^a		1,362,000	23,838,250	24,308,500	18,783,000	19,797,000
		—	2,853,000	342,000	4,352,500	942,750
TOTAL, FIVE-YEAR PROGRAM		—	—	—	—	—
Proposed		—	—	—	—	846,539,000
Policy unresolved ^a		—	—	—	—	88,348,550
		—	—	—	—	8,490,450

DEPARTMENT OF CORRECTIONS—RECAPITULATION OF FIVE-YEAR
CAPITAL OUTLAY PROGRAM BY INSTITUTION

California Conservation Center	\$321,000
Correctional Institution at Tehachapi	1,000,000
Correctional Training Facility	1,938,100
Deuel Vocational Institution	2,398,200
State Prison at Folsom	2,896,850
Institution for Men	2,672,300
Medical Facility	21,905,000
Mens Colony—East Facility	437,500
State Prison at San Quentin	6,480,250
Institution for Women	759,800
New facilities	
Southern California Correctional Center	55,700,000
New Women's Institution	300,000
Totals, Department of Corrections	\$96,839,000

DEPARTMENT OF CORRECTIONS—SUMMARY OF POPULATIONS, CAPACITIES AND OVERCROWDING AS EXISTING AND AS PROPOSED BY THE
FIVE-YEAR (1965-66—1969-70) BUILDING PROGRAM

Institution and project	Capacity June 30, 1965	Additional capacity funded prior to 1965-66		Additional capacity proposed in 5-year plan				
		1965-66 completion	1966-67 completion	1966-67 completion	1967-68 completion	1968-69 completion	1969-70 completion	
MEN'S INSTITUTIONS								
California Conservation Center and camps	2,032							
North Coast Branch Center		100						
Conservation camp transfers		614	\$ 220					
Shasta Conservation Camp				80				
Sierra Conservation Center and camps	1,200	80						
Longview Conservation Camp		366	\$220					
Conservation camp transfers								
Southern Conservation Center and camps	1,400	80						
Cayamaca Conservation Camp								
Correctional Institution at Tehachapi	380		\$44					
Addition and new unit								
Correctional Training Facility	3,387							
Conservation camp transfers								
Replacement and addition of South Facility		3-340			160	24	58	
Deuel Vocational Institution	1,515							
State Prison at Folsom	2,019							
Institution for Men	1,535				114	89	154	
Replace barracks buildings								
Addition to guidance center								

Medical Correctional Institution-----						
Medical Facility-----	2,035					1,200
Special security facility-----						154
Addition to guidance center-----						
Men's Colony—East Facility-----	2,470					
Men's Colony—West Facility and camp-----	1,350					
Rehabilitation Center-----	1,900					
State Prison at San Quentin-----	3,461					
Conservation camp transfers-----		1-640				
Total Male Capacity, June 30, 1965-----	24,384					
Total Construction Projects-----		260	844	80	274	1,621
Total Male Capacity, June 30, 1970-----	27,521					58
WOMEN'S INSTITUTIONS						
Institution for Women-----	971					
Rehabilitation Center-----	400					
Total Female Capacity, June 30, 1965-----	1,371					
Total Construction Projects-----						
Total Female Capacity, June 30, 1970-----	1,371					

¹ Camp capacity of 640 is being transferred from San Quentin to the California Conservation Center. In addition, that center is transferring 26 camp capacity to the Sierra Conservation Center.

² Camp capacity of 220 is being transferred from the California Conservation Center to the Sierra Conservation Center.

³ Camp capacity of 340 is being transferred from the Correctional Training Facility to the Sierra Conservation Center. In addition, the California Conservation Center is transferring 26 capacity to the Sierra Center.

DEPARTMENT OF THE YOUTH AUTHORITY

This department is responsible for the custody and rehabilitation of youths committed by the juvenile and criminal courts for delinquent behavior. It operates two institutions for reception, diagnosis, and classification of these boys and girls plus seven training institutions and four conservation camps. The eighth training school is under construction.

Consistent with accepted national practices, the department has developed institutions based upon a philosophy of working with homogeneous groups. In accordance with this principle, the department prefers to develop small institutions, 150-200 capacity for the youngest wards and 300-400 capacity for the older wards. Difficulties in financing state institutions have compelled the construction of institutions larger than these capacities. In order to achieve the economies of larger institutions together with the benefits derived from smaller institutions, the department has embarked upon a program of constructing the Northern California Youth Center and the Southern California Youth Center. These will be large clusters of institutions with each unit providing a 400-ward capacity. Each cluster will be developed around a central administration and services core.

The department operates the following facilities:

TRAINING AND TREATMENT (SCHOOLS AND CAMPS)

<i>Boys</i>	<i>Girls</i>
Conservation Camps	Los Guillicos School
Fricot Ranch School	Ventura School
Fred C. Nelles School	
Northern California Youth Center	
Paso Robles School	
Preston School of Industry	
Southern California Youth Center *	
Youth Training School	

RECEPTION AND DIAGNOSTIC CENTERS

Northern California Reception Center and Clinic
Southern California Reception Center and Clinic

TABULATION OF PROJECTS BY CATEGORIES

<i>Category</i>	<i>Amount</i>	<i>Percent of total</i>
Additional capacity		
New institutions	\$50,599,101	93.7
Existing institutions	190,370	0.4
Replacement and rehabilitation	311,160	0.6
Training facilities	1,626,106	3.0
Utilities and services	665,000	1.2
Auxiliary service buildings	599,135	1.1
Totals	\$53,990,872	100.0

PROGRAM SUMMARY

The construction program for the 1965-70 period is designed to provide institution capacity of 8,122 beds plus 606 hospital and detention beds to accommodate an estimated total institution population of 8,277 boys and girls by June 30, 1970. This program, at a total esti-

* This institution is still in the planning stage.

mated cost of \$53,990,872, provides for initial development and construction of the Southern California Youth Center and construction of essential auxiliary facilities at existing institutions. Construction of two youth conservation camps and replacement of one are proposed by the Division of Forestry in its construction program.

BASIC FACTORS AFFECTING AGENCY PROGRAM POPULATION ESTIMATES

Commitments are classified as juvenile court wards or as young persons convicted in the criminal courts, and include only persons who are at least 8 years of age or less than 21 years of age at the time of the offense resulting in commitment to the department. For the past five years, the court referral rate to the department for boys in the 12-17 age group has remained relatively stable at about 360 per 100,000 boys in this age group of the state population. This same rate has been projected for estimating admissions in the next five years. Recent experience indicates upward revisions in these estimates may be necessary in planning the department's long-range construction program.

The referral rate for girls has gradually increased to 67 per 100,000 girls in the 12-20 age group. This rate has been used in estimated institution capacity requirements for girls.

The referral rate per 100,000 males to both the Department of the Youth Authority and Department of Corrections in the 18-20 age group has fluctuated considerably over the last nine years varying from a rate of 317 in 1955-56 to 557 in 1960-61 and declining to 374 in 1963-64. This building program is based on a projected rate of 450 per 100,000 males in this age group.

The Youth Authority construction program is based on an overall length of stay at Youth Authority institutions (including reception center processing time) of 12 months for those 14 years of age and under and 9 months for youths 15 years of age and older. The overall average length of stay for older boys transferred to the Department of Corrections institutions is 12 months.

INSTITUTIONAL PROGRAM

The following institutions, with capacity as indicated, have been developed or planned and incorporate the general principles for institution construction and operation of the Department of the Youth Authority:

Youth Conservation Camps for Boys are operated in conjunction with the Division of Forestry. These provide additional capacity and afford an opportunity for older boys to acquire good work habits in a minimum security situation. Construction of two additional camps and replacement of one existing camp is included in the Division of Forestry program bringing the total capacity to 540.

Fricot Ranch School for Boys is used for placement of the youngest boys (13 years of age and under) in a program designed for full time elementary school level education. Dependency needs of this group are recognized and provided for to a much greater degree than is necessary for older boys. Projected capacity is 220 plus 12 hospital beds.

Fred C. Nelles School for Boys is for boys of 14-year maturity level, some of whom are approaching their limits in academic achievement.

INSTITUTIONAL PROGRAMS—(Continued)

All boys of this age group must be prepared for public school training because of the compulsory school attendance law. Regular and remedial academic teaching plays an important part in the program. Some emphasis is placed on a program of exploratory and prevocational training. Most of these wards are old enough to move in groups and require limited physical security. Projected capacity is 620 plus 35 hospital and detention beds.

Northern California Youth Center is to be located on a 935-acre site which has been acquired near Stockton. It is planned to construct a complex of 12 400-capacity institutions served by central service and administration units. Construction of the first institution for boys began in May 1964 with occupancy expected in June 1966. This institution is known as the O. H. Close School for Boys. The second institution for boys in the 15-year-old age group will be under construction in the spring of 1965 with occupancy expected about two years later. Construction funds are available for the third institution, a 400-bed older boys facility. Construction of this institution is expected to begin in early 1966 with occupancy in early 1968. An ultimate capacity of approximately 4,800 is planned for this youth center. Current and already funded construction will provide a projected capacity of 1,180 plus 77 hospital and detention beds.

Paso Robles School for Boys is for boys of the adolescent 15-16 year age group where a program of extensive remedial and academic training is provided in compliance with compulsory school attendance laws. An increasing emphasis is placed on prevocational training. Security is of an intermediate degree. Projected capacity is 453 plus 38 hospital and detention beds.

Preston School of Industry is for older boys providing a combination of academic and vocational training programs with greater emphasis on trades training and work experience. An agricultural education program is operated at this institution to meet the needs of many of these boys who will eventually be placed in agricultural employment. Greater security is provided at Preston School of Industry with the youths being moved about in groups under supervision. Projected capacity is 846 plus 94 hospital and detention beds.

Southern California Youth Center is planned as a complex of institutions at the Youth Training School site. This construction program includes a reception center for older boys a medical-psychiatric institution for boys and other institutions for boys together with central services and administration units. The existing Youth Training School will be a part of the complex. This building program includes a projected additional capacity of 1,591 plus 109 hospital and detention beds.

Youth Training School is for older boys who can profit from trades training and a related work experience program. The institution has an extensive vocational trades training program with related academic training. Almost all institution maintenance is carried out by vocational training classes. Projected capacity is 1,200 plus 72 hospital and detention beds.

INSTITUTIONAL PROGRAMS—(Continued)

Los Guilucos School for Girls is a school for immature girls of the 8-12 age group and for northern California girls, ages 13-15, with a program of education emphasizing remedial and regular academic teaching. Recreation, arts and crafts, and homemaking programs assist in the development of these girls. Projected capacity is 259 plus hospital and detention beds.

Ventura School for Girls houses Southern California girls of the 13-15 age group and older girls of the 16-21 age group from anywhere in the state. A program of education emphasizing remedial and regular academic teaching is supplemented with prevocational training for the older girls. A temporary 50-bed reception center for southern California girls is operating at this institution. Plans are being developed for a 100-bed reception center at Ventura School for Girls for girls received from southern California. Construction funds are already available. Projected capacity is 550 plus 74 hospital and detention beds.

The Youth Authority operates two reception centers and clinics, one located in Northern and one in Southern California. They afford diagnostic and clinical services for all juvenile court commitments prior to transfer to a training institution. After careful study, some wards are paroled directly from the reception centers. Reception and diagnosis of both boys and girls has been the function of these reception centers since occupancy in 1954. In January, 1964, the Southern California girls reception function was transferred to Ventura School for Girls. Total projected capacity at present reception centers is 663 plus 60 hospital and detention beds.

DEFINITIONS OF CAPACITIES

The dormitory sleeping area space standard allows an average of 54 square feet per ward, or 6 feet x 9 feet per bed. This provides space for each bed plus 3 feet between beds and a 5-foot aisle. In determining total institutional capacity, all beds and regular sleeping facilities excluding detention and hospital beds but including segregation units, are counted. Detention beds are used for control and discipline of wards and therefore are not considered in computing net institutional capacity. There is overcrowding at the present time in the Youth Authority institutions for boys.

DEPARTMENT OF THE YOUTH AUTHORITY—1965-70 PROJECTION OF
POPULATION AND CAPACITIES BY SCHOOLS
(End of Year—June 30)

<i>Facility</i>	<i>1965-66</i>	<i>1966-67</i>	<i>1967-68</i>	<i>1968-69</i>	<i>1969-70</i>
Total population	5,377	5,520	7,620	7,949	8,277
Total capacity	5,885	6,612	8,302	8,312	8,728
(Hospital and detention)	434	491	500	500	606
Net capacity	5,451	6,121	7,712	7,722	8,122
Population in excess of capacity	-74	(89)	-482	227	155

Analysis of Total Capacity by Institution

Northern California Reception

Center-Clinic

Total capacity	345	345	345	345	345
Hospital and detention	82	82	82	82	82
Net capacity	313	313	313	313	313

Southern California Reception

Center-Clinic

Total capacity	378	378	378	378	378
Hospital and detention	28	28	28	28	28
Net capacity	350	350	350	350	350

Youth Concentration Camps

Total capacity	560	560	560	540	540
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Frisco Ranch School for Boys

Total capacity	232	232	232	232	232
Hospital and detention	12	12	12	12	12
Net capacity	220	220	220	220	220

Fred C. Nelles School for Boys

Total capacity	655	655	655	655	655
Hospital and detention	35	35	35	35	35
Net capacity	620	620	620	620	620

Northern California Youth Center

Total capacity	400	849	1,257	1,257	1,257
Hospital and detention	20	69	77	77	77
Net capacity	380	780	1,180	1,180	1,180

Paso Robles School for Boys

Total capacity	491	491	491	491	491
Hospital and detention	38	38	38	38	38
Net capacity	453	453	453	453	453

Preston School of Industry

Total capacity	940	940	940	940	940
Hospital and detention	94	94	94	94	94
Net capacity	846	846	846	846	846

Southern California Youth Center

Total capacity	-----	-----	1,282	1,282	1,698
Hospital and detention	-----	-----	91	91	107
Net capacity	-----	-----	1,191	1,191	1,591

Youth Training School

Total capacity	1,272	1,272	1,272	1,272	1,272
Hospital and detention	72	72	72	72	72
Net capacity	1,200	1,200	1,200	1,200	1,200

Los Guilicos School for Girls

Total capacity	296	296	296	296	296
Hospital and detention	37	37	37	37	37
Net capacity	259	259	259	259	259

Ventura School for Girls

Total capacity	616	624	624	624	624
Hospital and detention	66	74	74	74	74
Net capacity	450	550	550	550	550

DEPARTMENT OF THE YOUTH AUTHORITY—SCHEDULE OF MAJOR PROJECTS FOR CAPITAL OUTLAY PROGRAM

1969-70

1968-69

1967-68

1966-67

1965-66

1964-65

1963-64

1962-63

1961-62

1960-61

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DEPARTMENT OF THE YOUTH AUTHORITY—SCHEDULE OF MAJOR PROJECTS FOR CAPITAL OUTLAY PROGRAM—Continued

Priority	Project	1965-66	1966-67	1967-68	1968-69	1969-70
Fricot Ranch School for Boys—Continued						
42	Protestant and Catholic chapels					
	Construction					\$185,000
	Equipment					22,480
Fred C. Nelles School for Boys						
1	50-boy living unit (No. 10)	\$13,050				
	Equipment					
7	Horticultural classroom, greenhouse and lath house	\$2,400				
	Construction	6,500				
	Equipment					
22	Replace boilers at steam plant		125,000	125,000		
	Construction					
30	Intercommunication and sound security system					
	Construction		105,000			
	Equipment					
31	New hospital building			302,700		
	Construction			8,460		
	Equipment					
Northern California Youth Center						
4	Drainage canal and holding basin	405,200				
	Construction					
5	Laundry and drycleaning plant	794,000				
	Construction	50,000				
	Equipment					
6	Central administration and service facilities— surgery addition to hospital	200,000				
	Construction		10,000			
	Equipment					
15	400-bed institution No. 2					
	Equipment		491,000			
16	400-bed institution No. 3					
	Equipment			418,130		

19	Employee training academy					
	Construction					
	Equipment					\$215,000 ^a
24	Site grading and seeding, phase I					20,000 ^a
	Construction					
	Equipment					
38	Site grading and seeding, phase II					
	Construction					100,000
	Equipment					5,000
	Paso Robles School for Boys					
25	Catholic and Protestant chapels					
	Construction					
	Equipment					249,250
32	Add industrial arts shop and remodel auto instruction shop					26,660
	Construction					
	Equipment					79,200
34	Music classroom					3,090
	Construction					
	Equipment					82,000
						946
	Preston School of Industry					
33	Auto body and fender vocational shop and storage area					
	Construction					
	Equipment					144,000
35	Additional recreation area					10,195
	Construction					
	Equipment					
41	Catholic chapel					
	Construction					70,000 ^a
	Equipment					400 ^a
						153,000
						18,425

^a Projects requiring further policy consideration as to relative urgency, timing or method of financing.

DEPARTMENT OF THE YOUTH AUTHORITY—SCHEDULE OF MAJOR PROJECTS FOR CAPITAL OUTLAY PROGRAM—Continued

Priority	Project	1965-66	1966-67	1967-68	1968-69	1969-70
Southern California Youth Center						
8	Central administration and service facilities					
	Working drawings	700,000	8,410,000			
	Construction			532,000		
	Equipment					
9	400-bed intermediate boys institution (No. 1)					
	Working drawings	450,000				
	Construction		6,200,000			
	Equipment			401,000		
10	375-bed older boys reception center (No. 2)					
	Working drawings	400,000				
	Construction		6,800,000			
	Equipment			500,000		
11	331-bed boys medical-psychiatric institution (No. 3)					
	Working drawings	480,000	7,000,000			
	Construction			500,000		
	Equipment					
12	Sewage treatment and disposal facilities					
	Project planning					
	Construction	50,000	720,000			
23	400-bed boys institution (No. 4)					
	Working drawings			350,000		
	Construction				6,300,000	
	Equipment					500,000
36	400-bed boys institution (No. 5)					
	Working drawings				350,000	
	Construction					6,300,000
	Equipment					
39	Site grading and seeding, phase I					
	Construction			100,000		
	Equipment			5,000		
43	Site grading and seeding, phase II					
	Construction					100,000
	Equipment					5,000

Los Guilucos School for Girls

37

Catholic and Protestant chapels

Construction	-----	-----	-----	-----	-----
Equipment	-----	-----	-----	-----	170,000
					25,000

Ventura School for Girls

2

100-bed girls reception center

Equipment	-----	-----	-----	-----	177,320
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3

Sewage treatment plant alterations

Construction	-----	-----	-----	-----	65,000
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13

General storage commissary building

Construction	-----	-----	-----	-----	79,740
Equipment	-----	-----	-----	-----	4,795

Annual totals, Department of the Youth Authority

<i>Proposed</i>	-----	-----	-----	-----	\$3,791,751
<i>Policy unresolved a</i>	-----	-----	-----	-----	31,791,751
					\$3,764,580
					3,764,580

					\$7,293,566
					7,058,566
					235,000

					\$7,182,880
					7,112,480
					70,400

					\$53,990,872
					53,685,472
					305,400

TOTAL, FIVE-YEAR PROGRAM*Proposed**Policy unresolved a*

^a Projects requiring further policy consideration as to relative urgency, timing or method of financing.

DEPARTMENT OF THE YOUTH AUTHORITY—RECAPITULATION OF FIVE-YEAR
CAPITAL OUTLAY PROGRAM

Northern California Reception Center-Clinic at Sacramento-----	---
Southern California Reception Center-Clinic at Norwalk-----	---
Youth Conservation Camps *-----	\$247,771
Fricot Ranch School for Boys near San Andreas-----	1,029,550
Fred C. Nelles School for Boys at Whittier-----	768,200
Northern California Youth Center at Stockton-----	2,813,330
Paso Robles School for Boys at Paso Robles-----	441,146
Preston School of Industry at Ione-----	396,020
Southern California Youth Center at Ontario-----	47,773,000
Youth Training School at Ontario-----	
Los Guilucos School for Girls at Santa Rosa-----	195,000
Ventura School for Girls near Ventura-----	326,855
<hr/>	
Total, Department of the Youth Authority-----	\$53,990,872

* Equipment only. Conservation camps included in Division of Forestry program.

DEPARTMENT OF THE YOUTH AUTHORITY—SUMMARY OF POPULATIONS, CAPACITIES AND OVERCROWDING AS EXISTING AND AS PROPOSED BY THE FIVE-YEAR (1965-66-1969-70) BUILDING PROGRAM

Institution and project	Capacity June 30, 1965	Additional capacity funded prior to 1965-66			Additional capacity proposed in 5-year plan			
		1965-66 completion	1966-67 completion	1967-68 completion	1966-67 completion	1967-68 completion	1968-69 completion	1969-70 completion
Northern California Reception Center-Clinic	345							
Southern California Reception Center-Clinic	378							
Youth conservation camps	360							
Ben Lomond Camp								
Replacement capacity			(70)					
Additional capacity			10					
Riverside Camp					80			
Orange Camp					80			
Pine Grove								
Replacement capacity							(70)	10
Additional capacity								
Fricot Ranch School for Boys	232							
Fred C. Nelles School for Boys	645							
One 50-boy living unit								
Replacement capacity			(40)					
Additional capacity			10					
Northern California Youth Center								
O. H. Close School for Boys (No. 1)		400						
Hospital: 33 beds (boys)			33					
Boys institution (No. 2)			416					
Boys institution (No. 3)								408
Paso Robles School for Boys	491							

DEPARTMENT OF THE YOUTH AUTHORITY—SUMMARY OF POPULATIONS, CAPACITIES AND OVERCROWDING AS EXISTING AND AS
PROPOSED BY THE FIVE-YEAR (1965-66—1969-70) BUILDING PROGRAM—Continued

Institution and project	Capacity June 30, 1965	Additional capacity funded prior to 1965-66				Additional capacity proposed in 5-year plan			
		1965-66 completion	1966-67 completion	1967-68 completion	1968-69 completion	1969-70 completion	1969-70 completion	1969-70 completion	1969-70 completion
Preston School of Industry-----	940								
Southern California Youth Center									
Hospital: 33 beds (boys)-----									
Boys institution (No. 1)-----									
Older boys reception center (No. 2)									
Boys medical-psychiatric institution (No. 3)									
Boys institution (No. 4)-----									
Boys institution (No. 5)-----									416
Youth Training School-----	1,272								
Los Guillicos School for Girls-----	296								
Ventura School for Girls-----	516								
Girls reception center-----			104						
Hospital addition-----			4						
Total capacity, June 30, 1965-----	5,475								
Totals: capacity to be added by fiscal year-----	3,253	400	577	408	160	1,282	10		416
Totals: capacity to be replaced by fiscal year-----	(180)		(110)				(70)		
Total capacity, June 30, 1970-----	8,728								

SUMMARY OF POPULATIONS, CAPACITIES AND OVERCROWDING AS EXISTING AND PROPOSED
BY THE FIVE-YEAR (1965-66-1969-70) BUILDING PROGRAM

Institution and project	Capacities 1964-65	New capacities will come into use				
		1965-66	1966-67	1967-68	1968-69	1969-70
Total population.....	5,262	5,377	6,520	7,620	7,949	8,277
Total combined capacities.....	5,475	5,885	6,612	8,302	8,312	8,728
Less hospital and detention capacity.....	414	434	491	590	590	606
Net capacity.....	5,061	5,451	6,121	7,712	7,722	8,122
Total excess population.....	201	-74	399	-92	227	155
Percent overcrowding.....	3.8	-1.4	6.1	-1.2	2.9	1.9

DEPARTMENT OF VETERANS AFFAIRS**Veterans' Home of California**

The Veterans' Home of California provides domiciliary and medical care for California veterans. At the present time the domiciliary bed capacity of the home is 1,531. Hospital and nursing home facilities of 881 beds are also provided to care for the needs of veterans housed at the home.

PROGRAM SUMMARY

The five-year program for the Veterans' Home is proposed subject to further policy consideration. Additional hospital beds are included to provide for the increasing number of veterans in the home requiring hospitalization due to advanced age and degenerate diseases and to provide capacity for California veterans from outside the home who may require hospitalization for chronic disabilities.

A bill proposing federal sharing in the construction of nursing home care facilities for veterans is now before the United States Congress. Facilities for this type of care have been shown with a 50 percent federal cooperative sharing of construction and equipment cost.

Other facilities are proposed to improve the physical plant and to replace old buildings which will deteriorate.

DEPARTMENT OF VETERANS AFFAIRS—VETERANS' HOME OF CALIFORNIA
SCHEDULE OF MAJOR PROJECTS FOR CAPITAL OUTLAY PROGRAM

Priority	Project	1965-66	1966-67	1967-68	1968-69	1969-70
1	Remodel Section B, McKinley Barracks to intermediate care					
	Construction		\$198,150 ^c			
	Construction (federal share)		198,150 ^b			
	Equipment		44,850 ^c			
	Equipment (federal share)		44,850 ^b			
2	Alterations and additions to main dining room and culinary building					
	Construction		721,300 ^a			
3	Addition to women's barracks					
	Construction			\$314,825 ^a		
	Construction (federal share)			314,825 ^b		
	Equipment					
	Equipment (federal share)				\$32,800 ^a	
	Vocational Training Center				32,800 ^b	
4	Construction				103,800 ^a	
5	Replace portion of supply building					
	Construction					\$198,600
	Annual totals		\$1,207,300	\$629,650	\$169,400	\$198,600
	State funds:					
	Proposed		243,000			198,600
	Policy unresolved ^a		721,300	314,825	136,600	
	Total, state funds					
	Nonstate funds ^b		\$964,300	\$314,825	\$136,600	\$198,600
			243,000	314,825	32,800	
TOTAL, FIVE-YEAR PROGRAM						
	State funds:					\$2,204,950
	Proposed					441,600
	Policy unresolved ^a					1,172,725
	Total, state funds					\$1,614,325
	Nonstate funds ^b					590,625

^a Projects requiring further policy consideration as to relative urgency, timing or method of financing.
^b To be financed from federal and other nonstate funds.
^c Projects may be subsequently proposed for amendment into the 1965-66 Budget Act subject to the development of adequate financing.

DEPARTMENT OF GENERAL SERVICES

The Department of General Services is responsible for providing space for all state agencies except those such as the Department of Employment, Motor Vehicles, and Highway Patrol which normally furnish their own facilities. These are agencies with operations that are not necessarily best served in downtown, centralized office space types of facilities. The facilities necessary for state operations may be acquired either by constructing state-owned facilities or by leasing facilities.

The types of facilities furnished include office buildings, warehouses, and radio communication facilities such as sites for vaults for housing microwave and other radio installations.

TABULATION OF FIVE-YEAR PROJECTS BY CATEGORY

<i>Category</i>	<i>Amount</i>	<i>Percent of total</i>
New facilities	\$59,046,275	79.7
Site acquisition	12,111,609	16.4
Alterations	2,951,200	3.9
Total	\$74,109,084	100.0

BASIC FACTORS AFFECTING THE PROGRAM

Many economies are realized through centralization of facilities. These include more efficient arrangement of space, lower maintenance and service costs and the elimination of duplicate services and facilities.

The factors considered in determining space requirements for each city include the number of state agencies involved, the amount of space currently occupied, the degree of present overcrowding, and anticipated agency growth. Projected population of the surrounding area is examined, as is the expected appreciation of land values.

Construction of state-owned facilities is limited by the availability of funds. Existing lease arrangements are normally extended until the priority becomes high enough to warrant construction of state-owned facilities.

When the construction of state-owned facilities is financed from special funds the special funds are repaid with interest from rental charges to occupying state agencies.

The following table describes the space needs and availability of state-owned space in the various cities throughout the state. Capacity figures for state buildings are based upon anticipated completion dates of projected construction.

CENTRAL OFFICE BUILDING REQUIREMENTS
(Net Square Feet of Office Space)

	<i>Present area 1965</i>	<i>Adjusted* area 1965</i>	<i>Estimated area 1970</i>	<i>Estimated area 1975</i>
Sacramento				
Present space	3,132,703			
Space requirements		3,272,498	3,703,378	4,290,690
State buildings		2,863,476	3,398,276	4,246,276
Deficiency or surplus		—409,022	—305,102	—44,414
San Francisco				
Present space	502,827			
Space requirements		521,000	595,000	680,000
State buildings		385,436	385,436	635,450
Deficiency or surplus		—135,564	—209,564	—44,550
Los Angeles				
Present space	666,808			
Space requirements		681,000	823,000	948,000
State buildings		520,925	520,925	821,000
Deficiency or surplus		—160,075	—302,075	—127,000
Oakland				
Present space	134,509			
Space requirements		141,500	161,000	183,000
State buildings		127,895	127,895	127,895
Deficiency or surplus		—13,605	—33,105	—55,105
Fresno				
Present space	131,411			
Space requirements		132,000	139,000	141,000
State buildings		93,356	93,356	93,356
Deficiency or surplus		—38,644	—45,644	—47,644
San Diego				
Present space	139,557			
Space requirements		143,208	245,000	270,000
State buildings		103,055	115,855	115,855
Deficiency or surplus		—40,153	—129,145	—154,145
San Jose				
Present space	41,735			
Space requirements		43,500	56,250	67,500
State buildings		—	53,738	53,738
Deficiency or surplus		—43,500	—2,512	—13,762
San Bernardino				
Present space	51,352			
Space requirements		53,917	69,000	72,000
State buildings		—	59,470	59,470
Deficiency or surplus		—53,917	—9,530	—12,530
Stockton				
Present space	34,522			
Space requirements		36,250	48,000	50,000
State buildings		—	34,500	34,500
Deficiency or surplus		—36,250	—13,500	—15,500
Long Beach				
Present space	40,584			
Space requirements		42,614	57,670	75,000
State buildings		—	—	75,000
Deficiency or surplus		—42,614	—57,670	—
Bakersfield				
Present space	25,132			
Space requirements		35,900	46,500	56,000
State buildings		—	—	—
Deficiency or surplus		—35,900	—46,500	—56,000

* Adjusted for currently overcrowded conditions.

CENTRAL OFFICE BUILDING REQUIREMENTS—Continued
(Net Square Feet of Office Space)

	<i>Present area 1965</i>	<i>Adjusted* area 1965</i>	<i>Estimated area 1970</i>	<i>Estimated area 1975</i>
Santa Rosa				
Present space	22,261			
Space requirements		22,485	37,500	43,000
State buildings				
Deficiency or surplus.....		—22,485	—37,500	—43,000
Santa Ana				
Present space	40,814			
Space requirements		42,854	58,500	73,000
State buildings				73,000
Deficiency or surplus.....		—42,854	—58,500	
Van Nuys				
Present space	31,979			
Space requirements		33,893	42,000	55,000
State buildings				55,000
Deficiency or surplus.....		—33,893	—42,000	
Santa Barbara				
Present space	15,327			
Space requirements		17,491	22,000	27,500
State buildings				
Deficiency or surplus.....		—17,491	—22,000	—27,500

* Adjusted for currently overcrowded conditions.

DEPARTMENT OF GENERAL SERVICES—SCHEDULE OF MAJOR PROJECTS FOR CAPITAL OUTLAY PROGRAM

Priority *Project* *1965-66* *1966-67* *1967-68* *1968-69* *1969-70*

Sacramento

1	For purchase of land within Capitol area plan, and water well sites for central heating and cooling plant				
	Site acquisition	\$2,248,500	\$4,613,109 ^a		
3	Combined office quarters, Military Department and California Disaster Office: to provide combination protected disaster headquarters and office facilities				
	Construction	2,763,105			
	Construction (federal share)	2,055,515 ^b			
	Equipment				\$50,000
	Equipment (federal share)				50,000 ^b
4	Central heating and cooling plant: to meet needs of all existing and authorized buildings in State Capitol area				
	Construction	10,663,625			
5	State Office Building No. 8 to meet projected space requirements				
	Construction	8,685,000			75,000
	Equipment				
6	State Office Building No. 9 to meet projected space requirements				
	Construction	9,032,500			75,000
	Equipment				
7	Office Building No. 1: Phase II alterations and improvements of office space vacated upon completion of Resources Building				
	Alterations	600,000			
8	Library and Courts Building: Phase II electrical alterations to comply with modern standards				
	Alterations	100,000			

^a Projects requiring further policy consideration as to relative urgency, timing or method of financing.

^b To be financed from federal or other nonstate funds

DEPARTMENT OF MENTAL HYGIENE—SCHEDULE OF MAJOR PROJECTS FOR CAPITAL OUTLAY PROGRAM—Continued

Priority	Project	1965-66	1966-67	1967-68	1968-69	1969-70
15	State Capitol: provide 2 new elevators in north side of west wing		311,300 c			
16	Alterations Renovation of rest rooms in Capitol building west wing		175,000 c			
18	Alterations Office building alterations and improvements of office space vacated upon completion of office buildings 8 and 9			750,000		
19	Alterations State office building: to meet projected space requirements Working drawings Construction			400,000 a	\$13,035,000 a	
22	State office building: to meet projected space requirements Working drawings					\$400,000 a
San Francisco						
13	For purchase of land for temporary parking and future building sites Site acquisition		500,000 a	750,000 a	750,000 a	500,000 a
Los Angeles						
10	State building: modernization of third elevator Alterations	58,900				
14	State office building: to meet projected space requirement Site acquisition Working drawings Construction		1,500,000 a			9,000,000 a

Oakland

- 9 State office building: alterations for new tenants
Alterations -----
- 17 State office building: to adequately air condition
building by providing auxiliary refrigeration ma-
chine -----
- Alterations -----

100,000

56,000 ^c**San Jose**

- 20 State office building
Equipment -----

30,000

San Bernardino

- 11 State office building: to equip new building for
occupancy -----
- Equipment -----

31,530

Long Beach

- 23 State office building: to meet projected space
requirements -----
- Site acquisition -----

750,000 ^a**Van Nuys**

- 21 State office building: to meet projected space
requirements -----
- Working drawings -----
- Construction -----

200,000 ^a2,000,000 ^a**Statewide**

- 2 Purchase mountain tops for radio vaults
Site acquisition -----

100,000

100,000 ^a100,000 ^a100,000 ^a100,000 ^a

^a Projects requiring further policy consideration as to relative urgency, timing or method of financing.
^b To be financed from federal or other nonstate funds.

DEPARTMENT OF AGRICULTURE

The Department of Agriculture engages in the enforcement of plant quarantine and fruit and vegetable standardization laws and regulations to protect the agricultural industry of the state against the introduction of plant pests and diseases, and to insure quality standards for produce marketed. Enforcement of these laws requires inspection stations at strategic locations within the state.

Trends in the design and size of meters used for liquid petroleum products and liquefied petroleum gas indicate the need for establishment of a facility in a remote area in Sacramento County or east Yolo County capable of handling these products at high rates of flow and varying temperatures.

PROGRAM SUMMARY

The 1965-66 budget proposes \$225,000 for a plant quarantine inspection station on Highway 66 east of Needles and \$1,000 to acquire the site for a plant quarantine inspection station on Highway 95 at Searchlight Junction.

During 1966-67 two projects are requested. The first is the construction of the Searchlight Junction plant quarantine inspection station, and the second is the construction of the Livermore fruit and vegetable standardization inspection station.

The Searchlight Junction inspection station will allow for the relocation of the present Twentynine Palms station. This station will operate in conjunction with the new Needles station just east of Needles on US Highway 66.

The Livermore fruit and vegetable standardization inspection station is made necessary by the relocation of US Highway 50 in the vicinity of Livermore.

In 1967-68 the reconstruction of the Vidal inspection station provides replacement of the present Vidal border station. This station, situated at the crossroads of the highway entering California from Parker, Arizona, and the highway leading south to the Blythe area from Needles, is needed to cover traffic coming into California from Parker, Arizona. It was originally constructed in 1938 as a temporary structure and by 1967-68 will be in such condition as to make any attempt to maintain it in a reasonable condition uneconomical.

In 1968-69 land acquisition and construction in a remote section of Sacramento County or east Yolo County is proposed to provide for a liquid petroleum products testing station.

Information from the Division of Highways indicates that relocation of Highway 99 at Hornbrook will require reconstruction of that plant quarantine inspection station in 1969-70. The same situation applies to the reconstruction of Pacheco Pass fruit and vegetable standardization inspection station. Construction funds will be required in 1969-70 because of highway relocation.

DEPARTMENT OF AGRICULTURE—SUMMARY OF MAJOR PROJECTS FOR CAPITAL OUTLAY PROGRAM

Priority	Project	1965-66	1966-67	1967-68	1968-69	1969-70
1	Needles: plant quarantine station Construction	\$225,000				
2	Searchlight Junction: plant quarantine station Site acquisition	1,000				
3	Searchlight Junction: plant quarantine station Construction		\$100,000			
4	Livermore: fruit and vegetable standardization inspection station Construction		110,000			
5	Vidal: plant quarantine station Construction			\$100,000		
6	Sacramento County or east Yolo County: testing facility Site acquisition				\$10,000 ^a	
7	Sacramento County or east Yolo County: testing facility for liquid petroleum and liquefied petroleum gas products Construction					\$225,000
8	Hornbrook: plant quarantine station Construction					110,000
9	Pacheco Pass: fruit and vegetable standardization inspection station Construction					\$335,000
	Totals	\$226,000	\$210,000	\$100,000	\$160,000	335,000
	State Funds					
	Proposed	226,000	210,000	100,000	160,000	
	Policy unresolved ^a					
	TOTAL, FIVE-YEAR PROGRAM					\$1,031,000
	State Funds					871,000
	Proposed					160,000
	Policy unresolved ^a					

^a Projects requiring further policy considerations as to relative urgency, timing or method of financing.

DEPARTMENT OF EMPLOYMENT
PROGRAM SUMMARY

The long-term building program of the Department of Employment proposes to replace leased premises with state-owned buildings with the exception of offices located in communities where there may not be a permanent need for a local office. This is a continuation of the program the department embarked upon during the 1948-49 fiscal year. An expenditure of \$7,094,100 is proposed for the five-year period 1965-66 through 1969-70.

The department is presently leasing office space in many communities throughout the state. The acquiring of state-owned buildings would represent a substantial savings in rent paid by the department. The Federal Bureau of Employment Security will provide a rental grant to the Department of Employment which will be used to amortize the cost of the building projects over a reasonable number of years. Similar grants will also be made for maintenance and repair costs both during and after amortization.

Acquisition and preliminary planning funds for the various projects are to be provided from the Department of Employment Contingent Fund. Federal grants to the Unemployment Trust Fund under provisions of Public Law 88-31, which extended availability of Reed Act grants, will be used for construction purposes.

The proposed projects would provide sufficient working space correctly designed to meet the specific needs and would be designed to provide for expansion. The department is continuing its efforts to build an outstanding employment service in California; and experience here and elsewhere in the nation indicates that suitable premises definitely contribute to employer and applicant acceptance of the program. With properly designed facilities, the department should give better service to employers, applicants, and claimants.

The priorities established for the various projects and the recommendations for consideration in specific fiscal years represent consideration of a number of factors including:

1. Condition and flexibility of present leased space.
2. Size of leased space with relationship to staff and workload.
3. Present workload factors and anticipated growth.
4. Key position of office in overall agency program.
5. Location of present office.
6. Expiration of leases.
7. Availability of rental properties.
8. Rental costs.
9. Consolidation of multiple leases.

DEPARTMENT OF EMPLOYMENT—SUMMARY OF MAJOR PROJECTS FOR CAPITAL OUTLAY PROGRAM

Priority	Project	1965-66	1966-67	1967-68	1968-69	1969-70
1	Palo Alto : office building Construction	\$555,000 ^b				
2	Oroville : office building Construction	280,000 ^b				
3	Sacramento : parking lot Construction	88,000 ^b				
4	Visalia : office building Site acquisition	185,000 ¹				
5	Monterey : office building Site acquisition	250,000 ¹				
6	San Jose : office buildings Construction		\$1,675,000 ^{b, c}			
7	Visalia : office building Construction		300,000 ^b			
8	Monterey : office building Construction		340,000 ^b			
9	San Luis Obispo : office building Construction		320,000 ^b			
10	Bakersfield : office building Construction (alterations)		66,100 ^b			
11	Santa Rosa : office addition Construction			\$240,000 ^b		
12	Chico : office building Construction			180,000 ^b		
13	Santa Ana : office building Site acquisition			600,000 ¹		
14	Torrance : office addition Construction				\$400,000 ^b	
15	Vallejo : office addition Construction				125,000 ^b	
16	Auburn : office building Site acquisition					\$180,000 ¹
17	Crescent City : office building Site acquisition					150,000 ¹

DEPARTMENT OF PUBLIC HEALTH

The Department of Public Health, in cooperation with local health departments, is responsible for the prevention of disease and the provision of a healthful environment for the people of California.

PROGRAM SUMMARY

The 1965-66 capital outlay budget provides \$450,000 for working drawings to construct an addition to the laboratory facilities in Berkeley. This annex would add approximately 34,000 net square feet of laboratory space and approximately 20,732 net square feet of office space not related to the laboratory function. The office space will be designed to allow for future conversion to laboratory space when needed. Construction is contemplated for 1966-67 and would require an additional appropriation of approximately \$5,675,000.

Also budgeted for 1965-66 is \$535,000 to replace the existing boilers and expand the boiler room in order to meet the increased needs of the departmental headquarters building and laboratory addition. The present boilers are at maximum capacity and because of their poor condition should be replaced from a safety standpoint.

No additional major construction projects are contemplated for the Department of Public Health through 1969-70.

DEPARTMENT OF PUBLIC HEALTH—SCHEDULE OF MAJOR PROJECTS FOR CAPITAL OUTLAY PROGRAM

<i>Priority</i>	<i>Project</i>	1965-66	1966-67	1967-68	1968-69	1969-70
1	Berkeley Laboratory Annex					
	Working drawings -----	\$450,000				
	Construction—boiler addition -----	535,000				
	Construction—laboratory annex -----		\$5,675,000			
	Annual totals -----	\$985,000	\$5,675,000			
	Total, five-year program -----					\$6,660,000

DEPARTMENT OF THE CALIFORNIA HIGHWAY PATROL

PROGRAM SUMMARY

The program of the California Highway Patrol is oriented to the prevention of traffic accidents through enforcement of laws regulating the operation of motor vehicles.

The major portion of the projects included in the proposed building program for the Highway Patrol are for office space and related facilities for the area and zone functions.

Space requirements are directly related to traffic volume, population, accident frequency and the flow of traffic. The general policy of the department is to lease offices throughout the State wherever possible. This permits flexibility for moving to new locations as traffic conditions warrant without abandoning expensive state-owned capital investments. In this manner the operational efficiency of the field forces can be maintained at a high level. The department contemplates the continuation of this leasing policy.

Under the agency concept of state government it is possible to take advantage of similar needs for various departments at a single location. In this regard, the department has programed a number of new area offices for sites adjacent to freeways. Scheduled for completion along with the freeway, these buildings will share sites, utilities, parking, communications and other facilities with other members of the Highway Transportation Agency.

A study of the present Highway Patrol Academy is now underway. The goal of the study is to determine whether the academy should be removed from its present urban location. If this is recommended the study will also indicate what other uses could be made of the existing academy plant. The results of this study will appear in a subsequent five-year program as the needs are determined.

All expenditures for this department are from the Motor Vehicle Fund.

DEPARTMENT OF THE CALIFORNIA HIGHWAY PATROL—SCHEDULE OF MAJOR PROJECTS FOR CAPITAL OUTLAY PROGRAM

1969-70 ¹1968-69 ¹1967-68 ¹1966-67 ¹1965-66 ¹

Project

Priority

1	Redding : office building Construction	\$360,000			
2	Mount Shasta : substation Construction	136,650			
3	Los Angeles : alterations to zone-area office building Construction	95,000			
4	San Francisco : alterations and additions to zone- area office buildings Working drawings	20,000	\$300,000		
5	San Luis Obispo : area office construction (additional cost)	217,000			
6	Sacramento : academy parking and street improve- ments	58,130			
7	Taft : substation Site acquisition Construction	30,000	\$183,000		
8	Los Banos : substation Site acquisition Construction	35,000	183,000		
9	Auburn : area office Site acquisition Construction	50,000	225,000		
10	Bakersfield : area office Site acquisition Construction	50,000	280,000		
11	Woodland : area office Site acquisition Construction	45,000	225,000		
12	Tracy : substation Site acquisition Construction	30,000	188,000		

DEPARTMENT OF THE CALIFORNIA HIGHWAY PATROL—SCHEDULE OF MAJOR PROJECTS FOR CAPITAL OUTLAY PROGRAM—Continued

<i>Priority</i>	<i>Project</i>	1965-66 ¹	1966-67 ¹	1967-68 ¹	1968-69 ¹	1969-70 ¹
13	Hood-Elk Grove : area office Site acquisition Construction	---	---	40,000	\$200,000	---
14	Avenal : area office Site acquisition Construction	---	---	40,000	190,000	---
15	Barstow : area office Site acquisition Construction	---	---	---	40,000	200,000
16	Baker : area office Site acquisition Construction	---	---	---	40,000	195,000
17	Blythe : area office Site acquisition Construction	---	---	---	40,000	200,000
18	Needles : area office Site acquisition	---	---	---	---	40,000
19	Winterhaven : substation Site acquisition Statewide : preliminary planning	---	---	---	---	---
	Annual totals	\$901,780	\$555,000	\$1,379,000	\$525,000	\$690,000
	TOTAL, FIVE-YEAR PROGRAM					\$4,050,780

¹ From Motor Vehicle Fund.

DEPARTMENT OF MOTOR VEHICLES

PROGRAM SUMMARY

The program of the Department of Motor Vehicles is directed toward registering and licensing all motor vehicles, licensing drivers, and administration of the Financial Responsibility Law. The capital outlay needs of the department are generally influenced by the location of population centers and the workload created by the use of motor vehicles.

Generally, the construction program of the department is limited to the replacement of rental properties in those areas where suitable leased facilities are not available or where it is deemed more economical for the department to construct its own building.

BUILDING STANDARDS

All projects shown in the capital outlay program are tied to expiration of leases and other conditions related to the departmental housing needs.

Several basic factors govern the location and area of real property and the size of the building that is constructed thereon:

These factors are:

1. Population and estimated workload in the area.
2. Proximity to other branch offices.
3. Traffic conditions adjacent to the proposed office.
4. Amount of offstreet parking required.

Capital outlay expenditures for this department are from the Motor Vehicle Fund.

DEPARTMENT OF MOTOR VEHICLE—SCHEDULE OF MAJOR PROJECTS FOR CAPITAL OUTLAY PROGRAM

Priority	Project	1965-66 ¹	1966-67 ¹	1967-68 ¹	1968-69 ¹	1969-70 ¹
1	Sacramento: addition to headquarters parking area Site acquisition Construction	\$525,000 51,500	\$450,000 75,000		\$350,000 75,000	
2	San Diego: addition to parking area Site acquisition	190,000				
3	San Francisco: office addition Construction	414,500				
4	Hayward: office building Site acquisition Construction	290,000		270,000		
5	Monterey: office building Site acquisition Construction	434,000		220,000		
6	Los Angeles: west side office building Site acquisition Construction	480,000		340,000		
7	Glendale: addition to parking area Site acquisition Construction	130,000		25,000		
8	Redding: office building Site acquisition Construction	30,000 264,080				
9	Sacramento: alterations to office Building No. 1 for E.D.P. site Construction	250,000				
10	Oakland: corrections to ventilating system Construction	65,400				
11	Sacramento: remodel old C.H.P. headquarters to field office Working drawings Construction	15,000		175,000		
12	Bellflower: office building Site acquisition Construction			240,000		260,000

13	Whittier: office building Site acquisition Construction	210,000	275,000	
14	Inglewood: office building Site acquisition Construction	285,000	375,000	
15	Glendale: office addition Construction		100,000	
16	Pomona: office building Site acquisition Construction			\$225,000
17	San Mateo: office building Site acquisition Construction			165,000
18	Colver City: office building Site acquisition Construction			210,000
19	Sacramento: refurbish headquarters building Construction			280,000
20	Sacramento: northeast area office building Site acquisition Working drawings Statewide: preliminary planning			261,000 15,000 20,000
	Annual totals	\$2,310,000	\$1,455,000	\$720,000
	TOTAL, FIVE-YEAR PROGRAM	\$3,159,880		\$1,121,000
				\$8,765,880

¹ From Motor Vehicle Fund.

DEPARTMENT OF PROFESSIONAL AND VOCATIONAL STANDARDS

The purpose of this department is to protect the public health, welfare and safety by licensing only persons and firms in certain professions and vocations who have demonstrated knowledge and abilities to perform services for the public, to prevent unauthorized practices upon the public, and to discipline those licensees who fail in their public trust.

There are 30 boards, bureaus and commissions of this department which are responsible for regulating in excess of 600,000 persons practicing more than 50 professions and vocations in the State of California.

The department operates two state office buildings in Sacramento. These buildings house a majority of the member boards, bureaus and commissions and also the Division of Corporations and the State Board of Equalization.

Included in 1965-66 are funds to automate the three passenger elevators in the main building. The lack of safety devices and the condition of the equipment present a hazardous situation. There have been several instances of passengers being injured and frequent occasions of the elevators stalling between floors.

DEPARTMENT OF PROFESSIONAL AND VOCATIONAL STANDARDS—SCHEDULE OF MAJOR PROJECTS FOR CAPITAL OUTLAY PROGRAM

<i>Project</i>	1965-66	1966-67	1967-68	1968-69	1969-70
Business and Professions Building					
Automate 3 passenger elevators	\$177,840				
TOTAL, FIVE-YEAR PROGRAM	-----				=====
					\$177,840

DEPARTMENT OF CONSERVATION

Division of Forestry

The Division of Forestry has the primary function of the protection of over 39 million acres of state and private lands having statewide interest with regard to timber production, rangelands, recreational uses and watershed values. Fire control and prevention is the primary role of the division. In addition, a major function of the division's program is maintenance and operation of 34 conservation camps (as of July 1, 1965). These camps are used cooperatively with the Youth and Adult Corrections Agency for useful conservation projects through the use of inmates from various correctional institutions of the state.

PROGRAM SUMMARY

The following program for the Division of Forestry consists of relocation and replacement of inadequate forest fire stations; additions to stations lacking the normal complement of facilities; construction of two training centers to replace existing substandard plants; establishment, replacement and expansion of county headquarters and ranger unit offices and accompanying facilities where necessary; and site acquisition for all types of facilities including lookouts and fire stations.

With the 1965-66 fiscal year program funds will be available to complete all authorized conservation camps. In the late years of this five-year program the conservation camp concept for two new camps a year is reinstituted. This is based upon current eligible inmate population estimates and will be subject to close review at that time. In addition to the new camps, replacement or addition to some existing conservation is also proposed.

TABULATION OF PROGRAM BY CATEGORY

<i>Category</i>	<i>Amount</i>	<i>Percent of total</i>
Forestry field facilities:		
Site acquisition	\$626,100	6.7
County and district headquarters.....	2,174,755	23.2
Fire control facilities	4,312,335	45.9
Support facilities (training centers, nurserys, etc.).....	1,537,768	16.4
Engineering and planning	736,110	7.8
Total forestry field facilities.....	\$9,387,068	100.0
Conservation camps:		
Site acquisition	\$280,000	3.1
Rehabilitation or additions to existing camps.....	3,150,000	34.7
New camp construction and equipment.....	5,512,849	60.6
Construction and equipment for camps at centers.....	147,733	1.6
Total conservation camps	\$9,090,582	100.0
Grand total	\$18,477,650	

BASIC FACTORS AFFECTING CAPITAL OUTLAY NEED

The Division of Forestry's construction needs are governed by the authorized level of personnel and equipment. At the present time the division operates 234 forest fire stations, 81 lookouts and 15 primary and 14 secondary air attack bases. The division maintains 32 ranger unit headquarters (all but Owens Valley have fire stations), 6 district headquarters, 34 conservation camps, a headquarters nursery at Davis

along with three branch nurseries, equipment shops, 7 state forests and numerous radio repeater sites. In addition the division is responsible for maintenance of 1,776 miles of telephone lines, 3,586 miles of fire access roads, 69 bridges and 16.3 miles of powerlines.

The Division of Forestry constructs and maintains forestry conservation camps for the use of the Department of Corrections and Department of Youth Authority. Inmates living in these special camps engage in conservation work projects such as fire hazard reduction; construction and maintenance of fire access roads and trails, powerlines and other projects beneficial to the enhancement and management of natural resources. The inmate capacities of these camps are reflected in the capacity figures for the respective departments.

DIVISION OF FORESTRY—SCHEDULE OF MAJOR PROJECTS FOR CAPITAL OUTLAY PROGRAM

FORESTRY FIELD FACILITIES

Project

Priority

	1965-66	1966-67	1967-68	1968-69	1969-70
1	\$70,100	\$75,000	\$85,000	\$95,000	\$100,000
2	133,217	139,878	146,872	154,216	161,927
DISTRICT I					
<i>Humboldt-Del Norte Ranger Unit</i>					
41				295,200	30,500
				23,300	21,500
27					
			95,000		
60					
					95,000
35					
				105,000	
<i>Sonoma Ranger Unit</i>					
24			115,000		
42					
5				65,000	
	94,960				
DISTRICT II					
<i>Butte Ranger Unit</i>					
15		95,000			

<i>Tahama-Glenn Ranger Unit</i>				
25	Paskenta Forest Fire Station—replacement and additional facilities, (barracks-messhall, residences) Construction	-----	-----	105,000
<i>Lassen-Mador Ranger Unit</i>				
36	Termo Forest Fire Station—replace facility on new site Construction	-----	-----	75,000
32	Bieler Forest Fire Station—replace facility Construction	-----	-----	65,000
31	Willow Creek Forest Fire Station—replace facility on new site Construction	-----	-----	95,000
10	Alturas Forest Fire Station—additional facilities (barracks-messhall, equipment storage) Construction	-----	110,000	-----
63	Chester Forest Fire Station—new facility Construction	-----	-----	95,000
64	Coppervale Forest Fire Station—new facility Construction	-----	-----	95,000
62	Crank Springs Forest Fire Station—new facility Construction	-----	-----	95,000
61	Hazleton Springs Forest Fire Station—new facility Construction	-----	-----	105,000
<i>Shasta-Trinity Ranger Unit</i>				
26	Diddy Wells Forest Fire Station—replace facility on new site Construction	-----	-----	115,000
<i>Siskiyou Ranger Unit</i>				
53	MacDoel Forest Fire Station—replacement and additional facilities Construction	-----	-----	70,000

DIVISION OF FORESTRY—SCHEDULE OF MAJOR PROJECTS FOR CAPITAL OUTLAY PROGRAM—Continued

FORESTRY FIELD FACILITIES—Continued

Priority	Project	1965-66	1966-67	1967-68	1968-69	1969-70
	DISTRICT III					
	<i>Amador Ranger Unit</i>					
9	Northern California Training Center—replace facility on new site					
	Construction		767,268 *			
33	Mt. Zion Forest Fire Station—replace facility on new site					
	Construction			95,000		
	<i>Calaveras Ranger Unit</i>					
7	West Point Forest Fire Station—replace barracks-messhall					
	Construction	97,580				
18	Valley Springs Forest Fire Station—replace facility on new site					
	Construction			75,000		
16	Copperopolis Forest Fire Station—replace facility					
	Construction		95,000			
43	San Andreas Ranger Headquarters—replace warehouse				65,000	
	Construction					
	<i>Nevada-Yuba Ranger Unit</i>					
4	Nevada City Ranger Headquarters—additional facilities (warehouse-shop building)					
	Construction	80,580				
	<i>Placer Ranger Unit</i>					
65	Lincoln Forest Fire Station—new facility					75,000
	Construction					
	<i>Sacramento County</i>					
17	District Headquarters—additional facilities (expand office)		65,000			
	Construction					

<i>Yolo County</i>				
54	Davis Headquarters—replace warehouse, office, provide master plan Construction	-----	-----	400,000
DISTRICT IV				
<i>Fresno Ranger Unit</i>				
48	Piedra Forest Fire Station—replace facility Construction	-----	-----	75,000
28	District Headquarters—additional facilities (expand office) Construction	-----	-----	-----
<i>Madera-Merced Ranger Unit</i>				
37	Madera Ranger Headquarters—replacement and additional facilities Construction	-----	102,000	-----
19	Los Banos Forest Fire Station—replace facility on new site Construction	-----	-----	450,000
<i>Mariposa Ranger Unit</i>				
55	Coulterville Forest Fire Station—replace facility (barracks-messhall) Construction	-----	115,000	-----
8	Cathay Forest Fire Station—replace facilities Construction	-----	-----	60,000
<i>Tulare Ranger Unit</i>				
3	Tulare Ranger Headquarters—replace facility on new site Construction	54,582	-----	-----
12	Mountain Home State Forest Headquarters—replace facility on new site Construction	536,215	-----	-----
			56,000	-----

^c Projects may be subsequently proposed for amendment into the 1965-66 Budget Act subject to the development of adequate financing.

DIVISION OF FORESTRY—SCHEDULE OF MAJOR PROJECTS FOR CAPITAL OUTLAY PROGRAM—Continued

FORESTRY FIELD FACILITIES—Continued

Priority	DISTRICT IV—Continued		Project	1965-66	1966-67	1967-68	1968-69	1969-70
44	Mountain Home Forest Fire Station—new facility	Construction	-----	-----	-----	-----	65,000	-----
47	Tyler Creek Forest Fire Station—replace facility on new site	Construction	-----	-----	-----	-----	-----	75,000
34	Springville Forest Fire Station—new facility	Construction	-----	-----	-----	65,000	-----	-----
DISTRICT V								
Monterey Ranger Unit								
49	Tulareitos Forest Fire Station—replace facility	Construction	-----	-----	-----	-----	-----	110,000
20	Mustang Forest Fire Station—replace facility	Construction	-----	-----	-----	75,000	-----	-----
56	King City Forest Fire Station and Ranger Headquarters—replace barracks-messhall	Construction	-----	-----	-----	-----	-----	115,000
San Luis Obispo Ranger Unit								
57	San Luis Obispo Forest Fire Station and Ranger Headquarters—replace barracks	Construction	-----	-----	-----	-----	-----	60,000
San Benito Ranger Unit								
11	Antelope Forest Fire Station—replace barracks-messhall	Construction	-----	-----	75,000	-----	-----	-----
Santa Clara Ranger Unit								
29	Almaden Forest Fire Station—replace facility on new site	Construction	-----	-----	-----	95,000	-----	-----

21	Sunshine Forest Fire Station—new facility Construction	-----	-----	85,000	-----
6	Smith Creek Forest Fire Station—replace barracks-messhall Construction	-----	80,173	-----	-----
38	<i>Santa Cruz Ranger Unit</i> Big Creek Forest Fire Station—replace facility Construction	-----	-----	115,000	-----
50	Sandy Point Forest Fire Station—replace facility Construction	-----	-----	-----	95,000
DISTRICT VI					
45	<i>Orange Ranger Unit</i> San Juan Capistrano Forest Fire Station—replace barracks-messhall and equipment building Construction	-----	-----	95,000	-----
22	<i>Riverside Ranger Unit</i> Temecula Forest Fire Station—additional residences (2), replace messhall Construction	-----	-----	85,000	-----
40	San Jacinto Forest Fire Station—replace facility Construction	-----	-----	-----	95,000
39	Southern California Training Center—replace facility on new site Construction	-----	-----	-----	400,000
46	Cajalco Forest Fire Station—new facility Construction	-----	-----	-----	65,000
13	<i>San Bernardino Ranger Unit</i> San Bernardino Ranger Headquarters—replace office Construction	-----	150,000	-----	-----
51	Yucaipa Forest Fire Station—replace facility on new site Construction	-----	-----	-----	95,000

DIVISION OF FORESTRY—SCHEDULE OF MAJOR PROJECTS FOR CAPITAL OUTLAY PROGRAM—Continued

FORESTRY FIELD FACILITIES—Continued

DISTRICT VI—Continued

San Diego Ranger Unit

<i>Priority</i>	<i>Project</i>	<i>1965-66</i>	<i>1966-67</i>	<i>1967-68</i>	<i>1968-69</i>	<i>1969-70</i>
23	Dulzura Forest Fire Station—replace facility on new site	---	---	110,000	---	---
30	Campo Forest Fire Station—replace facility	---	---	110,000	---	---
59	Cuyamaca Forest Fire Station—replace facility	---	---	---	---	110,000
14	Red Mountain Forest Fire Station—replace barracks-messhall and equipment building	---	90,000	---	---	---
52	Potrero Forest Fire Station—replace facility	---	---	---	---	80,000
58	San Marcos Forest Fire Station—replace facility on new site	---	---	---	---	105,000
	Annual Totals, Forestry Field Facilities	\$1,147,407	\$1,718,146	\$2,034,872	\$2,162,716	\$2,323,927
	TOTAL, FIVE-YEAR PROGRAM					\$9,387,068

CONSERVATION CAMPS*Project**Amador Ranger Unit*

<i>Priority</i>	<i>Project</i>	<i>1965-66</i>	<i>1966-67</i>	<i>1967-68</i>	<i>1968-69</i>	<i>1969-70</i>
C-6	Pine Grove Youth Conservation Camp—replace facility and expand to 80-man capacity	---	---	---	---	---
	Construction	---	550,000	---	---	---
	Equipment (20-man expansion)	---	55,000	---	---	---

<i>Catalinas Ranger Unit</i>			
(C-9)	Beaver Creek Conservation Camp—replace facility on new site, expand to 80-man capacity	-----	-----
	Construction	-----	660,000
	Equipment (20-man expansion)	-----	55,000
C-4a	Vallecitos Conservation Camp—purchase existing leased property	-----	40,000 ^c
<i>Fresno Ranger Unit</i>			
(C-7)	Murietta Conservation Camp—replace facility on new site (Rancheria)	-----	-----
	Construction	-----	660,000
<i>Humboldt Ranger Unit</i>			
(C-2)	Garberville Conservation Camp	-----	-----
	Equipment—phase II	147,733	-----
<i>Nevada-Yuba Ranger Unit</i>			
C-11	Smartville Youth Conservation Camp—replace facility and expand to 30-ward capacity	-----	-----
	Construction	-----	400,000
	Equipment (10-man expansion)	-----	55,000
<i>Orange Ranger Unit</i>			
(C-3)	Ortega Youth Conservation Camp	-----	-----
	Construction—phase II	610,000	-----
	Equipment—phase II	171,047	-----
<i>Riverside Ranger Unit</i>			
C-4	Bautista Youth Conservation Camp	-----	-----
	Construction—phase II	150,000	-----
	Equipment—phase III	61,553	-----
<i>San Diego Ranger Unit</i>			
(C-8)	Minnewawa Conservation Camp—replace facility on new site (Bratton Valley) and expand to 80-man capacity	-----	-----
	Construction	-----	660,000
	Equipment (20-man expansion)	-----	55,000

^c Projects may be subsequently proposed for amendment into the 1965-66 Budget Act subject to the development of adequate financing.

CONSERVATION CAMPS—Continued

Priority	Project	1965-66	1966-67	1967-68	1968-69	1969-70
	<i>Shasta Ranger Unit</i>					
C-1	Shasta Conservation Camp—new facility					
	Construction—phase II	560,000				
	Equipment—phase II	171,885				
	<i>Statewide</i>					
C-10	Conservation Camps—phased to activate two new camps per year					
	Construction—phases I and II				1,401,310 a	1,401,310 a
	Equipment—phases I and II				492,872 a	492,872 a
C-15	Site Acquisition—conservation camps					
	Two new sites per year—statewide			80,000 a	80,000 a	80,000 a
	Annual Totals, Conservation Camps	\$1,872,218	\$1,760,000	\$1,510,000	\$1,974,182	\$1,974,182
	<i>Proposed</i>	1,872,218	1,760,000	1,430,000		
	<i>Policy unresolved a</i>			80,000	1,974,182	1,974,182
	TOTAL, FIVE-YEAR PROGRAM					
	<i>Proposed</i>					\$9,090,582
	<i>Policy unresolved a</i>					5,062,218
						4,028,364
	Annual Totals, Division of Forestry	\$3,019,625	\$3,478,146	\$3,544,872	\$4,136,898	\$4,298,109
	<i>Proposed</i>	3,019,625	3,478,146	3,464,872	2,162,716	2,323,927
	<i>Policy unresolved a</i>			80,000	1,974,182	1,974,182
	TOTAL, FIVE-YEAR PROGRAM					
	<i>Proposed</i>					\$18,477,650
	<i>Policy unresolved a</i>					14,449,286
						4,028,364

a Projects requiring further policy consideration as to relative urgency, timing or method of financing.

c Projects may be subsequently proposed for amendment into the 1965-66 Budget Act subject to the development of adequate financing.

PROJECT PLANNING

Funds for preparation of preliminary project planning are to provide for definitive delineation of project scope and sound cost estimates for legislative and executive use. Lump sum amounts are proposed from which allocations to agencies will be made upon subsequent determination of need.

Priority	Project	PROJECT PLANNING				
		1965-66	1966-67	1967-68	1968-69	1969-70
1	Project planning	\$750,000	\$750,000	\$750,000	\$750,000	\$750,000
TOTAL, FIVE-YEAR PROGRAM		\$3,750,000				

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REPORT OF THE
**JOINT COMMITTEE ON FAIRS ALLOCATION
AND CLASSIFICATION**

MEMBERS OF THE COMMITTEE

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HON. GLENN M. ANDERSON
President of the Senate

HON. HUGH M. BURNS
President pro Tempore

JOSEPH A. BEEK
Secretary of the Senate

LETTER OF TRANSMITTAL

CALIFORNIA LEGISLATURE
JOINT COMMITTEE ON FAIRS ALLOCATION AND CLASSIFICATION
STATE CAPITOL, Sacramento, June 1, 1965

HON. GLENN M. ANDERSON, *President,*
and Members of the Senate

HON. JESSE M. UNRUH, *Speaker,*
and Members of the Assembly

GENTLEMEN :

Your Fairs Allocation and Classification Committee created pursuant to Section 92.7 of the Agricultural Code, hereby submits the report of its investigations and studies including its conclusions and recommendations.

Respectfully submitted,

RANDOLPH COLLIER, *Chairman*

FRANK P. BELOTTI, *Vice Chairman*

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STATUTORY BASIS FOR COMMITTEE

CALIFORNIA STATE AGRICULTURAL CODE

Section 92.7 as Amended by Chapter 2057, Statutes of 1959

92.7. There is hereby created the Fairs Allocation and Classification Committee which shall consist of seven Members of the Senate and seven Members of the Assembly.

To the extent that it is feasible, appointments shall be made so that there is one Member of the Senate and one Member of the Assembly on the committee from each of the following areas:

- Area 1. Siskiyou, Modoc, Trinity, Shasta, Lassen, Tehama, Plumas, and Sierra Counties.
- Area 2. Butte, Yuba, Sutter, Glenn, Colusa, Yolo, Sacramento, and Solano Counties.
- Area 3. Del Norte, Humboldt, Mendocino, Lake, Sonoma, Napa, and Marin Counties.
- Area 4. El Dorado, Amador, Calaveras, Tuolumne, Mariposa, Nevada, and Placer Counties.
- Area 5. San Joaquin, Stanislaus, Merced, Madera, Fresno, Kings, Tulare, and Kern Counties.
- Area 6. San Francisco, Contra Costa, Alameda, San Mateo, Santa Clara, Santa Cruz, San Benito, Monterey, and San Luis Obispo Counties.
- Area 7. Santa Barbara, Ventura, Los Angeles, Orange, San Diego, Imperial, San Bernardino, Inyo, Mono, Alpine, and Riverside Counties.

The first meeting of the committee shall be at the call of that Member of the Senate on the committee who is senior in point of service in the Senate. If two or more Members of the Senate on the committee have equal seniority, the one whose name would appear first if the surnames of such members were arranged in alphabetical order shall be deemed to be the senior. The committee shall, at its first meeting and thereafter from time to time, elect its chairman and vice chairman. The committee may meet at any time, whether or not the Legislature is in session, and shall continue in existence until otherwise provided by law.

The committee shall have authority to investigate, study, and analyze any or all facts and matters relating to the operation and financing of fairs which are subject to Section 92.6, and the effect and operation of the laws relating thereto.

The committee shall report to the Legislature at the commencement of each regular session and may report thereto at any time, including in such reports its recommendations, if any, as to necessary or desirable legislative action. The provisions of the Joint Rules of the Senate and Assembly, as they may exist from time to time, which relate to joint investigating committees shall apply to the committee created by this section.

SUMMARY OF RECOMMENDATIONS

1. Educational Coordination Group

The Joint Committee on Fairs Allocation and Classification recommends that there be established a permanent educational coordination group to assist the district, county, and other fairs develop their full potentials in the field of education. Such a group should include, but need not be limited to, representatives of fairs themselves, the Division of Fairs and Expositions, the Department of Education, the Universities and the State Colleges.

2. Interim Usage of Fair Facilities

The committee recommends that each fair which is required to submit an annual report under Section 92.6 of the Agricultural Code be required to include in that report pertinent information as to the kinds of organization making use of its facilities during the interim between fairs, the types of such usage, and the number of people participating in such usage.

3. Increase the Statutory Ceiling on Capital Outlay

The committee renews its previous recommendation that the statutory ceiling of \$2,250,000 on the amount of state funds which can be allocated to district, county, and citrus fairs be increased to \$4,000,000 for a period of four fiscal years.

4. Bring Other Fairs Within Jurisdiction of Committee

The committee renews its recommendation that all of the fairs receiving state support which are not now within its jurisdiction, such as the State Fair and Exposition, the Los Angeles County Fair, District 1-A Cow Palace, and the 48th District Fair, be brought within its purview by law.

INTRODUCTION

The Fairs Allocation and Classification Committee, pursuant to provision of the law under which it was created, carried on its responsibilities of analyzing and investigating the financing and operations of the 71 district and county fairs which are subject to Section 92.6 of the Agricultural Code during the interim following adjournment of the 1963 session of the Legislature.

The committee has met three times since the submission of its 1963 report, on September 6, 1963, November 8, 1963, and on December 4, 1964. At these meetings, it received statements and testimony from many individuals interested in fairs. Directors and managers from many fairs located in all parts of the state offered facts about their experiences in the operations of their fairs. Representatives of the State Departments of Finance and Agriculture furnished pertinent and valuable information on many matters of concern to those in fairs management.

During the interim, the committee staff and consultants devoted itself to the collection and compilation of factual material from individual fairs, the Division of Fairs and Expositions, and the Western Fairs Association, to aid the committee in arriving at its findings and recommendations.

Major Change in State Supervision of Fairs

The 1963 Legislature enacted a law which made a major change in the position of supervisory responsibility for fairs matters within our state government. From 1929 on, control over the allocation of state funds to local fairs has been within the Department of Finance. However, over the years so many "housekeeping" functions had been added to the department's duties that its purely fiscal responsibilities were in some danger of being overwhelmed. To correct this situation, the state administration sponsored a bill in the 1963 Session, which created a new Department of General Services, and transferred to it from Finance these housekeeping functions.

Obviously, supervision of local fairs could not be classified as "housekeeping." In addition, there were objections to leaving fairs matters in the hands of an agency primarily fiscal in nature. To resolve this dilemma, the measure also provided that the Division of Fairs and Expositions should be transferred to the Department of Agriculture as of October 1, 1963. At the committee meeting of November 8, 1963, representatives of both Finance and Agriculture were present to discuss the changeover.

Since the only foreseeable problem which could result from the changeover is related to the annual allocation of state funds for fair operations, the two departments have worked out a practical system so that local fairs would not be compelled to deal with two different agencies in the matter. Under this arrangement, the Division of Fairs and Expositions reviews the budget of each local fair to determine

how much of the maximum grant of \$65,000 will be allocated to it, and the Department of Finance accepts the decision.

Legal Distinctions Between District and County Fairs

There are significant legal distinctions between the district and county fairs with which this committee is concerned. These differences relate to the organization and management of the fairs, to their status as governmental entities, and to their authority to undertake certain activities.

District fairs are governed by, and may be organized under Sections 80 through 98.3 of the Agricultural Code. Section 81 provides that 50 or more persons, residents of the county, or of all of the counties or parts of counties intended to form an agricultural district, may form a district agricultural association, for the purpose of holding fairs and exhibitions of all of the industries and industrial enterprises, resources and products of every kind or nature of the state, in order to improve, exploit, encourage, and stimulate them. The officers of such an association shall be a board of directors of nine resident citizens of the district. The directors are appointed by the Governor for four years, and their terms of office overlap.

Section 86 provides that each district agricultural association is a state institution. With the approval of the Department of Agriculture, each district may: (a) contract, or sue; (b) purchase, hold, sell or convey real and personal property, or improve it; (c) lease its property to any person or public body for any purpose approved by the board of directors and the department; (d) use or manage its property jointly with any lessee; (e) lease its real property for public park, recreational or playground purposes; (f) rent, or permit the use of its premises for purposes beneficial to the agricultural industry; and (g) do everything necessary to carry out the purposes for which the association is formed.

The statutory provisions for county fairs differ considerably from those for their district counterparts. They are contained in Sections 25900 through 25908 of the Government Code.

The law authorizes the board of supervisors of any county to erect and maintain permanent county fair buildings within the county on land owned by the county, or by any other local government agency. It also authorizes each board to levy a special property tax, not to exceed 4 cents on each \$100 of assessed value, proceeds of which are to be used to encourage immigration, increase trade, and promote the "industrial, livestock, agricultural, horticultural, viticultural, and pastoral pursuits of the county."

Specifically, the code authorizes the use of funds raised through this tax for: (a) the preparation and maintenance of an exhibition of the products and industries of the county at any domestic or foreign exposition; and (b) contribution to the support of any local fair maintained by any public agency, county agricultural association, county fair association, or chamber of commerce in the county. If there is no such local fair, contribution may be made to the support of a fair maintained by a group of counties. Funds contributed may be used for general operations of the fair, including premiums for excellent exhibits of all types of county products.

Two alternate methods of managing county fairs are provided in the Government Code, in addition to direct management by the county government itself. Both involve contracting by the board of supervisors with a nonprofit corporation or association for operation of a fair. Section 25905 permits such contracting for periods not to exceed five years, allows advance contributions of county funds to the operating corporation, and requires deposit of all net proceeds from operation of the fair to be deposited in the county treasury to the credit of the fair fund. Section 25906 permits such contracts "for such period and under such conditions as the board may determine." Most county fairs are now operated under such contracts. Only 2 of the 23 county fairs with which this committee is concerned, Lassen and Trinity, are managed directly by their county governments.

The law is silent as to the organization of the nonprofit corporations or associations which are permitted to manage county fairs under contract. Apart from the provisions of the Corporations Code relating to nonprofit organizations, there are apparently no general legal dicta as to requirements for membership, the selection, terms and powers of directors, or the relationship between directors and staff.

These legal lacunae with respect to the organization of county fair corporations or associations should not be interpreted as implying that county fairs are less subject to state fiscal control than district fairs. Since all county fairs, with the exception of San Benito, receive state allocations, either for operating expenses, or for capital outlay, or both, they are subject to the same reporting and budgetary controls as are the district fairs. San Benito County Fair has for several years been operating on only its cash income and accumulated reserves, but complies fully with state requirements.

The differences in status between district and county fairs have occasionally caused problems in the relationships between the fairs and the municipal or other local governments within which the fair plants are located. Problems have arisen with respect to the application of local revenue, health, safety, and building code ordinances. The status of district fairs as state agencies has sometimes resulted in their receiving one form of treatment, while county fairs under similar circumstances received another. A new Section 87.2 of the Agricultural Code enacted in 1963 prohibits the imposition of any city tax, except a sales or use tax, upon any district agricultural association which represents more than one county, or upon any concessionaires or rental contractors of such a district. Application of this section is at present limited to District 1-A, the Cow Palace, but it is significant to note that no similar statutory protection has been provided for county fairs.

Broadening the Scope of District and County Fairs

During its meeting in September 1963, it was suggested that the joint committee explore the possibility of developing greater support for fairs by business and industry generally, so as to broaden the scope of fair presentations, and to assist them to draw as visitors a greater proportion of the state's urban population. The committee's consultants were instructed to explore this matter with executives of individual industries, of trade associations and chambers of commerce, and

to report findings and suggestions to the next committee meeting. The further work of the committee in this important area is discussed at length in the body of this report.

Other matters which were also approved for committee study and action were: (1) enlarging the educational functions of fairs; (2) encourage more interim use of fair facilities; (3) evaluation of entertainment and other attractions staged by fairs; (4) continue work for an acceptable legislative solution to the pressing problem of the existing restrictive limitation on state allocations to fairs for capital outlay; (5) effective and meaningful classification of fairs; (6) the proper location within the framework of state government for state administration of fairs matters; and (7) extension of committee authority to study and report on the operations of the several fairs now outside its jurisdiction.

THE GROWTH OF DISTRICT AND COUNTY FAIRS

The fiscal data and statistics published by the Division of Audits, Department of Finance, in its annual "California Fairs, Report on Operations" reveal a continued healthy growth of district and county fairs from 1963 to 1964. This is true in all major respects except one—most of these fairs still do not break even, so far as revenues from operations and expenditures are concerned.

Financial Results

The record discloses that total revenues from all operations for the 71 fairs increased 5.5 percent to \$9,134,486 from 1963 to 1964. Total expenditures rose less than half as much, 2.5 percent to \$12,840,439.

Once again, five fairs, all with horseracing, had revenues which exceeded their expenditures in 1964. They are the 21st (Fresno) and the 22nd (Del Mar) District fairs, and the Alameda, Solano and Sonoma county fairs. Together, they had surpluses totaling \$301,614 over expenses. The remaining 66 fairs together had revenues \$4,007,567 less than their total expenditures during the year, but this total deficit was down slightly, 0.5 percent, from that for 1963. The deficits of most fairs were covered by the allocations of state funds for operating expenses (maximum, \$65,000 per fair per year), but 16 fairs had deficits larger than their allocations, and so had to make them up partially from reserves, or local funds.

Attendance Growth

More people attended the district and county fairs in 1964 than did in the previous year. The total for all fairs rose 4.9 percent, to 5,282,497. This includes attendance at the 10 fairs which charge no admission. Paid admissions increased 4.1 percent, to 2,747,397.

Since total attendance at fairs of all kinds is a matter of public interest, and is as well an indicator of the viability of fairs generally, information about attendance at fairs not under jurisdiction of the Joint Committee has been obtained from the Audit Division's reports. These fairs are the California State Fair, the Los Angeles County Fair, Agricultural District 1-A (Cow Palace), 48th District, the San Bernardino Orange Show, and the Cloverdale Citrus Fair.

These six fairs attracted practically the same number of visitors in 1964 as they did in 1963, 2,630,289 as compared to 2,629,806. Adding these totals to the similar ones for district and county fairs gives a grand total attendance at all fairs in 1964 of 7,912,786, up 3.2 percent over the previous year. It should be noted, however, that admissions to the California State Fair and to the Los Angeles County Fair account for almost 80 percent of the total at all six fairs. Increase in admissions to the Los Angeles Fair to 1,109,151, or 8.7 percent, more than offset the decrease in those to the State Fair, from 914,311 in 1963 to 864,766 in 1964, or 5.4 percent.

Exhibitors and Entries

The record with respect to the number of exhibitors and their entries in district and county fairs in 1963 and 1964 is mixed, and for that reason may be indicative of some of the transitional problems now confronting such fairs. The number of senior exhibitors in all classes declined 0.4 percent, to 46,087 in 1964, but the decrease in their entries was even more marked, down 2.4 percent to 284,650.

The number of Future Farmers of America exhibitors, the high school youths enrolled in classes in agriculture, dropped 2 percent to 9,450, but the slump in the number of their entries was even greater than that in senior entries. FFA entries skidded 3.7 percent, and totaled only 20,446 in 1964. Experts in agricultural vocational education attribute this decline primarily to recent change in federal law, which no longer requires that a student carry on a "farm production project" as a condition precedent to his admission into FFA. The number of students enrolled in agricultural courses has increased substantially during the past two years, but they are taking up other aspects of agribusiness in their classes.

In contrast to these decreases, the 4-H classes at district and county fairs have continued to grow in healthy fashion. The number of 4-H exhibitors was 32,911 in 1964, up 4.3 percent over the preceding year. The number of their exhibits rose to 81,835, 3.2 percent higher than for a year earlier.

Both the number of exhibitors and entries in "Other Junior Departments" categories increased substantially between 1963 and 1964. Youths participating rose 7.5 percent, to 6,123. Their entries climbed to 15,081, up 14.4 percent. Part of this rise is attributed to the continuing Division of Fairs' program to separate junior classes in such areas as horticulture, floriculture, and minerals and metals, completely from senior classes in the same areas in the master premium list, and thus to give these junior classes their own identities. However, the remarkable growth in number, both of these junior exhibitors and their entries far exceeds in magnitude any reductions observed in the senior classes.

Other Growth Factors

There are a number of other factors in the operations of the district and county fairs which also serve to illustrate their growth between 1963 and 1964. Revenues from horse racing at the seven district and county fairs which conducted it totaled \$2,822,189 in 1964, up 3.3 percent from the previous year. Direct expenses of conducting the racing went up even more, 4.6 percent to \$2,205,101. Attendance at fairs' horse races jumped 5.9 percent to 380,990, but continued to average about 25 percent of total admissions to the fairs having racing.

Revenue from concessions rose to \$1,417,144 in 1964, topping the preceding year by 7.7 percent. Revenue from carnivals constituted the major portion of this, about 56 percent, and grew even faster than overall concessions revenue. Nonfair revenue from rental of buildings, rental of other facilities, and rental of equipment, jumped 16.1 percent, to \$737,021 in 1964. This figure is probably the closest approximate possible to the revenue derived from interim uses for which charges were made.

Rental of industrial and commercial display space increased 4.8 percent to \$475,594 in 1964. Income from attractions such as shows, dances, and rodeos was barely larger in 1964 than it was in 1963. It accounted for \$349,895 in the later year.

Very Satisfactory Growth

The various statistics cited above certainly demonstrate that the district and county fairs enjoyed a very satisfactory rate of growth between 1963 and 1964. In the majority of instances the rate exceeded considerably the growth rate for our state's population, which was 3.2 percent during the period. While wide variations in the results obviously exist between individual fairs, there can be no doubt that in the overall, the fairs made a very worthwhile contribution to our state's economy.

THE EDUCATIONAL FUNCTIONS OF FAIRS

The committee has devoted a large part of its efforts since the submission of its last report to a study of the educational functions of the district and county fairs, its goal being their improvement and expansion. Early in its work on this subject, it became evident that there is no general understanding among all the people of California as to the importance of these functions to our economy. Those directly connected with administration of fairs, with Western Fairs Association and allied organizations, with agricultural and industrial arts education, and with all kinds of agriculture are, of course, thoroughly imbued with the educational possibilities and responsibilities of fairs, and labor to advance them.

However, these groups in the aggregate constitute a small minority of our total population. It is regrettable that the vast majority of Californians, particularly the urban and suburban residents, look upon fairs as almost exclusively entertainment enterprises. It is especially disturbing that among this group are a majority of our teachers at all levels, elementary, secondary, and college. From this it follows that a major task confronting those interested in fairs is to develop and carry out a broad program to convince the general public of the importance of fairs in our overall educational process.

Specific recognition of this need was voiced at the committee's meeting on November 8, 1963 by Louis S. Merrill, general manager of Western Fairs Association. In reviewing discussions with administrators of the state college system about possible participation of the state colleges in the educational work of fairs, Mr. Merrill said that several suggestions were advanced. "One is the participation of the state colleges in actual preparation of exhibits as well as the lending of their staff aids for educational displays at fairs. We ourselves (WFA) are contemplating the development of such a program with two colleges with whom we are negotiating. Two educational displays, one of the effect of the (European) common market on California agriculture, to be displayed at three major fairs, if possible. *Another is an exhibit of the educational functions of fairs themselves, especially for those fairs near metropolitan areas.* Sometimes livestock is becoming a zoo rarity almost in some of our areas, *so we need to tell the story of the fairs themselves.*"

Addressing the committee, President Julian McPhee of California Polytechnic College in San Luis Obispo stressed education as one of the primary purposes of fairs:

Although I'm not actually connected with fairs at all, as you probably know, I have had a lot of background of fairs over my many years with the state, particularly in organizing the Future Farmers, and encouraging Future Farmers Exhibits at the various fairs throughout the state. Also at one time, I encouraged 4-H Club exhibits, because I had been a 4-H Club leader at one time.

We had a lot in common over the years, because the fairs and Cal Poly shared in the Fair and Exposition Fund. I suppose that Cal Poly got too large for the Fair and Exposition Fund in one way or another, but we don't get that money anymore, but it did give us a big start at Cal Poly, that we would not have got otherwise. We are very much interested in participating with fairs, and assisting with any educational programs they have in conjunction with schools, and of course we have a lot of our former students connected with fairs at the present time.

In my early days with fairs, I had two things in mind. First of all, the fairs basically are for educational purposes. That is the only justification I see for the expenditure of state funds for the fairs. I think entertainment is secondary, although it does have a big part in attracting people to get an education at the fair, which they probably would not come to otherwise. I think there are two types of education at the fair. I think one type is the improving of the individual's participation in agriculture, and in raising better livestock, raising better crops, and the housewife doing a better job herself at home, and giving her an opportunity to exhibit her product in competition with others in order to build up that excellence. That is the individual's participation, and we can go on and see that most of the fairs in the early days, emphasized that part of the fair.

I think a more important type of education is the education of the public who visit the fairs. I don't think they get as much education themselves visiting the individual exhibits, and they may or may not be interested in them, but they do have an opportunity to get educated in many other things than just those of their everyday life. Going back over the years, I have participated in programs of this kind before. I have talked to various legislative committees over the years, and I got figures together and some of the things I am very proud of is the fact that our Future Farmers and 4-H Clubs and even our open class groups have raised the quality and quantity of our livestock, and other crops in agriculture over the years, because of their participation in seeking of excellence in that type of work through competition for which they got ribbons and cash benefits.

I can remember in the early days we were importing into the state a lot of fine dairy cattle. I personally sent some people out to bring in dairy calves from Wisconsin, Michigan, Oregon and Washington, and in the early days they brought them in by the trainload to distribute to the Future Farmers and the 4-H Clubs, so as to raise their quality. I think it had a big impact on the early history of our agriculture. It had a lot to do with the great progress we made in agriculture in the State of California, that has been done just through that program.

We of Cal Poly, when I first went there, had in mind the distribution of livestock, the best we had, the best we had in hatching eggs, baby chicks or seed to the Future Farmers and others throughout the state and most of them were encouraged because of the fairs, which had a very definite part in it. I think that we can go back and see that that has been a wonderful thing.

We know right now there has been a change. First of all, these exhibits cost money if you are going to give premiums, if you are going to prepare for them at the fairs, I think a lot of the money of the Fairs and Expositions Fund has been used for that purpose and has done a wonderful job, but it is getting kind of expensive when you get more exhibitors, and you are getting higher premiums and more classifications. And then, of course, we have had some problems, I have problems with people who got into the fair business with individual exhibits, not from the standpoint of their agricultural interest, but more to make the money out of these premiums, and we got some of them in connection with the program I had something to do with. That, I think, is something we have to keep in mind in the changing of agriculture.

I think that we must remember California is the richest state, agriculturally in the union. In spite of the fact that only five to six percent of our total population are engaged in productive agriculture. However, one person out of three has got a job connected some way with agriculture or agricultural business. I heard the other day there are 70 firms in the state that buy and sell 70 percent of our agricultural products through supermarkets or places of that kind, the outlets to the consumer. We also know that the competition in agriculture is getting terrific, and right now the farmer gets only 37 cents out of every consumer's dollar that the consumer pays. It used to be 50 cents that he got, but it is getting less and less all the time, and that means it is difficult to go ahead with our total agricultural problem.

I remember that the fat hogs and the fat steers that we usually showed in the fairs are not now the ideal for the market, for their consumer. The supermarkets don't take that type of animal anymore, yet we emphasized that over the years at some of these individual exhibits.

Our farmers are getting into the problem of their surpluses. The cost of land and equipment is getting very, very high and we know from our graduates at Cal Poly, very few of them can go into agriculture from college, unless they inherit a farm, or unless they marry a farm. Usually a farm costs about \$100,000 to get started now, and it is difficult to do it at the present time. What I am trying to say, is agriculture is becoming big business. Big business with problems of taxes, problems of land cost getting so high that it is almost not economical to raise crops and get the receipts from them. We know that the labor problems—I got involved somehow—someone around this table started to set up a commission, of which I was elected chairman to solve the problem of agricultural labor, and I know some of the difficulties in that area. It is a difficult problem that we have in the State of California.

But with all that, we have been keeping in mind that the farm family still exists, and still is very important, and still does a lot of the agriculture in the state. In fact, the competition is so great that agriculture today isn't what it was before. I think that we should not only continue these exhibits we had, these individual exhibits, and encourage them, but we should also tell the people of the state some of these farm problems that they have.

I think we can put before the people some of the myths that they have about agriculture—that all the farmers are very, very wealthy, some of them have the idea that these pesticides are killing everybody; they ought to know it isn't true, and what is being done. You people know because you are having hearings at the present time on that problem. They think that they get all the subsidies out of the government in agriculture, they ought to know about the farmer's problems in taxes, and high price of land, and what he has to come out with on that program. And then we ought to let them know that farming is important, and I think it ought to be shown.

If these fairs are to be what they are, should be in education, they should tell the people the story the best they possibly can. When I went to Cal Poly in 1933, 80 percent of the students came there to go back on to some farm in production. Today, it is reversed; only about 20 percent go back on the farm. The others go into agribusiness, and I think that can be told to the people so that they can better understand the things they should know.

I think it is also important that the farmers be alert, and hold the ground that they have won over these 30 years. I think that the fairs have done a wonderful job, and I think the primary thing they should keep in mind is to not lose any of what they have gained. I think that they should educate the public to the rapidly changing society. I think that is very, very important.

I think the fairs have never been the product of agriculture, but that they are the product of the people who attend the fairs. The future is going to be shaped around what those people think. Another thing which I think is important to the fairs, we touched on this previously, is our whole change of economy in this country. The change is being brought about by automation and technology. We are raising our standard of living very rapidly, but we are also causing problems which need to be solved, and one of the big problems is unemployment.

I was reading in *Look* magazine just the other day that there are over 12½ million people in this country that are destitute, and they are destitute because of unemployment. First of all, there are about 4½ or 5 million unemployed, then there is the unemployable; they can't get jobs because they have not been trained, and I think that there is the underemployed. They meant those people who get salaries or annual wages for families of three thousand dollars or less, and that has been brought about and it is being emphasized because of automation and technology. I think that there are some areas in which there are shortages of labor. There is a lot of overtime being paid and if you look at any Sunday paper from any of the large cities you find page after page of ads looking for people of certain types of training, and yet we have the unemployment.

I think that our schools up to now have not done the best job of taking care of this problem. I think they have been looking and training more for college and not for the elite type of thing, I think more vocational education should be put into the schools, and that is being corrected more now than it has been over the years, because more money is being expended. If the fairs are to be part of this, if they are to be a part of our educational program I think they can do a

wonderful job by exhibits, by telling the people, by showing opportunities in these fields where they can get employment, and how to train for that employment, and I think the people deserve that kind of an opportunity.

Some of the other countries, like Sweden, are trying to solve their problem by anticipating what the problems are of unemployment and spending some money in that direction, rather than to spend money on relief, for people on relief or for unemployment wages. I think that thing could be worked out and brought together by a little thought and planning.

I think that in our fairs of tomorrow, much can be done in this direction. There must be a revolutionized method of presenting exhibits and displays; no longer can we show our whole fair by this 10 x 10 booth that we have had over the years, and not be very interesting to the public. We must compete for the interest of the people—with good color, lighting and motion. I think we must show products and progress through exciting exhibits used to the fullest extent of the modern knowledge of the techniques that we have, and already been mentioned as far as audiovisual education is concerned. Then we can emphasize the cooperative displays, where we can get groups of people together to display educational exhibits. I think that an important one is the traveling display. We had one down at our Poly Royal this year that attracted the most attention of any exhibit we had, and that was set up by the Army. It showed the people are very much interested. We have to show the product of course in these fairs, but we must tell the story of that product, where it comes from, and how it is grown, by whom, under what conditions, how it reaches the ultimate supermarket, and how it reaches the consumer. And so, with these eight million Californians who visit the fairs this year, we want to tell them what is new, not tell them what is old in the new package, we must tell them what is new, and what they can anticipate.

I think that industry can come in and play a very definite part in the future of fairs, and Don Muchmore gave an example yesterday—when he was down in the museum in Los Angeles, he succeeded in getting hundreds of thousands of dollars from IBM to put up an arithmetic-type of display that educates the people. They became interested and set up that exhibit. Right now I am going down to the trustees after I leave here to ask them if we can accept the \$300,000 computer that the company is giving us. They will give you these things if you can get it out to the public, and get it before the people, and the colleges are willing to go ahead because their interest in education, not only education of regular all day students, but educating through any means possible. I think that is one of our programs. One of the things that I think Cal Poly can continue to do is to try to educate people to be fair managers, and do work with the fairs and to get through this other means of education, as well as the classroom that we have another outlet for our whole program.

As I say, I'm not an expert on fairs, I don't know why I was asked to be here, but those are some of my ideas as to what can be done in the future. I think it important that the opportunity for the future be given a lot of thought, a lot of investigation, and I think with a lot

of cooperation they can continue to improve as they have over the past 30 years.

Wesley P. Smith, Chief of the Bureau of Vocational Education, State Department of Education, concurred generally with Mr. McPhee's opinions, but added some recommendations of his own for improvement of the educational functions of fairs:

Mr. Smith: Mr. Chairman and members of the committee: I have a four minute presentation here . . . I would like to read it for the reason that it says some of the same things that have been said three or four times here already this morning. I haven't seen Mr. McPhee for four months, until I just walked in here and he has said something that is in this statement, and for this reason, I would like to read it. County and district fairs in California are educational institutions. They are so intended in their origin, they have been so over the years, and they must remain so in the future. As educational institutions, our fairs have contributed significantly to the mass knowledge of our people, and especially has this been true in the area of occupational intelligence. Indisputable proof of this fact is found in the capacity of our agricultural industry, and in the efficiency of its practitioners. Nowhere in the world is there an agricultural industry more productive, and nowhere in the world is there a system of fairs that can compare with ours. Now, I have only one purpose in this short testimony today and that is to make a plea for the extension of the occupational education contributions of our fairs to the other production and service occupations. In the same manner as the fairs have increased the competency of those who work in the production, the processing and distribution facets of agriculture, so should these same fairs increasingly serve all other businesses and industries. The task of meeting the demands of the upward spiral of skilled requirements of all occupations is a problem we have yet to solve. To the degree that it goes unsolved, is the degree that our economy will falter.

As educational institutions our fairs should join in a sustained effort to contribute to other occupations the steady constructive learnings that have been so beneficial to agriculture. The uniqueness of such a new education of new educational contributions means that there are no prototypes that can be super imposed in premium books or in rules and regulations. Instead, it seems paramount that some method or policy ought to be approved whereby our fairs may have open-ended opportunity to exploit ideas, to experiment, to test, to invent, yes, even to spend. Career planning, vocational guidance, and occupational information are essential elements of occupational intelligence. It is possible that our fairs may become inspirational centers for these necessities both during and between exhibition dates.

One of the two often missing ingredients in education these days is ambition or incentive. The absence of desire creates dropouts from our schools. The absence of incentive produces unemployment and underemployment. The absence of ambition reduces our productive capacity.

A few years ago our fairs joined together in not only extending opportunities for physical fitness in our population, but assumed an active role in popularizing physical fitness. In a similar manner, it seems

entirely possible that fairs might well join together now in a concerted effort to increase occupational fitness in our population.

On previous occasions I have discussed with this committee suggested possible means, asking the committee to take every advantage of every opportunity to increase attention upon all phases of vocational education. Some minor break throughs have been possible and some progress has been noted. I hope that your committee will do all in its power to bolster any efforts that are taken to make maximum use of the physical facilities that are available in the talents of the fair people in meeting the critical needs for the training and retraining of California's school force. Thank you for the opportunity to make that statement.

Mr. Chairman: Thank you very much, Wesley. I know of no one in the state more qualified than you on vocational education. It has been a pleasure to have you before the committee this morning. Are there any questions from the committee of Mr. Smith?

Assemblyman Williamson: I don't have a question; I just want to compliment Mr. Smith on his statement, and say I really think he has hit on the big problem of fairs here. We always look at our own fair, the one we are most familiar with and we think we have a very good agricultural fair, particularly the one for the youngsters to participate in. This is where the real education takes place—in the participation and preparation by these kids in their projects for the fair. I don't think we can kid ourselves that the people who yearly go to the fair learn a heck of a lot from going out and looking at the animals. It's the people who actually prepare them and show them are the ones who do. This is where we are falling down, I believe in the other aspects. We are not encouraging other types of participation in fairs to the same degree that we are those of agriculture.

Mr. Smith: This is difficult, and Mr. McPhee could have told you he brought me up as an ag teacher—I have exhibited in fairs, they have been part of me all my life too. When people hear me talk about extending or bringing more balance to our fairs they think immediately one way to bring balance is to eliminate or cut down the emphasis on agriculture, and this is the last thing I ever want to see done. But I think there is another way of bringing balance, and that is increasing the emphasis on some of the other areas. This is hard, and I think if you were able to make a tabulation of progress that has been made you would find lots of progress. It moves a little slowly, but I think with a little more patience and a little bit more bolstering along the way, it will come.

Assemblyman Williamson: I would like to see something dramatic take place once in a while.

Senator O'Sullivan: It has occurred to me that in the changing nature of the society in California that perhaps the position of the agricultural fairs is even more important than it was years ago. The necessity is great for impressing upon the growing metropolitan and suburban areas, and their population, the importance of agriculture, and informing them as to what farming is. It has caused us, will cause, or should cause us to stress the use of fairs or extend the use of fairs in the metropolitan areas. Now the same thing I think pertains in the field of agricultural education. We are finding that fewer and fewer

people in relation to the entire population of our educational institutions are entering the study of agriculture. It seems to me that for a broad education, that some of these courses ought to be available, and some advantage should be taken of them by almost everyone who gets an education. Bringing to mind here—the curriculum that Thomas Jefferson had in his education which was not formalized as it is today. But it seems to me this facet of education is becoming less and less in our society. And I think that, instead of deemphasizing fairs in the metropolitan and suburban areas, we should give them extra emphasis in such areas, so that the children and grandchildren and the people who left the country and went to the city will at least have some idea of what a farm is and what the agricultural nature of America is.

It would appear from Mr. Smith's reference to the active part which fairs took in popularizing physical fitness some years ago, and from Mr. Merrill's earlier mention of Western Fairs Association's efforts to upgrade the educational functions of fairs by the development of traveling exhibits which would demonstrate to the fairs public the many functions of state government in areas such as education, health, safety, recreation, social welfare and water, that several attempts have been made to improve the performance of fairs in education during the past dozen years or so. However, as indicated in Mr. Smith's statement quoted above, success of these efforts has at best been sporadic, and only some "minor break throughs have been possible."

Apparently, the inability to achieve lasting results from these efforts stems primarily from failure to develop firm, permanent cooperative arrangements with agencies of state government whose assistance is necessary to success. The committee is strongly of the opinion that the district and county fairs, taken together as an agency of government, offer such a practical and valuable means of extending the educational services of the state that every effort appropriate should be made to create a permanent organizational structure which can work effectively to reach the desired goals. The committee will continue its study of the problem until an adequate solution is developed.

INTERIM USAGE OF FAIRS

The committee has devoted considerable attention to the problems involved in fostering greater interim usage of fair facilities. Potentially, every district and county fair is a community service center with facilities available on a year-round basis for use by various elements of its community.

Since the first enabling legislation was passed by the Legislature to authorize and encourage interim uses of fair facilities, considerable progress has been made by most fairs in developing such use. The individual fairs have received much encouragement and assistance from the Division of Fairs and Expositions, and the Western Fairs Association has had an active committee on interim uses for some time.

The few statistics available on a comparative basis would seem to indicate that interim use of fair facilities has grown even faster than has attendance during the official fair periods themselves. A survey made by Western Fairs Association in 1959, in which 50 of the 71 fairs replied, placed the total number of days of interim use of facilities of the fairs responding at 12,310. The number of persons attending interim events at those fairs was fixed at 924,634.

Recently, the Division of Fairs and Expositions released a report on an exhaustive study of 1963 interim usage of fair facilities which covered all of the fairs except the California State Fair and the 6th District California Museum of Science and Industry. According to this report, during that year, the total number of days of interim use at all covered fairs was 39,542. The number of participants in interim activities was 9,354,306. A rough idea of the astonishing growth in interim usage between 1959 and 1963 may be obtained if the totals for the earlier year are increased by 50 percent to allow for such usage at the 24 fairs not reporting, and for underreporting. On this basis, the number of days of interim usage more than doubled over the four-year period. The number of individuals involved, however, increased sevenfold during this same short span of years. Such a rate of growth is really remarkable.

The division's report comments that in order to achieve this magnitude of community service, it has been necessary to construct fair facilities which are second to none, to require maintenance of a very high standard, and to employ competent personnel on a year-round basis at salary rates sufficiently attractive. Meeting these needs has resulted in high investments in fair properties, and relatively high operating costs. The report points out that many critics of our fair system, both in and out of state government, have in mind the mistaken idea that fair plants are utilized only for the relatively few days each year in which the fairs themselves are staged.

The report contains a broad range of statistical material which support the undeniable fact that our California system of fairs is, on the whole, doing a competent job of serving the communities in which

fairs are located. "Its services to youth alone constitute a considerable contribution to the solution of the problem of juvenile discontent and delinquency."

The many types of organizations which use fair facilities during the interims indicate the breadth of fair services to all segments of the population:

SUMMARY OF NONFAIR USAGE OF FAIRGROUNDS BY GROUPS

<i>Group</i>	<i>No. of Days used</i>	<i>Approximate No. of people</i>
Clubs or lodges -----	3,821	1,300,488
Churches -----	1,358	630,323
Junior groups -----	2,774	547,348
Commercial organizations -----	8,568	1,725,486
Entertainment organizations -----	1,189	938,744
Schools -----	4,361	850,524
Athletic contests -----	1,599	871,329
Agriculture groups -----	2,776	936,402
Other -----	13,096	1,553,662
Total -----	39,542	9,354,306

One very valuable feature of the report is the information it contains about the recreational facilities of the various fairs and their interim usage. The inventory of existing recreational facilities at the 73 fairs, including the two orange shows, reveals the following varied list:

<i>Type of facility</i>	<i>Number of fairs</i>
Picnic grounds -----	39
Swimming pools -----	3
Playgrounds -----	15
Golf courses -----	5
Driving ranges -----	8
Campgrounds -----	14
Football fields -----	13
Baseball diamonds -----	22
Museums -----	4
Skating rinks -----	6
Miscellaneous -----	34

The value of these recreational facilities is amply demonstrated by their use. They account for 16,151 days of the total interim use. The number of people using them during 1963 is estimated at 1,793,948.

In its conclusions, the division's report stresses the importance of the fair system to the overall recreational needs of California. "Fair-ground facilities are able to offer potential recreation to both the local community resident and the urban dweller using modern highways and automobiles to visit rural areas away from the city. This function alone will more than justify the continued utilization of the present fair system."

The report recognizes that problems exist with respect to interim usage which must be resolved by the management of each fair. The cost of maintaining the fairgrounds, and keeping it open on a year-round basis, is an important budgetary factor. Charges for interim uses offset part of the additional cost, but are difficult to establish on a uniform basis, applicable to all users. In some areas, civic groups, charitable organizations, and other community groups can find no other

location than the fairgrounds from which to operate. Such organizations are generally granted use of the facilities either free, or with only a nominal charge, so their use adds to the drain on fair operating funds. Sometimes, complaints arise about competition between fairs and available private facilities, especially with respect to entertainment and commercial activities.

An interesting and thought-provocative enumeration of additional recreational facilities on a fair-by-fair basis, which would be provided under existing policies, or changed policies and increased capital outlay appropriations, is included in the report. The possibility of enlarging each fair's recreational facilities is broken down into eight different categories, ranging from picnic and court game (tennis, basketball) uses, through water sports, the performing arts, night recreation centers, and horsemanship, to tent and trailer camping facilities. Every fair could expand in at least one of the categories, and many of them in all eight. No estimate of the cost of this suggested expansion is given, but it obviously could run into millions.

The joint committee is completely in accord with the program of the Division of Fairs and Expositions to assist the fairs in increasing interim use of their facilities. Whether or not the revenue from interim events covers the direct costs which they create is primarily a matter for decision by the board and management of each fair. Service to the community and public relations are factors which must be weighed in establishing a scale of charges for interim uses. Not to be overlooked, however, is the fact that the state and the community have a considerable investment in every fair plant, and that investment can only be justified by the use to which the plant is put.

In order to assist the fairs to reach the maximum potential of interim use, the committee feels that the division should continue, and perhaps even enlarge its work on interim usage. Fair managers need to be informed of the many different types of such usage, of the problems encountered, and of the successes achieved by fairs in all parts of the state. This kind of information can most efficiently be collected and disseminated by the division. Managers should be encouraged to prepare and use descriptive and informational materials about the various facilities of their fairs.

The study and report on interim uses by the division give us the first well-rounded picture of such usage. Yet, as this is being written, the information in the report is almost two years old, and many changes have undoubtedly occurred. It would seem advisable that pertinent information on interim usage be required of each fair which must submit an annual report under Section 92.6 of the Agricultural Code. Since interim uses will continue to grow in relative as well as in absolute importance, information about them in some detail will be of great value.

CAPITAL OUTLAY

In its two previous reports to the Legislature, the Joint Committee on Fairs Allocation and Classification has described and commented strongly on the serious problem which confronts district and county fairs because of the existing statutory ceiling of \$2,250,000 per year on the total amount which may be allocated to all such fairs for capital outlay purposes from horse racing revenues. In the 1961 report, the committee stated that on the basis of the evidence then available it was apparent the ceiling would prove too low to meet the basic growth and development needs of the fairs. It was recommended that the amount be raised to a more realistic figure between \$3 and \$5 million annually for an experimental five-year period, the exact amount to be decided after study of actual experience under the ceiling.

In its 1963 report, the committee recited portions of the transcripts taken at two of its hearings concerning the difficulties encountered by three fairs under the ceiling: the Marin County Fair, having to move to a new, larger, and more suitable site, but unable to obtain enough in capital outlay allocations to start construction of even the first building; the Alameda County Fair, whose old grandstand constituted a safety hazard, but with the cost of a replacement estimated at \$1,300,000; and the 37th District Fair, unable to accept a gift of valuable land from the City of Santa Maria because lack of capital outlay funds would prevent it from erecting an exhibit hall-convention center in which to operate.

The testimony of Mr. Roy Bell, Assistant Director of Finance, quoted from the hearing transcript, has particular importance in evaluating the adequacy of the \$2,250,000 ceiling on capital outlay. At one point he declared, "And as I have said, in our opinion, the \$2,250,000 is not sufficient to meet the unusual needs of the fairs." Again, in discussing plans of the Department of Finance to give the Alameda County Fair \$1,100,000 in two annual installments to build the new grandstand, he said, "... this is a good indication, then, of the fact that you cannot take even half a million out of this pocket for one fair without seriously damaging the ongoing programs and stalling them too long at the other fairs."

As a result of our further study of the capital outlay problem, the joint committee disapproved the proposal that the balance left each year from the appropriation of \$4,680,000 to be allocated to district and county fairs for operating expenses be made available for capital outlay. The maximum grant to any one fair is fixed at \$65,000, and during the years since the annual amount was tied to the needs of each fair, the unallocated balance has stayed close to \$500,000 per year, which was felt insufficient to meet the real construction needs of fairs. The committee also advised against handling of unusual situations by special appropriation bills or budget augmentations because such a procedure could increase the legislative workload considerably, and could also lead to logrolling which would be harmful to all fairs.

The committee unanimously recommended that the ceiling be raised to \$4,000,000 for a period of four fiscal years, and that it then revert to the \$2,250,000 current figure, unless the Legislature again acts to change it. A Senate bill embodying this proposal was introduced in the 1963 General Session, but could not be acted upon because the budget bill for 1963-64 ran into serious difficulties which forced the calling of a special session.

The Alameda County Fair grandstand problem was alleviated, with the Governor's written consent, by legislative approval of two budget augmentations; the first of \$529,300 in 1963, the second of \$337,300 in 1964. The problem of the 37th District Fair was worked out by administrative action, under which the fair was granted \$235,000 to start construction of the required exhibit building this year, and additional funds were approved for later years.

These piecemeal actions did nothing to remedy the basic fault in the current statutory ceiling, publicly acknowledged by the Department of Finance, namely, that it is not high enough to take care of emergencies or "unusual situations" without depriving some fairs of capital funds. The Marin County Fair is still unhappily burdened with an "unusual situation" not of its own making, toward the solution of which only ineffective, token steps have so far been taken.

In its 1963 report, this committee commented on the difficulties which seem to be inherent in the present system of allocating capital funds. The Division of Fairs and Expositions has developed a series of project priorities, upon which it bases its recommendations to the Public Works Board for approval of allocations. About this series, the committee said, "It would not be easy to develop a new sequence of the criteria for priority of projects, but it is an inescapable fact that expansion to meet the needs of growth comes third behind health-safety factors, and replacement of existing facilities. The present \$2,250,000 ceiling has proved insufficient to meet needs of all fairs in the first two categories, so expansion, moving to new sites, or purchase of sites, seem to be well-nigh stopped until the Legislature acts to relieve the situation."

There seems to have been a certain amount of inequity, no doubt inadvertent, in the treatment accorded the Marin County Fair with respect to the capital allocations needed to move to its new site. For many years the fair has utilized a leased 10 acre site in the suburban community of Ross to stage its annual event. The site is too small to permit expansion, and the lack of parking space has become acute.

In a letter to the committee dated May 13, 1965, Mrs. Marcelle McCoy, manager of the fair, explained how it got caught in the "before and after" situation. Briefly, her account follows.

In 1953 the Marin County Board of Supervisors and the county fair jointly purchased a 140-acre site for combined use as a county administrative center and fairgrounds. The fair would occupy 80 acres, the county the remainder. In 1957 the county retained Frank Lloyd Wright, the famed architect, to prepare one integrated design to provide for the county's cultural, administrative, and fair needs. In 1958, before the ceiling was placed on allocations for capital outlay, the master plan, with a projected construction schedule and costs estimates,

was presented to the Division of Fairs and Expositions. It was "enthusiastically endorsed by the chief of the division, his staff, and subsequently by other state officials."

The plan submitted provided for a three-year site development and initial construction period, at a cost estimated at \$2,184,600. Total costs for a fully developed fair were tentatively fixed at \$7 million.

"State officials indicated during several meetings and consultations that it would be logical to expect allocations in the area of \$500,000 per year to develop the total fairgrounds project within a reasonable time." Whether such "indications" can be construed as commitments is doubtful, but they are certainly evidence that a request for allocations of capital funds had been made, and that a specific possible figure had been mentioned before the enactment of the legislation which established the ceiling.

Before the ceiling was imposed, the Marin Fair was granted \$181,500 towards the cost of the new plant. In the first year afterward, the allocation was \$115,000 for site development. Each year since, \$105,000 has been allocated for the project, but all of the money has been left in the State Treasury, pending start of actual construction. As Mrs. McCoy comments in her letter, this annual grant covers the inflation factor and little else.

The Marin Supervisors have committed \$719,087 of county tax funds towards the cost of the initial fairgrounds building, a multipurpose auditorium construction of which would enable the fair to move from its present leased site. However, even if this amount is added to the \$420,000 in state funds now on deposit, the total is still insufficient to start construction of the first building.

This recital of the Marin County Fair situation has been given to demonstrate the arbitrary effect of the ceiling on a necessary and valuable project which was initiated, and developed to a considerable degree before the law was changed. It would certainly follow from the facts cited that more equitable treatment might have been afforded the fair.

Sufficiency of Funds to Increase Capital Allocations

Attempts have been made to argue that since the law requires that any balance left in the Fair and Exposition Fund at the end of each calendar month to the General Fund, there is no money available to increase the \$2,250,000 ceiling on allocations for capital outlay. This specious argument falls apart when examined in the light of the legal and fiscal facts.

Section 19630 of the Business and Professions Code provides in part that "There is hereby appropriated annually from the second balance of the (Fair and Exposition) fund, for expenditure without regard to fiscal years, the sum of two million two hundred fifty thousand dollars (\$2,250,000) or so much thereof as may be approved by the State Public Works Board and allocated by the Director of Finance in his discretion for any of the following:" (permanent improvements at fairs; purchase of equipment; and the purchase of real property for sites.) Thus, the ceiling is statutory, and subject to change by law.

The last paragraph of Section 19630 reads in part, "Any unappropriated money in the fund (underlining supplied), shall be transferred to the General Fund . . ." Thus, there is no limitation whatsoever in the transfer provision on the amount which can be set as the ceiling on allocations in the first paragraph of the section, nor is there any express requirement that any ceiling whatever be contained in the law.

The fiscal records prove that horseracing revenues which flow into the Fair and Exposition Fund are more than adequate to furnish the \$4 million annually for capital outlay which this committee recommends be made available for capital outlay at district and county fairs during four fiscal years. The following table, taken from the Division of Fairs and Expositions report on interim uses of fairs, shows that during the 1963-64 fiscal year, after all statutory appropriations were subtracted from the horseracing revenues credited to the Fair and Exposition Fund, including the \$2,779,300 authorized for capital outlay under both the Section 19630 ceiling and the budget act augmentation of \$529,300 previously mentioned, there still remained the sum of \$14,704,426 which was transferred to the General Fund on a monthly basis as stipulated in the law.

**STATE OF CALIFORNIA
DISTRIBUTION OF FAIR AND EXPOSITION FUND REVENUE**

July 1, 1963, to June 30, 1964

Revenue from horseracing -----	\$23,148,326.48
Escheated warrants -----	25.00
Proceeds from sale of real property, Section 88, Agricultural Code -----	125.00
Total Revenue -----	\$23,148,476.48
Reverting balances redistributed -----	66,428.38
Total available for distribution -----	\$23,214,904.86
Less appropriation ahead of First Balance :	
Department of Agriculture -----	\$132,319.00
California Horse Racing Board -----	219,158.00
Department of Finance -----	143,877.00
California State Fair and Exposition -----	265,000.00
Los Angeles County Fair -----	250,000.00
1-A District Agricultural Association -----	250,000.00
California Museum of Science and Industry -----	15,000.00
48th District Agricultural Association -----	125,000.00
Capital Outlay, district fairs, Section 88, Agricultural Code -----	125.00
Total appropriations ahead of first balance -----	\$1,400,479.00
First balance -----	\$21,814,425.86
Less appropriations from first balance :	
Encouragement of citrus fairs -----	\$180,000.00
Encouragement of district and county fairs -----	4,150,700.00
Total appropriations from First Balance -----	\$4,330,700.00
Second balance -----	\$17,483,725.86
Less appropriations from second balance :	
Capital outlay for fairs, Section 19630, Business and Professions Code and Section 10.2 Budget Act of 1963 -----	\$2,779,300.00
Revenue for the General Fund -----	\$14,704,425.86

It should be noted that the amounts siphoned into it from the Fair and Exposition Fund are not the only revenues which accrue to the General Fund from the operation of parimutuel wagering on horse racing in California. Under Section 19632 of the Business and Professions Code all revenues from horse racing, except those appropriated to the Fair and Exposition Fund, and the \$750,000 appropriated annually to the Wildlife Fund, are paid into the General Fund. During fiscal 1963-64, Fund revenues received under this section amounted to \$19,236,220. When the balances in the Fair and Exposition Fund which were transferred to the General Fund are added to this amount, they increase the total revenues from horse racing of this Fund to \$33,940,646 for the year.

From this, it is evident that there can be little logic in maintaining that the diversion of an additional \$1,750,000 per year for the next four years to meet the pressing capital needs of district and county fairs would cause any serious inroads on General Fund revenues. On the contrary, it would seem to be a penny-wise and pound-foolish policy not to expend this additional amount to conserve our \$90 million investment in fairs facilities, and to improve them sufficiently so they can better meet the needs of our rapidly expanding and changing economy.

For the reasons explained above, the Joint Committee on Fairs Allocation and Classification renews its recommendation that the ceiling in Section 19630 on the appropriation for capital outlay be increased to \$4 million per year for a period of four years.

ENLARGING THE SERVICES OF DISTRICT AND COUNTY FAIRS

Important problems of fairs with which this committee is concerned arise from the steady shift of our state's economy from one agriculturally dominated to one in which, though agriculture is still the largest single income producer, industry is the dominant factor. One significant indicia of this shift is the great decline in the proportion of rural to total population in the last half-century: from 38 percent in 1910 to 13 percent in 1960. This tremendous shift in our economy has caused two types of problems for fairs. The first, is how to continue the fine work fairs have done in improving California livestock and crops. The second, is how to provide some educational and competitive services for youth which is oriented to scientific or industrial pursuits rather than agricultural. There are apparent elements of incompatibility between possible solutions for these two types of problems.

These problems lead to one basic conclusion, that district and county fairs must enlarge the scope of their services to meet the needs of more people, especially urban residents. Unless they successfully meet this challenge with the full assistance of California business and industry, their value to our entire economic and social fabric could be seriously diminished.

Growth of Fairs—1948 Through 1962

Statistics compiled by the Department of Finance from the annual reports filed by district and county fairs throw some interesting lights on the growth of these fairs since the war, and consequently on their adaptation to changing circumstances in the state. Though these statistics cannot be completely reliable, and are not always strictly comparable, they do enable the drawing of some valid conclusions.

Attendance

It is generally conceded that the effectiveness of a fair is best judged by the attendance it attracts. The record discloses that in the 15-year period from 1948 through 1962 (selected because of the availability of official population figures) total attendance at all district and county fairs grew from 2,021,680 to 4,774,351, or 136.1 percent. During this same period total state population rose from 10,064,000 to 17,094,000, or 69.8 percent. In comparison, fairs would seem to have grown much faster than population.

Some experts on fairs, however, maintain that the real test of fairs is the *paid* attendance they attract. Admittedly, the figures on paid attendance are more reliable than those for total admissions, which include exhibitors, their helpers, and even fair staff, as well as several varieties of free admissions. It is argued that those who pay to attend fairs are the real patrons of the fairs—the public which fairs seek to educate and entertain.

There are those who maintain that the value of paid attendance statistics is vitiated by the continued existence of fairs which do not charge admission. This contention, however, is disputed by the first group, who call attention to the fact that the number of free fairs has decreased from fifteen or sixteen in 1948 to ten at present, and total attendance at such fairs has dropped from 620,000 to 330,000. The record of paid attendance at fairs reveals that it has not grown as rapidly as has the total population of the state. It increased from 1,625,930 in 1948 to 2,557,531 in 1962, or only 57.2 percent as compared to the population growth of 69.8 during the same period. From this, it can be argued with some cogency that the fairs have not kept full pace with the development of California.

Finances and Capital Investment

The financial records of district and county fairs reveal rather steady growth during the 15-year period from 1948 through 1962. However, it should be noted that during this period, only four of these fairs (21st district, Fresno; 22nd district, Del Mar; Solano County; and Sonoma County) made more in operating revenues than they spent. The other 67 fairs expended more than their operating revenues, and depended on the annual allocations from state funds to keep themselves in the black, or drew on accumulated reserves.

Total operating expenditures of all 71 fairs grew from \$5,398,743 in 1948 to \$11,749,925 in 1962, or 117.6 percent. Operating revenues increased from \$3,407,217 to \$7,822,106 in the same period, or 129.5 percent. Net loss from operations for all these fairs increased from \$1,991,526 to \$3,927,819, up approximately 100 percent.

Figures about capital investment in fairs plant and facilities are not available for years prior to 1955. In that year the total capital investment in the plants of these fairs was reported by the Department of Finance to be \$49,368,569. By 1962 it had risen to \$74,843,289. The effect of the 1959 ceiling on allocations of state funds for capital purposes is evident; the percentage of increase from one year to the next averaged 6.5 for the first years, but after the law was changed it fell to 4.2 percent.

These statistics serve to demonstrate that fairs, though some may be small, collectively amount to a considerable business, one whose contribution to community welfare should not be treated lightly. It would seem to be best for the state as a whole to utilize their full potentialities for the benefit of all segments of our economy, not merely agriculture.

Unequal Distribution of Fairs

One important factor in evaluating the district and county fairs is their location with respect to population. Because they are generally thought of as agriculturally oriented, it might be concluded that fairs would tend to be concentrated in agricultural areas. An examination of the facts, however, reveals some noteworthy variations from such a pattern.

Counting in the six "exempt" fairs, the distribution of fairs between counties is like this. Two counties, Los Angeles (population 6,038,771) and Sonoma (147,375) have three fairs each. Nineteen coun-

ties, ranging from San Benito (15,396) to San Bernardino (503,591) have two fairs each. Thirty-three, from Trinity (9,706) to San Diego (1,033,011) each have one fair. Four counties have no fairs located within their boundaries, but three of these, Alpine, Mono and Yuba are included in districts whose fair plants are located in other counties. Only sparsely populated Sierra County has no legal connection with a fair.

Viewed from another angle, the location of fairs displays some interesting differentials in concentration around large population centers. Fair attendance, tabulated on the same basis, also reveals significant differences. There are seven fairs located within a 60-mile radius of Los Angeles, in four counties having an estimated population of some 8.5 million. Fifteen fairs are located within a 60-mile radius of San Francisco, in nine counties with an estimated population of about 4.2 million.

Fair attendance during 1963 at the fairs in the Los Angeles area totalled 1,766,417, of which 1,020,056, or 60 percent was at the Los Angeles County Fair, the state's largest. This attendance was equal to 21 percent of the area population. Three other fairs in the area each had attendance exceeding 100,000.

Attendance during the same year at San Francisco area fairs totalled 1,608,750, or 38 percent of area population. No one fair drew more than 20 percent of total attendance, but seven fairs in the area each drew more than 100,000.

Industrial Education—Successes and Disappointments

As originally enacted, Section 92 of the Agricultural Code authorized apportionment of state funds to district and county fairs on the amount which each fair actually paid in premiums for agricultural, horticultural, mineral and livestock exhibits, and exhibits of domestic arts, agricultural mechanics made or manufactured for other than commercial purposes in each year. The 1957 Legislature amended the section to enlarge the list of types of exhibits on which apportionments will be made to include "industrial education." The term is not defined in the act.

The Division of Fairs and Expositions promptly revised its master premium list to include industrial education exhibits, taking as its guide the definition of the term used by the State Department of Education. The revised list was used by a few fairs for the first time in 1958.

From the available information as to industrial education exhibits, it would appear that there have been both considerable successes and some disappointments in connection with such exhibits. Some fairs have devoted much effort to encouragement of industrial education exhibits, and have achieved exceedingly worthwhile results. Others have run into various difficulties which have impeded the growth of their programs, or caused other disappointments.

One fair program of industrial arts exhibitions which has achieved national recognition is operated on a statewide basis. This industrial arts exposition and award program is conducted by the California State Fair and Exposition as part of the annual State Spring Fair, and the fifth event was held in March 1965. Open to secondary school

students, the program offers cash awards in three grade classifications, for student designed and constructed exhibits in six categories: drafting, electricity-electronics, graphic arts, industrial crafts, metal working, and wood working.

Cooperating in the conduct of this program are the State Department of Education, through its consultant on industrial arts education, and the California Industrial Education Association. Working through a statewide advisory committee and 12 regional committees, exhibits are gathered at 12 collection centers from San Diego to Sacramento and the selections of the regional committees are shipped to the Spring Fair, where the award winners are picked by a judging committee of industrial arts experts from universities and colleges. No statistics as to number of student participants are kept, but it is estimated that about 5,000 entries were sent to collection centers, and 800 of these to the Spring Fair, in 1965.

While it is known that many of the exhibits in this program are later displayed at district or county fairs near the homes of their designers, no specific information as to the extent of this practice is now available.

In contrast to the successes are a few disappointments which have arisen in connection with industrial education programs. Two examples may be cited. The Los Angeles County Fair for a few years successfully staged a junior technical science exhibit. It was sponsored by a large aerospace firm, which held elimination contests at many local high schools, then brought the winners to be put on exhibition at the fair. Additional awards by the company were given in a final judging at the fair, including a share of stock in the company, and an air trip to its plant.

Because so many science shows are now being staged by schools, news media and community organizations, the company this year abandoned its sponsorship, and merely invited possible participants to place their exhibits directly in the fair. The additional awards were also dropped.

The second example illustrates another kind of difficulty which fairs are encountering in their efforts to expand their industrial arts exhibits. The Orange County Fair (32nd District Agricultural Association) reports that several local firms support its industrial arts department by donating money which is used to buy U.S. Savings Bonds for winners in the various exhibit categories and to provide a \$100 scholarship for the top winner.

The fair manager says that while these additional awards perhaps stimulate some interest among students in preparing and entering exhibits, the fair's main difficulty has been in developing cooperation among industrial arts teachers. He estimates that only about 12 percent of the 200-odd industrial arts teachers in Orange County cooperate with the fair program. He admits, however, that the fact that the fair is held during summer vacation may have an adverse effect on their participation. He concludes by saying, "Without the support and cooperation of the industrial arts teachers no amount of support by local firms will help the situation."

The California Museum of Science and Industry

Organized under state law as the Sixth District Agricultural Association, the California Museum of Science and Industry, located in Los Angeles, is unique among California fair district organizations. It still retains this form of legal organization, with a board of nine directors appointed by the Governor, though it has long since been transformed into a full-fledged museum dedicated to providing educational exhibits which demonstrate the scientific and industrial progress of our state. It is ranked high among the 17 museums of this type in the United States, also among which is the city-operated Academy of Sciences in Golden Gate Park.

Operating expenses of the museum are supplied from two main sources. About 40 percent of the approximate \$700,000 annual budget comes from the state's general fund. The remaining 60 percent is derived from rental proceeds of parking lots, and of land on which the Los Angeles Memorial Coliseum and Sports Arena are located.

The museum houses many costly permanent exhibits which have been paid for partly or entirely by private enterprise. One on the evolution of the motorcar, "The Turning Wheel," was financed entirely by an automobile manufacturer. Another, "The Science of Aviation," was financed on a matching basis by the state and the airframe industry on a matching basis. The 1961 Legislature authorized the addition of a permanent Space Museum to the educational complex, and the 1963 Special Session appropriated \$200,000 toward the cost of a new Hall of Health.

Like most of its counterparts, the museum depends on visitor participation to achieve its educational purposes. In one exhibit, when a visitor puts his hand on a small generator and pushes a button, the electricity stored in his body flows into a neon tube, which then lights up. At an exhibit called Mathematica, developed by IBM, bulbs light up to show what happens when a number is squared or cubed. After a trip through a giant animated atom, a student can test his memory of what he saw in a new teaching machine.

The year-round attendance figures of the museum are certainly impressive. At least 120,000 students, from grade school through high school, visited it in planned tours this last year. Total annual attendance grew from 1,009,441 in 1961-62 to 1,194,498 in 1962-63, and topped 1,300,000 in 1963-64.

The principal reason for this discussion of the work of the museum has been aptly summarized in an article in *Time* magazine, which said, "Science and industry exhibits are necessarily a collaboration between museums and private industry." The article further commented that while small museums might have to accept a big dose of advertising with displays of doubtful scholarship, larger institutions, like our Los Angeles museum, may invite major enterprises to supply elaborate installations which meet their primary educational requirements.

A Program for Action to Broaden Service of Fairs

At its meeting in Sacramento on September 6, 1963, the Joint Committee on Fairs Allocation and Classification considered a number of

suggestions submitted by its consultants as to possible areas for study and action by the committee prior to the 1965 session of the Legislature. One of the suggestions was that the committee undertake a program to enlist the active support of all segments of California business and industry for a program designed to extend the services of district and county fairs to all elements of our population, without impairing their service to agriculture.

In its discussion of this suggestion, the committee concluded that it would be difficult, if not impractical, for it to carry on such a program. Therefore, it was decided that the possibility of setting up an appropriate committee of business and industrial leaders to carry on the work should be explored. The consultants were requested to secure the opinions of organizations such as the State Chamber of Commerce, various statewide trade associations, and the Western Fairs Association as to (1) the necessity of undertaking such a program, and (2) the feasibility of working through a citizens' committee such as that suggested to achieve the desired results.

At its meeting in San Francisco on November 8, 1963, the Committee received an initial report on the contacts made to that date. It might be summarized briefly as follows: the consensus of those contacted is that there is real need to broaden the services of fairs in order to maintain and improve their importance as educational institutions. As to the suggested citizens' committee, it was the general consensus that the task could only be accomplished through the work of such a group, which should be composed of the most influential leaders in the most important lines of business and industry, drawn from all parts of the state.

At the conclusion of this meeting, the committee unanimously approved a program of enlisting business and industrial support of fairs, and the formation of an appropriate citizens' committee as a committee project. It was understood that this citizens' committee would at first have two major responsibilities: (1) to assist district and county fairs to upgrade their industrial education programs as far as possible, and to help fairs attract business and industrial exhibits of an educational not commercial character; and (2) to convince important California businesses, industries, and trade associations that it will be greatly to their advantage on a long-term basis by taking full advantage of the educational opportunities offered by fairs to inform the public more completely of the vital part they play in our economy, of how their processing and marketing is carried on, and on an even broader scale, of how they operate and survive in our private enterprise system.

In compliance with this action of the joint committee, invitations to membership on the statewide advisory committee of business and industrial leaders were addressed to a number of prominent and influential individuals. Represented were a cross section of economic activities of primary importance to California. Indicative of the caliber of those who have consented to advise the joint committee is the following list. It is anticipated that the full membership of the advisory committee will be from 20 to 25 persons.

Mr. S. Clark Beise, Retired President
Bank of America

Mr. W. G. Chaffee, Vice President
Pacific Telephone and Telegraph Co.

Mr. Francis V. Keesling, Jr., President
West Coast Life Insurance Company

Mr. Frederick W. Mielke, Jr., Assistant President
Pacific Gas and Electric Co.

Sigvald Nielson, Esq.
Pillsbury, Madison & Sutro
Attorneys at Law

Mr. T. S. Peterson, Retired President
Standard Oil Company of California

Mr. Robert W. Walker, Vice President
Santa Fe Railway

Informative material was prepared for the use of those who accepted membership on the advisory committee. Outlined in it were the statutory basis for the Joint Committee on Fairs Allocation and Classification, the problems confronting the district and county fairs in keeping pace with the rapid growth, industrialization, and urbanization of our state, the extent to which industrial arts education exhibits have been developed within the fairs, and the helpful information to be derived from the successful cooperation with industry attained by the Santa Clara County Fair and the California Museum of Industry and Science, which is organized under the laws relating to the formation of district fairs.

Because of the length of time required for preliminary organization of the advisory committee, it became necessary to schedule a meeting just before the convening of the 1965 Legislature. A combined meeting of the Joint Committee and the advisory committee was held in San Francisco on December 4, 1964. A majority of the advisory committee members already appointed were present, and those who could not attend sent representatives.

Mr. William Straub, secretary-manager of the Santa Clara County Fair, gave the meeting some valuable information concerning the specialized type of industrial participation in that fair. Dr. William Fitzgerald, director of the California Museum of Science and Industry in Los Angeles, presented a detailed account of the finance, organization, and operation of that institution, and gave a clear and thorough explanation of the cost, maintenance, and other factors involved in major museum exhibits, as well as an interesting and useful discussion of portable exhibits. Excerpts from the transcription of the meeting summarize these presentations, and the questions asked by members of the Joint Committee and the advisory committee:

Chairman Regan: William Straub, manager, Santa Clara County Fair—would you open the meeting by explaining the program for industrial exhibits, as it is organized, staffed, operated, etc., by your fair?

William Straub: Yes, Mr. Chairman, I will be very glad to. As you know, Santa Clara County is one of those that has increased tremendously in population. The increase in population has brought major new segments of industry into our area. Historically, Santa Clara Valley is one of the finest agricultural areas in the world, but now is playing host to new industries, such as the missile industry and the electronics industry. This change in our economy has been going on for a number of years now, beginning just after World War II. In anticipation of the continuation of this change in our economy, the board of directors of our fair association determined a number of years ago to adapt the program of the annual county fair to changing needs of the community. We have always recognized that basically we are a service organization to provide a needed useful service to the community. We, I feel, have established a fine record and on the agricultural level, so we undertook to introduce industry into the fair. First of all, to be of greater service to the community to enhance and improve the economy. You recall that the Legislature some years ago, between 1954 and 1955 conducted a pilot study regarding the inclusion of a junior industrial department on a competitive basis in which the state would provide cash rewards for youngsters in school programs other than those listed as vocational agriculture. Now, I had the pleasure of serving on that original committee and was personally quite proud of the idea, and felt that there was a great potential here, not only in manner of service to the community but as far as the content of the fair itself is concerned, from the show point of view, from the interest point of view for the benefit of our patrons. Some of the reasons for this are that the items that are made available for display from this area are recognizable, our customers can evaluate them, they are familiar things to most fair audiences, particularly urban population where contact with agriculture is diminishing. This is at the junior level. We also felt that we should reflect major industry in the area as an important segment of the economy, and so our board of directors authorized establishment of a committee, hopefully to be drawn from the top ranks of industry in our local area. Approaches were made through the fair association to various industries of great stature in our community, and the results were amazingly good.

Chairman Regan: For the record. When was this done?

William Straub: Done during 1959, and we went into action in 1960. The composition of the committee is approximately as follows: We had representatives from each of the major industries who agreed to participate in the standing committee. The understanding with the members of the committee was they would serve whether or not their particular industry took part in the fair as of that year. They wanted to establish a committee that could develop the program in an orderly fashion with continuity because we did anticipate at the outset the necessity of doing some probing to find the appropriate vehicle for bringing industry into fairs.

Chairman Regan: May I interrupt at the moment? Prior to 1959, would you say that your fair was primarily an agricultural fair?

William Straub: It was with the exception of the introduction in 1956 of the junior division, junior industrial participation based on the same similar program.

Chairman Regan: Since 1959 or since 1960 when you put the new facilities in, is there a trend, or has there been a transition, are you moving into an industrial exhibit, more substantial than agriculture?

Mr. Straub: Yes, we are. We aim at continual improvement and development in this area. We tried a number of different methods of approach. We started out in facilities that weren't quite adequate. Those of you who have visited our fair know that we are still one of the largest users of tents for our exhibit areas. However, the tent location which also accommodated commercial exhibits wasn't the proper location for the type of operating display that we had asked industry to design for us. The next step was to move the industrial display in its entirety into a building where the hazards of dust and undue heat and distraction from commercial facilities do not exist. This enhanced the exhibit considerably. At that time it was still the displaying of static exhibits with or without an attendant to give information and answer questions, etc. There are a number of drawbacks in this practice, principally one of cost, the headache factor was high from the point of view of both exhibitors and fair management, because the burden on the exhibitors for the cost of moving, assembling, and explaining equipment which was highly complex in nature, in the ordinary exhibit, the type you might see at a trade show. In fact, in the early days I believe a number of them were brought direct from trade show operations in, not only other parts of the United States, but foreign countries. I recall the display that Lockheed provided in the early days which was quite an expensive display, a beautiful display, and it moved to our fair from an air show that was held in Paris, France. Now, as you can imagine, this entailed considerable expense. It was a beautiful display, but the setting was not perfectly suited to it.

Going back now to what I think of is the senior in the industrial department, participation in this particular group exhibit by industry has been on an invitational basis under the direction and design of the committee consisting of representatives of industry.

Chairman Regan: You have a committee of industrial exhibitors, is that it? And from time to time they extend an invitation under the jurisdiction of the fair itself to other industries to participate, is that what you are saying?

Mr. Straub: To clarify this, this committee meets frequently through the year, plans a specific exhibit for the forthcoming year, issues invitations to potential exhibitors from the industrial community, acquaints them with the nature of the exhibit, the procedures and practices that are employed in participating in the exhibit.

As I indicated at the outset, we felt that we would have to probe around a little bit to find out the perfect vehicle after moving the

exhibit to better port, so to speak, changing the type of arrangements so that

Chairman Regan: If you don't mind my interrupting to clarify some points. You mention in the beginning that you primarily had tents, that you were great users of tents and that you have now, that there has been a transition period where you have gone into buildings. Where did you get the money?

Mr. Straub: We moved the exhibit to an existing building, Senator.

Chairman Regan: You didn't build any additional buildings?

Mr. Straub: Not for this purpose. We made space available in an existing building to accomodate this display. Due to the fact that it is committee designed, so to speak, and the area available is noncommercial, it is possible to invite participation so that the space will not be exceeded and need not be emptied. Some degree of control on the final form that the exhibit takes is exercised by the committee. This is the second step. We are talking about this move into the building now. However, many of the attendant headaches from the exhibitor's point of view still remain. These were, cost factors, problem of borrowing knowledgeable personnel from everyday operations. To setup or supervise the installation of this technical equipment still worked a great hardship on the exhibitor. The latest approach by the committee which was employed during the fair last year, was a different approach in which we combined the resources of the fair association, the industrial people in the community and the science students in the high schools with the cooperation of the science instructors. The display last year was in the form of live demonstrations sponsored by various organizations featuring science students in visual demonstrations of scientific principles involved in the production of profit in various industries. First thing the change did was to offer a wide field for subject matter. It removed the limitations of having to bring in a product which in many cases is the same year after year, even if it doesn't lend itself well to repeating. However, there are so many avenues of scientific approach in almost any industry that it is a wealth of new ideas and new ways to tell something about the company. It also tells of a product that we are very fond of—these are our students. It enabled us to put on the stage literally, in front of fairs visitors, enthusiastic youngsters who are in love with their subject, who can help to convey this to fair people in terms which our fair people can understand, our fair visitors.

Chairman Regan: Go back to the adult exhibits, now, and then we can go back to the students a bit later. What was the reaction of the public to this transition from agricultural exhibit to industrial exhibit?

Mr. Straub: Senator, if I may explain. The students I mentioned most recently are a part of the adult exhibit. This is the latest method used by which we provide participation by industry as sponsor and as counsel for these youngsters who demonstrated scientific principles.

Chairman Regan: I think one of the things we are interested in is what is the attitude of the public generally in your area to a fair.

Is it a matter of continued interest, or increasing interest or decreasing interest, can you discuss that for a while?

Mr. Straub: My feeling is that it is a matter of continuing interest and growing interest, particularly I think enhanced by this movement into the industrial area.

Chairman Regan: Senator Symons.

Senator Symons: You may have stated this. What is your estimated population of the area we will say, 50 or 60 miles radius that you would normally draw from?

Mr. Straub: We consider our service area to be 800,000 people, so you are getting about one-third of it in fair attendance.

Chairman Regan: I'm interested in the reaction of industry, generally to the transition in the fair in Santa Clara County, and particularly I'm concerned with whether or not you would have a waiting list of exhibitors who would like to exhibit. Do you have to go out and rustle around and convince them that they should from time to time exhibit? What is your reaction to that?

Mr. Straub: I think it is interesting to note that after the committee decision to adopt this new type of demonstration, with student co-operation with the fair, that the first 10 industries contacted by the appropriate member of our committee gave a yes answer, right now. In fact the available space was oversubscribed upon the first approach, and the interest was terrific. The valuation of results by all those I have been able to talk with was better than we expected.

To summarize our experience during the latest fair year with participation of industrial firms in our area. The effort was threefold in contribution by the students and the instructors who assisted us in the selection and preparation of students for live demonstrations. The fair association undertook the staging of the event, the lighting, the theatrical aspect of it, the area where we felt best qualified to provide this portion of the display. Industry provided the incentive in the form of honorariums for the students that participated, and assisted on expenses incurred by the student in travel, meals, etc. The students, of course, worked together with scientists and industries to prepare, and work out, and become familiar with this equipment that was used to demonstrate basic principles. Such demonstrations as the laser light beam in one case, transmission of music over beam of light in another, are examples of scientific work of the various firms that participated.

Chairman Regan: Would you address yourself to this situation? Was it necessary, or did you in the operation of the fair there at Santa Clara bring in entertainment to attract fairgoers? For example, you might have brought the Beatles or somebody down there. That might have something to do with bringing the people in. What I want for the record is whether or not you had to do that or did the new industrial participation, etc., the exhibits that came from industry and business, did they attract, or did you have to get the Beatles or their prototypes?

Mr. Straub: We didn't even have prototypes. We had entertainment, professional entertainment, we traditionally add a host of amateur act entertainment which is also a local product. The addition of the industrial display to the fair was a great supplement, and did a better job of telling the story of the county economy to the community.

Chairman Regan: What is the reaction of the individual, if you could give the answer? Is the individual interested in coming to see the laser displays, etc., or do you first have to attract him, and then as a side product, does he go around and look at industrial exhibits?

Mr. Straub: I expect that a fair, in offering what amounts to a smorgasbord, attracts different people for different reasons. Incidentally, many see other exhibits they didn't necessarily come to see, and their interest is in many cases awakened by casual contact with areas of the economy, and other educational features that they didn't know were there.

Chairman Regan: Now, in your participation with fair work at Santa Clara, could you give us a summary of your belief, the results of this transition, if there was one, from agricultural to greater participation by business and industry?

Mr. Straub: I think as I indicated at the outset, that basically the fair is a service organization which provides a needed service for the community. The introduction and strong representation by industry in our particular circumstance should reflect this in its role in the community, but might not necessarily be so in other areas. It is, however, in ours, and whether interested in this or not, it is essential to our customers.

Chairman Regan: Do you have any other questions?

Senator Bradley: Mr. Chairman, I would like just for the records say that this exhibit, I think you are referring to the one in Exhibition Hall, I have noticed it myself and I would say without any question that in my opinion it has developed as a growing attraction for people. They conduct these experimentations and demonstrations on a time basis, and in anticipation of a demonstration we will have a very substantial number of people, young people, adults, all kinds, who will go there well in advance of the next hour or next time demonstration. I think that this of itself is a very strong indication of the public interest that is developing and has developed in these industrial exhibits.

Chairman Regan: For the record, this is Dr. William Fitzgerald, director of the Museum of Science and Industry in Los Angeles, which is organized as a district agricultural association, as are most of the fairs with which this committee is concerned. Is that right, Doctor?

Dr. Fitzgerald: It is correct. Senator Regan, and members of the committee, and other guests present. I would like to step back for a moment and talk a bit about the basic purposes and give some descriptive material about the California Museum of Science and Industry.

In regard to that, I do have some publications, a sufficient number for all members of the committee. I am sorry I do not have a sufficient number for everyone here present. Certainly you are welcome—these can be distributed. One is a brochure describing the educational programs sponsored by the museum. The second is a pictorial annual report of activities of the museum culminating in our annual awards dinner last May. The third is a brochure describing one of the industrially sponsored exhibits, in this case that of General Motors, "the Turning Wheel." The last item is an example of our temporary exhibit program, because we have both permanent and temporary exhibits. Now, the California Museum of Science and Industry is an agency of the State of California and is the successor to the 6th District Agricultural Association. Our basic purposes are to present education in fundamental scientific principles to create a deeper knowledge of how those principles are being applied in modern industrial technology, and to increase the general understanding of the economy of the State and of the nation in which we live. Now, how do we achieve those purposes? Basically, through an exhibit program which emphasizes demonstration exhibits. I would like to stress this because we of the Museum of Science and Industry are different from the traditional "collection-oriented" museum. Our museum tells its story, performs its educational task, shows exhibits which demonstrate these principles in action. Now we are pleased in the report which the consultants prepared for this committee. They show, what I think, is the most dramatic example of this kind of exhibit contained in the Southern Cal Edison electricity exhibit. It is actually a Vandergraff generator which the visitor touches and the electricity is then absorbed in his body, he then presses a button which is like a neon tube, and the principle of the generation and the transmission of electricity is dramatically shown by the body, and through the body of the visitor. In other words, in that exhibit it really isn't an exhibit until someone comes and makes it work. The visitor is truly a part of the exhibit. That is about the best and most dramatic example I can think of, but our goal is to repeat and multiply exhibits with this kind of stress on the participation of the visitor in the museum.

The existence then of a permanent exhibit program is the backbone of the museum. However, we do have temporary exhibits which are sometimes on the fringe of a basic scientific emphasis because these tend to attract new people to understand what we are doing and to help them to appreciate the exhibit program at the museum. In that respect most notable, I think, would be the fact that we have the Kennedy Library Exhibit at the museum in the month of October, and this brought large numbers of people to the museum who had not been there before so I feel that these who understand what we are doing will become regular visitors.

We are open 363 days a year. The museum is closed on Thanksgiving and Christmas, otherwise we are open from 10 in the morning until 5, six days a week, that is Monday through Saturday, from 10 until 6 on Sunday. Our attendance figures are referred to in the consultant's report. I would merely add to them the figure for the fiscal year ending on the 30th of June 1964. The figure there would be

1,323,168. In other words, an increase from the previous year of something slightly over 130,000. Currently, our attendance for the first five months of the current fiscal year from July of this year our attendance is 850,000. This is quite a notable increase and indicates that the figure which is mentioned in the report of an attendance of 1,600,000 in the current fiscal year, will undoubtedly be exceeded. We have 850,000 for the first five months of this year.

Now, in regard to the history of the museum. The 6th District Agricultural Association has existed for a long time. There has been a permanent exhibit building and exposition park in the center of Los Angeles since 1912. The building was erected at that time for the purpose of holding housing exhibits primarily in the field of agriculture. There have been some changes in Los Angeles since 1912, as we are all well aware when we try to get out to the airport in the morning, among other things. The population of the city was 100,000 in 1900, and is 2,300,000 today. There has been through the years a number of changes in the exhibit program, but the emphasis remained in the field of agriculture. The board of directors of the museum in 1951 determined to change the focus of emphasis on the exhibit program to a broader one and did select the name "California Museum of Science and Industry." This was legalized by a specific act of the State Legislature in 1963. But the purpose of the board and the intention of the agency was made clear as far back as 1951.

I would say for the benefit of those present this morning that we on the museum staff date the transition to a true demonstration-oriented exhibit program from the time of the installation of the mathematical exhibit which was sponsored by International Business Machines was opened to the public in March, 1961. So the kind of emphasis we have in increasing proportion at the museum which we want to be the purpose of the total museum really is of quite recent origin. It dates, I would say, from 1961.

Now, perhaps of greatest interest to the committee is the role of the California Museum Foundation. Because the museum is a big agency, we are an educational institution with a function comparable to that of a large library. I think that is the best comparison to make of a first rate museum. It is a kind of resort to which people come for a special kind of learning. Someone once described our museum as a walking encyclopedia. At any rate, the reason for its being and its basic operational budgetary support comes from the State of California.

It is certainly notable that we have been able to improve the quality of our exhibit program and have been able to move more rapidly in the change over toward modern demonstration exhibits because of the support which has come from private industry to the museum from the California Museum Foundation. This is in the form of annual memberships by individuals which are more important in terms of the dollar amount than the memberships taken out by corporations. The amount of unrestricted funds raised by the Museum Foundation averages about \$30,000 to \$35,000 per year, not including contributions for specific purposes.

The estimated value of the exhibits which have been contributed to the museum in the past five years by private industry runs in the

neighborhood of \$2,000,000. An additional cost which industry is bearing in the presentation to the public of this high level exhibit program, is in the form of technical maintenance of their exhibits which was estimated in the last fiscal year as having a dollar value of some \$20,000. One example of this I would mention is that the Pacific Telephone Company which is represented here this morning has had a man in the museum daily since the opening of their major permanent exhibit in February last year, to indicate the concern they have of assuring high-powered technical maintenance. Now, in regard to the range of companies which are involved, I have just referred to the Pacific Telephone Company whose representative is here this morning—I also noted in the introduction at the beginning of the hour that a representative from Santa Fe Railroad is present. Both of these companies have major exhibits in the museum. Also in the catalog with major exhibits, would be IBM, General Motors, Southern California Edison, Union Pacific, Carnation Milk, Great Western Savings and Loan Association. A number of other smaller exhibits are displayed in what we call our Omnibus Room, where the exhibits need not have the magnitude of the "Turning Wheel Exhibit" which is described in a booklet before the members of the committee now.

The example I mentioned in response to the question about a combined industrial sponsorship is exemplified in our Science of Aviation exhibit. This is partly sponsored by the aerospace industry. In particular instance of cooperation with the state, an agreement was made that half of the cost of the exhibit be borne by the state and half by the aerospace industry, and that exhibit has been installed in the museum. The first phase was started in October of 1962, the second phase in November of 1963.

Through the medium of the California Museum Foundation, we have been able to attract annual, general, support fund through memberships, the installation of major exhibits at a considerable cost, the dollar amount which I mentioned be estimated at \$2,000,000 the past five years, and a considerable dollar contribution toward the cost of technical maintenance of these exhibits on a day-to-day basis. When you take into account the fact that the museum is open 363 days a year, or 364, because this year was leap year, and when you take into account the fact that last year we had 1,300,000 visitors, and in the current year we will certainly have 1,600,000 to 1,700,000 the problem of maintenance becomes a very significant one.

I also emphasize that when you have demonstration exhibits, when you involve the visitor, when you invite him to touch, we are a do touch museum, when you invite him to come and manipulate things, you are bound to have a problem of the maintenance of the exhibits. Care, of course, needs to be taken in the original research and design of the exhibits. Our own experience, I think, is that designers do a better job in this regard, so that we have exhibits that will stand up under wear and tear of such usage.

Reference was made earlier to the exhibits of trade show nature, and I think this is an important distinction to keep in mind, that is, the distinction between an exhibit which is primarily a display to showcase a particular product and one which is designed to illustrate a

basic scientific principle as it is being applied in modern industrial technology. I don't mean that there is an absolute distinction, so that we have to think of these things as unrelated. In fact, we in the museum, the kind of museum which we have, learned a great deal from the design of trade show exhibits and the use of color, the use of bright colors, and the use of attractive design help to distinguish our institution from some of the traditionally oriented museums. That would be illustrated in the pictures which are in that annual report which you have before you. I would like to say, also, in regard to that, all the literature that you have before you with the exception of the temporary exhibit schedule was printed at the expense of the foundation. Through our own print shop, we have in the museum printed the temporary schedule. Having materials of this kind available to encourage attendance and to help to keep understanding of the museum, I think is very important. Here again we can appreciate the contribution which industry is making through the California Museum Foundation.

The concern of industry to represent itself properly through institutional advertising in the press, and communication media is being met by the kind of opportunity they have in the museums such as our own. I think they feel that the visitor who comes to see the major company or industrial exhibit is concerned about public education. A company or industry which cares about the education of adults as well as the youngsters, enough to place an exhibit of this kind in a museum of our type gets the kind of return that makes the investment worthwhile. Also, it is true that the companies in question feel that they must participate in what I suppose in the last analysis is our most important purpose, and that is in providing intellectual and vocational stimulation for young people. Many youngsters get their first glimpses of their future careers by what they see in museums, by getting excited about ideas that might not have been exciting to them if presented in another format. We feel very proud about this as a fundamental reason for our being and we do feel that the excellence of the exhibit program has been greatly increased by the quality of the exhibits which industries offer to our visitors this year. These are the basic background remarks that I hope will put in context for you the function of the California Museum of Science and Industry.

I have tried to emphasize the relationship of the California Museum Foundation to the museum as supported by the state in order that the potential and possibilities of the assistance from industry to the fairs could be brought into closer focus. I feel certainly that our experience with temporary exhibits in the field of the aerospace industry has been a very successful one. On two successive occasions, for periods of six months, we had space exhibits—they were backboned by materials from NASA, but they were strongly supported by materials from aerospace industries. On both of these occasions we had a remarkable public response. In the last instance, we had 350,000 people go through that particular exhibit in the course of six months, and for part of that time we were not open during the week days except for school tours. I feel that industry is aware of the value in presenting to the general public material which illustrates what they are doing, and how they are applying science in their daily operations. In the experience

which our exhibit department has had, there is potential help and cooperation throughout the state for fairs. The staff of the California Museum of Science and Industry is ready to help in any way.

Mr. Queale: Dr. Fitzgerald, one question. The museum has a free gate, there is no admission charge, is there?

Dr. Fitzgerald: There is only one example of admission fee in the museum and that is in the model railroad exhibit, which I mentioned is cosponsored by Santa Fe and the state. At the time that the agreement was made for construction of the model railroad it was agreed by Santa Fe that the museum would charge a 10-cent fee which was to be returned to the state to compensate for the state's part in the cost of the construction and installation of that exhibit. This 10-cent fee continues at the present time. I would say that Santa Fe also provides a subsidy in that all school children who come to the museum on formal school tours with their teachers are admitted free and in fact, the Santa Fe does pay the 10-cent per child cost and that goes into the state's coffers. This is a very popular exhibit. Attendance at it ran last year about 150,000—a little over 10 percent of our total attendance. Last year 85,000 youngsters came through in regular school tours with teachers, conducted through the museum by guides who are employees of the museum.

Mr. Queale: One other question, Doctor. Are any of the exhibits—I haven't been down there in a year or year and a half—could any of these exhibits be in the form of a moving exhibit, that could be transported from one fair to another, in miniature form, or something of this type? I know that all of your exhibits are rather large, and bulky. This is what we are looking for.

Dr. Fitzgerald: I would like to distinguish here. The permanent exhibits work are designed to fit into particular areas, and are designed to be placed in our museum. Now, that is true of GM, IBM, Southern Cal Edison, Pacific Telephone exhibit. Pacific Tel had to dig out part of the floor in order to find the proper setting for Telstar. Actually a replica of Telstar. Now our permanent exhibits would not be movable. They were designed for our museum specifically. We have had, this is especially true in the realm of our space industry exhibits, a number of excellent transportable exhibits which have been shown at trade shows and other fairs and exhibitions of a temporary nature. It is also true that the experience which we had at the museum with particular units in the total exhibit would make it possible for some of these to be transported. I might say that personally I have felt for a long time that it would be highly desirable if we could have a movable museum. Many museums do this with great success. The Junior Museum in Sacramento did it very effectively a few years ago. To have and put on the road to the schools and to neighborhood groups one or two small units of a given number of exhibits could be very worthwhile. I think this could be done, but units would have to be specially designed for that purpose. The designer and the sponsor have to know what they want to do. If they want to design an exhibit which would be transportable, this certainly could be done, illustrating the same

principles and in many cases, I am sure, using the same devices which we have in the museum.

Mr. Queale: I was thinking particularly of the use in other fairs. A circuit of some of these exhibits. Is this a possibility? Of course there again, the cost of the construction of the exhibit and the willingness of the industry to exhibit other than at the Museum of Science and Industry, would have to be taken into account.

Dr. Fitzgerald: There certainly is a very distinct possibility that it could be done, especially when the number of people attending fairs around the State of California is explained to the potential exhibitor. In other words part of the attractiveness around the museum is the attendance which we have, and the fact that a large number of people will be exposed to the exhibit program.

Chairman Regan: Do you have any comment or any information that will help the committee on the matter of the cost of the installations like Santa Fe installation or Pacific Telephone. What I have in mind is this. The committee probably is interested in knowing whether or not industry would expand its exhibit features by going into other areas—to Sacramento, to San Francisco, to San Jose, to Fresno, Merced, etc. Now the cost of the exhibits that actually are attracting the people down there.

Dr. Fitzgerald: Now, we have a rough rule of thumb in regard to our discussions and negotiations with potential exhibitors. That rough rule of thumb is that a first-class, modern exhibit which emphasizes visitor participation costs about \$50 a square foot. Now, some of our exhibits cost more than that. If you are talking about a 1,500-square-foot exhibit you can figure the kind of money we are talking of here. It is possible to do a first-rate exhibit for less, and some of our exhibitors spend more, but I think that is a good rough rule of thumb. Now that figure could be reduced, I am sure, if the design purpose were to produce a compact exhibit. It would have to be shown in a smaller area. You could perhaps do it for less than that figure. That is the rough figure that we use in making plans for the new exhibits at our museum in Los Angeles.

Chairman Regan: Do you know whether or not any of the major exhibits in your museum have been duplicated any place else in the state?

Dr. Fitzgerald: I do not know of any that have been duplicated elsewhere in the state, but there is one outstanding example of the total exhibit which has been duplicated elsewhere. The mathematic exhibit of IBM has been duplicated for the Chicago Museum of Science and Industry. While the precise dollar figures are not known, it is estimated that that exhibit cost IBM for time and reasearch and development \$400,000. Charles Luckman, the designer, had free rein for a suitable period of time to work on this, in the early stages of his work with IBM.

Chairman Regan: Mr. Chaffee, you have been indicated there, would you comment on the activities of the telephone company?

Mr. Chaffee: I was going to say, we do duplicate some of the exhibits, insofar as the concept of those exhibits is concerned. For example, at the Sacramento Fair we have a permanent exhibit building there and we have demonstrated some of the same principles that we have at the Museum of Science and Industry.

Chairman Regan: Would you say that the results which are achieved have been considered beneficial to your company?

Mr. Chaffee: Oh, indeed.

Chairman Regan: Next question. How about further expansion by. . . We do have 71 fairs. To what extent would your industry or any other participate in any of the rest of the fairs in California?

Mr. Chaffee: I believe we participate in a number of them. I can't offhand say that we participate in all of them. We approach the fair on the basis of the kind of audiences we may be exhibiting to.

I was going to comment regarding your mentioning portable exhibits—we have one presently that sits in a trailer which we have taken over a good portion of California. We take it to the youngsters, in other words we make it available to youngsters, and there again, we demonstrate some of the same principles, and some of the same things we permanently display in the Museum of Science and Industry. We have found this very attractive to our young people. One of the things we are concerned about, is that we want to see young people get interested in science. We have somewhat of a selfish interest in that because we hope these young folks will go on and take an educational course which may lead to a position in our industry at some later date and we know they need a science background. This is somewhat of a selfish point of view.

Dr. Fitzgerald: Pacific Telephone had in our temporary space exhibit a fine replica of Telstar.

Mr. Chaffee: We have used this type of exhibit quite extensively throughout the state.

Dr. Fitzgerald: This is different from the way in which the basic concept was explained in the permanent exhibit in the museum. Each did an effective job of teaching. There are a number of units which we have in our museum in Los Angeles. There is the tic-tac-toe game played against the computer, which is a very attractive kind of exhibit that people get a lot of fun out of, and does illustrate the operation of the computer. The readiness and speed with which the computer can respond to any mark that a human competitor makes with it is astonishing. In fact, you can't beat the machine. Not only that, but how it works is exemplified.

Assemblyman Booth: Mr. Chaffee, what is the cost of your portable exhibit?

Mr. Chaffee: It varies. I can't tell you offhand, because we maintain a stock of various types of exhibits that could be used before various kind of audiences. Not only fairs, but various types of trade

shows, etc., so these would vary in cost depending upon their size. In addition to that, we try to man most of our exhibits so that we have experienced people who are available to talk to the public, explain things, because very often these exhibits are a little complicated in a sense of getting some concept of electronics, etc. So it would be rather difficult to give you a particular figure.

Senator Bradley: Mr. Chaffee, do other organizations—do you believe the cost to be prohibitive to the advantages they get out of it?

Mr. Chaffee: I think each organization would probably have to judge this on its own concept of what it might feel valuable to it. In our case we think this is a very valuable medium of reaching the public, particularly young people.

OTHER MATTERS

Fairs Not Within Jurisdiction of Joint Committee

Previously, the Joint Committee on Fairs Allocation and Classification has recommended that the various fairs which are not now legally within the jurisdiction of the committee, be brought within its province by appropriate amendments to Section 92.7 of the Agricultural Code. These fairs include the California State Fair and Exposition, the California State Exposition and Fair, the Los Angeles County Fair, Agricultural District 1-A (Cow Palace), the 48th District Fair, and the two citrus fairs.

The committee is of the opinion that this change will benefit these fairs by providing them with a forum in which their needs, problems, and programs may be discussed and dealt with, and will benefit all California fairs by developing greater cooperation between them in achieving their common purposes.

A bill to make this change was introduced in the current session, but failed to come out of committee. The committee feels that another effort should be made to enact this change in law at the next regular session.

Entertainment and Other Attractions at Fairs

One of the topics approved for study at the meeting of the Joint Committee on November 8, 1963, was entertainment and other attractions staged at fairs to draw attendance. Preliminary investigation revealed that the problems involved are so complex, and so many ramifications exist, that the study was necessarily postponed until a later date.

ACKNOWLEDGMENTS

The committee acknowledges with gratitude the cooperation of Charles Paul, Director of the Department of Agriculture; A. E. Suider, former Chief of the Division of Fairs and Expositions, and his successor, Thomas E. Bair; Dr. Julian McPhee, President of California Polytechnic College; Wesley P. Smith, State Director of Vocational Education, State Department of Education; Mrs. Marcelle McCoy, Secretary-Manager, Marin County Fair; Ed Clendennen, Manager, 37th District Fair; Roy Bell, Assistant Director of Finance; M. R. Harrington, Assistant Chief, Division of Fairs and Expositions; William Straub, Secretary-Manager, Santa Clara County Fair; Dr. William Fitzgerald, Director of the California Museum of Science and Industry; Richard Walker, Past President, Western Fairs Association; and Louis S. Merrill, General Manager, Western Fairs Association.

The committee expresses its particular appreciation to Messrs. S. Clark Beise, W. G. Chaffee, Francis V. Keesling, Jr., Frederick W. Mielke, Jr., Sigvald Nielson, Esq., T. S. Peterson, and Robert W. Walker, for accepting appointments as members of the statewide advisory committee of business and industry.

The staff which conducted research for the committee, and worked in the preparation of this report are also thanked and commended: C. William Queale, Consultant; Pat Merrick, Project Director; and Patricia Warner, Secretary.

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Statement of Expenditures of Oil Revenue

By the City of Long Beach in Accordance With Section 10,
Chapter 138, Statutes 1964, First Extraordinary Session



Published by the
SENATE
OF THE STATE OF CALIFORNIA
1965

GLENN M. ANDERSON
President of the Senate

HUGH M. BURNS
President pro Tempore

JOSEPH A. BEEK
Secretary



Offices of The City Attorney of Long Beach
Long Beach, California 90802
October 1, 1965

Secretary of the Senate
State of California
State Capitol, Sacramento

Dear Sir :

In accordance with Section 10, Chapter 138, Statutes 1964, First Extraordinary Session, the City of Long Beach hereby files the Statement of Expenditures of Oil Revenue required under the aforesaid act.

Very truly yours,

LEONARD PUTNAM, City Attorney
By Robert W. Parkin, Deputy

Encl.



TIDELAND OIL FUND
TIDELAND OIL REVENUE FUND

SCHEDULE OF EXPENDITURES, INCLUDING OBLIGATIONS INCURRED BUT NOT PAID,
FROM OIL REVENUE FOR THE FISCAL YEAR 1964-65

<i>Description</i>	<i>Disbursements</i>	<i>Obligations incurred but not paid</i>	<i>Total expenditures</i>
Shoreline Development			
Property Acquisitions for Shoreline Drive and access to Arena-----	\$505,602.50	--	\$505,602.50
Title Insurance, appraisers, and negotiators expenses relating to property acquisition -----	12,662.99		12,662.99
Demolition and removal of buildings---	8,684.50		8,684.50
Site investigation, preliminary engineering and design, and preparation of preliminary plans and specifications by personnel of the Engineering Department, for preconstruction phase--	4,219.84		4,219.84
Professional services of Consulting Engineer -----	--	\$13,800.00	13,800.00
Purchase and equipping a work boat for use during construction of hydraulic fill --	4,002.40	3,511.83	7,514.23
Engineering services provided by Department of Engineering for the preconstruction phase of the Shoreline Development -----	2,344.33	--	2,344.33
Totals, shoreline development ----	<u>\$537,516.56</u>	<u>\$17,311.83</u>	<u>\$554,828.39</u>
Arena			
Modification of Attic access openings and ladders -----	\$5,350.00		\$5,350.00
Replacement of trees as part of landscaping -----	1,341.60		1,341.60
Purchase of equipment and materials--	61,235.75	\$4,802.87	66,038.62
Totals, arena -----	<u>\$67,927.35</u>	<u>\$4,802.87</u>	<u>\$72,730.22</u>
Marina and Marine Stadium			
Construction of Comfort Station and Shower Building for Basin No. 5----	\$6,147.17		\$6,147.17
Construction of Parking Lot at 72nd Place—Basin No. 5 -----	24,125.77		24,125.77
Demolition of Building and Improvements at 72nd Place—Basin No. 5--	1,495.00		1,495.00
Reimbursement for Hoist Platforms—Basin No. 5 -----	(4,680.00)		(4,680.00)
Engineering services provided by Department of Engineering for the construction of Basin No. 5 Improvements -----	4,886.14		4,886.14
Construction of Addition to Comfort Station—Basin No. 4-----	15,219.35		15,219.35
Engineering services provided by Department of Engineering for the construction of addition to Comfort Station—Basin No. 4 -----	3,271.07		3,271.07

TIDELAND OIL FUND—Continued
TIDELAND OIL REVENUE FUND—Continued

SCHEDULE OF EXPENDITURES, INCLUDING OBLIGATIONS INCURRED BUT NOT PAID,
 FROM OIL REVENUE FOR THE FISCAL YEAR 1964-65

<i>Description</i>	<i>Disbursements</i>	<i>Obligations incurred but not paid</i>	<i>Total expenditures</i>
Marina and Marine Stadium—continued			
Installation of Landscaping and Sprinkler System of Marina Drive and approaches to Davies Bridge-----	13,785.84		13,785.84
Engineering services provided by Department of Engineering for the installation of landscaping and sprinkler system -----	713.82		713.82
Property acquisition near Marina Drive and San Gabriel Flood Control Channel	61,008.00		61,008.00
Construction of Overlook Park -----	33,525.48		33,525.48
Engineering services provided by Department of Engineering for construction of Overlook Park -----	10,604.78		10,604.78
Professional services for preparation of plans and specifications for construction of Marine Stadium West Improvements -- -----	--	\$58,000.00	58,000.00
Professional services for soil investigation for Marine Stadium West improvements -----	500.00		500.00
Engineering services provided by Department of Engineering for Marine Stadium West improvements -----	10,529.62		10,529.62
Engineering services provided by Department of Engineering for construction of Marine Park -----	5,876.32		5,876.32
Professional services for preparation of plans and specifications for construction of Sea Scout Headquarters----	7,125.00	7,125.00	14,250.00
Professional services for soil investigation for Sea Scout Headquarters-----	375.00		375.00
Engineering services provided by Department of Engineering for Sea Scout Headquarters -----	863.75		863.75
Totals, marina and marine stadium -----	<u>\$195,372.11</u>	<u>\$65,125.00</u>	<u>\$260,497.11</u>
Miscellaneous Expenditures			
Professional services for preparation of plans and specifications for construction of New Belmont Pier -----	\$13,625.00	\$40,875.00	\$54,500.00
Professional services for soil investigation for New Belmont Pier -----	2,600.00		2,600.00
Engineering services provided by Department of Engineering for New Belmont Pier -----	3,864.34		3,864.34
Professional services for preparation of plans and specifications for construction of Bixby Beach Parking Lot----	6,000.00	12,000.00	18,000.00
Engineering services provided by Department of Engineering for Bixby Beach Parking Lot -----	5,225.71		5,225.71

TIDELAND OIL FUND—Continued
TIDELAND OIL REVENUE FUND—Continued

**SCHEDULE OF EXPENDITURES, INCLUDING OBLIGATIONS INCURRED BUT NOT PAID,
 FROM OIL REVENUE FOR THE FISCAL YEAR 1964-65**

<i>Description</i>	<i>Disbursements</i>	<i>Obligations incurred but not paid</i>	<i>Total expenditures</i>
Miscellaneous Expenditures—continued			
Construction of addition to Lifeguard Station at Navy Landing -----		24,821.00	24,821.00
Engineering services provided by Department of Engineering for addition to Lifeguard Station at Navy Landing	8,581.29	--	8,581.29
Engineering services provided by Department of Engineering for construction of Ticket Office at Navy Landing -----	5,095.09	-	5,095.09
Engineering services provided by Department of Engineering for Appian Way Traffic Survey -----	4,691.00	--	4,691.00
Engineering services provided by Department of Engineering for improvements to Leeway Sailing Club and area -----	6,481.48	--	6,481.48
Purchase of furniture and equipment--	442.77	7,886.12	8,328.89
Totals, miscellaneous expenditures	<u>\$56,606.68</u>	<u>\$85,582.12</u>	<u>\$142,188.80</u>
Oil Production Expenses			
Payment of expenses incurred by the Harbor Department relating to the production of oil in Parcel "A"—Richfield Oil Corporation Lease-----	\$148,478.76	--	\$148,478.76
Payment of expenses incurred by the Harbor Department relating to the development of off-shore outside of the Harbor District -----	26,589.67	--	26,589.67
Payment of expenses incurred by the Petroleum Administration Division of the general City relating to the development of the off-shore area outside of the Harbor District -----	19,092.68	--	19,092.68
Payment of expenses incurred by the Department of Engineering relating to the development of off-shore area outside of the Harbor District -----	27,633.19	--	27,633.19
Payment of expenses incurred by the Department of Oil Properties relating to the development and production of oil properties -----	2,704,725.01	429,907.35	3,134,632.36
Payment of expenses incurred by various City officials relating to legislation and development of Long Beach Tidelands -----	2,072.03	922.72	2,994.75
Payment of expenses relating to Contractor's Agreement for production of off-shore area outside of the Harbor District -----	3,399.81	--	3,399.81

TIDELAND OIL FUND—Continued

TIDELAND OIL REVENUE FUND—Continued

SCHEDULE OF EXPENDITURES, INCLUDING OBLIGATIONS INCURRED BUT NOT PAID,
FROM OIL REVENUE FOR THE FISCAL YEAR 1964-65

<i>Description</i>	<i>Disbursements</i>	<i>Obligations incurred but not paid</i>	<i>Total expenditures</i>
Oil Production Expenses—continued			
Payment of expenses incurred by the general City for finance, auditing, legal, and advisory services of personnel attributable to oil development and production of off-shore area outside of the Harbor District -----	10,699.33	--	10,699.33
Professional services for engineering and geological work relating to development, water injection, subsidence control, and unitization of the Long Beach Unit -----	65,630.97	--	65,630.97
Totals, oil production expenses ----	<u>\$3,008,321.45</u>	<u>\$430,830.07</u>	<u>\$3,439,151.52</u>

Maintenance of Tideland Areas and Improvements

Payment of expenses for the operation and maintenance of Long Beach Marina, inspection of boats and boat landings in Alamitos Bay, and patrolling of the water area of the Marina, Bay, and other tidelands, by the Division of Operation and Maintenance of the Marine Department, including the Administration of these activities -----	\$235,902.88		\$235,902.88
Payment of expenses for the operation and maintenance of four Patrol Boats operating in Alamitos Bay, Marine Stadium, and along the ocean front by the Division of Lifeguards of the Marine Department -----	73,413.66	--	73,413.66
Payment of expenses incurred by the general City for finance, auditing, legal, and advisory services, attributable to projects listed herein, and operation and maintenance functions of the Marine Department -----	52,113.36	--	52,113.36
Payment of expenses for the operation and maintenance of lifeguard services in Alamitos Bay and on ocean beach, by the Division of Lifeguards of the Marine Department, including the administration of these activities ----	182,334.62	--	182,334.62
Payment of expenses incurred by the general City for finance, auditing, and personnel services attributable to the Division of Lifeguards of the Marine Department -----	1,147.56	--	1,147.56
Payment of expenses for the administration, operation, and maintenance of the Long Beach Arena by the Arena Division of the Auditorium-Stadium-Arena Department -----	147,417.58	--	147,417.58

TIDELAND OIL FUND—Continued

TIDELAND OIL REVENUE FUND—Continued

SCHEDULE OF EXPENDITURES, INCLUDING OBLIGATIONS INCURRED BUT NOT PAID,
FROM OIL REVENUE FOR THE FISCAL YEAR 1964-65

<i>Description</i>	<i>Disbursements</i>	<i>Obligations incurred but not paid</i>	<i>Total expenditures</i>
Maintenance of Tideland Areas and Improvements—continued			
Payment of expenses incurred by the general City for finance, auditing, and personnel services attributable to the Arena Division of the Auditorium- Stadium-Arena Department -----	2,575.63	--	2,575.63
Placement of rock and sand on South side of Alamitos Bay -----	17,043.74	--	17,043.74
Totals, maintenance of tideland areas and improvements -----	\$711,949.03	--	\$711,949.03
Administration of Tideland Trust			
Reimbursement to Harbor Revenue Fund for direct and pro-rata share of legal services expended in behalf of Tideland Oil Fund -----	\$1,683.51	--	\$1,683.51
Payment of expenses incurred by City Attorney in behalf of Trust -----	189.25	--	189.25
Totals, administration of tideland trust -----	\$1,872.76	--	\$1,872.76
Settlement of Obligations and Adjustments for Prior Year			
Settlement of obligations for the opera- tion and maintenance of Long Beach Marina, inspection of boats and boat landings in Alamitos Bay, and patrol- ling of the water area of the Marina, Bay, and other tidelands, by the Di- vision of Operation and Maintenance of the Marine Department, including the administration of these activities, incurred during 1963-64 (Enc. \$21,- 893.19) -----	\$17,951.56	--	\$17,951.56
Settlement of obligations for the opera- tion and maintenance of lifeguard services in Alamitos Bay and on ocean beach, by the Division of Life- guards of the Marine Department, in- curred during 1963-64 (Enc. \$26,- 760.89) -----	10,772.11	--	10,772.11
Settlement of obligations for the opera- tion and maintenance of Patrol Boats operating in Alamitos Bay, Marine Stadium, and along the ocean front by the Division of Lifeguards of the Marine Department -----	324.27	--	324.27
Settlement of obligations for con- struction of new Patrol Boat for op- erating in Alamitos Bay, Marine Sta- dium, and along the ocean front by the Division of Lifeguards of the Marine Department -----	10,293.75	--	10,293.75

TIDELAND OIL FUND—Continued
TIDELAND OIL REVENUE FUND—Continued

SCHEDULE OF EXPENDITURES, INCLUDING OBLIGATIONS INCURRED BUT NOT PAID,
 FROM OIL REVENUE FOR THE FISCAL YEAR 1964-65

<i>Description</i>	<i>Disbursements</i>	<i>Obligations incurred but not paid</i>	<i>Total expenditures</i>
Settlement of Obligations and Adjustments for Prior Year—continued			
Settlement of obligations for the administration, operation and maintenance of the Long Beach Arena by the Arena Division of the Auditorium-Stadium-Arena Department, incurred during 1963-64 (Enc. \$17,298.62)	14,410.10		14,410.10
Settlement of obligations for various City officials relating to legislation and development of Long Beach Tidelands, incurred during 1963-64 (\$11,523.68)	11,911.27	--	11,911.27
Payment of additional expenses incurred by the Petroleum Administration Division of the general City relating to the development of off-shore area outside of the Harbor District, for adjustment of 4th Quarter, 1963-64 to actual expenses	986.72	--	986.72
Payment of additional expenses incurred by the general City for auditing and legal services relating to the development of off-shore area outside of the Harbor District, for adjustment of 4th Quarter, 1963-64 to actual expenses	1,231.67	--	1,231.67
Payment of additional expenses incurred by the general City for the maintenance of buildings, floats and piers, grounds, sewer pump stations, parking lots, and radio units, for the Operation and Maintenance Division of the Marine Department by personnel of the Departments of Public Service and Park, for adjustment of 4th Quarter, 1963-64, to actual expenses	412.12	--	412.12
Payment of additional expenses incurred by the general City for finance, personnel, auditing and legal services attributable to projects, and operation and maintenance functions of the Marine Department, for adjustment of 4th Quarter, 1963-64, to actual expenses	(86.16)	--	(86.16)
Payment of additional expenses incurred by the general City for the operation and maintenance of Fire Boat #3, housed at Fire Station 21, Long Beach Marina, for adjustment of 4th Quarter, 1963-64, to actual expenses	(1,170.99)	--	(1,170.99)
Payment of additional expenses by the general City for the cleaning and maintenance of the beaches, and maintenance of various facilities and areas			

TIDELAND OIL FUND—Continued
TIDELAND OIL REVENUE FUND—Continued

SCHEDULE OF EXPENDITURES, INCLUDING OBLIGATIONS INCURRED BUT NOT PAID,
 FROM OIL REVENUE FOR THE FISCAL YEAR 1964-65

<i>Description</i>	<i>Disbursements</i>	<i>Obligations incurred but not paid</i>	<i>Total expenditures</i>
Settlement of Obligations and Adjustments for Prior Year—Continued			
of the tidelands, exclusive of the Long Beach Marina area, by personnel of the Department of Public Service, for adjustment of 4th Quarter, 1963-64, to actual expenses -----	12,275.17	--	12,275.17
Payment of additional expenses incurred by the general City for the maintenance of landscaped areas in parks and parking lots, exclusive of the Long Beach Marina area, by personnel of the Department of Parks, for adjustment of 4th Quarter, 1963-64, to actual expenses -----	(464.27)	--	(464.27)
Payment of additional expenses incurred by the general City for finance, personnel, and auditing services attributable to the Division of Lifeguards of the Marine Department, for adjustment of 4th Quarter, 1963-64, to actual expenses -----	221.67	--	221.67
Payment of additional expenses incurred by the general City for furnishing crossing guards at parking lots and street intersections on, and bordering, the tideland areas, and for beach and boat patrols, by personnel of the Police Department, for adjustment of 4th Quarter, 1963-64, to actual expenses -----	3,585.85	--	3,585.85
Payment of additional expenses incurred by the general City for finance, personnel, and auditing services attributable to the Arena Division of the Auditorium-Stadium-Arena Department, for adjustment of 4th Quarter, 1963-64, to actual expenses -----	39.61	--	39.61
Refund of payment to Long Beach Arena (P.O. 2040) -----	(17.00)	--	(17.00)
Adjustment of charges for engineering services provided by Department of Engineering for dredging of North arm of Alamitos Bay between E. 2nd Street and Marine Stadium during the fiscal year 1960-61 for charges incurred prior to approval of project by State Lands Commission -----	(2,000.00)	--	(2,000.00)
Totals, settlement of obligations and adjustment for prior year-----	\$80,677.45	--	\$80,677.45
Grand totals -----	\$4,660,243.39	\$603,651.89	\$5,263,895.28

LONG BEACH HARBOR DEPARTMENT
STATEMENT OF EXPENDITURES OF OIL REVENUE
 INCLUDING OBLIGATIONS INCURRED BUT NOT YET PAID
 FISCAL YEAR 1964-65

<i>Description</i>	<i>Expenditures</i>	<i>Obligations incurred but not yet paid</i>	<i>Total expenditures and obligations</i>
Construction in Progress—A.F.E.s			
Area 7—Fill	\$102,074.35	—	\$102,074.35
Area 4—Fill	157,010.49	—	157,010.49
Fault Block 5 Water Supply & Injection System	427,535.65	—	427,535.65
Pier J Construction	5,864,957.38	—	5,864,957.38
Fills for Back Area Berth 83-87—Form. Pac. Dock & Term.	905,234.61	—	905,234.61
Pier F—B 206 & 207 Transit Shed & Area Development	957,727.21	—	957,727.21
Economic Study & Design for Parcel Z Water Injection Plant FB V.....	1,669.06	—	1,669.06
Pier A—B 211—Grain Storage Facility Expansion	108,473.13	—	108,473.13
Secondary Elec. Distr. Sys. for Pier A,B,C,D, G & Seaside Strip	158,943.55	—	158,943.55
Prepare Plans & Spec. for New Water Injec. Plant on Pier G for Fault Block V	57,263.49	—	57,263.49
Banana Terminal	1,534,499.20	—	1,534,499.20
Pico Ave. Service Road 9th St. to 3rd St.	115,726.18	—	115,726.18
Feas. Study of In-Situ-Combust. Combined with Water Injec. Tar Zone by TOR	14,780.60	—	14,780.60
Pier S3—Channel 2—Back Area Development	781,487.77	—	781,487.77
Programming by Service Bureau Corporation	5,000.00	—	5,000.00
Implementation of Sub-Pool Plan for FB IV Upper Term. Zone.....	2,326.25	—	2,326.25
Barium Sulfate Scale Study	44.84	—	44.84
Study of Secondary Oil Recovery Processes	3,394.90	—	3,394.90
Study of Ultraviolet Radiation Units	49.94	—	49.94
Subtotal, A.F.E.s	\$11,198,198.60	—	\$11,198,198.60
Construction in Progress (Work Orders)			
James A. Lewis Analysis of East Wilmington Field	\$4,106.72	—	\$4,106.72
Update Petroleum and Subsidence Control Div. Workload Study	602.51	—	602.51
Subtotal, work orders	\$4,709.23	—	\$4,709.23
Deferred Charges—State Oil Conservation Assessments	\$9,487.38	—	\$9,487.38

LONG BEACH HARBOR DEPARTMENT—Continued
STATEMENT OF EXPENDITURES OF OIL REVENUE—Continued
 INCLUDING OBLIGATIONS INCURRED BUT NOT YET PAID
 FISCAL YEAR 1964-65

<i>Description</i>	<i>Expenditures</i>	<i>Obligations incurred but not yet paid</i>	<i>Total expenditures and obligations</i>
Operating Expenses—Oil			
Fault Block II Unit Costs-----	\$5,722.01	--	\$5,722.01
Fault Block III Unit Costs—L.B.O.D.-----	29,935.29	--	29,935.29
Fault Block Unit IV Costs General-----	34,993.94	--	34,993.94
Fault Block Unit IV Costs—L.B.O.D.-----	32,527.04	--	32,527.04
Fault Block V Ranger Unit Costs, General-----	10,710.29	--	10,710.29
Fault Block V Ranger Unit Costs, L.B.O.D.-----	17,702.77	--	17,702.77
Non-Unit Costs L.B.O.D.-----	100,222.00	--	100,222.00
Non-Unit Costs—Richfield Oil Corp.-----	58,199.64	--	58,199.64
Non-Unit Costs—Parcel L Develop- ment-----	58,310.69	--	58,310.69
Field Wide General Facility Engineer- ing Costs-----	1,614.47	--	1,614.47
Monthly Report on Water Flood Opera- tion-----	47,747.95	--	47,747.95
Field Wide Engineering Studies-----	110,401.18	--	110,401.18
Compilation of Data Requested by Out- side Parties-----	199.22	--	199.22
Field Wide Corrosion Control Eng. Costs-----	27,442.93	--	27,442.93
Subsidence Costs Harbor Department Only-----	56,158.92	--	56,158.92
State of California Admin. Expense-----	237,160.00	--	237,160.00
General Oil Expense Commitments Not Directly Identified With Any Particular Operation			
Subtotal, operating expenses, oil-----	\$829,048.34	--	\$829,048.34
Petroleum & Subsidence Division Over- head-----	\$80,142.39	--	\$80,142.39
Drilling & Production Operations Sec- tion-----	6,512.44	--	6,512.44
Water Flood Operations-----	6,625.63	--	6,625.63
Technical Services Operations-----	4,919.44	--	4,919.44
Subsidence Control Operations-----	18,758.31	--	18,758.31
Grand total-----	\$12,158,401.76	--	\$12,158,401.76

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